

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD. and
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

SEVEN NETWORKS, LLC,
Patent Owner.

IPR2018-01106 (Patent 9,516,127) IPR2018-01108 (Patent 9,516,127)
IPR2018-01113 (Patent 8,811,952) IPR2018-01114 (Patent 8,811,952)
IPR2018-01120 (Patent 9,247,019) IPR2018-01122 (Patent 9,325,600)
IPR2018-01124 (Patent 9,351,254) IPR2018-01125 (Patent 9,351,254)
IPR2018-01126 (Patent 9,516,129) IPR2018-01127 (Patent 9,553,816)¹

Before THU A. DANG, KARL D. EASTHOM, JONI Y. CHANG,
THOMAS L. GIANNETTI, ROBERT J. WEINSCHENK, and
JACQUELINE T. HARLOW, *Administrative Patent Judges*.²

CHANG, *Administrative Patent Judge*.

ORDER
Conduct of Proceeding
37 C.F.R. § 42.5

¹ This Order applies to each of the above-listed proceedings. We exercise our discretion to issue one Order to be filed in each proceeding. The parties are not authorized to use this heading style in any subsequent papers.

² This is not an expanded panel of the Board. It is a listing of all the Judges on the panels of the above-listed proceedings.

IPR2018-01106 (Patent 9,516,127) IPR2018-01108 (Patent 9,516,127)
IPR2018-01113 (Patent 8,811,952) IPR2018-01114 (Patent 8,811,952)
IPR2018-01120 (Patent 9,247,019) IPR2018-01122 (Patent 9,325,600)
IPR2018-01124 (Patent 9,351,254) IPR2018-01125 (Patent 9,351,254)
IPR2018-01126 (Patent 9,516,129) IPR2018-01127 (Patent 9,553,816)

The Board received three emails from Petitioner (“Samsung”) and Patent Owner (“SEVEN Networks”), requesting a conference call with the panels. Ex. 3002.³ The email sent on October 1, 2018, indicates that “[a]fter meeting and conferring with counsel for Patent Owner (SEVEN Networks) on Friday, September 28 and Monday, October 1, counsel for Petitioner (Samsung) wishes to address [five] topics on the conference call with the Board that [the parties] requested in [the] September 28 e-mail.” *Id.*

In this Order, we address below each of these five items listed in the October 1, 2018 email in turn. Therefore, a conference call with the Board at this time is not necessary.

As to Item #1, Samsung’s request to seal Exhibit 3001 is improper. *Id.* Exhibit 3001 includes an email and an attachment that were sent to the Board on August 13, 2018. Ex. 3001. Neither the email nor the attachment indicates that it contains confidential material. *Id.* Moreover, the Board’s trial rules do not permit submission of confidential material via email to the Board. Notably, 37 C.F.R. § 42.14 provides that “[t]he record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered,” and that “[a] party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed.” *See also* 35 U.S.C. § 316(a)(1) (“The Director shall prescribe regulations . . . providing that the file of any proceeding under this chapter shall be made available to the public, except

³ We cite to the record in IPR2018-01106, unless otherwise noted.

IPR2018-01106 (Patent 9,516,127) IPR2018-01108 (Patent 9,516,127)
IPR2018-01113 (Patent 8,811,952) IPR2018-01114 (Patent 8,811,952)
IPR2018-01120 (Patent 9,247,019) IPR2018-01122 (Patent 9,325,600)
IPR2018-01124 (Patent 9,351,254) IPR2018-01125 (Patent 9,351,254)
IPR2018-01126 (Patent 9,516,129) IPR2018-01127 (Patent 9,553,816)

that any petition or document filed with the intent that it be sealed shall, if accompanied by a motion to seal, be treated as sealed during the outcome of the ruling on the motion.”).

In any event, for efficiency, we treat Samsung’s request to seal Exhibit 3001 as a request for authorization to file a motion to seal, and grant Samsung leave to file a motion to seal, along with a jointly proposed protective order (such as the default protective order set forth in the *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, Appendix B (Aug. 14, 2012)) and a redacted version of Exhibit 3001 that is available to the public, within five business days of this Order, in each proceeding at issue.

The motion to seal should provide specific and sufficient reasons why the information should be maintained under seal, why the information was emailed to the Board without any indication that the information includes confidential material, and why Samsung failed to notify the Board immediately after Exhibit 3001 was entered into the records on September 18, 2018. For further guidance, the parties are directed to *Argentum Pharm. LLC v. Alcon Research, Ltd.*, Case IPR2017-01053 (PTAB Jan. 19, 2018) (Paper 27) (informative).

As a precaution, the availability status of Exhibit 3001 has been changed to “parties and Board only” temporarily. The availability status will be changed back to “public” if Samsung fails to timely file a motion to seal.

As to Item #2, the October 1, 2018 email indicates that Samsung’s request for authorization to file a ten-page brief, to address real party in

IPR2018-01106 (Patent 9,516,127) IPR2018-01108 (Patent 9,516,127)
IPR2018-01113 (Patent 8,811,952) IPR2018-01114 (Patent 8,811,952)
IPR2018-01120 (Patent 9,247,019) IPR2018-01122 (Patent 9,325,600)
IPR2018-01124 (Patent 9,351,254) IPR2018-01125 (Patent 9,351,254)
IPR2018-01126 (Patent 9,516,129) IPR2018-01127 (Patent 9,553,816)

interest and privity issues raised by SEVEN Networks in its Preliminary Response is not opposed by SEVEN Networks. As to Item #3, the email indicates that SEVEN Networks' request for authorization to file a six-page reply brief is not opposed by Samsung. We believe additional briefing on these issues would be helpful to resolve the parties' dispute. As such, the parties' requests are *granted*.

As to Item #4, SEVEN Networks' request to file certain documents into the cases⁴ filed by Google LLC ("Google") is an improper *ex parte* communication because counsel for Google, who is the Petitioner in those cases, was not included or copied in the email. Moreover, there is no indication that SEVEN Networks has conferred with Google. Accordingly, SEVEN Networks' request to enter documents into Google's cases is *denied*.

As to Item #5, Samsung's request for authorization to file a reply to SEVEN Networks' Preliminary Responses in Cases IPR2018-01106, IPR2018-01108, IPR2018-01124, and IPR2018-01125 to address arguments regarding claim construction and the Board's discretion under § 325(d) is *denied*, as Samsung could have foreseen these arguments and addressed them in its Petitions.

Lastly, the Board reminds the parties to observe the Board's statutory and regulatory requirements carefully to avoid improper requests. Improper

⁴ Cases IPR2018-01047, IPR2018-01048, IPR2018-01049, IPR2018-01050, IPR2018-01051, IPR2018-01052, IPR2018-01094, IPR2018-01095, IPR2018-01101, IPR2018-01102, IPR2018-01103, IPR2018-01104, IPR2018-01115, IPR2018-01116, IPR2018-01117, and IPR2018-01118 ("Google's cases").

IPR2018-01106 (Patent 9,516,127) IPR2018-01108 (Patent 9,516,127)
IPR2018-01113 (Patent 8,811,952) IPR2018-01114 (Patent 8,811,952)
IPR2018-01120 (Patent 9,247,019) IPR2018-01122 (Patent 9,325,600)
IPR2018-01124 (Patent 9,351,254) IPR2018-01125 (Patent 9,351,254)
IPR2018-01126 (Patent 9,516,129) IPR2018-01127 (Patent 9,553,816)

requests cause unnecessary delays, costs, and burden on the Board, which frustrate the Board's statutory and regulatory goals (*see* 35 U.S.C. § 316(b) and 37 C.F.R. § 42.1(b)), and the Board's ability to timely meet its statutory obligations (*see* 35 U.S.C. § 314(b)). *See also* 37 C.F.R. § 42.12.

ORDER

In consideration of the foregoing, it is hereby

ORDERED that, within five business days of this Order, Samsung is authorized to file a motion to seal Exhibit 3001 as noted above, along with a jointly proposed protective order, and a redacted version of Exhibit 3001 that is available to the public;

FURTHER ORDERED that, although the availability status of Exhibit 3001 has been changed to "parties and Board only" temporarily, the availability status will be changed back to "public" if Samsung fails to timely file a motion to seal in compliance with this Order;

FURTHER ORDERED that Samsung is authorized to file a ten-page brief by October 12, 2018, to address real party in interest and privity issues raised by SEVEN Networks in its Preliminary Response;

FURTHER ORDERED that SEVEN Networks is authorized to file a six-page reply brief by October 19, 2018;

FURTHER ORDERED that SEVEN Networks' request for authorization to file certain documents into Google's cases is *denied*; and
FURTHER ORDERED that Samsung's request for authorization to file a reply in Cases IPR2018-01106, IPR2018-01108, IPR2018-01124, and

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.