

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Huawei Technologies Co. Ltd.
Petitioner

v.

Nokia Solutions and Networks Oy
Patent Owner

Case IPR2017-01540
Patent 9,185,688

**PETITIONER'S MOTION TO SEAL UNDER 35 U.S.C. §312 AND 37
C.F.R. §42.104**

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.14, Petitioner, Huawei Technologies Co. Ltd. (“Petitioner”) hereby move to seal Petitioners’ Petition for *Inter Partes* Review, HUAWEI-1003, and HUAWEI-1016 (“Proposed Sealed Documents”). The Proposed Sealed Documents are filed contemporaneously with this Motion.

II. PROTECTIVE ORDER

In the accompanying district court litigation (*Nokia Solutions and Networks US LLC and Nokia Solutions and Networks OY v. Huawei Technologies Co. LTD. and Huawei Device USA, Inc.*, Case No. 2:16-cv-00754-JRG-RSP (E.D. Tex.)), Patent Owner has agreed to a protective order. When Patent Owner appears in the present proceeding, Petitioners anticipate that the parties will negotiate a protective order of the same or similar scope. In the meantime, Petitioners are submitting the default protective order along with this Motion, which may be replaced by a revised protective order at a later date upon agreement between the parties.

III. BASIS FOR SEALING CERTAIN EXHIBITS

The *Office Patent Trial Practice Guide* provides that “[t]he rules aim to strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly

sensitive information.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, those “rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. § 42.54); *see also Illumina v. Columbia University*, IPR2013-00011, Paper 66, Aug. 12, 2013 Dec. (granting a motion to seal “technical and business information” and “product development information”).

The Proposed Sealed Documents contain information that is subject to the Protective Order entered in the accompanying district court litigation.

1. **HUAWEI-1016.** This document contains Patent Owner’s Infringement Contentions in the accompanying district court litigation related to U.S. Pat. No. 9,185,688. These Infringement Contentions were marked CONFIDENTIAL by the Patent Owner and, as such, are subject to the Protective Order entered on Oct. 07, 2016. *See Nokia Solutions and Networks US LLC and Nokia Solutions and Networks OY v. Huawei Technologies Co. LTD. and Huawei Device USA, Inc., Case No. 2:16-cv- 00754-JRG-RSP*, Paper 42 (E.D. Tex. Oct. 07, 2016)

2. **Petitioners' Petition for *Inter Partes* Review of U.S. Pat. No. 9,185,688.** This Petition for *Inter Partes* Review references and discusses the subject-matter of HUAWEI-1016, so it should be classified as CONFIDENTIAL. A redacted version of this Petition is provided herewith.
3. **HUAWEI 1003.** The Declaration of Narayan Mandayam references and discusses the subject-matter of HUAWEI-1016, so it should be classified as CONFIDENTIAL. A redacted version of this Declaration is provided herewith.

Pursuant to 37 CFR § 42.55(a), Petitioner proposes entry of the default protective order found in Appendix B of the Trial Practice Guide. As noted previously, the default protective order may be replaced in the future by agreement between the parties to a protective order consistent with that imposed in the related litigation.

The aforementioned Proposed Sealed Documents provide evidence of Patent Owner's belief about the scope and meaning of the claims in U.S. Pat. No. 9,185,688. Thus, the Proposed Sealed Documents are necessary to construe any disputed claims.

For the foregoing reasons, the Proposed Sealed Documents described herein should receive a "CONFIDENTIAL" designation and be kept under

seal.

Respectfully submitted,

Date: 6-12-17

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APPENDIX A

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PROTECTIVE ORDER

This standing protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “PROTECTIVE ORDER MATERIAL.”

2. Access to confidential information is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) *Parties*. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(B) *Party Representatives*. Representatives of record for a party in the proceeding.

(C) *Experts*. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

(D) *In-house counsel*. In-house counsel of a party.

(E) *Other Employees of a Party*. Employees, consultants or other persons performing work for a party, other than in-house counsel and in-house counsel's support staff, who sign the Acknowledgement shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

(F) *The Office*. Employees and representatives of the Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and

representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

(G) *Support Personnel*. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

3. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to

maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

4. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) *Documents and Information Filed With the Board.*

(i) A party may file documents or information with the Board under seal, together with a non-confidential description of the nature of the confidential information that is under seal and the reasons why the information is confidential and should not be made available to the public. The submission shall be treated as confidential and remain under seal, unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that the documents or information do not to qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the

information redacted from the non-confidential version is confidential and should not be made available to the public. The nonconfidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless, upon motion of a party and after a hearing on the issue, or *sua sponte*, the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) *Documents and Information Exchanged Among the Parties.*

Information designated as confidential that is disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “PROTECTIVE ORDER MATERIAL” and shall be produced in a manner that maintains its confidentiality.

(j) *Standard Acknowledgement of Protective Order.* The following form may be used to acknowledge a protective order and gain access to information covered by the protective order:

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**Standard Acknowledgment for Access to
Protective Order Material**

I _____, affirm that I have read the
Protective Order; that I will abide by its terms; that I will use the
confidential information only in connection with this proceeding and for no
other purpose; that I will only allow access to support staff who are
reasonably necessary to assist me in this proceeding; that prior to any

disclosure to such support staff I informed or will inform them of the requirements of the Protective Order; that I am personally responsible for the requirements of the terms of the Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Protective Order and providing remedies for its breach.

Signed _____

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned certifies that on June 12, 2017, a complete and entire copy of this MOTION TO SEAL UNDER 37 CFR § 42.54 was provided via FedEx, to the Patent Owner by serving the correspondence addresses of record as follows:

HARRINGTON & SMITH
4 RESEARCH DRIVE, Suite 202
Shelton, CT 06484-6212

Service was also made to the litigation counsel of the Patent Owner by serving the correspondence email address of record as follows:

Alston & Bird LLP
101 S. Tryon Street, Suite 4000
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Emails: ben.pleune@alston.com, Marsha.Diedrich@alston.com and Nokia-Huawei@alston.com

/Christine Rogers/

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