

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ILLUMINA, INC.,
Petitioner,

v.

THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK
Patent Owner.

Case IPR2018-00322
Patent 9,708,358

PATENT OWNER'S MOTION TO SEAL UNDER 37 C.F.R. § 42.54

MOTION TO SEAL UNDER 37 C.F.R. § 42.54

Pursuant to 37 C.F.R. § 42.54, Patent Owner The Trustees of Columbia University in the City of New York (hereinafter “Patent Owner”) respectfully submits this Motion to Seal a portion of the confidential version of its Patent Owner Response and certain Exhibits referred to therein. These documents are being filed concurrently with this Motion.

Patent Owner identifies Exhibits 2120-2124 as containing sensitive business confidential information of Petitioner Illumina, Inc. (hereinafter “Petitioner”), and explains below the good cause for placing these documents under seal.

Patent Owner has conferred with Petitioner regarding this Motion, and Petitioner has reserved the right to oppose this Motion.

Patent Owner has indicated to Petitioner that it proposes using the Board’s model Default Protective Order set forth in the *Office Patent Trial Practice Guide* as the Protective Order. 77 FED. REG. 48756, 48771 (Aug. 14, 2012) and Petitioner has not objected. The documents containing confidential information are already covered by a Protective Order (Exhibit 2128 hereto) which has been agreed upon by Patent Owner and Petitioner in a related litigation pending in the District of Delaware. D. Del. C.A. No. 17-973 (CFC).

I. Good Cause Exists for Sealing Certain Confidential Information

The *Office Patent Trial Practice Guide* provides that “the 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).

Each of the exhibits summarized in Table 1 below (the “Proposed Sealed Exhibits”) contains sensitive, confidential business information of Petitioner.

The Proposed Sealed Exhibits are discussed in the confidential version of Patent Owner’s Response. These exhibits and the portions of Patent Owner’s Response which refer to them should be sealed for the reasons enumerated in Table 1 below.

TABLE 1 – Proposed Sealed Exhibits

Exhibit No.	Summary of Contents	Good Cause for Filing Under Seal
2120	Internal corporate email re: Illumina’s acquisition of Solexa	Contains sensitive, proprietary Illumina business communications that have been marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
2121, 2122, 2123, 2124	Internal corporate emails and attachments re: IP Group Meetings	Contains sensitive, proprietary Illumina business communications that have been marked “HIGHLY

		CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
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II. Certification of Non-Publication

On behalf of Patent Owner, undersigned counsel certifies that to the best of his knowledge the information sought to be sealed by this Motion to Seal has not been published or otherwise made public.

Efforts to maintain the confidentiality of this information have been undertaken by Patent Owner and Petitioner in the related district court proceeding. D. Del. C.A. No. 17-973 (CFC). In that district court proceeding, the information that Patent Owner now moves to seal was produced pursuant to a Protective Order agreed upon by Patent Owner and Petitioner and was designated “Highly Confidential – Attorneys’ Eyes Only” by Petitioner pursuant to that Protective Order.

III. Certification of Conference with Opposing Party Pursuant to 37 C.F.R. § 42.54

Patent Owner has conferred with Petitioner regarding its proposal to use the Board’s model Default Protective Order and Petitioner has not objected.

IV. Proposed Protective Order

The Protective Order attached hereto as Exhibit 2127 is the Board's Default Protective Order and Patent Owner proposes the Parties be bound by it in the

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above-identified IPR. *Office Patent Trial Practice Guide*, 77 FED. REG. 48756, 48771 (Aug. 14, 2012). Patent Owner has also attached to this Motion as Exhibit 2128 a copy of the Protective Order agreed to by Patent Owner and Petitioner in the concurrent litigation.

Respectfully submitted,

Dated: October 26, 2018

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CERTIFICATE OF SERVICE

I hereby certify that a computer disk containing a true and correct copy of the foregoing **PATENT OWNER'S MOTION TO SEAL UNDER 37 C.F.R. § 42.54** and **EXHIBITS 2120-2124, 2127 AND 2128** are being served on October 26, 2018, via Federal Express overnight mail to Counsel for Petitioner at:

Knobbe, Martens, Olson, & Bear, LLP
2040 Main St., 14th Floor
Irvine, CA 92614

Dated: October 26, 2018

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