

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 IPR2018-00291 (Patent 9,718,852 B2)
Case IPR2018-00318 (Patent 9,719,139 B2)
Case IPR2018-00322 (Patent 9,708,358 B2)
Case IPR2018-00385 (Patent 9,725,480 B2)
Case IPR2018-00797 (Patent 9,868,985 B2)¹

Before JAMES A. WORTH, MICHELLE N. ANKENBRAND, and
BRIAN D. RANGE, *Administrative Patent Judges*.

RANGE, *Administrative Patent Judge*.

DECISION
Motion to Seal and for Protective Order
37 C.F.R. §§ 42.14 and 42.54

¹ These proceedings have not been consolidated. The parties are not authorized to use a combined caption unless an identical paper is being entered into each proceeding, and the paper contains a footnote indicating the same.

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On October 26, 2018, Patent Owner filed a substantively identical motion to seal in each of these five matters, and on November 2, 2018, Petitioner filed parallel substantively identical responses further supporting the Motion. *See, e.g.*, IPR2018-00291, Papers 33 (“Motion”), 36 (“Response”). Patent Owner also proposes that the parties be bound by the Board’s default protective order and certifies that Petitioner does not object to this proposal. Motion at 3–4.

Only “confidential information” may be protected from public disclosure when filed in an *inter partes* review. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations— . . . providing for protective orders governing the exchange and submission of confidential information.”). The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. The moving party has the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). To grant a motion to seal, we need to know why the information sought to be sealed constitutes confidential information. *See, e.g., Garmin Int’l, Inc. v. Cuozzo Speed Technologies LLC*, IPR2012-00001, Paper 36, 3–4.

Here, Patent Owner’s Motion seeks to seal Exhibit Numbers 2120–2124. Motion at 2–3. Patent Owner notes that each of the exhibits are designated “Highly Confidential – Attorneys’ Eyes Only” under the terms of a protective order agreed upon by Petitioner and Patent Owner in related litigation pending in the District of Delaware (D. Del. C.A. No. 17-973

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(CFC)). *Id.* at 1.² Petitioner’s Response argues in favor of Patent Owner’s Motion by asserting that each of the exhibits includes sensitive and confidential business information. Response at 2–3.

Upon consideration of the Patent Owner’s Motion to Seal, we determine that there is good cause for granting the Motion with respect to Exhibits 2120–2124.

We have reviewed the subject exhibits and determine that they relate to internal business matters and meetings. On balance, we determine that Petitioner’s interest in keeping Exhibits 2120–2124 confidential outweighs the public’s interest in being able to access the documents. In particular, we note that Patent Owner cites these exhibits to establish that, “[t]he admissions made in the ’465 patent reexamination are attributable to Illumina.” *See, e.g.*, IPR2018-00291, Paper No. 31, 57–58 (Patent Owner’s Response). The particular business substance of the documents is not highly relevant to this point and is also not particularly relevant to the merits of *inter partes* review as a whole. Good cause exists to place Exhibits 2120–2124 under seal, and we see little harm to the public’s interest in restricting access to the information.

² We note that paragraph 6(k) of the District Court’s Protective Order provides that the producing party may, in writing, agree that others may receive information designated confidential under the District Court’s Protective Order. Ex. 2128. Here, Patent Owner conferred with Petitioner prior to filing its motion, and Petitioner represents that it does not object to sealing the exhibits and that it agrees that entry of the Board’s default protective order is appropriate in these proceedings. *See* Motion 1; Response 1.

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ORDER

For the foregoing reasons, Petitioner's Motion to Seal is granted. It is

ORDERED that with respect to Exhibits 2120–2124, the motion is *granted* and that these exhibits will be kept under seal; and

FURTHER ORDERED that the Board's default protective order (Exhibit 2127) is entered and governs the treatment and filing of confidential information of this proceeding.

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