

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ILLUMINA, INC.,  
Petitioner,

v.

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

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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)<sup>1</sup>

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

WORTH, *Administrative Patent Judge*.

ORDER  
Motions to Preserve Record Pending Appeal

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<sup>1</sup> The 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.

## I. INTRODUCTION

With Board authorization, the parties filed a joint motion to preserve the record under seal pending appeal in each of these proceedings. Cases IPR2018-00291 (Paper 70), IPR2018-00318 (Paper 72), IPR2018-00322 (Paper 70), IPR2018-00385 (Paper 69) (“Motions to Preserve the Record”). In the Motions to Preserve the Record, the parties ask that the Board preserve the record by maintaining sealed Exhibits 2120–2124 and the sealed Patent Owner Response.<sup>2</sup>

## II. DISCUSSION

Patent Owner was permitted to file certain information under seal in accordance with 37 C.F.R. § 42.54(a) such that the record contains public and non-public versions of certain documents and confidential exhibits. *See* Paper 37. The documents and exhibits filed under seal become publicly available after final judgment. *See* Office Patent Trial Practice Guide at 77 Fed. Reg. 48756, 48761 (Aug. 14, 2012)). However, a party may file a motion to expunge confidential information from the record if wishing to preserve its confidentiality. 37 C.F.R. § 42.56. Here the parties ask that the record be preserved as is, i.e., without removal or disclosure to the public of the information filed under seal, during the pendency of its appeals.

Under the present circumstances, it is reasonable to maintain the record undisturbed pending outcome of any appeal proceedings. At the

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<sup>2</sup> Where the same or similar papers have been filed in multiple proceedings, we refer herein to the papers filed in Case IPR2018-00291, except where otherwise indicated. Nevertheless, we note that the same exhibit numbers, i.e., Exhibits 2120–2124, are referred to in the Motion to Preserve the Record in each of the proceedings.

Cases IPR2018-00291, IPR2018-00318, IPR2018-00322, IPR2018-00385

conclusion of any appeal proceeding, a motion to expunge the confidential information in the record shall be filed. If a motion to expunge is not timely filed, then the information filed under seal will be made public in due course. *See* Office Patent Trial Practice Guide at 77 Fed. Reg. 48756, 48761 (Aug. 14, 2012)).

### III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the joint Motion to Preserve the Record in each proceeding is *granted*;

FURTHER ORDERED that the records in Cases IPR2018-00291, IPR2018-00318, IPR2018-00322, and IPR2018-00385 shall be preserved until the conclusion of any appeal proceedings;

FURTHER ORDERED that the record in this proceeding will be preserved and the documents filed under seal will not be expunged or made public until after the completion of all appeals, or, if no Notice of Appeal is filed, the expiration of the period to file a Notice of Appeal; and

FURTHER ORDERED that the documents filed under seal in this proceeding will be unsealed 45 days after the conclusion of all appeals, or, if no Notice of Appeal is filed, 45 days after the expiration of the period to file a Notice of Appeal, unless, before that time, the parties file a motion to expunge.

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