

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NXP USA, INC.,
Petitioner,

v.

IMPINJ, INC.,
Patent Owner.

IPR2020-00544
Patent 8,344,857 B1

Before BRIAN J. McNAMARA, ROBERT J. WEINSCHENK, and
KEVIN C. TROCK, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

ORDER
Denying Patent Owner's Motion to Seal
37 C.F.R. §§ 42.14, 42.54

I. INTRODUCTION

Impinj, Inc. (“Patent Owner”) filed a motion to seal portions of Exhibit 2005. Paper 6 (“Motion” or “Mot.”). For the following reasons, the Motion is *denied* without prejudice.

II. ANALYSIS

A motion to seal must contain a protective order. 37 C.F.R. § 42.54(a). Patent Owner provides a copy of an “agreed-upon Protective Order.” Mot. 1. Patent Owner explains that “[t]he Protective Order differs from the PTAB’s default protective order provided in the Consolidated Trial Practice Guide only in that it provides for a confidentiality designation that is limited to outside counsel only.” *Id.* at 2. Specifically, the proposed Protective Order creates two categories of confidential information, namely, confidential information marked “PROTECTIVE ORDER MATERIAL” and confidential information marked “OUTSIDE COUNSEL EYES ONLY—PROTECTIVE ORDER MATERIAL.” *Id.* at Appx. A. The proposed Protective Order states that the Office, as defined in Section 2(F), may access “the confidential information . . . without the requirement to sign an Acknowledgement.” However, Section 2 of the proposed Protective Order concerns only one of the categories of confidential information, i.e., “PROTECTIVE ORDER MATERIAL.” *Id.* Section 3 of the proposed Protective Order, which concerns “OUTSIDE COUNSEL EYES ONLY—PROTECTIVE ORDER MATERIAL,” does not expressly state that the Office may access “OUTSIDE COUNSEL EYES ONLY—PROTECTIVE ORDER MATERIAL.” *Id.* According to the proposed Protective Order, access to “OUTSIDE COUNSEL EYES ONLY—PROTECTIVE ORDER MATERIAL” is limited to “outside counsel of record for a party to the

proceeding (and their staff and personnel); and party experts, as defined in Sec. 2(C)” and does not mention the Office as defined in Section 2(F) *Id.*

Because the proposed Protective Order does not expressly state that the Office may access “OUTSIDE COUNSEL EYES ONLY—PROTECTIVE ORDER MATERIAL,” we decline to enter the proposed Protective Order. Patent Owner, though, may file a revised motion to seal with a revised protective order. The revised protective order should expressly state that the Office, as defined in Section 2(F), may access “OUTSIDE COUNSEL EYES ONLY—PROTECTIVE ORDER MATERIAL.” The revised protective order also should state that employees and representatives of the Office may access such material *without* the requirement to sign an acknowledgement.

Further, Patent Owner filed the sealed version of Exhibit 2005 under exhibit number 2001 in PTAB E2E. If Patent Owner files a revised motion to seal, Patent Owner shall refile the sealed version of Exhibit 2005 under the correct exhibit number in PTAB E2E. Upon refiling the sealed version of Exhibit 2005, the original sealed version will be expunged from the record.

III. ORDER

It is hereby

ORDERED that the Motion is *denied* without prejudice;

FURTHERED ORDERED that, within ten (10) business days of this Order, Patent Owner may file a revised motion to seal in accordance with the instructions set forth above; and

FURTHER ORDERED that, if Patent Owner does not file a revised motion to seal within ten (10) business days of this Order, Exhibit 2005 will

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be unsealed and made available to the public.

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