

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

VLSI TECHNOLOGY LLC,

Appellant,

v.

PATENT QUALITY ASSURANCE LLC, INTEL
CORPORATION,

Appellees,

JOHN A. SQUIRES, Under Secretary of Commerce for
Intellectual Property and Director of the United
States Patent and Trademark Office,

Intervenor.

No. 23-2298

PATENT QUALITY ASSURANCE LLC,

Appellant,

v.

VLSI TECHNOLOGY LLC,

Appellee,

JOHN A. SQUIRES, Under Secretary of Commerce for
Intellectual Property and Director of the United
States Patent and Trademark Office,

Intervenor.

No. 23-2354

**VLSI TECHNOLOGY LLC'S NON-CONFIDENTIAL REPLY IN
SUPPORT OF ITS MOTION TO UNSEAL**

Confidential Material Omitted: The material redacted on pages 2, 5, and 7-10 of this reply concerns, and in context could reveal information about, a report that the Director ordered to be kept under seal.

The oppositions to unsealing underscore the need for sunlight in this case.

PQA tries to hide everything. It opposes *any* unsealing—even unsealing this Court expressly ordered. PQA.Resp.2-3; Mot.5. That is the latest stop on PQA’s campaign to conceal and misrepresent its origins, purposes, and backers. That campaign started with PQA’s creation: PQA’s articles of organization were filed, under penalty of perjury, by “Morgan Noble”—since exposed as a “fake persona” used to conceal LLCs’ true creators.¹ PQA’s campaign continued with its flagrant violations of the Director’s orders to disclose its members, purposes, and backers. Appx73-83; Appx225-39. PQA disobeyed those orders, with impunity. We still do not know who is behind it—or who is supposed to have been “admonished” by the Director’s putative sanction. And PQA’s defiance now extends to *this Court’s* order to remove confidentiality markings.

PQA says it had no idea the confidentiality discussion at oral argument concerned this case. PQA.Resp.8-9. That is frivolous. The discussion focused on the “whistleblower report”—at issue *only* in PQA’s case—and *explicitly* referenced “the PQA appeal.” No. 23-2158, Oral Arg. 0:12-2:52. PQA cannot credibly contend this Court did not order unsealing of its efforts to extract money from VLSI.

PQA also fights tooth and nail against unsealing *anything* in the whistleblower report—even information now undisputedly public under FOIA. But “once

¹ Appx7120-21; <https://www.wired.com/story/registered-agents-inc-fake-personas>.

there is disclosure [under FOIA], the information belongs to the general public.” *Nat’l Archives & Recs. Admin. v. Favish*, 541 U.S. 157, 174 (2004). “Publicly available information cannot be sealed.” *June Med. Servs., L.L.C. v. Phillips*, 22 F.4th 512, 520 (5th Cir. 2022). PQA’s dogged efforts to keep that information off the public docket underscores the question that has dogged this entire case: What exactly is PQA trying to hide—from the PTO, VLSI, and the public?

And why is the PTO abetting that effort? The whistleblower report purports to shed light on who is **allegation** —the topic of the **allegation**. Yet the Director refused to investigate the report’s disturbing allegations, and suppressed it from public view. Appx131; Appx135-36; Appx140-42. When the Court directed the parties to address confidentiality markings at the May 8 argument, ECF #152 at 3, the PTO argued full-throatedly for maintaining *all* redactions concerning the report, Oral Arg. 1:08-2:15. But the PTO failed to mention that it had *already publicly disclosed* much of the report under FOIA the night before argument—a disclosure the PTO now concedes requires removing many of the redactions it fiercely defended at argument. PTO.Resp.1-2. The PTO’s response fails to reconcile its representations at argument with its disclosure the day before.

The PTO and Intel blame *VLSI* for not raising the *PTO’s* FOIA disclosure at oral argument. Intel.Resp.1-2; PTO.Resp.2. VLSI’s arguing counsel learned of the disclosure only *after* argument. Mot.11. The PTO made the disclosure to VLSI’s

FOIA counsel (not involved in these appeals) on May 7 at 5:20 p.m. EDT—the eve of oral argument, and nearly two years into the FOIA action. The PTO’s response overlooks that curious timing.²

The PTO faults VLSI for filing a motion to unseal. PTO.Resp.1-2. But **PQA**’s intransigence made that motion necessary—PQA refused to agree to **any** unsealing, and disputed the meaning of this Court’s express unsealing order. Mot.5. And while the PTO agreed to partial unsealing of whistleblower materials disclosed under FOIA, PTO.Resp.2, **PQA** opposed **any** unsealing. PQA’s unrelenting opposition to even court-ordered unsealing necessitated a motion to resolve the disputes. A motion being necessary, VLSI appropriately asked this Court to unseal the entire whistleblower report, none of which is truly confidential. Mot.13-17.

The PTO’s efforts to resist unsealing fall flat. It abandons any argument that the whistleblower report—which was sent to Congress, forwarded to the Patents Ombuds Office (not the PTAB) without confidentiality markings, and shared with all parties simultaneously—is an “ex parte” communication under PTO regulations.

² The PTO has also produced heavily redacted agendas indicating then-Director Vidal repeatedly discussed these IPRs with the Commerce Department in 2022, but has continued to withhold supporting documents. https://ipwatchdog.com/wp-content/uploads/2023/02/Quinn-F-23-00029_Final-Production-6.28.23.pdf (e.g., USPTO0171-76). Even that limited disclosure appears to contradict Director Vidal’s 2023 congressional testimony that she “d[id] not discuss” the cases “with anybody within the administration”—raising questions about “ex parte communications.” *Oversight of U.S. Patent and Trademark Office: Hearing Before H. Comm. on Judiciary*, 118th Cong. 8 (2023) (Dir. Vidal).

Mot.10, 16-17. The PTO identifies no legitimate interest in deterring reporting of alleged misconduct to Congress, or in deterring Congress from alerting the PTO. Any interest in not “publicly disseminating” such reports, PTO.Resp.3-4, went out the window once the PTO publicly disclosed much of the report under FOIA—including its most explosive allegations. Any concern about “personal” information (which the PTO never mentioned at argument), PTO.Resp.5-6, can be addressed through targeted redactions, rather than blacking out entire pages, Mot.15-16.

The government says the report’s allegations “lack any corroboration or evidentiary underpinning.” PTO.Resp.4. But the public cannot assess the accuracy of that assertion, because the government insists on redacting the *extraordinarily detailed* factual support the report offers. *See* Appx11078-119. Any shortage of “corroboration” or “evidence” stems from the Director’s remarkable incuriosity about the report’s allegations—and refusal to allow discovery based on them. Mot.8-9. Without knowing what the report alleges and what it offers in support, the public cannot assess the propriety of its servant’s actions.

The PTO invokes *admissibility* under the Rules of Evidence. PTO.Resp.4-5. That has nothing to do with *sealing*—or with discovery. VLSI.Br.31-33; VLSI.Resp.-Reply.Br.11-13.

Intel and the PTO complain that the redactions they demanded—their efforts to hide materials from public view—have attracted press scrutiny. Intel.Resp.11;

PTO.Resp.5.³ But these IPRs are of manifest public interest, as years of attention from press, Congress, and commentators show. Mot.15 n.5.⁴ That interest has only grown. The U.S. government now owns a significant equity stake in Intel. Intel Corp., Form 8-K, item 1.01 (Aug. 22, 2025). And the PTO has repeatedly encountered allegations of misconduct, including that companies like Intel have used other entities to evade IPR rules. *Semiconductor Components Indus., LLC v. Greenthread, LLC*, IPR2023-01242, Paper 94 at 3 (Apr. 24, 2025). The misconduct alleged in the whistleblower report is no less deserving of public scrutiny. The “greater the public interest in the litigation’s subject matter, the greater the showing necessary to overcome the presumption of access.” *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016). The PTO, Intel, and PQA have not carried that burden.

None of the parties’ remaining objections comes close to justifying the secrecy they seek to perpetuate.

VLSI complied with this Court’s May 11 order. The PTO’s accusation that VLSI “ignore[d] this Court’s clear direction,” PTO.Resp.1-2, is unfounded. The

³ See also <https://www.law360.com/articles/2479660/vlsi-tells-fed-circ-to-allow-whistleblower-report-after-foia>; <https://www.mlex.com/mlex/articles/2479947/vlsi-moves-to-unseal-bombshell-allegations-in-us-patent-row-with-intel-pqa>.

⁴ source .

corrected briefs and appendices VLSI filed (ECF #161-165) remove *only* redactions concerning party communications (which this Court expressly ordered removed) and redactions the PTO *agrees* should be removed after the FOIA disclosure, which makes sealing of now-public information inappropriate. *See* ECF #167 (VLSI's notice of correction); p. 3, *supra*. The corrected briefs and appendices did *not* unilaterally remove the additional redactions that the PTO and Intel opposed unsealing. ECF #167 at 2-3, 5. VLSI appropriately filed a motion requesting that additional unsealing. Mot.14-21. If the PTO means to suggest VLSI should have filed corrected briefs that continued to redact material the PTO publicly disclosed and concedes is non-confidential, it fails to justify that remarkable demand.

The whistleblower report should be unsealed. The whistleblower report is not legitimately confidential. It circulated in Congress and arrived at the PTO without confidentiality markings, and no party says it contains their confidential information. Mot.15-16. Intel observes the full report is “currently *not* publicly available.” Intel.Resp.12-13. But the report's sealed status is not a *reason* for confidential treatment; it is the reason to unseal.

Intel insists “Intel's and PQA's interrogatory responses” disprove the whistleblower report's allegations. Intel.Resp.13-14. But the interrogatories never addressed those allegations. Besides, the Director found PQA's responses woefully “deficient.” Appx79. If the report and Intel's responses conflict, that raises—not

resolves—the question of which is correct. And the report alleges machinations by **allegation** persons, not merely **allegation** itself. Appx11116.

Intel’s protest that the public has “more than enough” information, Resp.13, inverts the presumption of public access. Besides, the remaining redactions cover critical and verifiable details that undermine the Director’s decision to disregard the report, as well as current efforts to dismiss it as unbelievable. Mot.18-21; p. 4, *supra*. The public needs those details to understand the issues.

The PTO and Intel fail to justify redacting VLSI’s brief. All remaining redactions in VLSI’s brief should be removed. Mot.18-21.

The PTO protests that yellow-highlighted material from VLSI’s opening brief (Mot. Ex. B at 14-15) cites pages redacted from the FOIA disclosure. PTO.Resp.6-7. But it never disputes that material is, in substance, disclosed by other, ***unredacted*** sections. Mot.19-21. That a brief cites a sealed page does not mean the brief must be sealed. And the asserted reason for redacting those pages is to protect alleged personal information, PTO.Resp.5-6, none of which appears in the brief.

Intel nitpicks whether each yellow-highlighted word is expressly disclosed by unredacted portions of the FOIA report. Intel.Resp.15-18. VLSI’s motion explains why the unredacted allegations support unsealing each word in question. Mot.18-21. More fundamentally, Intel misses the forest for the trees. Intel ***admits*** there is no basis for redacting the forest: the whistleblower report’s central allegation that

[redacted] is a “[redacted]” and “[redacted] allegation [redacted] allegation and [redacted] allegation by [redacted] allegation and [redacted] allegation of [redacted] and its [redacted] allegation” to [redacted] the [redacted] underlying [redacted] allegation against [redacted]. Appx11078; Appx11082; Mot. Ex. A at ’726, ’730. Once *that* is publicly disclosed, there is no reason to hide supporting details—*e.g.*, that there were [redacted] allegation and [redacted] allegation.

PQA waived its objection and cannot conceal its efforts to extract money from VLSI. The Court correctly ordered unsealing of communications in which PQA demanded money from VLSI. Mot.10-11. PQA waived any objection to that unsealing by failing to object at argument. *See* p. 1, *supra*. And the presumption of public access is “at its zenith” for documents that “‘directly affect an adjudication.’” *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016). The communications here were critical both to the Director’s December 2022 decision finding PQA committed “abuse of process” by pursuing this IPR for the “sole” and “improper purpose of extracting money from VLSI” and to her August 2023 sanctions decision—both of which redacted the communications. Appx95-96; *see* ECF #113 at Appx77-83, Appx90-92, Appx98-99, Appx102, Appx111-12, Appx230-33, Appx235-38 (pages with confidentiality markings by Director). Both decisions are central to these appeals. VLSI.Br.4; PQA.Op.-Resp.Br.3. As the Court noted, keeping the communications sealed needlessly hinders consideration and decision of this case. Oral Arg. 0:13-0:42.

PQA cannot hide behind the NDA. PQA.Resp.7-8. Confidentiality agreements are “‘void as contrary to public policy’” where they would “‘conceal illegal activity.’” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1017 (9th Cir. 2018). The Director found PQA’s communications revealed an illicit scheme of extortion and abuse of process. Nor did VLSI “fraudulently induce[] PQA to enter into” the NDA, PQA.Resp.7, which allegation —not allegation, Appx9476. And VLSI signed before it knew PQA’s scheme. Once it did, VLSI opposed sealing under the NDA. IPR2021-01229, Papers 82-83.

PQA’s belated merits arguments are baseless. PQA claims “prejudice[]” because, when it prepared its briefs, it assumed its communications would remain sealed. PQA.Resp.7-8. Nonsense. The motion-panel order concerning redactions in VLSI’s opening brief—including redactions to party communications—gave notice that the merits panel might order “further disclosure.” ECF #74. Regardless, PQA was free to prepare whatever briefs it wanted. And if PQA wants “both sides of the story” publicized, PQA.Resp.7, that is achieved by **granting** unsealing.

PQA smuggles in new **merits** arguments. PQA.Resp.7-8, 10-11. That VLSI initiated settlement negotiations or made monetary offers, PQA.Resp.7, 11, is immaterial. The Director found PQA—a putative stranger to VLSI’s verdict against Intel—pursued this IPR for the “sole” and “improper purpose of extracting money from VLSI after VLSI’s success before the jury.” Appx96. VLSI’s response does

not absolve PQA. If someone approaches a house with torches and gasoline, the homeowner does not commit wrongdoing by offering money to entice that person to leave. Nor does VLSI's response absolve PQA's misrepresentations to the Director and defiance of the Director's orders. Appx86; Appx99.

VLSI did not "[redacted] allegation" to "[redacted] allegation" the "[redacted] allegation." PQA.Resp.8. VLSI simply asked PQA to *terminate* the IPR. Appx9464; *see* 35 U.S.C. § 317(a).

PQA objects to the word "whistleblower." PQA.Resp.10. But that is how Senator Tillis's office described the report, Appx11077, as did the Court and PTO, Oral Arg. 1:32-2:02, 2:58-3:09. While the author's insider status is unknown, PQA.Resp.10, the report contains multitudinous facts of an insider nature, which could have been tested had the Director permitted discovery.

PQA objects to the words "abuse of process" and "extortion." PQA.Resp.10-11. They come from *the Director's findings*. Appx99-100; Appx102; Appx111; Appx113. And they fit. Abuse of process is misuse of a process primarily to achieve "an end other than that which it was designed to accomplish," such as extracting "the payment of money"—"in other words, a form of extortion." *Prosser & Keeton on Torts* § 121, at 897-98 (5th ed. 1984); *see* Restatement (Second) of Torts § 682 & cmts.a-b.

IPRs are not designed to enrich challengers by allowing them to demand a cut of verdicts to which they are strangers. The Director thus could find abuse of process

warranting sanctions—including fees or terminating PQA’s IPR. While her August 2023 decision did not repeat her abuse of process and extortion findings, *see* PQA.Resp.11 (citing PTO.Br.32), neither did it retract or find error in those findings; their disappearance is unexplained.⁵

PQA invokes the dismissal of VLSI’s state-court abuse-of-process claim. PQA.Resp.11. The state court dismissed on the ground that the *state-law* tort applies only to *judicial* proceedings. ECF #174-2 at 58:5-8. But *federal* law authorizes sanctions for “abuse of process” and other “improper use” of *IPR* proceedings. 35 U.S.C. § 316(a)(6). The state-court decision does not bar the Director from finding abuse and improper use of the IPR process—findings made in December 2022 but which disappeared without explanation in August 2023.

VLSI appropriately asked the Director to unseal. Upon filing its unsealing motion, VLSI notified the Director—copying counsel for all parties—and requested he consider unsealing the whistleblower report under his own authority. ECF #172, Ex. 1 at 3-5. Because the email was submitted in connection with the IPR proceeding, it copied all counsel who appeared in the IPR (including several of Intel’s appellate counsel), but not counsel who did not appear below (thus excluding *VLSI’s*

⁵ Because the Director never required PQA to comply with discovery, we do not know if its truest aim was extortion or another nefarious purpose. But PQA has never identified a legitimate reason for challenging the patent, and the evidence plainly supports a finding that PQA sought to extract money from VLSI.

appellate counsel of record, too). *Id.*; *cf.* Intel.Resp.7-8. VLSI's request cited authorities explaining agencies' power to address such matters pending appeal. ECF #172, Ex. 1 at 1 (citing *Anchor Line Ltd. v. Fed. Maritime Comm'n*, 299 F.2d 124, 125 (D.C. Cir. 1962); *McClatchy Broad. Co. v. FCC*, 239 F.2d 19, 23 (D.C. Cir. 1956)). Intel neither mentions nor questions those authorities.

CONCLUSION

The Court should reject the PTO's, Intel's, and PQA's efforts to keep crucial aspects of this case off the public docket. The motion to unseal should be granted.

June 5, 2026

Respectfully submitted,

/s/ Jeffrey A. Lamken

Jeffrey A. Lamken

Counsel of Record

MOLOLAMKEN LLP

The Watergate, Suite 500

600 New Hampshire Avenue, N.W.

Washington, D.C. 20037

(202) 556-2000 (telephone)

(202) 556-2001 (facsimile)

jlamken@mololamken.com

Counsel for VLSI Technology LLC

FORM 19. Certificate of Compliance with Type-Volume Limitations

Form 19
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 2023-2298, 2023-2354

Short Case Caption: VLSI Technology LLC v. Patent Quality Assurance LLC

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Date: 06/05/2026

Signature: /s/ Jeffrey A. Lamken

Name: Jeffrey A. Lamken

FORM 31. Certificate of Confidential Material

Form 31
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF CONFIDENTIAL MATERIAL

Case Number: 2023-2298, 2023-2354

Short Case Caption: VLSI Technology LLC v. Patent Quality Assurance LLC

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Date: 06/05/2026

Signature: /s/ Jeffrey A. Lamken

Name: Jeffrey A. Lamken