

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. 2023-2298

Appeal from the United States Patent and Trademark Office,
Patent Trial and Appeal Board in Nos. IPR2021-01229, IPR2022-00479

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. 2023-2354

Appeal from the United States Patent and Trademark Office,
Patent Trial and Appeal Board in No. IPR2021-01229

DIRECTOR'S RESPONSE TO VLSI'S MOTION TO UNSEAL

Pursuant to Fed. R. App. Proc. 27(a)(3) and Fed. Cir. R. 27(b), the Director submits this Response to VLSI Technology LLC's Confidential Motion to Unseal (ECF No. 169, "Motion"). The Director respectfully requests that the Motion be denied in part. The Director does not object to unsealing materials related to communications between the private parties in accordance with the Court's direction at oral argument. However, the Director opposes VLSI's Motion to the extent it seeks to unseal any information related to the "whistleblower event" beyond those details lawfully disclosed by the USPTO in response to VLSI's separate FOIA action.

The only post-argument issue for the parties to address, per this Court's Order, is the Court's direction at oral argument for the parties to "file corrected briefs, eliminating the confidentiality markings *other than* the whistleblower event." Oral Arg. Tr. at 3:05-3:14 (emphasis added); ECF No. 159 (Order of the Court directing the parties to file "revised briefs and appendices to address confidential markings in accordance with the panel's *instruction at oral argument*") (emphasis added). VLSI's Motion, which seeks to unseal information from the Document¹ reflecting

¹ For clarity, the email to the USPTO Patents Ombuds Office and attached anonymous document appear at Appx11077-11119 in both the Joint Appendix and VLSI's proposed Corrected Joint Appendix. The Director understands the confidential and non-confidential versions of the Corrected Joint Appendix are meant to reflect the redactions applied to the FOIA-produced documents shown in

the so-called “whistleblower event,” ignores this Court’s clear direction to simply file corrected briefs preserving the confidentiality of that Document.

Just prior to oral argument, VLSI obtained, through a FOIA request, a partially redacted version of the Document. Given that development, the USPTO agreed to allow VLSI to substitute that partially redacted version in the refiling of the appendix, and to allow VLSI to update the confidentiality markings in its briefs to accurately reflect the scope of only the remaining FOIA redactions to the Document, which are largely directed to information that, if disclosed, would “constitute a clearly unwarranted invasion of personal privacy.” *See* 5 U.S.C. § 552(b)(6), (b)(4), (b)(7)(C).

Yet despite this Court’s clear direction on how to proceed post-argument and the USPTO’s willingness to permit the substitution of the recently available, partially redacted version of the Document in complying with that direction, VLSI nonetheless now burdens the Court and the parties with needlessly overbroad motion practice that seeks rehearing of an issue already decided by this Court at oral argument. Worse, the Motion reaches beyond a simple matter of confidentiality markings to engage in inappropriate advocacy.

Motion Ex. A. This Response refers to the attached anonymous document at Appx11078-11119 as the “Document” for simplicity.

As explained below, the Director believes there is good cause to maintain the redactions to the email and Document shown in Motion Ex. A in the filing of the Corrected Non-confidential Appendix, and to allow and require the parties to maintain commensurate redactions in their briefs and other related Appendix documents.

When the Ombuds Office first received the Document, the USPTO was presented with a difficult question. Not informing the parties of the non-party communication could have led to allegations that the USPTO was improperly influenced by information that it concealed from the parties. Yet publicly disseminating the Document would reward the anonymous author's attempt to inject unsworn allegations into a pending administrative proceeding, and potentially invite others to do the same. *See* Appx130-131. Ultimately, the USPTO restricted access to the Document to "Parties and Board only," and decided that neither the Board or the Director would consider it as part of the IPR proceeding. *Id.* After further briefing by the parties alternatively seeking to expunge the Document or make it public, the Director reaffirmed that "[t]hese steps were taken to balance the Office's interest in transparency with its interest in not further disseminating such communications." Appx134-136. As the USPTO has explained, disseminating such communications within the administrative hearing framework could reward a non-

party's attempt to co-opt the agency's public platform for its own purposes, and, in doing so, could encourage communications not properly directed to the administrative tribunals of the agency.

The nature of the Document reinforces those concerns and confirms that there is good cause not to make it fully public. The Document is unsworn, unsigned, and anonymous. Appx11078. Contrary to VLSI's characterization of the Document as a "whistleblower document" or similar, there is no indication that it was prepared, as such a label would normally suggest, by an employee or insider with firsthand knowledge of the allegations, and the Document itself makes no such claim. Instead, the Document refers to the writing as a "report," (Appx11078), or resulting from "the investigation," (e.g., Appx11091, Appx11092, Appx11093). The Document itself acknowledges that the USPTO Director had already undertaken an in-proceeding inquiry into matters substantially related to the Document's allegations. Appx11089. The Document itself also acknowledges separate filings by counsel for PQA and Intel, subject to the duties of 37 C.F.R. §§ 11.18(b)(2), 42.11(a), (c), and responsive to the Director's inquiry that denied the Document's primary allegation. Appx11109-11115. The purported facts that are foundational to the Document's primary claim lack any corroboration or evidentiary underpinning, and the Document provides no explanation of how what is allegedly

confidential information, including confidential financial information, was obtained. *See, e.g.*, Appx11091-11093. In sum, even if the Document could be characterized as either “relevant” or “evidence,” any probative value it might possess is substantially outweighed by the dangers it presents. *See* Fed. R. Evid. 104, 403, 801, 802, 901; *see also* 37 C.F.R. § 42.62(a).

In a decided contrast to the USPTO’s substantial and continuing interest to avoid the prejudicial effect of such unsubstantiated, non-party communications on the integrity of administrative proceedings, VLSI identifies no prejudice it would suffer from keeping the FOIA-redacted portions of the Document confidential. Indeed, there is none. The Director maintains that the Document pertains to a determination that is not reviewable by this Court. But even if this Court disagrees on the merits, the full unredacted content of the Document has always been available for the Court’s review in the Confidential Appendix.

The Motion’s purported advocacy for the “public interest” in this matter rings hollow. Motion at 13-15. VLSI’s evident desire to try this appeal in the court of public opinion is not a cognizable legal interest. And to the extent this anonymous Document serves a legitimate “public interest” in understanding the nature of these proceedings, that interest is amply served by the FOIA-redacted version of the Document. Furthermore, the FOIA-redacted portions of the Document contain what

can only be considered the personal and confidential information of multiple individuals and entities who are not parties to this appeal and who have no representative before this Court to protect their interests. *See* 5 U.S.C. § 552(b)(4), (6), (7)(C). The potential prejudice to these individuals and entities is far more concrete than anything that VLSI alleges is necessary to the “public interest” in understanding the proceedings.

Also, VLSI inaccurately attributes to the USPTO a desire to prohibit the “reporting of potential misconduct” as the justification for the Document’s confidential treatment. *See* Motion at 16-17. The USPTO’s limited actions here to protect the integrity of the Agency’s administrative adjudications do nothing to prohibit the Agency from separately taking appropriate actions to investigate and address allegations of misconduct. The USPTO takes any allegations of misconduct with respect to matters under its auspices seriously, and nothing the USPTO has done here suggests otherwise.

Finally, VLSI argues that the unredacted portions of the FOIA version of the Document justify unsealing the yellow-highlighted portions of its Opening Brief marked in Motion Ex. B. Motion at 18-21. The Director believes this assertion relies on an overbroad characterization of the unredacted material and improperly attempts to expand VLSI’s reliance on portions of the document not cited in its brief.

Specifically, on page 14 of its brief (*see* Motion Ex. B), VLSI cites Appx11091-11107 for support of the yellow-highlighted material, but those pages remain redacted in their entirety even in the FOIA version of the Document (*see* Motion Ex. A; Corrected Confidential Appendix). The yellow-highlighted assertions for which VLSI relies on Appx11085-11086 (*see* Mot. Ex. B) similarly refer to the redacted material on those pages (*see* Motion Ex. A; Corrected Confidential Appendix). The limited redaction to the sentence for which VLSI cites the broad range Appx11082-11119 (*see* Mot. Ex. B) is appropriate in light of the significant portion of that range that is either partially or fully redacted in the FOIA version of the Document (*see* Motion Ex. A; Corrected Confidential Appendix). On page 15 of VLSI's brief (*see* Mot. Ex. B), the yellow-highlighted words rely on Appx11105 which remains fully redacted in the FOIA version (*see* Motion Ex. A; Corrected Confidential Appendix), and Appx11129, which is a later email characterizing redacted information (*see* Corrected Confidential Appendix). Finally, on page 31 of VLSI's brief (*see* Mot. Ex. B), the yellow-highlighted words either explicitly or implicitly refer to the discussion on the brief pages above and thus are appropriately redacted for the same reasons.²

² VLSI has also included yellow-highlighting on table of contents page i of its brief in Motion Ex. B. The Director understands this to be an oversight or color-coding error, as the Director is unaware of an objection to unsealing the words marked on

For all these reasons, the Director respectfully requests that VLSI's Motion to Unseal be denied in part.

Respectfully submitted,

May 29, 2026

/s/ Peter J. Sawert

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this page in view of the FOIA version of the Document. For clarity, the Director does not oppose unsealing the marked portions on page i.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing filing complies with the type-volume limitation in Fed. R. App. Proc. 27(d)(2)(A). The total number of words in the foregoing motion response is 1,592, as calculated by Microsoft Word.

/s/ Peter J. Sawert

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