

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.

Petitioner

v.

DRAGON INTELLECTUAL PROPERTY, LLC.

Patent Owner

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Case IPR2014-01252

Patent No. 5,930,444

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**PETITIONER'S MOTION TO EXPUNGE**

## I. INTRODUCTION

Pursuant 37 C.F.R. § 42.56, Petitioner, Unified Patents Inc. (“Unified” or “Petitioner”), hereby requests that certain confidential information in the record be expunged. Specifically, Petitioner respectfully submits that (i) Paper 10, Patent Owner’s Preliminary Response to Petition; (ii) Paper 18, Petitioner’s Reply Brief on Real Party in Interest; (iii) Paper 21, Dragon Intellectual Property, LLC’s Opposition to Petitioner’s Motion to Seal; (iv) Paper 24, Dragon Intellectual Property, LLC’s Motion for Additional Discovery; (v) Paper 28, Petitioner’s Motion to Seal; (vi) Paper 31, Petitioner’s Motion to Seal; and (vii) Exhibits 1015, 1017, 2001, 2003-2005, 2007-2009, 2011-2013, and 2015-2016 (collectively, the “Confidential Documents”) should be expunged from the record as these pleadings and exhibits contain Petitioner’s highly confidential business information.

The deadline for filing a motion to expunge in this case is 45 days from the Final Written Decision. *See* Office Patent Trial Practice Guide (“OPTP Guide”), 77 Fed. Reg. 48756, 48761 (Aug. 14, 2012). While generally the Confidential Documents would become publicly available at this time, the Board made clear in its Final Written Decision that “[t]he record will be maintained undisturbed pending the outcome of any appeal taken from [the] Decision.” Paper 64 at 22. Accordingly, Petitioner requests that the Confidential Documents be expunged

after the conclusion of any appeal proceeding or, if neither party appeals the Final Written Decision, after the expiration of the time period for appealing.

## **II. STATEMENT OF REASONS FOR RELIEF REQUESTED**

### **A. Procedural Background**

Petitioner filed four motions to seal in this proceeding and requested that the Board maintain the Confidential Documents under seal because they contain three categories of Petitioner's confidential information: (1) Petitioner's members' identities; (2) Petitioner's membership terms and business strategy; and (3) Petitioner's financial information. *See* Papers 12, 17, 27, and 30. Patent Owner opposed all four Motions. On February 27, 2015, the Board granted Petitioner's motions to seal the Confidential Documents. *See* Paper 40. Specifically, the Board found that (1) Petitioner had "shown good cause to seal the identities of its members;" (2) Petitioner had "shown good cause for maintaining its membership terms and business strategy under seal;" and (3) that "the public's interest in knowing Petitioner's financial information is relatively low, such that it is outweighed by Petitioner's interest in maintaining its financial information confidential." *Id.* at 6-7.

### **B. Applicable Legal Standards**

The *OPTP Guide* provides, in pertinent part, that:

There is an expectation that information will be made public where the existence of the information is referred to . . . in a final written decision

following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.

*OPTP Guide*, 77 Fed. Reg. at 48761. Additionally, 37 C.F.R. § 42.56 provides that “[a]fter a denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information in the record.”

**C. Good Cause Exists for Expunging the Confidential Documents from the Record**

Good cause exists for expunging the Confidential Documents. All of the Confidential Documents contain Petitioner’s highly confidential business information, which Petitioner guards in order to protect its own business as well as its members. Specifically, the Confidential Documents contain information relating to Petitioner’s membership list, its membership terms and business strategy, and Petitioner’s financial information. Additionally, the Board has already agreed that good cause exists to maintain the Confidential Documents under seal. Moreover, the Board did not rely on any of the sealed Confidential Documents in its Final Written Decision (*See* Paper 64 at 22), so there is no public interest in now making the Confidential Documents publicly available. Accordingly, good cause exists to expunge the Confidential Documents.

### III. CONCLUSION

Because the Board has already found that the Confidential Documents should be maintained under seal, and because the Board did not rely on them in its Final Written Decision, Petitioner respectfully requests that the Board protect Petitioner's highly confidential business information and expunge the Confidential Documents pursuant to 37 C.F.R. § 42.56.

Respectfully Submitted,

Dated: March 21, 2016

/Michael L. Kiklis/

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