

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.
Petitioner

v.

FALL LINE PATENTS, LLC
Patent Owner

Case IPR2018-00043
Patent 9,454,748

PATENT OWNER'S RESPONSE TO PETITIONER'S
SUBMISSION PURSUANT TO ORDER

Pursuant to the Board’s Order Regarding the Motions For Protective Order and To Seal (Paper 33), Patent Owner Fall Line Patents, LLC files this response to Petitioner’s proposed redactions for Paper 30, Paper 31, and Exhibit 2009.

I. THERE MUST BE GOOD CAUSE TO SEAL OR REDACT

There is a strong public policy for making available to the public all information in an *inter partes* review. *Argentum Pharmaceuticals LLC v. Alcon Research Ltd.*, Case IPR2017-01053 (P.T.A.B. Jan. 19, 2018) (Paper 27 at 3). Therefore, the default rule is that all papers are open and available to the public. *Id.* Any party seeking to seal a document or redact information must show “good cause” as to why the default rule of public access should not apply. *Id.*

To show “good cause” a party moving to seal must show: (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record. 37 C.F.R. § 42.54; IPR2017-01053, Paper 27 at 3.

II. PETITIONER HAS NOT SHOWN GOOD CAUSE

In this proceeding, petitioner proposes substantial redactions to Paper 30, Paper 31, and Exhibit 2009, but has not satisfied the above test for most of the information.

Petitioner has not shown that the information it seeks to seal is truly confidential. The vast majority of the redacted information relates to how Petitioner conducts business and communicates with its members, and Petitioner provides no explanation as to why this is confidential. Nor does Petitioner explain how it will suffer any harm, much less a concrete one, as a result of its disclosure.

The information sought to be sealed relates to Petitioner's business practices and whether Petitioner's members are real-parties-in-interest to the IPRs filed by Petitioner. This information is crucial to determining whether Petitioner has satisfied its statutory burden to file an IPR petition and to what extent the statutory estoppel provisions apply. As such, there is a strong public interest in having this information available to the public, and Petitioner has not shown why any concerns about confidentiality outweigh the public interest.

Prior to Petitioner filing its proposed redactions, Petitioner provided Patent Owner its proposed redactions, and Patent Owner provided Petitioner with a list of the information in Exhibit 2009 that Patent Owner would not object to redacting. That information primarily relates to certain individuals' personal financial information and certain revenue, costs, and profit information for Petitioner. While Petitioner has not provided good cause for sealing that information, Patent Owner does not oppose Petitioner's request to seal that information.

III. CONCLUSION

Because Petitioner has not shown good cause to seal the information it seeks to redact, Papers 30 and 31 should be made public in their entirety. Exhibit 2009 should also be made public, but to the extent sealing is appropriate, it should be limited to the information pertaining to personal and private financial matters.

Dated: April 23, 2019

Respectfully submitted,

/Michael D. Ellis/
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on April 23, 2019, the foregoing document was served via email on counsel for Petitioner:

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