

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

- vs. -

FALL LINE PATENTS, LLC

Patent Owner

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IPR2018-00043

U.S. Patent 9,454,748

**PETITIONER'S MOTION TO EXPUNGE**

Pursuant to 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 30, Patent Owner’s RPI Observations; (ii) Paper 31, Petitioner’s Response to Patent Owner’s Observations; and (iii) Exhibit 2009, the transcript of the deposition of Kevin Jakel (collectively, the “Confidential Documents”) should be expunged from the record as these pleadings and exhibits contain Petitioner’s highly confidential business information.

This motion is being timely filed within 45 days from the Final Written Decision. *See* Office Patent Trial Practice Guide (“Trial Practice Guide”), 77 Fed. Reg. 48756, 48761 (Aug. 14, 2012). For the reasons set forth below, Petitioner requests that the Confidential Documents be expunged.

### **I. Applicable Legal Standards**

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.” Likewise, the Trial Practice Guide states, 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.” Trial Practice Guide, 77 Fed. Reg. at 48761.

## **II. Reasons for Relief Requested**

### **A. Procedural Background**

Two unopposed Motions to Seal have been filed in this proceeding (Paper 29 and Paper 32), requesting that the Board maintain the Confidential Documents under seal. As indicated in the Motions to Seal, the Confidential Documents contain confidential, sensitive business information that has not been published or made public. *See* Paper 29 at 2, Paper 32 at 2–3. The Confidential Documents contain, *inter alia*, Petitioner's members' identities, Petitioner's membership terms and business strategy; and Petitioner's financial information.

The Board deferred ruling on the Motions to Seal until the parties filed redacted, public versions of the exhibits. Paper 33 at 2. Petitioner has filed redacted, publicly-available versions of Paper 30 (as Paper 37), Paper 31 (as Paper 38), and Exhibit 2009 (as Exhibit 1028).

### **A. 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.

Although the Board has yet to grant the parties' unopposed Motions to Seal, in other proceedings, the Board has granted motions to seal Petitioner's confidential information, finding that Petitioner had "shown good cause to seal the identities of its members;" "shown good cause for maintaining its membership terms and business strategy under seal;" and 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." *See Unified Patents Inc. v. Dragon Intellectual Property, LLC*, IPR2014-01252, Paper 40, at 6–7 (PTAB Feb. 27, 2015).

The Board did not specifically rely on any of the sealed Confidential Documents in its Final Written Decision (See Paper 34), so there is no public interest in now making the Confidential Documents publicly available. First, the Board's Final Written Decision "decline[d] to consider" "Patent Owner's belated challenge regarding Petitioner's real party in interest [certification]." Paper 34 at 18. Second, the Board's Final Written Decision found that did not "identify any third party that should be named" and had not "produced any evidence to support such an argument." *Id.* at 20. Given these findings, which did not rely specifically on any of the information contained in the Confidential Documents, good cause exists to expunge the Confidential Documents.

### III. Conclusion

Because the parties have argued for sealing the Confidential Documents, because other panels have found that similar information 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,

May 14, 2019

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