

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 B2

Before MICHELLE N. WORMMEESTER, SHEILA F. McSHANE, and
JOHN R. KENNY, *Administrative Patent Judges*.

KENNY, *Administrative Patent Judge*.

ORDER

Motions to Seal
37 C.F.R. § 42.54

BACKGROUND

On February 22, 2019, Patent Owner moved to seal Patent Owner's RPI Observations (Paper 30) in its entirety and to seal the deposition transcript of Mr. Kevin Jakel (Ex. 2009) in its entirety. Paper 29, 2. Petitioner did not oppose this motion. On March 1, 2019, Petitioner moved to seal Petitioner's Response to Patent Owner's Observations (Paper 31) in its entirety and to seal the errata sheet for the deposition transcript of Mr.

Jakel (Ex. 1028) in its entirety. Paper 32, 2–3. Patent Owner did not timely file an opposition to this motion.

On April 4, 2019, we addressed the parties' motions to seal (Papers 29 and 32). Paper 33. We noted that the parties had represented that the papers and exhibits they sought to seal contain confidential, sensitive business information that has not been published or made public, but the parties had not justified sealing the entirety of each of those papers and exhibits. *Id.*, 2. Therefore, we ordered the parties, for each paper and exhibit that they sought to seal, to file a redacted, public version of that paper or exhibit or provide a detailed explanation as to why the entirety of that paper or exhibit must be sealed. *Id.* We also allowed each party to submit a responsive paper to the other side's filing. *Id.* at 3.

In response, Petitioner filed redacted, public versions of Papers 30 and 31 and Exhibit 2009 (*see* Paper 37, Paper 38, and Exhibit 1029, respectively), and Petitioner withdrew its request that Exhibit 1028 be sealed. Paper 36, 1. Patent Owner responded, arguing that Petitioner had not sufficiently justified its proposed redactions to Papers 30 and 31 and Exhibit 2009 and, therefore, Papers 30 and 31 should be made public in their entireties and Exhibit 2009 should also be made public in its entirety or should be appropriately redacted. Paper 39, 2–4.

DISCUSSION

We grant the parties' motions to seal with respect to Papers 29 and 32 and Exhibit 2009, but deny Petitioner's motion to seal with respect to Exhibit 1028. During the normal course of briefing, neither motion to seal was opposed, and both motions contained representations by Petitioner (presented directly by Petitioner's motion or through Patent Owner's

motion) that the information the parties sought to seal was confidential. After reviewing those motions, we ordered the parties to file redacted copies of the involved papers and exhibits (or justify not doing so), and Petitioner filed redacted versions of Papers 29 and 32 and Exhibit 2009. Paper 33, 2–3. None of the redactions proposed by Petitioner affect public access to our Final Written Decision (Paper 34), as neither party requested that we seal any portion of that decision. Accordingly, under the circumstances, we grant the pending motions to seal with respect to Papers 30 and 31 and Exhibit 2009.¹

Regarding Patent Owner’s recent opposition to the motions to seal, we do not find it persuasive. First, we note that Patent Owner changed its position regarding sealing Papers 30 and 31 and Exhibit 2009 without explaining that change in position. Paper 39, 2–4. As mentioned above, Patent Owner initially moved to seal Paper 30 and Exhibit 2009, with no redacted versions of those documents filed, and without any argument that its motion should be denied. Paper 29, 2. To the contrary, Patent Owner stated that “[g]ood cause exists” for granting that motion. *Id.* Patent Owner also initially did not oppose Petitioner’s motion to seal Paper 31, with no redacted version of that paper filed, or include objections in its own motion, Paper 29. Patent Owner does not explain why, now that redacted versions of these documents have been filed, it now opposes the motions to seal. Paper 39, 2–4.

¹ In reaching this ruling, we consider only the issue before us: whether, in light of this record with the final written decision in this proceeding and the challenge to the redactions presented to us, we should grant these motions.

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Second, Patent Owner had the opportunity to provide what it believes are appropriately redacted copies of the involved papers and exhibits, but Patent Owner did not submit such copies. Paper 33, 3. Although Patent Owner indicates it gave Petitioner a list of appropriate redactions for Exhibit 2009, Patent Owner did not provide that list to the Board, or provide a copy of Exhibit 2009 with the redactions on that list. Paper 39, 3. Therefore, the list of no value for deciding the pending motions to seal.

Third, Patent Owner has not specifically identified to the Board a single redaction that it contends is improper and explained why that redaction is improper or how it should be modified. *Id.* at 2–4. Accordingly, Patent Owner’s response regarding the parties’ motions to seal is not persuasive.

Accordingly, it is ORDERED:

The pending motions to seal (*see* Papers 29 and 32) are GRANTED for Papers 30 and 31 and for Exhibit 2009.

Petitioner’s motion to seal (*see* Paper 32) is DENIED for Exhibit 1028.

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