

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC

Petitioner

- vs. -

FALL LINE PATENTS, LLC

Patent Owner

IPR2018-00043

U.S. Patent 9,454,748

PETITIONER'S RENEWED MOTION TO EXPUNGE

Pursuant to 37 C.F.R. § 42.56, Petitioner, Unified Patents, LLC (“Unified” or “Petitioner”), hereby renews its request that certain confidential information in the record be expunged. This motion is timely filed within 20 days after the conclusion of Patent Owner’s appeal of the Final Written Decision. *See* Paper 44, p. 3 (“Petitioner may file another motion to expunge within twenty days after ... (ii) the termination of any appeal in this proceeding if a notice of appeal is filed”); EX1030 (Federal Circuit decision entered December 19, 2022 affirming Board’s final written decision); 37 C.F.R. § 1.7(a). For the reasons set forth below, Petitioner respectfully requests that the following documents be expunged from the record, as these pleadings and exhibits contain Petitioner’s highly confidential business information: (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”).

I. Applicable Legal Standards

37 C.F.R. § 42.56 provides that “[a]fter ... 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 “[t]here 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.” Consolidated TPG at 22. A party seeking expungement from the record must show good cause by demonstrating “that any information sought to be expunged constitutes confidential information, and that Petitioner’s interest in expunging it outweighs the public’s interest in maintaining a complete and understandable history of this *inter partes* review.” *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97 at 2 (P.T.A.B. Apr. 15, 2015).

II. Reasons for Relief Requested

A. Procedural Background

Two unopposed Motions to Seal were 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 granted the Motions to Seal. *See* Paper 43, p. 4.

Petitioner filed a Motion to Expunge (Paper 40) seeking to expunge the Confidential Documents. The Board denied Petitioner’s motion “because the time

period for filing a notice to appeal has not expired, and the record for this proceeding should be fully preserved in the event of an appeal.” Paper 44, p. 2.

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. Disclosure of this information would adversely harm Petitioner. Specifically, the Confidential Documents contain closely held information relating to Petitioner's membership list, its membership terms and business strategy, Petitioner's financial information, and other such confidential business information. The Board granted Motions to Seal the Confidential Documents based at least in part on its acknowledgment 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” and because neither Motion to Seal was opposed. Paper 43, pp. 1–2.

In its Order denying Petitioner's first Motion to Expunge (Paper 44), the Board instructed that a renewed motion to expunge “should address the merits of expunging Papers 30 and 31 and Exhibit 2009 in light of the appellate record (if any) as well as the current record.” Paper 44, p. 2. Regarding the appellate record, although certain elements of the Confidential Documents were relied upon in the parties' briefing, the Federal Circuit ultimately did not refer to or rely on any of the

Confidential Documents in reaching its decision to reject Patent Owner's appeal regarding sufficiency of the Petition under 35 U.S.C. § 312(a)(2). *See Fall Line Patents, LLC v. Unified Patents, LLC*, 818 Fed. Appx. 1014 (Fed. Cir. 2020) (non-precedential). Nor did the Federal Circuit rely on the Confidential Documents in its subsequent decision rejecting Patent Owner's constitutional challenge. *See Fall Line Patents, LLC v. Unified Patents, LLC*, Appeal No. 19-1956, slip op. (Fed. Cir. Dec. 19, 2022) (non-precedential) (EX1030). Thus, there is no public interest in making the Confidential Documents publicly available, as the Federal Circuit's decisions are clear and understandable without reference thereto.

Regarding the proceedings before the Board, 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 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, p. 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.

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