

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

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UNIFIED PATENTS INC.

Petitioner

v.

FALL LINE PATENTS, LLC

Patent Owner

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CASE IPR2018-00043

PATENT 9,454,748

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**PATENT OWNER'S OPPOSITION TO  
PETITIONER'S RENEWED MOTION TO EXPUNGE**

The Board should deny Petitioner's motion to expunge for multiple, independent reasons on the merits. Alternatively, the Board should deny it as premature because Patent Owner's time to seek review from the Supreme Court has not yet run.

First, much of what Petitioner seeks to expunge has already been made public in filings before the Federal Circuit. *See Non-Confidential Joint Appendix, Fall Line Patents, LLC v. Unified Patents, LLC*, Case No. 2019-1956, Dtk. No. 66 at Appx548-556 (redacted version of Paper No. 30); Appx557-566 (Paper No. 31); Appx4769-4957 (redacted version of Ex. 2009). Petitioner simply ignores this in its renewed motion—despite the Board's express instruction that any renewed motion “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 at 2. There is no possible basis for Petitioner's request that the Board expunge from its records of this IPR proceeding documents (or parts of documents) that have been made public during the Federal Circuit proceedings.

Second, Petitioner has not met its burden to show expungement is appropriate. Petitioner argues that expungement is appropriate based only on general, conclusory assertions that it keeps certain information, such as the identity of its members, confidential and that disclosure of that information would harm

Petitioner. *See* Renewed Motion at 3. But those general, unsupported assertions are insufficient to overcome the presumption of public access. *See Edwards Lifesciences Corp. v. Boston Scientific Scimed, Inc.*, IPR2017-00060, Paper 56 at 7 (P.T.A.B. Feb. 9, 2018) (“One sentence statements arguing in a conclusory manner that the document is ‘highly confidential’ and contains ‘competitively sensitive information’ is, on its face, insufficient to support sealing of exhibits in their entirety.”); *Intri-Plex Techs., Inc. v. Saint-Gobain Performance Plastics Rencol Ltd.*, IPR2014-00309, Paper 92 at 4-5 (P.T.A.B. Oct. 2, 2015) (“We are not persuaded that Saint-Gobain’s interest in concealing the names of its customers outweighs the public interest in the record in a complete and understandable record of this proceeding.”). Moreover, they are inconsistent with the fact that Petitioner itself proudly advertises its members on its own website. *See* <https://www.unifiedpatents.com/members>. Indeed, Petitioner has previously made the same conclusory assertion with respect to a specific member—Samsung—only to abandon it before the Federal Circuit. *See* Brief of Appellee, *American Patents LLC v. Unified Patents, LLC*, Case No. 2021-1635, Dkt. No. 16 at 5 (Fed. Cir. Sept. 1, 2021).

Third, Patent Owner has not waived its objections to expungement.

Petitioner argues that expungement is appropriate because the Court previously

granted motions to temporarily seal the documents, which were unopposed. *See* Renewed Motion at 3. But Patent Owner did not oppose the initial motions to seal only because the protective order entered by the Board required materials designated by Petitioner as confidential to be filed under seal. Patent Owner never agreed that the documents were in fact confidential and properly sealed. In any event, even if Patent Owner's failure to oppose the initial motions to seal waived its objections to the temporary sealing of Petitioner's documents, that would not mean that Patent Owner waived its objections to their permanent expungement.

Fourth, the public is entitled to the full record that led to the ultimate decision in this IPR: Commissioner Hirshfeld's order denying Patent Owner's motion for director rehearing. Petitioner argues that the the documents it seeks to expunge were not relied on by the Board in its final written decision. Renewed Motion at 3-4. But Petitioner ignores that Commissioner Hirshfeld's decision denying Patent Owner's petition for director rehearing did not explain the basis for the denial at all. *See* 12/6/21 Order (Paper No. 49). Accordingly, Petitioner's arguments that the documents it seeks to expunge are not relevant to the decisions in this matter have no support.

If the Board does not deny Petitioner's motion on the merits, it should deny it as premature. The Board denied Petitioner's earlier motion to expunge as

premature because Patent Owner's time to appeal had not yet expired. *See* 5/16/19 Order at 2 (Paper 44) ("We deny Petitioner's motion to expunge (Paper 40) 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."). Patent Owner's time to file a petition seeking the Supreme Court's review has not yet expired. Patent Owner intends to file a petition, just as the Arthrex patent owner did in its case, challenging Commissioner Hirshfeld's authority to provide the director review that the Supreme Court ruled was required under the Constitution. *See* Petition For A Writ Of Certiorari, *Arthrex, Inc. v. Smith & Nephew, Inc., et al.*, Case No. 22-639 (January 6, 2023). Patent Owner has at least until March 17 to file its petition. Obviously, "the record for this proceeding should be fully preserved" until all appeals have been exhausted. *See* 5/16/19 Order at 2 (Paper 44).

For the foregoing reasons, the Board should deny Petitioner's motion.

2/7/2023

Respectfully submitted,

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