

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 REPLY IN SUPPORT OF ITS RENEWED
MOTION TO EXPUNGE**

None of the arguments in Patent Owner's Opposition ("Opp.", Paper 51) to Petitioner's Renewed Motion to Expunge ("Motion", Paper 50) suggest denial of the Motion is appropriate, and the Board should grant Petitioner's Motion.

First, with respect to the information made public in filings before the Federal Circuit, Petitioner submits herewith the portions of the Joint Appendix that correspond to Paper No. 30 (as Exhibit 1031), Paper No. 31 (as Exhibit 1032), and Exhibit 2009 (as Exhibit 1033). This submission moots Patent Owner's first argument, and addresses the Board's instruction regarding expunging "Papers 30 and 31 and Exhibit 2009 in light of the appellate record" — the Board may (at its preference) expunge the redacted Papers 30–31 and Exhibit 2009 (i.e., Papers 37–38 and Exhibit 1029) and replace those documents with the documents submitted herewith.

Second, Petitioner has met its burden to show expungement is appropriate. Patent Owner's cited cases (Opp., p. 2) both address motions to **seal**, not motions to expunge. The Board has already granted motions to seal Petitioner's confidential information, and those motions are no longer at issue. Patent Owner points to no authority suggesting that a motion to expunge must re-argue the requirements of a motion to seal, and Patent Owner's argument is, in effect, a belated opposition to the motions to seal, which it did not oppose at the outset, nor did it file a request for reconsideration.

Third, while Patent Owner allegedly “has not waived its objections to expungement,” its new characterization that it “did not oppose the initial motions” and “never agreed that the documents were in fact confidential and properly sealed” contradicts the record. Opp., pp. 2–3. Patent Owner ignores that Patent Owner itself moved to seal Paper 30 and Exhibit 2009 (*see* Paper 29, p. 1: “Patent Owner’s Motion to Seal”), and Patent Owner did not oppose Petitioner’s motion to seal Paper 31. *See* Paper 43, p. 2 (“Patent Owner did not timely file an opposition to [Petitioner’s Motion to Seal].”) It did not make any objections known when relevant, nor did it ever assert that sealing was only “temporarily” proper; its four-year belated attempt to object to sealing cannot be condoned. *See* 37 C.F.R. § 42.25(b) (“A party should seek relief promptly after the need for relief is identified.”). Indeed, as the Board found in granting the Motions to Seal the Confidential Documents, the Board acknowledged 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.” Paper 43, pp. 1–2 (emphasis added). If that characterization was incorrect, it was incumbent on Patent Owner to timely request rehearing or reconsideration of that decision, which it did not. *See* 37 C.F.R. § 42.71(d) (“A party dissatisfied with a decision may file a single request for rehearing....Any request must be filed: (1) Within 14 days of the entry of a non-final decision....”).

Fourth, contrary to Patent Owner's argument, the public indeed has access to the record that led to the ultimate decision in this proceeding, and Patent Owner's argument is nonsensical. Commissioner Hirshfeld's decision denying Patent Owner's Request for Director Review ordered "that the Patent Trial and Appeal Board's Final Written Decision in this case is the final decision of the agency." Paper 49, p. 2. That Final Written Decision, as Petitioner argued in its Renewed Motion to Seal, did not rely upon or cite any confidential information—it had no need to. Patent Owner's argument which relied upon the confidential information was not considered, as the Board found it was a "belated challenge" that Patent Owner "made no effort to timely raise." Paper 34, pp. 17–18; *see also Unified Patents, LLC v. Electronics and Telecommunications Research Institute, et al.*, IPR2020-01048, Paper 60 (PTAB Feb. 14, 2023) (granting motion to expunge similar confidential documents, in part, because "the confidential material has nothing to do with the scope and content of the prior art, differences between the claimed subject matter and the prior art, ordinary skill in the art, any objective evidence of nonobviousness, or the priority date" of the subject patent" "or any prior art reference," and because "none of the confidential material is cited or relied on in the Final Written Decision.")

Fifth, and finally, Patent Owner argues that Petitioner's request is premature, because "Patent Owner intends to file a petition" seeking Supreme

Court review. *Opp.*, pp. 3–4. The Board's order set a deadline for Petitioner's renewed Motion, and Petitioner timely filed according to that instruction. *See* Paper 44, p. 3. If Patent Owner files a petition for certiorari, the Board may hold Petitioner's Renewed Motion in abeyance until the resolution of Patent Owner's petition, and decide the Renewed Motion at that time. *See* 37 C.F.R. § 42.71(a) (“The Board may take up petitions or motions for decision in any order, may grant, deny, or dismiss any petition or motion, and may enter any appropriate order.”). Such a resolution would “secure the just, speedy, and inexpensive resolution” of the proceeding, consistent with the regulatory framework of these proceedings (*see* 37 C.F.R. § 42.1); by contrast, denying the Renewed Motion (as Patent Owner urges) would require an additional round of duplicative briefing, unnecessarily burdening the Board and the parties.

Accordingly, for the reasons set forth above and in Petitioner's Renewed Motion to Expunge, the Board should grant Petitioner's Renewed Motion and expunge Papers 30 and 31 and Exhibit 2009. In the alternative, the Board should hold Petitioner's Renewed Motion in abeyance pending Supreme Court review, if Patent Owner seeks such review.

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