

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner

v.

UNILOC LUXEMBOURG S.A. & UNILOC USA,
Patent Owner

IPR2018-00199
Patent 7,092,671

**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE TO
PETITIONER'S MOTION TO SEAL (PAPER 22)**

I. Introduction

The competitively sensitive confidential information voluntarily produced by Petitioner Unified Patents (“Petitioner”) in good faith should be sealed. After agreeing to and accepting discovery under the Default Protective Order, Patent Owner continues in its attempt to publicly disclose that confidential information. Good cause exists to seal the confidential information in the Declaration of Kevin Jakel (Ex. 1022) and Petitioner’s Reply (Paper 20). The Motion to Seal should be granted.

II. Background and Procedural History

On August 8, 2018, two months after trial was instituted in this proceeding, Patent Owner requested discovery from Petitioner related to real parties-in-interest (RPI) and privity. As evidenced by the Standard Acknowledgement executed by Patent Owner’s counsel, Mr. Brett Mangrum,¹ the parties agreed to use the Board’s Default Protective Order to protect Petitioner’s confidential information. *See Kamstrup A/S v. Apator Miitors APS*, IPR2015-01403, Paper 18, 4 (agreement to the Default Protective Order is shown by signed Acknowledgement) (citing Fed. Reg. 48,756, 48,770, app. B, §(e) (Aug. 14, 2012)).

Thereafter, in reliance on the Protective Order, Petitioner provided voluntary discovery to Patent Owner on September 11, 2018. The produced documents were

¹ Mr. Travis Richins, who has sought to be admitted *pro hac vice*, also signed the Standard Acknowledgement of the Protective Order.

marked “PROTECTIVE ORDER MATERIAL.” On September 21, 2018, Patent Owner filed, under seal, its Patent Owner Response including a discussion of Petitioner’s confidential business information. On that same date, without consulting with Petitioner’s counsel or otherwise giving Petitioner prior notice, Patent Owner also filed a redacted version of the Patent Owner Response (Paper 13), only partially redacting Petitioner’s confidential information. Patent Owner did not file a Motion to Seal with its Response, nor did Patent Owner’s counsel reach out to Petitioner’s counsel to request that they prepare a Motion to Seal. Petitioner subsequently filed a Motion to Seal, which Patent Owner opposed. *See* Papers 16 and 17.

Concurrently with filing its Reply brief (Paper 20) on December 21, 2018, Petitioner also filed a Motion to seal the confidential information in both its Reply (Paper 20; Paper 21, redacted version) and in the Declaration of Kevin Jakel (Ex. 1022). Patent Owner filed its Opposition on January 22, 2019. *See* Paper 22.

III. Argument

A. There is Good Cause to Seal Petitioner’s Confidential Information in the Declaration of Kevin Jakel (Exhibit 1022)

Good cause exists to seal the confidential information in the Declaration of Kevin Jakel (Ex. 1022). *See Garmin v. Cuozzo*, IPR2012-00001, Paper 36 and 37 C.F.R. § 42.54(a) (setting forth the good cause standard). Petitioner has filed a public version of Exhibit 1022, with confidential information properly redacted. The confidential information should be sealed.

Patent Owner does not contest the confidentiality of the vast majority of the redactions in the public version of Exhibit 1022. Rather, Patent Owner only disputes that information related to the identities of various third-parties (who may or may not be members of Unified, as the case may be) is publicly available and therefore not confidential information. *See* Paper 22, 2, 3. Patent Owner is incorrect.

As required, Petitioner included Mandatory Notices in its Petition, including a statement of related matters pertaining to U.S. Pat. 7,092,671 (the “’671 patent”). That statement listed several litigations in which Patent Owner had asserted the ’671 patent against various third parties. *See* Paper 2, 2. That statement of related matters does not identify any of those various third parties as members or non-members (as the case may be) of Petitioner, nor does Petitioner disclose such information anywhere else in the Petition or other papers. Thus, contrary to Patent Owner’s unsupported assertion, Petitioner has not publicly disclosed information in this proceeding relating to whether particular third parties are *members or non-members of Petitioner*. Petitioner has properly kept such information confidential.

The information redacted in Exhibit 1022 is confidential because it relates to confidential and sensitive business practices, commercial, and financial information, trade secrets, and information regarding membership in Unified. Information relating to the identity of, and dealings with, Petitioner’s members is subject to confidentiality agreements with third parties. Additionally, the redacted information includes details

of Petitioner's closely guarded proprietary business model and methods, and sensitive financial information, the disclosure of which could give Petitioner's rivals an unfair competitive advantage, including a roadmap on how to replicate Petitioner's unique and valuable business model. *Cf.* Paper 16, 5-8.

Finally, Patent Owner is incorrect that the public interest requires that Petitioner's confidential information be made public. It is unnecessary for the unnamed entities to be identified in the Board's analysis of Uniloc's RPI contentions. Indeed, the Board has routinely relied, as necessary, on confidential information in a Final Written Decision while maintaining that confidential information under seal. *See, e.g., Petrol. Geo-Services Inc. v. WesternGeco LLC*, IPR2014-01477, Paper 71, 62-68 (redacting confidential information and finding no privity between Petitioner and third party defendant in litigation). The public interest strongly favors sealing confidential information provided as voluntary discovery in reliance on a protective order, or else parties will be dissuaded from engaging in voluntary discovery out of fear that confidential information will be publicly disclosed, as would be the result if Patent Owner's arguments here are followed.

B. Good Cause Exists to Seal the Confidential Information in Petitioner's Reply (Paper 20)

Good cause exists to seal the confidential information in Petitioner's Reply (Paper 20; public, redacted version filed as Paper 21). *See Garmin* and 37 C.F.R. § 42.54(a). As with Exhibit 1022, Patent Owner does not contest the vast majority of

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