

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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Unified Patents Inc.  
Petitioner

v.

Uniloc Luxembourg S.A. & Uniloc USA,  
Patent Owner

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IPR2018-00199  
Patent 7,092,671

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**MOTION TO SEAL TRANSCRIPT OF ORAL HEARING AND PATENT  
OWNER RESPONSE**

## **I. Introduction**

Petitioner requests that the confidential version of the Transcript of Oral Hearing (filed as Paper 30) be sealed under 37 C.F.R. § 42.54 and the Default Standing Protective Order (filed as Exhibit 1017), and that the redactions to confidential information in the public version of the Transcript of Oral Hearing (filed as Paper 31) are maintained. Petitioner also requests that the redacted version of the Patent Owner Response containing inadequately redacted confidential information (filed as Paper 13) be sealed and that redactions to confidential information in the public version of the Patent Owner Response (“POR”) (filed as Paper 32) be maintained. Good cause exists to seal the confidential versions of the Transcript of Oral Hearing and the POR and maintain the redactions of confidential information from the public versions of these papers because these papers contain Petitioner’s sensitive, non-public information that was voluntarily produced under the terms of the Protective Order in this proceeding.

Patent Owner has indicated that it will oppose the present Motion to Seal.

## **II. Background and Procedural History**

### **A. Transcript of Oral Hearing**

The Oral Hearing in this proceeding took place on February 28, 2019. At the request of Petitioner, the Oral Hearing was closed to the public due to the likely discussion of confidential business information, which indeed occurred. Accordingly,

when the Board filed the Transcript of Oral Hearing (Paper 30), it was marked “NON-PUBLIC VERSION – PROTECTIVE ORDER MATERIAL.” Petitioner submitted a version of the Transcript of Oral Hearing that redacts Petitioner’s confidential information (Paper 32).

### **B. Patent Owner Response**

On August 8, 2018, two months after institution of this proceeding, Patent Owner asked Petitioner to provide additional discovery relating to real party-in-interest (“RPI”) and privity. Petitioner agreed to voluntarily produce items that contained Petitioner’s confidential business information, including separately produced documents detailing Petitioner’s non-public business model, membership agreements, and trade secret information. The parties agreed to use the Board’s Default Protective Order to protect Petitioner’s confidential business information. Exhibit 1017 is the Default Protective Order with a Standard Acknowledgement executed by Patent Owner’s counsel, Brett Mangrum. The documents were produced under the Protective Order and marked “PROTECTIVE ORDER MATERIAL.”

Patent Owner filed its POR on September 21, 2018, without conferring with Petitioner regarding redactions to Petitioner’s confidential information, and without the required accompanying motion to seal. Instead, Patent Owner unilaterally filed an inadequately redacted version of the POR (Paper 13) that revealed Petitioner’s confidential information, and filed an unredacted version of the POR under seal. In

its POR, Patent Owner cited a limited number of Petitioner's voluntarily produced confidential and highly sensitive documents, which were provided by Petitioner as seventeen (17) separate documents. However, Patent Owner compiled Petitioner's separately produced confidential documents into a single document that Patent Owner filed as Exhibit 2005. Exhibit 2005 includes membership agreements, subscription forms, and other items that contain only Petitioner's confidential and sensitive business information. Petitioner filed its Opposed Motion to Seal Exhibit 2005 and maintain the unredacted POR under seal. *See* Paper 16. At that time, Petitioner focused its motion to seal on Exhibit 2005 and the unredacted POR due to the substantial amount of confidential business information at issue, and inadvertently did not propose additional redactions to the improperly redacted POR publicly filed by Patent Owner (Paper 13). In particular, Petitioner inadvertently did not propose redacting the name of an entity that is a confidential member of Petitioner in the improperly redacted POR filed by Patent Owner (Paper 13). Petitioner did not intend to reveal any confidential information related to the status of membership of any third-party entity (as the case may be) in the improperly redacted POR (Paper 13), and did not waive the disclosure of its confidential information due to the unilateral actions taken by Patent Owner in filing Paper 13.

In subsequent papers filed by Petitioner, Petitioner continued to redact its confidential information, including the name of a confidential member of Petitioner

that was improperly not redacted by Patent Owner in the POR. *See* Petitioner’s Reply (Paper 21), Redacted Transcript of Oral Hearing (Paper 31). Thus, at all times throughout this proceeding, Petitioner has protected its confidential information in its own papers.

Petitioner was recently made aware of third parties citing to the confidential information included in the improperly redacted POR in this proceeding. *See* IPR2019-00482, Patent Owner Preliminary Response (Paper 9) (citing one of the two confidential member names revealed in Patent Owner’s improperly redacted POR (Paper 13)).<sup>1</sup> Upon learning of the third party’s citation to Petitioner’s confidential information in the improperly redacted POR filed by Patent Owner (Paper 13), Petitioner moved to remove Paper 13 from public accessibility and replace it with a version that properly redacts Petitioner’s confidential information. Thereafter, the Board removed Paper 13 from public accessibility and replaced it with a properly redacted version of the POR, filed as Paper 32.

Subsequently, Petitioner became aware that in another proceeding before the Board, Apple Inc. (“Apple”) did not redact its membership in Petitioner Unified

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<sup>1</sup> In IPR2019-00482, the Board required Patent Owner to refile its Preliminary Response to include redactions to Petitioner’s confidential information. *See* IPR2019-00482, Redacted Patent Owner Preliminary Response (Paper 10).

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