

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 PATENT OWNER REQUEST FOR REHEARING**

## **I. Introduction**

Petitioner requests that the confidential version of Patent Owner's Request for Rehearing (Paper 38) be sealed under 37 C.F.R. § 42.54 and the Default Standing Protective Order (filed as Exhibit 1017).<sup>1</sup> Petitioner hereby moves to seal the confidential version of Patent Owner's Request for Rehearing and redact the confidential information contained therein from the public version of Patent Owner's Request for Rehearing (filed by Petitioner herewith as Exhibit 1026).

The parties have met and conferred as to the redactions in the public version of Patent Owner's Request for Rehearing. Petitioner submits that good cause exists to seal the confidential information reflected in the confidential version of Patent Owner's Request for Rehearing because that information is sensitive, non-public information. Patent Owner has indicated that it will oppose the present Motion to Seal.

## **II. Good Cause Exists for Sealing Certain Confidential Information Reflected in Patent Owner's Request for Rehearing**

The Office Patent Trial Practice Guide provides that "the rules aim to strike a balance between the public's interest in maintaining a complete and understandable

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<sup>1</sup> Petitioner notes that Patent Owner's Request for Rehearing (Paper 38) is nearly 18 pages long, 3 pages in excess of the 15-page limit set by the rules governing practice before the Board. *See* 37. C.F.R. § 42.24(a)(1)(v).

file history and the parties' interest in protecting truly sensitive information.” 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). Further, those rules “identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.” *Id.* (citing 37 C.F.R. § 42.54).

There must be “good cause” to seal a document in a proceeding before the Board. *Garmin v. Cuozzo*, IPR2012-00001, Paper 36 (PTAB Apr. 5, 2013) and 37 C.F.R. § 42.54(a). Good cause is established by demonstrating that the balance of the following factors favors sealing the material: whether (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record. *Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative); *see also Corning Optical Commc'ns RF, LLC, v. PPC Broadband, Inc.*, IPR2014-00440, Paper 47 at 3 (PTAB Apr. 14, 2015). The balance of these factors favors sealing the confidential information reflected in Patent Owner's Request for Rehearing.

Patent Owner correctly filed its Request for Rehearing (Paper 38) under seal because Patent Owner's Request for Rehearing contains information that Petitioner has identified as confidential business information. The confidential version of Patent Owner's Request for Rehearing includes sensitive business information which has not been published or otherwise been made public.

Specifically, for example, Patent Owner's Request for Rehearing includes statements from, summaries of, and citations to Exhibit 2005 produced voluntarily by Petitioner in response to requests from Patent Owner under the agreed-to Default Protective Order governing this case. Petitioner has previously identified Exhibit 2005 as containing only confidential information. *See* Opposed Motion to Seal (Paper 16) at 3. Because Exhibit 2005 includes only confidential information, any statement from, summary of, or citation to the contents of Exhibit 2005 is confidential information and should be sealed.

Additionally, Patent Owner's Request for Rehearing references additional information that is confidential, sensitive commercial information, including closely held information, related to Petitioner's core business, membership terms, and business strategy and constitutes highly confidential business information, as well as trade secrets. As a specific, non-exhaustive example, Patent Owner's Request for Rehearing includes reference to a specific third party that is a private member of Petitioner Unified Patents. Whether or not this specific third party is, in fact, a

member of Petitioner is a matter of non-public information that Petitioner maintains as confidential information and is contractually obligated to maintain as confidential. As another specific, non-exhaustive example, Patent Owner's Request for Rehearing includes specific details pertaining to the terms of membership of another third party that Petitioner has previously identified as a public member of Petitioner Unified Patents. *See* Paper 36 at 4-5. However, the specific details pertaining to the membership of that public member remain confidential, including details about the amount of the membership fee paid by that public member.

Disclosure of Petitioner's highly confidential business information would provide Petitioner's competitors and would-be business rivals with a roadmap for replicating Petitioner's unique, valuable business model and would reveal contractual business information between two parties produced voluntarily under a joint protective order. Additionally, were confidential information produced voluntarily under a joint protective order to be disclosed publicly, a producing party would have little incentive to engage in voluntary discovery of confidential information. Furthermore, Petitioner is contractually bound to third parties to maintain the confidentiality of the confidential information contained within Patent Owner's Request for Rehearing. Accordingly, the public interest would be served by maintaining the confidentiality of this information. Thus, the confidential information contained in Patent Owner's Request for Rehearing (Paper 38) should

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