

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 MOTIONS TO SEAL AND MOTION TO EXPUNGE**

I. Introduction

Petitioner Unified Patents (“Petitioner”) voluntarily produced competitively sensitive confidential information in good faith, and that confidential information should be protected. After agreeing to and accepting Petitioner’s voluntary discovery under the Default Protective Order, Patent Owner continues its attempt to publicly disclose that confidential information. Good cause exists to seal the confidential information in the Final Written Decision (Paper 33), the Transcript of Oral Hearing (Paper 30), and Patent Owner Response (Paper 12, redacted version filed as Paper 37). Also, good cause exists to expunge the confidential versions of papers and exhibits.

Patent Owner’s attempt to publicly disclose Petitioner’s confidential information is mistaken and contrary to law. Good cause exists to protect Petitioner’s confidential information. Petitioner’s motions should therefore be granted. Moreover, Patent Owner’s Opposition (Paper 40) fails to comply with the rules governing practice before the Board. Therefore, the Board should not consider Patent Owner’s Opposition.

II. Argument

A. Good Cause Exists for Granting Petitioner’s Motions

Patent Owner has failed to contest Petitioner’s showing that the information Petitioner seeks to protect is properly confidential. Nor is Patent Owner correct that Petitioner has waived confidentiality.

1. The Information Petitioner Seeks to Protect Is Confidential

Patent Owner does not contest the confidentiality of the vast majority of the redactions. Rather, Patent Owner only disputes that citations to Exhibit 2005 and the identity of a third-party, who is an alleged member of Petitioner, are confidential information. *See* Paper 40, 2. Patent Owner is incorrect.

As Petitioner has previously explained, Exhibit 2005 contains confidential information and should be sealed in its entirety. Paper 16, 3, 5-7. The confidential information contained within Exhibit 2005 is subject to confidentiality agreements with non-parties. Paper 16, 5. Similarly, the identity of a third-party who is an alleged member of Petitioner is confidential information, and this confidential information is also subject to confidentiality agreements with non-parties. Paper 28, 3. Thus, Petitioner is contractually bound to third-parties to protect its confidential information. Petitioner produced the confidential information pertaining to the alleged member with the understanding that the confidential information was protected from being made public under the terms of the Default Protective Order. EX1019 (email attaching and share site providing access to documents bore Protective Order Material designations).

2. Petitioner Did Not Waive Confidentiality

Patent Owner repeats its baseless allegation that Petitioner waived confidentiality by providing documents to Patent Owner's counsel. In a parallel proceeding before the Board involving the same parties and similar confidential information as here, the Board categorically rejected Patent Owner's unreasonable and

extreme position, finding that Petitioner did not waive confidentiality. *See Unified Patents, Inc. v. Uniloc 2017 LLC*, IPR2017-02148, Paper 76, 6 (rejecting Patent Owner’s suggestion that the Board “adopt a per se rule” regarding waiver of confidentiality”). The Board should find so here. *See, e.g.*, Paper 18, 4-5.

Additionally, even if Patent Owner were correct that Petitioner waived confidentiality (and as explained above, Petitioner has not), Patent Owner’s actions in the present case have rendered its argument moot. Patent Owner alleges that documents were provided to Travis Richins, one of Patent Owner’s attorneys, who was not of record at the time. *See* Paper 17, 4-5. But Mr. Richins is now counsel of record in this proceeding. *See* Paper 29 (Order Granting Patent Owner’s Motion for Admission *Pro Hac Vice* of Travis Richins).¹ Therefore, Patent Owner’s own actions belie its allegation of waiver of confidentiality.

Patent Owner also argues that because *Patent Owner* failed to properly redact all of Petitioner’s confidential information in the originally-filed redacted version of the Patent Owner Response (filed as Paper 13, now expunged), that Petitioner has waived confidentiality. Patent Owner is mistaken. Notably, Patent Owner has pointed to no authority in support of its extreme claim that the actions of an opposing party, *i.e.*, Patent Owner, who is in receipt of voluntarily produced information subject to a

¹ Mr. Richins has also signed the Standard Acknowledgement of the Protective Order.

protective order, can make that information public such that production of the information constitutes waiver of confidentiality by Petitioner, regardless of the time span involved. Indeed, Petitioner has consistently and properly redacted all of its confidential information in all papers it has submitted before the Board in this proceeding. *See, e.g.*, Paper 28, 3; Paper 36, 3-4.

Patent Owner's unilateral action is not a basis for finding Petitioner waived confidentiality. As Petitioner has explained, Patent Owner filed the improperly redacted version of the Patent Owner Response without conferring with or receiving permission from Petitioner. *See, e.g.*, Paper 16, 2; Paper 36, 2-3. The documents Petitioner voluntarily produced under the governing Protective Order, were clearly marked "PROTECTIVE ORDER MATERIAL." Paper 16, 2. Thus, contrary to Patent Owner's statements, Patent Owner reasonably should have considered the material contained within those documents to be confidential. Instead, Patent Owner decided, unilaterally, to be the arbiter of Petitioner's confidential information when it filed its Patent Owner Response (Paper 13) with Petitioner's confidential information without proper redactions. But Patent Owner's error cannot be attributed to Petitioner, who has properly protected its confidential information.

B. Patent Owner's Opposition Fails to Comply with the Board's Rules

Patent Owner's Opposition brief (filed as Paper 40) fails to comply with the rules governing practice before the Board. Specifically, Patent Owner's Opposition is styled

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