

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

OPPOSED MOTION TO SEAL

I. Introduction

Petitioner Unified Patents (“Unified”) respectfully requests that the Board seal Exhibit 2005, a compilation of core Unified business information that is commercially and competitively sensitive, and maintain under seal the unredacted version of the Patent Owner Response filed on September 21, 2018. In response to Patent Owner’s contentions concerning the real party-in-interest (“RPI”) in this proceeding, Unified voluntarily produced confidential documents under the Board’s Default Protective Order to confirm that Unified properly identified itself as the sole RPI. The confidential documents detail Unified’s non-public business model and membership lists and practices, precisely the type of competitively sensitive and trade secret information for which there is good cause to grant a motion to seal.

Despite producing the confidential documents to Patent Owner’s counsel under the Board’s Default Protective Order, Patent Owner incredulously asserts that Petitioner has waived the confidentiality of the documents because the documents were served to all counsel of record and an attorney at the law firm representing Patent Owner who did not specifically sign the Standard Acknowledgement of the Default Protective Order. Patent Owner is incorrect. The Board should reject Patent Owner’s attempt to use Unified’s voluntary disclosure under the Protective Order as a vehicle for publicly disclosing Unified’s sensitive and confidential business

information. For the reasons below, good cause exists to seal Unified's confidential documents (Ex. 2005) and the unredacted Patent Owner Response.

II. Background and Procedural History

On August 8, 2018, two months after institution of this proceeding, Patent Owner asked Petitioner to provide additional discovery relating to RPI and privity. The parties agreed to use the Board's Default Protective Order to protect that information. Exhibit 1017 is the Default Protective Order with a Standard Acknowledgement executed by Patent Owner's counsel, Brett Mangrum.

The documents Petitioner voluntarily produced under the Protective Order were marked "PROTECTIVE ORDER MATERIAL." At no point did Patent Owner challenge this confidentiality designation. On September 21, 2018, Patent Owner filed a Patent Owner Response under seal that quotes and discusses Petitioner's confidential business information, including information subject to third-party confidentiality provisions. Contrary to the PTAB Trial Practice Guide, Patent Owner filed its Response under seal without the required motion to seal. On that same date, without giving Petitioner prior notice, Patent Owner also filed a redacted version of the Patent Owner Response (Paper 13).

Pursuant to 37 C.F.R. § 42.54, Petitioner certifies that the parties conferred in a good faith effort to resolve the dispute regarding a motion to seal; however, an agreement was not reached. Thus, Petitioner submits this Opposed Motion to Seal.

III. Motion to Seal

Patent Owner filed the Patent Owner Response together with Exhibit 2005, a compilation of the entirety of Petitioner's voluntarily produced confidential information. Exhibit 2005 contains sample Unified Membership Agreements and Subscription Forms that contain only confidential and sensitive business, commercial, and financial information. Exhibit 2005 also includes membership lists, closely held information related to Unified's core business, and information subject to confidentiality agreements with third-parties. The Patent Owner Response directly quotes, references, and cites to confidential information in these documents.

Exhibit 2005 contains invoices with sensitive financial information and the identity of Unified members, Subscription Fee Schedules with sensitive financial and commercial information (Ex. 2005: UP-000001; UP-000016; UP-000033; UP-000036; UP-000042 through UP-000043; UP-000048 through UP-000050; UP-000077), and Unified Member Agreements and Subscription Forms (*id.*: UP-000002 through UP-000015; UP-000017 through UP-000019; UP-000020 through UP-000032; UP-000034 through UP-000035; UP-000037 through UP-000041; UP-000074 through UP-000076). Exhibit 2005 also includes non-public lists of Unified members and contact information for individuals at those entities (*id.*: UP-000044 through UP-000047). Thus, pursuant to 37 C.F.R. § 42.14, Petitioner moves to seal Exhibit 2005 in its entirety and the unredacted Patent Owner Response.

IV. Good Cause Exists for Sealing These Documents

To seal documents, the Board must find “good cause.” *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 documents at issue.¹

¹ The Board has granted numerous motions to seal where maintaining confidentiality of sensitive information outweighed the public interest in an open record. *See, e.g., Hospira, Inc. v. Genentech, Inc.*, IPR2017-00731, Paper 24 (PTAB Oct. 10, 2017); *Unified Patents, Inc v. American Vehicular Scis., LLC*, IPR2016-00364, Paper 15 (PTAB Jun. 27, 2016). This includes proceedings involving substantially the same information at issue here. *See Unified Patents*,

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