

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**

I. Introduction

The competitively sensitive information voluntarily produced by Petitioner (“Unified”) should be sealed. After accepting discovery under the Default Protective Order, Patent Owner (“Uniloc”) attempts to publicly disclose the confidential details of Unified’s closely guarded business model and private member identity. Good cause exists to seal the entirety of Ex. 2005, which contains Unified’s Member Agreements and related documents, and the unredacted Patent Owner Response (“POR”). Unified has not “waived” confidentiality by providing appropriately designated documents to Uniloc’s counsel. The Motion to Seal should be granted.

II. Argument

A. There is Good Cause to Seal Exhibit 2005 in its Entirety

Good cause exists to seal Ex. 2005 in its entirety. Paper 16, 4-10. Uniloc incorrectly argues that Ex. 2005 should not be sealed because Unified does not allege or show that the entirety of the exhibit is confidential. Paper 17, 3. Unified voluntarily produced the documents in Ex. 2005 as separate documents, each marked as confidential, under the terms of the Default Protective Order. Ex. 1019. Despite citing to only a small subset of Unified’s individually produced documents, Uniloc compiled the separate documents and filed Unified’s entire production as a single exhibit, Ex. 2005. Uniloc relies on Ex. 2005 only for limited purposes in its POR, and, as evidenced by the redactions in its POR, Uniloc recognizes the confidentiality

of the material it quotes or describes from Ex. 2005. Paper 13, 4-5, 10-12, 19.

Uniloc incorrectly alleges that Unified's arguments regarding confidentiality "focus almost exclusively" on protecting the identity of Unified's members, some of which "appeared to be publicly-known," and that Unified's business model is well known.¹ Paper 17, 3. Although some of Unified's members are publicly known, the membership, or lack thereof, of those entities put at issue by Uniloc in this IPR is not public information. In fact, Unified is contractually obligated to many of its private members to maintain the confidentiality of their identities. Paper 16, 7. Uniloc points to Square Enix, a public Unified member, as an example of alleged nonconfidential information in documents sought to be sealed in an unrelated proceeding (IPR2017-02148). Paper 17, 3. Uniloc, however, points to no specific information in Ex. 2005 of this IPR that it alleges to not be confidential.

Unified's motion demonstrates that the information in Ex. 2005 reflects the details of Unified's closely guarded business strategies and trade secrets. Paper 16, 5-7. Uniloc's argument that they are mere "contract terms" ignores their substance. Paper 17, 4. Among others, Ex. 2005 contains agreements with confidentiality provisions reflecting Unified's and its members' intentions and duties to keep the terms of the contract confidential. Paper 16, 7. Unified has shown good cause.

¹ Uniloc's assertions are attorney argument void of any supporting evidence.

B. There is Good Cause to Seal the Unredacted POR

The POR contains quotations and/or descriptions of Unified's confidential information provided under the Protective Order. The material Unified seeks to maintain under seal relates directly to the details of the confidential information contained in Ex. 2005. For at least the same reasons described above for Ex. 2005, good cause exists for sealing the unredacted POR.

C. The Balance is Heavily Weighted in Favor of Protecting Unified's Highly Confidential Business Information

Uniloc argues that because Unified's confidential information relates to certification of RPI, the public interest requires public disclosure. Paper 17, 8-9. This ignores the balancing required by *Garmin* and *Argentum*, which favor protecting confidential business information. Without an assurance that its confidential information would be protected, Unified would have had little reason to participate in voluntary discovery in this proceeding.

Ex. 2005 contains the same type of information that the Board sealed in *Garmin*, such as Unified's bank account and routing numbers. Ex. 2005, UP-000007. The Board has repeatedly found that equivalent or substantially similar information produced by Unified (e.g., members, membership terms, business strategy, and finances) should be sealed in other proceedings. Paper 16, 5-6. If Unified's confidential information is relied upon in determining RPI, the Board has

demonstrated in numerous proceedings that it can adequately disclose the basis for its decision while maintaining confidential information under seal. Paper 16, 8-9.

Disclosure of the confidential information in Ex. 2005 to competitors would harm Unified's business. *Id.* at 7. This would disincentivize free exchange of information and chill voluntary disclosure in Office proceedings. Thus, the public interest is well-served by sealing Unified's confidential information.

D. Unified Did Not Waive Confidentiality in this Proceeding

Uniloc's extreme position that waiver resulted from Unified providing its documents to Uniloc's counsel (including Mr. Richins), not all of which had signed the Acknowledgement of the Protective Order, is incorrect. Paper 17, 4-6.

Uniloc acknowledges that it is represented by Mr. Richins, yet alleges that he is not "an employee or consultant for" Uniloc in this IPR but "an attorney who represents Uniloc in other matters but who is not ... of record in this matter." Paper 17, 6. Contrary to its assertion, Uniloc repeatedly included Mr. Richins in email correspondence between the parties, including negotiation of the terms of voluntary discovery. Paper 16, 11. Following notice of Uniloc's waiver allegation, Unified removed Mr. Richins from further correspondence between the parties; however, Uniloc re-copied Mr. Richins on subsequent correspondence between the parties and indicated that he is "counsel" that should have been included in communications relating to this proceeding. Ex. 1020. Further, upon receiving Uniloc's delayed and

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.