

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.

REALTIME ADAPTIVE STREAMING, LLC  
Patent Owner.

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Case IPR2018-00883  
U.S. Patent 8,934,535

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**JOINT MOTION TO SEAL THE DECISION ON INSTITUTION**

## **I. Introduction**

On October 11, 2018, the Board issued a Decision on Institution (Paper 29, “Non-Public Decision”) in this proceeding, which contained certain confidential information. On October 17, 2018, the Board issued an Order granting Patent Owner’s Motion to Seal (Paper 20) and Petitioner’s Motion to Seal (Paper 24) and further instructing the parties to file a Joint Motion to Seal the Non-Public Decision and a proposed redacted version of the Non-Public Decision.

Accordingly, the parties request that the Board’s Non-Public Decision, be maintained under seal under 37 C.F.R. § 42.54 and the Modified Default Standing Protective Order (Paper 19). Good cause to seal the Non-Public Decision exists because it contains Petitioner’s sensitive, confidential business information. Furthermore, the parties provide along with this motion a proposed Public Version of the Decision on Institution, which redacts the confidential information.

## **II. Good Cause Exists for Sealing Certain Confidential Information**

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 file history and the parties’ interest in protecting truly sensitive information.” 77 FED. REG. 48756, 48760 (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).

The Board’s Non-Public Decision contains information that Petitioner has identified as confidential business and commercial information. More particularly, the Board’s Non-Public Decision references and describes the content of certain confidential materials, that Petitioner and Patent Owner previously moved to file under seal (*See* Paper 20, Patent Owner’s Motion to Seal, and Paper 24, Petitioner’s Motion to Seal) and marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Protective Order in this case. As set forth in these motions, good cause exists for maintaining Petitioner’s sensitive information as confidential. *See* Paper 20, Patent Owner’s Motion to Seal; Paper 24, Petitioner’s Motion to Seal. More particularly, these confidential documents referenced in the Non-Public Decision contain materials distributed by Petitioner to one or more of its members describing its business strategy, containing Petitioner’s spending and business activities, and other information relating to Petitioner and its members that Petitioner has a duty to maintain as confidential, including information subject to confidentiality obligations of agreements with third parties. *See id.*

### **III. A Proposed Public Version of the Decision on Institution**

The parties provide a proposed Public Version of the Decision on Institution, which redacts the confidential information, along with this motion as Exhibit 1019. The

proposed redactions in this Public Version of the Decision on Institution are limited to those statements that reveal sensitive and confidential information. As identified further below, quotations from and references to exhibits which have been placed under seal by the Board's October 17, 2018 Order granting the parties motions to seal have been redacted. As instructed in the Board's October 17, 2018 Order on Conduct of the Proceeding, the parties identify below why the redacted portions are truly confidential.

- Page 12, Paragraph One: redacted due to information subject to confidentiality provisions of agreements with third parties, including the terms of such agreements and/or the zone participation of any Unified members.
- Page 12, Paragraph Two, citation to sealed Exs. 2007 and 2008: redacted due to confidential nature of financial and other sensitive commercial information communicated to Petitioner's member, including confidential license agreements.
- Page 12, Paragraph Two, citation to sealed Ex. 2008: redacted due to information related to confidential settlement and/or license agreements and confidential nature of the sensitive business, commercial, and financial information in a non-public presentation to a member.

- Page 13, Paragraph One, citation to sealed Ex. 2006: redacted due to confidential nature of the sensitive business information quoted from a non-public presentation to a member describing Petitioner's business strategy and including information subject to confidentiality obligations of agreements with third parties.
- Page 14, Paragraph One: redacted due to information subject to confidentiality provisions of agreements with third parties, including the terms of such agreements and/or the zone participation of any Unified members.
- Page 15, Paragraph Two, citation to Ex. sealed 1018: redacted due to confidential nature of information quoted from a sealed declaration containing confidential business, commercial, and financial information.
- Page 15, Paragraph Two, citation to sealed Ex. 2006: redacted due to confidential nature of the sensitive business information quoted from a non-public presentation to a member describing Petitioner's business strategy and including information subject to confidentiality obligations of agreements with third parties.

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