

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS, LLC  
Petitioner

v.

MEMORYWEB, LLC  
Patent Owner

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Case no. IPR2021-01413  
Patent 10,621,228

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**PETITIONER'S UNOPPOSED MOTION TO SEAL BOARD'S ORDER  
(PAPER 56) AND PETITIONER'S REQUEST FOR REHEARING AND  
PRECEDENTIAL PANEL REVIEW FILED MARCH 22, 2023**

Pursuant to 37 C.F.R. § 42.54, Petitioner Unified Patents, LLC ("Petitioner") files this Motion to Seal the Board's Order (Paper 56) ("Order") and Petitioner's Request for Rehearing and Precedential Panel Review filed concurrently herewith on March 22, 2023 ("Request"). The Parties have conferred and Patent Owner Memoryweb LLC ("Patent Owner") does not oppose.

Good cause exists to seal the Order and Request because they contain sensitive, non-public information. Specifically, these documents each rely on and discuss the confidential materials and information found in, for example, the Patent Owner's Preliminary Sur-Reply (Paper 13), Patent Owner's Response (Paper 23) (POR), Petitioner's Reply (Paper 29), Patent Owner's Sur-Reply (Paper 35), and Order (Paper 56), as well as Exhibits 1023, 1024, 1025, 1029, 2028, 2030, 2032, 2033, 2034, and 2036. As directed by the Board, the parties have emailed a redacted version of the Order to the panel at [trials@uspto.gov](mailto:trials@uspto.gov) for filing. Order, 34. A public version of the Request, from which the confidential information has been redacted, will be filed shortly thereafter.

Petitioner previously filed a motion for entry of a Protective Order in this proceeding and to seal Exhibits 1023-1025 and 1029. Paper 10. Petitioner also filed a Motion to Seal regarding confidential information in the POR and Exhibits 2028, 2030, 2032, 2033, 2034, and 2036. Paper 24. The Board granted Petitioner's motions. Paper 26.

Petitioner has also filed Motions to Seal regarding confidential information in the Patent Owner's Preliminary Sur-Reply (Paper 13), Petitioner's Reply (Paper 29), Patent Owner's Sur-Reply (Paper 35), and confidential hearing transcript. *See* Papers 27, 31, 36, 54. The Board has yet to rule on these Motions.

Patent Owner did not oppose entry of the Protective Order or any of the Motions to Seal. Counsel for Patent Owner has executed the Protective Order.

## **I. MOTION TO SEAL**

In an *inter partes* review, it is the default rule that all filings are publicly available. 35 U.S.C. § 326(a)(1) and 37 C.F.R. § 42.14. Where a paper contains confidential information, a petitioner may file “a motion to seal with a proposed protective order as to the confidential information.” 37 C.F.R. § 42.55; *see also* 35 U.S.C. § 326(a)(1). A motion to seal and to enter a protective order will only be granted if the movant demonstrates a showing of “good cause.” 37 C.F.R. § 42.54(a). The Board has established a four-pronged test that must be met for a motion to seal to be granted:

a movant to seal must demonstrate adequately that (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 Pharm. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative) (citing to *inter alia* 37 C.F.R. § 42.54(a)). This Motion to Seal satisfies the four-pronged test in *Argentum*.

First, the redacted portions of the Order and forthcoming redacted portions of the Request contain non-public, highly confidential proprietary business information (“Information”)—information about Unified’s members and information regarding Unified’s business operations—that Petitioner maintains as confidential trade secrets and that is found in, for example, Exhibits 1023, 1024, 1025, 2028, 2033, 2036, and the POR, which the Board previously found properly sealed, as well as the Patent Owner’s Preliminary Sur-Reply (Paper 13), Petitioner’s Reply (Paper 29), Patent Owner’s Sur-Reply (Paper 35), and the confidential hearing transcript. Paper 26. This Information includes confidential, sensitive commercial information, including closely held information related to Unified’s core business. Unified guards such information closely to protect its members as well as its own business from copying by others. Unified has not made, and does not intend to make, this information publicly available and such information is subject to confidentiality obligations to third parties not involved in this proceeding.

Second, several potential harms would occur if this Information were to be disclosed. For example, disclosure of this Information to the public would expose Unified’s business model and confidential business activities. Additionally, Unified

has a contractual obligation with third parties not involved in this proceeding to maintain the confidentiality of the Information. Without an assurance that the Information will be protected, Unified's members wishing to remain confidential may be adversely affected. Disclosure of this Information to the public will not only harm Unified, as discussed above, but would also harm third parties not involved in this proceeding. Further, the public interest will not be harmed by sealing of the confidential business Information.

Third, there are allegations that certain entities are real parties-in-interest to this proceeding. *See* Paper 23, 1, 14-26; Paper 35, 23-27; Paper 56. The Order and Request rely on confidential information in Exhibits 1023, 1024, 1025, 2028, 2033, 2036, and the POR, which the Board previously found should be sealed, as well as such information in the Patent Owner's Preliminary Sur-Reply (Paper 13), Petitioner's Reply (Paper 29), Patent Owner's Sur-Reply (Paper 35), and confidential hearing transcript. *Id.*; Paper 26. This confidential information is relevant to this dispute.

Fourth, on balance, the interest in maintaining confidentiality outweighs the public interest in having an entirely open record and the redacted portions of the Order and forthcoming redacted portions of the Request should be sealed. Petitioner respectfully requests that the Board grant this motion to seal.

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