

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC
Petitioner

v.

MEMORYWEB, LLC
Patent Owner

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

**PETITIONER'S UNOPPOSED MOTION TO SEAL PETITIONER'S
REQUEST FOR DIRECTOR REVIEW OF FINAL WRITTEN DECISION
FILED APRIL 13, 2023**

Pursuant to 37 C.F.R. § 42.54, Petitioner Unified Patents, LLC ("Petitioner") files this Motion to Seal the Petitioner's Request for Director Review of Final Written Decision filed concurrently herewith on April 13, 2023 ("Request for Director Review"). The Parties have conferred and Patent Owner Memoryweb LLC ("Patent Owner") does not oppose.

Good cause exists to seal the Request for Director Review because it contains sensitive, non-public information. Specifically, this document relies on and discusses 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), confidential hearing transcript (Paper 52), Order (Paper 56), and Request for Rehearing and Precedential Panel Review (Paper 62), as well as Exhibits 1023, 1024, 1025, 1029, 2028, 2030, 2032, 2033, 2034, and 2036. A public version of the Request for Director Review, 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), confidential hearing transcript (Paper 52), Order (Paper 56), and Request for Rehearing and Precedential Panel Review (Paper 62). *See* Papers 27, 31, 36, 54, 61. The Board granted these motions. Paper 68.

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 forthcoming redacted portions of the Request for Director Review 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, 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), confidential hearing transcript (Paper 52), Order (Paper 56), and Request for Rehearing and Precedential Panel Review (Paper 62), as well as Exhibits 1023, 1024, 1025, 1029, 2028, 2030, 2032, 2033, 2034, and 2036, which the Board previously found properly sealed. Papers 26, 68. 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 Request for Director Review relies on confidential information in 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), confidential hearing transcript (Paper 52), Order (Paper 56), and Request for Rehearing and Precedential Panel Review (Paper 62), as well as Exhibits 1023, 1024, 1025, 1029, 2028, 2030, 2032, 2033, 2034, and 2036, which the Board previously found properly sealed. *Id.*; Papers 26, 68. This confidential information is relevant to this dispute.

Fourth, on balance, the interest in maintaining confidentiality outweighs the

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