

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC,
Petitioner,

v.

MEMORYWEB, LLC
Patent Owner

IPR2021-01413
U.S. Patent 10,621,228

PETITIONER'S MOTION TO EXPUNGE

I. Introduction

Pursuant to 37 C.F.R. § 42.56, Petitioner Unified Patents, LLC (“Unified”) files this Motion to Expunge certain confidential information in the record of this proceeding.

This Motion is timely filed on April 28, 2023, within 45 days of the Final Written Decision (Paper 58) which issued on March 14, 2023. *See* Paper 58; Patent Trial Appeal Board Consolidated Trial Practice Guide November 2019, p. 21-22.

However, Petitioner respectfully requests that the Board defer ruling on this Motion and preserve the record in its entirety, maintaining all confidential documents filed in this proceeding under seal, until resolution of (1) Petitioner’s Request for Rehearing and Precedential Panel Review (Paper 62), (2) Patent Owner’s Request for Rehearing (Paper 69), (3) Petitioner’s Request for Director Review (Paper 70), and (4) any appeal in this proceeding (or alternatively, until the period for filing a notice of appeal expires in this proceeding).

Patent Owner states that it opposes the Motion to Expunge on the basis that the record should be preserved while this proceeding, IPR2022-00031, and IPR2022-00222 are ongoing and through the appeals. Patent Owner states that it does not believe that the request to defer ruling on the Motion to Expunge is sufficient to accomplish that outcome but does not otherwise oppose the request to defer ruling on the motion.

II. Documents at Issue

Petitioner respectfully submits that the following confidential documents be expunged from the record, after resolution of the matters identified in Section I, as they contain Petitioner's highly confidential business information (collectively, "the Confidential Documents"):¹

- Paper 13 (Patent Owner's Preliminary Sur-Reply) (Confidential Version)
- Paper 23 (Patent Owner's Response) (Confidential Version)
- Paper 29 (Petitioner's Reply) (Confidential Version)
- Paper 35 (Patent Owner's Sur-Reply) (Confidential Version)
- Paper 52 (Hearing Transcript) (Confidential Version)
- Paper 56 (Order) (Confidential Version)
- Paper 58 (Final Written Decision) (Confidential Version)
- Paper 62 (Petitioner's Request for Rehearing and Precedential Panel Review) (Confidential Version)
- Paper 70 (Petitioner's Request for Director Review) (Confidential

¹ Exhibits 2027 and 2029 were filed by Patent Owner as available to the Parties and Board only but do not include Petitioner's confidential information and Petitioner did not seek to seal them. *See* Paper 24, p. 8, FN2.

Version)

- Exhibit 1023 (Confidential Version)
- Exhibit 1024 (Confidential Version)
- Exhibit 1025 (Confidential Version)
- Exhibit 1029 (Confidential Version)
- Exhibit 2028 (Confidential Version)
- Exhibit 2030 (Confidential Version)
- Exhibit 2032 (Confidential Version)
- Exhibit 2033 (Confidential Version)
- Exhibit 2034 (Confidential Version)
- Exhibit 2036 (Confidential Version)

For the reasons set forth below, after resolution of the matters identified in Section I, Petitioner requests that the Confidential Documents be expunged.

III. Applicable Legal Standards

37 C.F.R. § 42.56 provides that “[a]fter a denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information in the record.” Similarly, the Consolidated Trial Practice Guide states, in pertinent part, that “[t]here is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a

request to institute a review or is identified in a final written decision following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.” Consolidated Trial Practice Guide, p. 22. A party seeking expungement from the record must show good cause by demonstrating “that any information sought to be expunged constitutes confidential information, and that Petitioner’s interest in expunging it outweighs the public’s interest in maintaining a complete and understandable history of this *inter partes* review.” *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97 at 2 (P.T.A.B. Apr. 15, 2015).

IV. Reasons for Relief Requested

A. Procedural Background

All of the Confidential Documents in this matter disclose confidential information relating to the real parties in interest (“RPI”) issue raised by Patent Owner and the Board. Where possible, redacted versions of these documents are or will be available to the public, and information regarding the contents of the information is in the record, as detailed in the following table:

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