

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC
Petitioner

v.

MEMORY WEB, LLC
Patent Owner

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

PETITIONER'S UNOPPOSED SECOND MOTION TO SEAL

Petitioner Unified Patents, LLC (“Petitioner”) files this Motion to Seal the Patent Owner’s Response (Paper 23) (“POR”) and Exhibits 2028, 2030, 2032, 2033, 2034, and 2036. Concurrent with this Motion, Petitioner submits redacted copies of the POR (the public/redacted copy of the POR is being filed as Exhibit 1030) and Exhibit 2036 (the public/redacted copy of Exhibit 2036 is being filed as Exhibit 1031). Petitioner requests that these documents be sealed under 37 C.F.R. § 42.54. Good cause exists to seal the unredacted versions of these documents because they contain sensitive, non-public information.

Exhibits 2028 and 2030 are each a listing of email addresses belonging to Unified members, Exhibit 2032 is an email communication, Exhibit 2033 is a presentation slide deck, Exhibit 2034 is a listing of post-grant filings, and Exhibit 2036 is a deposition transcript of Unified’s Chief Executive Officer, Kevin Jakel. These exhibits address confidential aspects of Unified’s business. The redacted portions of the POR rely on and discuss these confidential materials and information.

Petitioner certifies that it has conferred with Patent Owner through counsel, and Patent Owner does not oppose this Motion to Seal.

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.”¹ 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 POR and Exhibit 2036, and Exhibits 2028, 2030, 2032, 2033, and 2034 in their entireties, contain non-public, highly

¹ Petitioner previously filed a motion for entry of a Protective Order in this proceeding and to seal Exhibits 1023-1025 and 1029. Paper 10. Patent Owner did not oppose entry of the Protective Order or that Motion to Seal. Counsel for Patent Owner has executed the Protective Order.

confidential proprietary business information (“Information”)—information about Unified’s members and information regarding Unified’s business operations—that Petitioner maintains as confidential trade secrets. 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. Due to the nature of Exhibits 2028, 2030, 2032, 2033, and 2034, Petitioner cannot meaningfully provide redacted versions of these documents, and requests that they remain sealed in their entirety.

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, Patent Owner asserts that certain entities are real parties-in-interest to this proceeding in its Patent Owner Response. *See* Paper 23, 1, 14-26. Petitioner disputes these assertions. This Information will be relied on in this trial to resolve 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 POR and Exhibit 2036, and Exhibits 2028, 2030, 2032, 2033, and 2034 in their entireties, should be sealed. Petitioner respectfully requests that the Board grant this motion to seal.

II. GOOD CAUSE EXISTS FOR SEALING THE POR AND EXHIBITS 2028, 2030, 2032, 2033, 2034, and 2036

In deciding whether to seal documents, the Board must find “good cause,” and must “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.” *Garmin v. Cuozzo*, IPR2012-00001, Paper 36 (April 5, 2013).

Exhibit 2028 is a listing of email addresses belonging to Unified members who were sent the News Update of Exhibit 2027 and has been marked “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” under the Protective Order in this case. This document contains sensitive business information which Petitioner

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