

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 THIRD MOTION TO SEAL

Petitioner Unified Patents, LLC (“Petitioner”) files this Motion to Seal the unredacted version of Patent Owner’s Preliminary Sur-Reply (“Preliminary Sur-Reply”), filed as Paper 13 on January 6, 2022.¹ Patent Owner filed Paper 13 as available to the Parties and Board only. Patent Owner also filed a publicly available version of the Preliminary Sur-Reply, which redacted confidential portions of the document, as Paper 12 on January 6, 2022. Petitioner agrees with the redactions made by Patent Owner in Paper 12.

Petitioner requests that Paper 13 be sealed under 37 C.F.R. § 42.54. Good cause exists to seal this document because it contains sensitive, non-public information. Specifically, the redacted portions of the Paper 13, shown in Paper 12, rely on and discuss confidential materials and information found in Exhibits 1023, 1024, and 1025. *See* Paper 12, p. 7; Paper 13, p. 7. Exhibit 1023 is the Supplemental Declaration of Kevin Jakel and was marked “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” under the Protective Order in this case. Exhibits

¹ Petitioner’s delay in filing this Motion to Seal was inadvertent. None of Petitioner’s confidential information has been made public by this delay as Paper 13 was filed by Patent Owner as available to the Parties and Board only, and the version of this document redacting Petitioner’s confidential information was filed publicly by Patent Owner as Paper 12.

1024 and 1025 are Unified membership agreements and were marked “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” under the Protective Order in this case. Petitioner previously moved to seal Exhibits 1023, 1024, and 1025. *See* Petitioner’s Motion to Seal and for Entry of Protective Order (Paper 10). The Board granted Petitioner’s request to seal these exhibits. *See* Order Granting Petitioner’s Unopposed Motions to Seal Entering Protective Order (Paper 26), p. 4.

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.”² 37 C.F.R. § 42.55; *see also* 35

² 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 moved to seal portions of Patent Owner’s Response (“POR”) and Exhibit 2036, and the entirety of Exhibits 2028, 2030, 2032, 2033, and 2034 in a second Motion to Seal. Paper 24. Counsel for Patent Owner executed the Protective Order, and Patent

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 Preliminary Sur-Reply 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. This Information includes confidential, sensitive commercial information, including closely held

Owner did not oppose entry of the Protective Order or the Motions to Seal. The Board granted Petitioner’s motions and entered the Protective Order. Paper 26.

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, Patent Owner asserts that certain entities are real parties-in-interest to this proceeding in its Preliminary Sur-Reply. *See* Paper 13, p. 7. 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

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