

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 MOTION TO SEAL PATENT OWNER'S
SUR-REPLY (PAPER 35)**

Petitioner Unified Patents, LLC (“Petitioner”) files this Motion to Seal the Patent Owner’s Sur-Reply (Paper 35) (“Sur-Reply”) filed October 11, 2022. Concurrent with this Motion, Petitioner submits a redacted copy of the Sur-Reply as Exhibit 1039. Petitioner requests that the redacted portions of the Sur-Reply be sealed under 37 C.F.R. § 42.54. Good cause exists because these portions contain sensitive, non-public information.

The redacted portions of the Sur-Reply discuss confidential materials and information contained in Exhibits 1023, 1024, 1025, 2028, 2033, 2036, and the Patent Owner’s Response (Paper 23) (POR). 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 second 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 first and second Motions to Seal. Paper 26.

Petitioner has also filed Motions to Seal regarding confidential information in the Patent Owner’s Preliminary Sur-Reply (Paper 13) and Petitioner’s Reply (Paper 29). *See* Papers 27, 31. 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.

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.” 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 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 and that is found in Exhibits 1023, 1024, 1025, 2028, 2033, 2036, and the POR, which the Board previously found properly sealed. 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, Patent Owner asserts that certain entities are real parties-in-interest to this proceeding. *See* Paper 23, 1, 14-26; Paper 35, 23-27. The Sur-Reply relies on

confidential information in Exhibits 1023, 1024, 1025, 2028, 2033, 2036, and the POR, which the Board previously found should be sealed. *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 Reply should be sealed. Petitioner respectfully requests that the Board grant this motion to seal.

II. GOOD CAUSE EXISTS FOR SEALING THE SUR-REPLY

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).

The redacted portions of the Sur-Reply rely on and discuss confidential aspects of Exhibits 1023, 1024, 1025, 2028, 2033, 2036, and the POR, which the Board previously found should be sealed. Paper 26. The redacted version of the Sur-Reply is being filed concurrently as Exhibit 1039.

Here, the balance overwhelmingly favors protecting Unified’s highly confidential Information. The Information Unified seeks to protect has nothing to do with patentability, the scope of U.S. Patent No. 10,621,228 (the “’228 patent”), or any matter generally impacting the public interest in evaluating the ’228 patent.

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