

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 MOTION TO SEAL AND FOR ENTRY OF
PROTECTIVE ORDER**

Petitioner Unified Patents, LLC (“Petitioner”) hereby moves for entry of the Protective Order appended below as Appendix A, and further moves to seal Exhibits 1023-1025 and 1029.

Petitioner has conferred with Patent Owner through counsel via email. Patent Owner does not oppose entry of the Protective Order or the motion to seal. Lead counsel for Patent Owner has executed the Standard Acknowledgment for Access to Protective Order Material, included with Appendix A of this motion.

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)).

Pursuant to the Protective Order, and responsive to Patent Owner’s Preliminary Response, Petitioner produced certain discovery to Patent Owner relating to Unified’s members and business operations (EXS1023-1025, EX1029). Some of this material is in support of the Second Declaration of Kevin Jakel (EX1023). This Motion to Seal satisfies the four-pronged test in *Argentum*.

First, these Documents contain non-public proprietary information (“Information”)— confidential member agreements 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. 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 highly confidential 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 this highly confidential business Information. Without an assurance that this highly confidential business 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 RPI to this proceeding in its Preliminary Response. *See* Paper 8, 22-28. 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 Documents should be sealed. Petitioner respectfully requests that the Board grant this motion to seal.

II. GOOD CAUSE EXISTS FOR SEALING EXHIBITS 1023-1025 and 1029

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).

All of the documents contain information that Petitioner has identified as confidential business information. Exhibit 1023 is the Supplemental Declaration of Kevin Jakel and has been marked “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” under the Protective Order in this case. This declaration includes sensitive business information which Petitioner asserts has not been published or otherwise been made public. A public version of Exhibit 1023, from which the confidential information has been redacted, is being filed concurrently as Exhibit 1022.

Exhibits 1024 and 1025 are Unified membership agreements and have been marked “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” under the Protective Order in this case. These documents contain sensitive business information which Petitioner asserts has not been published or otherwise been made public. Due to the nature of Exhibits 1024 and 1025, Petitioner cannot meaningfully provide redacted versions of these documents, and requests that they remain sealed in their entirety.

Exhibit 1029 is an email list of Unified members who were sent the News Update of Exhibit 1028 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 asserts has not been published or otherwise been made public. Due to the nature of Exhibit 1029,

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