

IPR2022-00031
Patent No. 10,621,228

Paper No. ____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.
Petitioner

v.

MEMORYWEB, LLC
Patent Owner

Patent No. 10,621,228

Inter Partes Review No. IPR2022-00031

PATENT OWNER'S UNOPPOSED MOTION TO SEAL

Patent Owner MemoryWeb, LLC (“MemoryWeb”) submits this Motion to Seal (“Motion”) Patent Owner’s Reply In Support of its Motion to Terminate (“Reply”) (Paper 71) and Exhibits 2114, 2115, 2116 and 2117. Patent Owner submits this Motion to safeguard Petitioner’s confidential information, pursuant to the Protective Order.¹ See Paper 52. Patent Owner will provide redacted versions of the Reply and Exhibit 2117 once it has had the opportunity to consult with the relevant parties to determine the extent of the redactions.

As discussed in greater detail below, each of the aforementioned exhibits comprises confidential information, and the forthcoming redacted version of the Reply will rely on and discuss the confidential information disclosed in such exhibits.

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

I. MOTION TO SEAL

In an *inter parties* review, it is the default rule that all filings are publicly available. 35 U.S.C. § 326(a)(1); 37 C.F.R. § 42.14. Where an exhibit contains confidential information, a party may file “a motion to seal with a proposed

¹ The relevant parties with respect to this Motion are Apple, Inc. (“Apple” or “Petitioner”) and Unified Patents, LLC (“Unified”).

protective order as to the confidential information.”² See 37 C.F.R. § 42.55; see also 35 U.S.C. § 326(a)(1). A motion to seal will only be granted if the movant demonstrates “good cause.” 37 C.F.R. § 42.54(a). Good cause exists if the movant “demonstrate[s] 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 the 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) (citing 37 C.F.R. § 42.54(a)). All four prongs are satisfied here.

First, the Reply, and Exhibits 2114-2117 contain non-public, highly confidential proprietary business information pertaining to Petitioner’s contractual relationship with Unified Patents LLC. Patent Owner understands that this information includes confidential commercial information that Petitioner has not made, and does not intend to make, publicly available. Patent Owner also understands that this information was produced pursuant to the Protective Order.

² Patent Owner filed an unopposed motion for entry of a Protective Order (Paper 52) and the Board granted Patent Owner’s motion (Paper 55). All relevant parties have executed the Protective Order.

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Due to the nature of Exhibits 2114, 2115, and 2116, Patent Owner and Petitioner cannot meaningfully provide redacted versions of these documents, and Patent Owner requests that they remain under seal in their entirety.

Second, public disclosure of this information would expose Petitioner's confidential business activities. Patent Owner understands the Reply and Exhibits 2114-2117 contain information Petitioner maintains as confidential. Patent Owner believes that the public will not be harmed by sealing its confidential business information.

Third, the exhibits at issue are directly relevant to whether Petitioner is a real party in interest ("RPI") to Unified's IPR. *See Unified Patents, LLC v. MemoryWeb, LLC*, IPR2021-01413. Patent Owner must rely on confidential information to prove that Petitioner is an RPI to Unified's IPR.

Fourth, on balance, the interest in maintaining confidentiality outweighs the public interest in having an open record. Accordingly, the redacted portions of the Reply and Exhibit 2117 (redactions forthcoming) and the entirety of Exhibits 2114, 2115, and 2116 should be sealed. Patent Owner respectfully requests that the Board grant this Motion.

II. GOOD CAUSE EXISTS FOR SEALING THE MOTION TO TERMINATE AND THE RELEVANT EXHIBITS

In deciding whether to seal exhibits, the Board must find "good cause" and

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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 Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 36 at 4 (PTAB Apr. 5, 2013).

Exhibit 2114 is an exhibit to an agreement between Apple and Unified that has been marked “Confidential” under the Protective Order in this case. This document contains sensitive business information that Petitioner asserts has not been published or otherwise made publicly available. Due to the nature of Exhibit 2114, Patent Owner and Petitioner cannot meaningfully provide redacted versions of this document, and request that it remain sealed in its entirety.

Exhibit 2115 is an email communication that has been marked “Confidential” under the Protective Order in this case. This document contains sensitive business information that Petitioner asserts has not been published or otherwise made publicly available. Due to the nature of Exhibit 2115, Patent Owner and Petitioner cannot meaningfully provide redacted versions of this document, and request that it remain sealed in its entirety.

Exhibit 2116 is an email communication that has been marked “Confidential” under the Protective Order in this case. This document contains sensitive business information that Petitioner asserts has not been published or otherwise made publicly available. Due to the nature of Exhibit 2116, Patent Owner and Petitioner cannot

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