

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Unified Patents, LLC

Petitioner,

v.

Motion Offense, LLC

Patent Owner.

Case No. IPR2020-00705

MOTION TO EXPUNGE CONFIDENTIAL INFORMATION

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.56, Petitioner, Unified Patents, LLC. respectfully submits this Motion to expunge the confidential versions of Patent Owner's Preliminary Response (Paper 8), Patent Owner's Opposition to Petitioner's Motion to Dismiss and Terminate (Paper 13), Exhibit 2002 and Exhibit 2004, hereinafter collectively "Confidential Documents," from the record.¹ This material contains confidential information of the Petitioner.

The deadline for filing a motion to expunge in this case is 45 days from the Order sealing Exhibits 2002 and 2004 (Paper 17) dated November 16, 2020. *See* Office Patent Trial Practice Guide ("Trial Practice Guide"), vol. 77, Fed. Reg. 48760-61 (August 14, 2012). Unless the Board decides this motion before that 45-day deadline, the Confidential Documents will become publicly available. *Id.* Because the Confidential Documents contain confidential information, Petitioner respectfully requests that the Board rule on this motion prior to the Confidential Documents becoming a part of the public record of this case. Alternatively, Petitioner requests that the Board issue an interim order delaying the public release of the Confidential Documents until such a time that the Board can rule on Petitioner's Motion to

¹ Redacted versions are of public record.

Expunge.

II. BACKGROUND

On August 3, 2020, Petitioner filed a Motion To Seal (Paper 9) Patent Owner's Preliminary Response (Paper 8) as well as Exhibits 2002 and 2004, to which Petitioner attached redacted versions of Paper 8 and Exhibits 2002 and 2004. On September 15, 2020, Patent Owner filed its Opposition to Petitioner's Motion to Dismiss and Terminate (Paper 13) which disclosed Petitioner's confidential information. The Board granted an order on the Motion to Seal and for Protective Order (Paper 17) stating, "Petitioner's showing is sufficient that good cause exists to seal Petitioner's confidential information, and we agree that the redactions to Patent Owner's Preliminary Response and Exhibits 2002 and 2004 are reasonably limited to protect such confidential information." *Id.*, at p. 5.

III. APPLICABLE LEGAL STANDARDS

Pursuant to 35 U.S.C. § 316(a)(7), "confidential information" is protected from disclosure. 35 U.S.C. § 316(a)(7) ("The Director shall prescribe regulations providing for protective orders governing the exchange and submission of confidential information.") Confidential information should be defined in a manner consistent with Fed. R. Civ. P. 26(c)(1)(G). *Trial Practice Guide*, 77 Fed. Reg. 48756 at 48760.

Granting a motion to seal confidential information requires a showing of “good cause.” 37 C.F.R. § 42.54. The same standard applies to a motion to expunge “confidential information” under 37 C.F.R. § 42.56 after final judgment in a trial. *RPX Corp. v. Virnetx Inc.*, IPR 2014-00171, Paper 62 at 3 (PTAB September 9, 2014). The movant generally has the burden of showing entitlement to the requested relief. 37 C.F.R. § 42.20(c); *RPX Corp.*, at 3.

Further, C.F.R. § 42.56 provides that “[a]fter ... final judgment in a trial, a party may file a motion to expunge confidential information in the record.” Likewise, the Trial Practice Guide states, in pertinent part, that “[t]here is an expectation that information will be made public where the existence of the information is referred to ... in a final written decision following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.” *Consolidated Trial Practice Guide*, at 22. A party seeking expungement from the record must show good cause by demonstrating “that any information sought to be expunged constitutes confidential information, and that Petitioner’s interest in expunging it outweighs the public’s interest in maintaining a complete and understandable history of this inter partes review.” *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 97 at 2 (P.T.A.B. April 15, 2015).

IV. GOOD CAUSE EXISTS TO EXPUNGE

The Board already agreed that there is good cause for the Petitioner's confidential information to be sealed, and "agree that the redactions to Patent Owner's Preliminary Response and Exhibits 2002 and 2004 are reasonably limited to protect such confidential information." Paper 17, at 5. Also, Patent Owner's Opposition to Petitioner's Motion to Dismiss and Terminate (Paper 13) filed on September 15, 2020² also contains Petitioner's confidential information. Petitioner guards this confidential information in order to protect its own business as well as its members. Disclosure of this confidential information would adversely harm Petitioner. Nothing has changed to reach a different result as the Board has not relied on any of the sealed, confidential information. Therefore, good cause exists to expunge the following confidential documents for the following reasons:

Patent Owner's Preliminary Response (Paper 8), Patent Owner's Opposition to Petitioner's Motion to Dismiss and Terminate (Paper 13), Exhibit 2002, and Exhibit 2004 contains highly confidential, competitively-sensitive information relating to

² Petitioner filed a redacted version of Patent Owner's Opposition to Petitioner's Motion to Dismiss and Terminate (Paper 13) on November 30, 2020, per the Board's order on the Motion to Seal and for Protective Order (Paper 17).

Unified's members.

Disclosure of the above information could put United Patents, LLC, and its members, at a commercial disadvantage, for instance in subsequent negotiations with other suppliers. Accordingly, Petitioner requests that these Confidential Documents be expunged from the record.

The Board states “[t]he default rule is that all papers filed in [*inter partes review*] proceedings are available to the public. Only “confidential information” is subject to protection against public disclosure.” *Id.*, at 3. The public interest in the disclosure of these proceedings is maintained as redacted versions of Patent Owner’s Preliminary Response (Paper 8), and Exhibits 2002 and 2004, made publically-available in an appendix to Petitioner’s Motion To Seal (Paper 9) filed on August 3, 2020, and Patent Owner’s Opposition to Petitioner’s Motion to Dismiss and Terminate (Paper 13) filed on November 30, 2020, only removes such confidential information and nothing more. The redacted versions of these Confidential Documents are currently available to the public.

The redacted versions “maintain the essence” of the arguments and information contained within each of the Confidential Documents, and thus appropriately balance the public’s interest in “maintaining a complete and understandable history” of the present proceeding. *Atlanta Gas Light*, Paper 97 at 2, 3. The redactions of confidential

information in these Confidential Documents are minimal and do not inhibit the public's ability to completely understand the file history of this proceeding. Thus, the redacted version of these Confidential Documents "stri[k]e an appropriate balance between the public policy for an open record and the legitimate need to protect confidential information from disclosure." *Atlanta Gas Light*, Paper 97 at 4 (citing *RPX Corp. v. VirnetX Inc.*, IPR2014-00171, Paper 62 at 4-5) (P.T.A.B. September 9, 2014)).

Thus good cause exists to expunge the Confidential Documents from the record.

V. CONCLUSION

Because the Board has ordered the sealing of Patent Owner's Preliminary Response (Paper 8), Exhibits 2002 and 2004, and entered redacted versions of these documents (and Patent Owner's Opposition to Petitioner's Motion to Dismiss and Terminate (Paper 13), as recently filed, Petitioner respectfully requests that the Board protect Petitioner's highly confidential business information and expunge the above identified Confidential Documents pursuant to 37 C.F.R. § 42.56. Should the Board not be inclined to grant the present Motion to Expunge, Petitioner hereby requests a conference call with the Board to discuss any concerns prior to the Board issuing a decision on the Motion.

December 7, 2020

Respectfully submitted,
/David M. Tennant/
David M. Tennant
Registration No. 48,362
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005-3807
Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on December 7, 2020 a copy of the foregoing Motion To Expunge Confidential Information was provided via email to:

Timothy Devlin (email: TD-PTAB@devlinlawfirm.com)

Derek Dahlgren (email: ddahlgren@devlinlawfirm.com)

dlflitparas@devlinlawfirm.com

December 7, 2020

Respectfully submitted,

/David M. Tennant/

David M. Tennant

Registration No. 48,362