

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS, LLC,  
Petitioner,

v.

MOTION OFFENSE, LLC,  
Patent Owner.

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IPR2020-00705  
Patent 10,013,158 B1

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Before PATRICK M. BOUCHER, KIMBERLY McGRAW, and  
NABEEL U. KHAN, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

ORDER  
Granting Motion to Expunge  
*37 C.F.R. § 42.56*

On September 23, 2020, we granted Petitioner's opposed Motion to Dismiss and Terminate this proceeding prior to a decision whether to institute the proceeding. Paper 14 ("Motion to Dismiss"). On November 16, 2020, we also granted Petitioner's unopposed Motion to Seal and for Entry

of Protective Order. Paper 9 (“Motion to Seal”). In deciding the Motion to Seal, we found good cause to seal Petitioner’s confidential information, but noted that Patent Owner’s Opposition to Petitioner’s Motion to Dismiss had been filed with restricted access and without a nonconfidential public version in the record of the proceeding. Paper 17, 5. Accordingly, we ordered Petitioner to file such a nonconfidential public version of Paper 13, “redacted only so far as to protect the confidential information.” *Id.* Petitioner complied with that order on November 30, 2020. *See* Paper 18 (redacted version of Paper 13).

On December 7, 2020, Petitioner filed a Motion to Expunge Confidential Information, requesting that we expunge Paper 8 (unredacted version of Patent Owner’s Preliminary Response), Paper 13 (unredacted version of Patent Owner’s Opposition to Petitioner’s Motion to Dismiss), and Exhibits 2002 and 2004, nonconfidential redacted versions of which exist in the record as appendices to Paper 9. Paper 19 (“Motion to Expunge”). Patent Owner did not file an opposition to the Motion to Expunge.

A strong public policy exists for making all information filed in a quasi-judicial administrative proceeding open to the public. Only “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”). The Consolidated Office Patent Trial Practice Guide<sup>1</sup> provides the following guidance:

The rules aim to 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.

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Confidential information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. 37 C.F.R. § 42.54.

Granting a motion to seal “confidential information” requires a showing of “good cause” during a proceeding. 37 C.F.R. § 42.54. A parallel rule applies the same standard to a motion to expunge “confidential information” “[a]fter denial of a petition to institute trial or after final judgment in a trial.” 37 C.F.R. § 42.56. The movant generally has the burden of proof in showing entitlement to the requested relief. 37 C.F.R. § 42.20(c). Accordingly, Petitioner must show 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 proceeding.

As Petitioner points out, “[t]he Board already agreed that there is good cause for the Petitioner’s confidential information to be sealed, and ‘agree

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<sup>1</sup> Patent Trial and Appeal Board Consolidated Patent Trial Practice Guide at 19 (Nov. 2019), <http://www.uspto.gov/TrialPracticeGuideConsolidated>; *see also* Office Trial Practice Guide, 84 Fed. Reg. 64,280 (announcing issuance of Consolidated Office Patent Trial Practice Guide).

that the redactions to Patent Owner’s Preliminary Response and Exhibits 2002 and 2004 are reasonably limited to protect such confidential information.” Paper 19, 4 (quoting Paper 17, 5). We have also reviewed the redacted version of Patent Owner’s Opposition to Petitioner’s Motion to Dismiss, filed as Paper 18, and similarly find the redactions reasonably limited to protect Petitioner’s confidential information. Petitioner represents that “[d]isclosure of the [confidential] information could put [Unified] Patents, LLC, and its members, at a commercial disadvantage, for instance in subsequent negotiations with other suppliers.” *Id.* at 5.

We are persuaded by Petitioner’s representations and arguments that expunging Papers 8 and 13, as well as Exhibits 2002 and 2004, would serve both the parties’ interest in protecting truly sensitive information and the public’s interest in maintaining a complete and understandable file history. As Petitioner asserts, the redacted versions of such documents, available in the record, “‘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.” *Id.* (citation omitted). We agree that “[t]he 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.” *Id.* at 5–6.

Accordingly, we grant Petition’s Motion to Expunge.

It is

ORDERED that Petitioner’s Motion to Expunge Confidential Information is *granted*; and

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FURTHER ORDERED that Papers 8 and 13, as well as Exhibits 2002 and 2004, are *expunged*.

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