

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC

Petitioner

- vs. -

ELECTRONICS AND TELECOMMUNICATIONS RESEARCH INSTITUTE,
KWANGWOON UNIVERSITY INDUSTRY-ACADEMIC COLLABORATION
FOUNDATION, AND
UNIVERSITY-INDUSTRY COOPERATION GROUP OF KYUNG HEE
UNIVERSITY
Patent Owners

IPR2020-01048

U.S. Patent 8,867,854

PETITIONER'S SECOND MOTION TO SEAL

I. Introduction.

Petitioner requests that Exhibits 2019–2024 and 2029, and the Patent Owners Response (Paper 21) be sealed under 37 C.F.R. § 42.54 and requests that the parties agreed-upon Revised Protective Order (EX1036) be entered in this proceeding. Good cause to seal these documents exists because they contain sensitive, non-public information. Redacted versions of Exhibits 2020–2024 and 2029 and the Patent Owners Response were previously filed with Petitioner's First Motion to Seal.

Petitioner certifies that it has conferred with Patent Owners through counsel, and Patent Owners do not oppose sealing such information and the entry of the revised protective order.

II. Good Cause Exists for Sealing Certain Confidential Information.

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 (PTAB Apr. 5, 2013) (Paper 36). Good cause for sealing material established by demonstrating that the balance of the following considerations favors sealing the material: whether (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. *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 (PTAB Jan. 19, 2018) (informative), at 4; *see also Corning Optical Communications RF, LLC, v. PPC Broadband, Inc.*, IPR2014-00440 (PTAB Apr. 14, 2015) (Paper 47), at 3.

Exhibits 2019–2024 and 2029 contain information that Petitioner has identified as confidential business information and which were marked as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Protective Order in this case that was agreed-upon by the parties. This confidential business information was produced as part of a voluntary discovery agreement between the parties. The Patent Owners Response cites to and quotes from the confidential portions of Exhibits 2019–2024 and 2029. The balance of the *Argentum* factors favors sealing the documents at issue. Addressing the *Argentum* factors in turn:

First, the information Petitioner seeks to seal is truly confidential. The Trial Practice Guide provides that “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.” 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). Further, those 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.” *Id.* (citing 37 C.F.R. § 42.54). The information sought to be sealed that Petitioner seeks to protect has nothing to do with patentability, but rather involves Petitioner’s status as the sole real party-in-interest. The redacted portions provide information on Petitioner’s confidential financial and business decisions and demonstrates how Petitioner conducts business with its members. This information relates to Petitioner’s trade secrets and highly confidential business practices, including confidential and sensitive information relating to dealings with Petitioner’s members. This information is subject to confidentiality provisions of agreements between Petitioner and its members. The information further includes details of how Petitioner conducts its proprietary business, which Petitioner closely guards and does not publicly disclose, and which includes sensitive financial information, confidential contractual agreements between Petitioner and its members, and the details of the relationship between Petitioner and its members. Accordingly, the unredacted version of the exhibits were marked as HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY in this proceeding pursuant to an agreement between the parties. The Board has separately found that similar information produced by Petitioner should be sealed in other proceedings. *See, e.g.*, IPR2014-01252, Paper

40 (PTAB Feb. 27, 2015).

Without an assurance that this information will be protected, Petitioner's members wishing to remain confidential may be adversely affected as public disclosure of membership and/or terms of membership could lead to retribution or other business harms from members' competitors. The information disclosed in the confidential exhibits is extremely sensitive trade secret information because they detail Petitioner's core business and strategy. Petitioner guards the information about its business dealings closely to protect its members as well as its own business interests. Petitioner has not made, and does not intend to make, this information publicly available.

Second, Petitioner and its members would suffer several concrete harms from the public disclosure of the confidential information sought to be sealed. Because the confidential information details Petitioner's proprietary and closely guarded business model and methods, sensitive financial information, and the identity of and dealings with Petitioner's members (which is subject to the confidentiality provisions discussed above), public access to this information could give Petitioner's competitors and would-be rivals unfair competitive advantages, including a roadmap of how to replicate Petitioner's unique, valuable business model. Public disclosure of this information could also undermine Petitioner's business and competitiveness in the market, and expose Petitioner's members (who

are not party to this proceeding) and their confidential information to potential harms and jeopardize contractual and confidential agreements between Petitioner and its members.

Third, there exists no genuine need to rely in the trial on the specific information sought to be sealed. The information that is sought to be sealed is entirely unrelated to the substantive patentability of the '854 Patent. Instead, the information that is sought to be sealed is pertinent only to Petitioner's certification as the sole real party-in-interest. The Board's determination of whether Petitioner has shown unpatentability by a preponderance of the evidence will be unaffected by the sealing of this confidential information. Indeed, the same information has been the subject of other motions to seal, or the Board has recognized the confidentiality and necessity of sealing similar information, in other proceedings. *See, e.g., Unified Patents, LLC v. American Patents, LLC*, Case IPR2019-00482, Paper 115 at 65, 71-73 (PTAB August 13, 2020) (final written decision granting motion to seal voluntarily provided membership agreement and member identities, based on concerns that disclosing the information could harm Petitioner and finding that sealing the exhibits would not substantially diminish the public record). The Board has routinely relied, as necessary, on confidential information in a Final Written Decision while maintaining that confidential information under seal. *See, e.g., Petrol. Geo-Services Inc. v. WesternGeco LLC*, IPR2014-01477,

Paper 71, 62-68 (redacting confidential information and finding no privity between Petitioner and third party defendant in litigation).

Fourth, on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record. As argued above, the information sought to be sealed is unrelated to the substantive patentability of the '854 Patent, and for this reason, the public interest in having details of Petitioner's confidential business dealings is minimal. And again, the public interest is well-served in keeping business information readily available and exchangeable between parties without the fear of incidental public exposure of confidential business information. By contrast, the public interest in having access to the confidential information in the documents to be sealed is minimal.

For the Board's convenience, good cause for sealing each document is addressed in turn below.

a. Exhibit 2019

Exhibit 2019 is a copy of Petitioner's membership agreement between Petitioner and one of its members. Exhibit 2019 was voluntarily produced by Petitioner in response to an agreement between Petitioner and Patent Owner.

Exhibit 2019 contains highly confidential and extremely sensitive commercial information related to Petitioner's core business, including the individual contractual terms between Petitioner and Petitioner's members.

Petitioner guards such information closely as core business and contractual information, to protect its members as well as its own business. Petitioner has not made, and does not intend to make, this information publicly available.

Petitioner's membership terms and business strategy constitute highly confidential business information, as well as trade secrets. The membership terms and business strategy contain information about how Petitioner runs its business and its contractual relationship with its members. Several potential harms would occur if this highly confidential business information were to be disclosed. For example, disclosure of this information to the public would provide Petitioner's competitors and would-be business rivals with a roadmap of how to replicate Petitioner's unique, valuable business model. It would reveal contractual business information between two parties produced voluntarily under a joint protective order. Additionally, Petitioner 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, Petitioner's members wishing to remain confidential may be adversely affected. Accordingly, disclosure of this information to the public would not only harm Petitioner, as discussed above, but would also harm a third party not involved in this proceeding. Thus, the public interest will not be harmed by the sealing of the confidential business information.

Importantly, the membership agreements contain confidentiality provisions in the agreements themselves and has been marked as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY in this proceeding.

Petitioner also notes that Exhibit 2019 was previously produced and filed in IPR2019-00194 as Exhibit 2018. In IPR2019-00194, the Board granted Petitioner's Motion to Seal that document in its entirety, finding "good cause for sealing" the Exhibit. *See Unified Patents, LLC v. Velos Media, LLC*, IPR2019-00194, Paper 59 at 2–3 (PTAB May 12, 2020).

Responsive to the Board's instructions in the Decision Denying Petitioner's Motion to Seal issued May 11, 2021 (Paper 29), Petitioner represents that everything contained in Exhibit 2019, without exception, constitutes confidential information.¹ The Board has agreed, in fact—in numerous previous *inter partes* review proceedings in which Petitioner has filed a Motion to Seal its membership agreement, the Board has granted sealing of the membership agreement in full. *See, e.g., American Patents*, IPR2019-00482, Paper 115 at 65 (PTAB Aug. 13, 2020) (final written decision granting motion to seal voluntarily provided

¹ Even if isolated portions of Exhibit 2019 are, in textual format, reproduced elsewhere, the entirety of Exhibit 2019 remains confidential despite that text's inclusion in Exhibit 2019, as Exhibit 2019 represents the confidential business relationship between Petitioner and one of its members.

membership agreement: “We are persuaded that Petitioner’s membership agreement...is confidential information. We find persuasive Petitioner’s concerns that disclosing this information could harm Petitioner by enabling others to replicate its business, and we are persuaded that unsealing such information would have an adverse effect on future voluntary discovery.”); *Unified Patents, Inc. v. Barkan Wireless IP Holdings, L.P.*, Case IPR2018-01186, Paper 57 at 43–44 (PTAB Jan. 8, 2020) (final written decision granting motion to seal Petitioner’s membership agreements in Exhibits 1018 and 1019); *Unified Patents LLC v. Velos Media, LLC*, Case IPR2019-00763, Paper 47 at 8 (PTAB Sept. 29, 2020) (granting motion to seal Exhibit 2152, Member Agreement and Subscription Form, in its entirety); *Unified Patents LLC v. Velos Media, LLC*, Case IPR2019-00707, Paper 56 (PTAB Sept. 3, 2020), Case IPR2019-00710, Paper 44 (Aug. 31, 2020), Case IPR2019-00757, Paper 41 (Aug. 18, 2020) (same), Case IPR2019-00757, Paper 30 (May 13, 2020) (same); *Unified Patents, LLC v. Bradium Techs., LLC*, Case IPR2018-00952, Paper 60 at 76 (PTAB Dec. 19, 2019) (“[W]e determine that Petitioner has shown good cause to seal [Petitioner’s Member Agreement and Subscription Form] in their entirety.”).

It is therefore respectfully requested that Exhibit 2019 be sealed in its entirety. As the entirety of Exhibit 2019 is confidential information, Petitioner has not filed a redacted version.

b. Exhibits 2020 and 2024

Exhibits 2020 and 2024 are transcripts of depositions of Petitioner's CEO, Kevin Jakel. Exhibits 2020 and 2024 were voluntarily produced by Petitioner in response to an agreement between Petitioner and Patent Owner. Petitioner respectfully requests that portions of Exhibits 2020 and 2024 remain under seal, and submits herewith a redacted copy of Exhibit 2020 as Exhibit 1030, and a redacted copy of Exhibit 2024 as Exhibit 1031.

Exhibits 2020 and 2024 contain highly confidential and extremely sensitive commercial information related to Petitioner's core business. Specifically, the deposition transcripts each contain confidential information reflected in the sample Membership Agreement (Exhibit 2019) and additional confidential information pertaining to Petitioner's proprietary confidential business information, including information specific to the membership of members who are third parties to this proceeding. Exhibits 2020 and 2024 also include material pertaining to other confidential information of Petitioner.

Petitioner notes that Exhibits 2020 and 2024 were previously produced and filed in IPR2019-00194 as Exhibits 2027 and 2138. In IPR2019-00194, the Board granted Petitioner's Motions to Seal those documents and enter corresponding redacted versions of those documents. *See* IPR2019-00194, Paper 59 at 2–6 (entering redacted version of Exhibit 2027 as Exhibit 1029 and entering redacted

version of Exhibit 2138 as Exhibit 1049). Exhibits 1030 and 1031 correspond to the redacted versions of the documents submitted in IPR2019-00194.

Accordingly, Petitioner respectfully submits that there is good cause to maintain Exhibits 2020 and 2024 under seal.

c. Exhibits 2021, 2022, 2023, and 2029

Exhibits 2022 and 2023 are emails with attachments that Petitioner sent to potential members of its Standard Essentials Patent (“SEP”) Video Codec Zone. Exhibit 2021 is a membership report that Petitioner sent to a member of the SEP Video Codec Zone. Exhibit 2029 is a communication that Petitioner received from a member of the SEP Video Codec Zone. The emails include PowerPoint attachments that contain highly confidential and extremely sensitive commercial information related to Petitioner’s core business, including the individual contractual terms between Petitioner and Petitioner’s members. The membership report contains confidential information of a similar nature. Petitioner guards such information closely as core business information, to protect its members as well as its own business. Petitioner has not made, and does not intend to make, this information publicly available.

Petitioner’s membership terms, business strategy, communications with members, and financial information constitute highly confidential business information, as well as trade secrets. The membership terms and business strategy

contain information about how Petitioner runs its business and its contractual relationship with its members. Several potential harms would occur if this highly confidential business information were to be disclosed. For example, disclosure of this information to the public would provide Petitioner's competitors and would-be business rivals with a roadmap of how to replicate Petitioner's unique, valuable business model. It would reveal contractual business information between two parties produced voluntarily under a joint protective order. Additionally, Petitioner has a contractual obligation with certain 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, Petitioner's members wishing to remain confidential may be adversely affected. Accordingly, disclosure of this information to the public would not only harm Petitioner, as discussed above, but would also harm a third party not involved in this proceeding. Thus, the public interest will not be harmed by the sealing of the confidential business information.

It is therefore respectfully requested that confidential information in the attachments, as well as the cover emails identifying the confidential contents of the attachments, be redacted in the public versions of the email exhibits.

Also included in the emails are the contact information of recipients who are representatives of the recipient entities. The names and contact information of the

recipients is confidential information, at least because disclosure of the names and contact information of the recipients can be used to identify the members whose names are redacted in, for example, Exhibits 2020 and 2024.

Petitioner notes that Exhibits 2022 and 2023 were previously produced and filed in IPR2019-00194 as Exhibits 2122 and 2111. In IPR2019-00194, the Board granted Petitioner's Motions to Seal those documents and enter corresponding redacted versions of those documents. *See* IPR2019-00194, Paper 59 at 4–6 (entering redacted version of Exhibit 2122 as Exhibit 1058 and entering redacted version of Exhibit 2111 as Exhibit 1055). Exhibits 1032 and 1033 correspond to the redacted versions of the documents submitted in IPR2019-00194. The redactions to Exhibit 2021 and 2029 are of a similar nature and are submitted as Exhibits 1034 and 1035.

Accordingly, Petitioner respectfully submits that there is good cause to maintain Exhibits 2021, 2022, 2023, and 2029 under seal.

d. Patent Owners Response

The Patent Owners Response (Paper 21) includes confidential information. Specifically, the Patent Owners Response includes confidential information provided in one or more of the member agreement (Ex. 2019), the Transcripts of the First and Second Depositions of Kevin Jakel (Ex. 2020 and Ex. 2024, respectively), and the e-mails with attachments (Exs. 2021-2023 and 2029).

Accordingly, Petitioner respectfully requests that any confidential information included in the Patent Owners Response be redacted and that the unredacted version of the Patent Owners Response (Paper 21) be sealed for the reasons given above with respect to the cited documents detailed above.

III. Table Mapping Confidential Exhibits to Redacted Versions

Confidential Exhibit	Redacted Version
Exhibit 2020	Exhibit 1030
Exhibit 2021	Exhibit 1034
Exhibit 2022	Exhibit 1032
Exhibit 2023	Exhibit 1033
Exhibit 2024	Exhibit 1031
Exhibit 2029	Exhibit 1035
Exhibit 2019	N/A (<i>see supra</i> § II.a.)

IV. Protective Order

Petitioner certifies that it has conferred with Patent Owners through counsel, and Patent Owners do not oppose entry of the Revised Protective Order (EX1036). Petitioner is contemporaneously filing a Second Motion for Protective Order.

V. Request for Conference Call

If the Board is not inclined to grant Petitioner’s Second Motion to Seal in part or in full, Petitioner respectfully requests a conference call with the panel to address the Board’s concerns.

VI. Conclusion

For these reasons, Petitioner requests that the Board seal and protect the confidential information in Paper 21 and Exhibits 2019–2024 and 2029.

Respectfully submitted,

May 18, 2021

/Raghav Bajaj/
Raghav Bajaj, Counsel for Petitioner
Registration No. 66,630
HAYNES AND BOONE, LLP

PETITIONER'S EXHIBIT LIST

EX1001	US Patent 8,867,854 to Choi et al.
EX1002	Prosecution File History of US Application 13/738,463
EX1003	Declaration of Immanuel Freedman, Ph.D.
EX1004	US Published Application 2006/0018385 to Lee (" <i>Lee</i> ")
EX1005	US Published Application 2008/0152005 to Oguz (" <i>Oguz</i> ")
EX1006	Prosecution File History of US Application 13/129,570
EX1007	US Published Application 2008/0175317 to Han et al. (" <i>Han</i> ")
EX1008	US Published Application 2007/0041450 to Kim et al. (" <i>Kim</i> ")
EX1009	H.264 and MPEG-4 Video Compression, <i>Iain E.G. Richardson</i> , 2003 (" <i>Richardson</i> ")
EX1010	Declaration of Kevin Jakel (treated as Declaration by Order of the Board)
EX1011	Wiegand et al., <i>Overview of the H.264/AVC Video Coding Standard</i> , IEEE Transactions on Circuits and Systems for Video Technology, Vol. 13, No. 7, July 2003
EX1012	Ostermann et al., <i>Video coding with H.264/AVC: Tools, Performance, and Complexity</i> , IEEE Circuits and Systems Magazine, 1 st Quarter 2004
EX1013	US Patent 8,363,965 to Choi et al.
EX1014	US Published Application 2007/0098070 to Saigo et al.
EX1015	US Published Application 2006/0222066 to Yoo et al.
EX1016	Kwak et al., <i>A Novel Hardware Architecture of Intra-Predictor Generator for H.264/AVC Codec</i> , IEICE Transactions on Information and Systems, Vol. E91, No. 8, July 2008
EX1017	Ku et al., <i>A High-Definition H.264/AVC Intra-Frame Codec IP for Digital Video and Still Camera Applications</i> , IEEE Transactions on Circuits and Systems for Video Technology, Vol. 16, No. 8, Aug. 2006
EX1018	US Published Application 2005/0089094 to Yoo et al.
EX1019	Kao et al., <i>A High-Performance VLSI Architecture for Intra Prediction and Mode Decision in H.264/AVC Video Encoding</i> , IEEE, 2006

EX1020	Cheng et al., <i>A 1280x720 Pixels 30Frames/s H.264/MPEG-4 AVC Intra Encoder</i> , IEEE, 2006
EX1021	European Patent Application EP 1512115 to Karczewicz
EX1022	Chuang et al. <i>Algorithm and Architecture Design for Intra Prediction in H.264/AVC High Profile</i> , Proceedings of the Picture Coding Symposium, 2007
EX1023	US Patent 8,059,717 to Saigo et al.
EX1024	Supplemental Declaration of Kevin Jakel
EX1025	Unified Consulting, LLC's website, available at http://www.unified-consulting.com/ (last accessed October 12, 2020)
EX1026	Westview Capital Partners "Investment Criteria" website, available at https://www.wvcapital.com/index.php/aboutcp/investment-criteria/ (last accessed October 12, 2020)
EX1027	"Open Invention Network Teams with IBM, Linux Foundation and Microsoft to Further Protect Open Source from Patent Trolls," November 19, 2019, available at https://www.globenewswire.com/news-release/2019/11/19/1949239/0/en/Open-Invention-Network-Teams-with-IBM-Linux-Foundation-and-Microsoft-to-Further-Protect-Open-Source-from-Patent-Trolls.html (last accessed October 12, 2020)
EX1028	"Unified Launches CyberSecurity Zone with Industry Leading Members," May 20, 2019, available at https://www.unifiedpatents.com/insights/2019/5/20/unified-launches-cybersecurity-zone-with-industry-leading-members (last accessed October 12, 2020)
EX1029	Protective Order
EX1030	Redacted Version of Exhibit 2020
EX1031	Redacted Version of Exhibit 2024
EX1032	Redacted Version of Exhibit 2022
EX1033	Redacted Version of Exhibit 2023
EX1034	Redacted Version of Exhibit 2021
EX1035	Redacted Version of Exhibit 2029
EX1036	Revised Protective Order

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Unified Patents, LLC Petitioner	§	Petition for <i>Inter Partes</i> Review
	§	IPR2020-01048
	§	U.S. Patent 8,867,854

CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6, that service was made on the Patent Owners as detailed below.

<i>Date of service</i>	May 18, 2021
<i>Manner of service</i>	Electronic Mail
<i>Documents served</i>	Petitioner's Second Motion to Seal Petitioner's Second Motion for Protective Order Exhibit 1036
<i>Persons served</i>	William H. Mandir (wmandir@sughrue.com) John F. Rabena (jrabena@sughrue.com) Fadi N. Kiblawi (fkiblawi@sughrue.com)

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