

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

SECOND MOTION FOR ENTRY OF PROTECTIVE ORDER

To facilitate timely voluntary discovery by Petitioner Unified Patents, LLC (“Petitioner”), the parties have agreed to entry of a Protective Order in this proceeding. The parties agreed-upon Protective Order is provided herein as Exhibit 1036. The proposed Protective Order deviates from the Board’s default Protective Order in one primary respect. Specifically, the agreed Protective Order differs from the Board’s default Protective Order in that it prohibits in-house counsel or other party employees from accessing certain classes of confidential information—designated “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

A party seeking to protect confidential information may seek entry of a protective order in a proceeding before the Board. *See, e.g., Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34 (PTAB Mar 14, 2013). Upon a showing of good cause, the Board may enter a Protective Order to protect from public disclosure such confidential information as disclosed by a party during the course of a proceeding before the Board. *See* 37 CFR § 42.54. Petitioner submits that, in light of the reasons discussed herein, the added limitations are necessary in this proceeding, and good cause exists to enter the proposed Protective Order.

Petitioner characterizes its business as follows: Unified’s core business is adverse to non-practicing entities (NPEs). It reduces NPE litigation risk by protecting key technology sectors. Companies in a technology sector subscribe to

Unified's technology-specific deterrence, and in turn, Unified performs many NPE-deterrent activities. Certain Unified confidential information (e.g., the identity of certain members, certain confidential financial or business information, or the like) is held in the strictest of confidence due to confidentiality provisions (e.g., within Unified's membership agreements) and because such information could cause harm to Unified and/or its members (e.g., retaliation against certain members by NPEs). Such harm potentially subjects Unified's members to NPE retaliation, including litigation, and would severely impact Unified's ability to conduct business. Unified accordingly seeks heightened protection for such materials disclosed in connection with this proceeding. A motion to seal is being filed contemporaneously. The proposed changes do not affect access to confidential information for employees and representatives of the Patent and Trademark Office who have a need for access to the confidential information. The revisions are noted in redline showing changes from the Board's Protective Order in Attachment A hereto.

Pursuant to the Board's Decision Denying Entry of Modified Protective Order issued May 11, 2021 (Paper 28), Petitioner has revised Section 2 of the proposed order. Previous Section 2(D) of Exhibit 1029 appeared to impose on employees and representatives of the Office the obligation to inform support personnel of those individuals listed in previous 2(C) of the terms and

requirements of the Protective Order. In the Revised Protective Order, Employees and representatives of the United States Patent and Trademark Office are now set forth in Section 2(D), such that there are no obligations upon employees and representatives of the Office. This is consistent with the Default Protective Order, which, in Section 2(F), contains the same text as the proposed protective order, in the same order (i.e., The Office is contained within Section 2(F), while Support Personnel are listed prior, in Section 2(E)). Accordingly, Petitioner respectfully submits that the proposed Protective Order complies with the Board's Decision, such that the proposed order does not impose obligations on employees and representatives of the Office, and the obligations of previous Section 2(D) do not apply to the Office. *See* Paper 28, p. 2.

As noted above, Patent Owner has agreed to the proposed protective order. For the foregoing reasons, good cause exists for entering the proposed Protective Order (Exhibit 1036) in this proceeding.

Respectfully submitted,

May 18, 2021

/Raghav Bajaj/
Raghav Bajaj
Counsel for Petitioner
Registration No. 66,630

Attachment A

The following DEFAULT Protective Order will govern the filing and treatment of confidential information in the proceeding:

DEFAULT Protective Order

This protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked “CONFIDENTIAL – PROTECTIVE ORDER MATERIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2. Access to confidential information marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is limited to the following individuals who have executed the ACKNOWLEDGMENT acknowledgement appended to this order:

~~Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.~~

~~(A) Party Representatives. Representatives of record for a party in the proceeding.~~

~~(A) Outside counsel. Outside counsel of record for a party in the proceeding, including employees of outside counsel of record’s law firm(s) to whom it is reasonably necessary to disclose this information to assist outside counsel of record in connection with this proceeding, including members of their firms, associate attorneys, paralegal, clerical, and other regular employees of such~~

counsel. All in-house counsel and other representatives of the parties (other than outside counsel of record) shall not be allowed to view HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY Information.

(B) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

In house counsel~~(C) In house counsel of a party.~~

Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Protective Order by the person they are supporting who receives confidential information.

(D) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the

Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Access to confidential information marked “CONFIDENTIAL – PROTECTIVE ORDER MATERIAL” is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Above Personnel. Those persons or entities identified in paragraph 2 of this Protective Order under the conditions set forth in that paragraph.

(B) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(C) In-house counsel. In-house counsel of a party.

4. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than ~~those persons identified above in (d)(2)(A)–(E), in-house counsel and in-house counsel’s support staff, who sign the Acknowledgement~~ shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person ~~and after signing the Acknowledgment.~~ The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

5. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

6. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The submission shall be treated as confidential and remain under seal, unless the Board determines that the documents or information do not to qualify for confidential treatment. The information shall remain under seal unless the Board determines that some or all of #the information does not qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party

may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties. Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as “CONFIDENTIAL – PROTECTIVE ORDER MATERIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and shall be produced in a manner that maintains its confidentiality.

7. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.