

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.,  
Petitioner,

v.

BRADIUM TECHNOLOGIES LLC,  
Patent Owner.

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Case IPR2018-00952  
Patent 9,253,239 B2

Before BRYAN F. MOORE, BRIAN J. McNAMARA and MINN CHUNG,  
*Administrative Patent Judges.*

CHUNG, *Administrative Patent Judge.*

DECISION

Granting-In-Part Petitioner's Renewed Motion to Seal  
Granting-In-Part Petitioner's Motion to Expunge  
*37 C.F.R. §§ 42.14, 42.54, 42.56*

## I. DISCUSSION

When the Final Written Decision (Paper 60) issued in this proceeding, the record was preserved in its entirety, and the papers and exhibits filed under seal remain protected, pending further developments, including resolution of appeal, if any. *See* Paper 62, 4; Paper 60, 79. The time period for filing a notice of appeal has expired without any party filing an appeal. On June 23, 2021, a Trial Certificate was issued cancelling claim 20, the sole remaining challenged claim, of U.S. Patent No. 9,253,239 B2 (Ex. 1001, “the ’239 patent”), as “finally determined to be unpatentable” under 35 U.S.C. § 318(b). Ex. 3001; *see also* Ex. 2027 (Patent Owner’s statutory disclaimer of claims 1–19 and 21–25 of the ’239 patent); Paper 60, 2–3.

Pursuant to our authorization (Paper 62), Petitioner filed an Unopposed Renewed Motion to Seal (Paper 70, “Renewed Motion to Seal” or “MTS”), seeking to seal various papers and exhibits containing allegedly confidential information relating to the real party-in-interest issue. In addition, Petitioner filed a Motion to Expunge Confidential Information (Paper 72, “Motion to Expunge” or “MTE”), requesting that the sealed documents be expunged from the record of this proceeding. Patent Owner has not opposed either motion. The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a).

A strong public policy exists for making information filed in an *inter partes* review publicly available. 37 C.F.R. § 42.14; *see also* Consolidated Trial Practice Guide 19 (“CTPG,” *available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>). Because sealed

information ordinarily becomes publicly available after final judgment, a party wishing to preserve its confidentiality may file a motion to expunge the information from the record. *Id.* at 21–22; 37 C.F.R. § 42.56. This rule balances the public’s interest in maintaining a complete and understandable file history with the party’s interest in protecting its truly sensitive, confidential information. CTPG 19, 22. Further, the parties are encouraged to redact confidential information, where possible, rather than seeking to seal entire documents. *Id.* at 22.

For the reasons explained below, Petitioner’s Renewed Motion to Seal and Motion to Expunge are each granted-in-part.

*A. Exhibits 2008 and 2009*

In our Final Written Decision, we granted Petitioner’s motion to seal Exhibits 2008 and 2009—which contain Petitioner’s Member Agreement and Subscription Form—in their entirety. Paper 60, 76; Paper 18. In its Motion to Expunge, Petitioner requests that Exhibits 2008 and 2009 be expunged from the record of this proceeding. MTE 3. The Final Written Decision did not discuss in detail or rely on any confidential information included in these exhibits in deciding any of the issues presented. *See generally* Paper 60. At this stage of the proceeding, we determine that expunging Exhibits 2008 and 2009 would not hinder the public’s ability to understand the Final Written Decision based on an understandable file history of the trial. Accordingly, we grant Petitioner’s Motion to Expunge Exhibits 2008 and 2009.

*B. Exhibits 2004 and 2013*

According to Petitioner, Exhibit 2013 is Petitioner's Voluntary Interrogatory Responses of Kevin Jakel and Exhibit 2004 is a deposition transcript of Kevin Jakel, both of which include Petitioner's confidential information as well as non-confidential information. MTS 3–4. Pursuant to our order (Paper 62), Petitioner submitted redacted versions of Exhibits 2004 and 2013 as Exhibits 1033 and 1032, respectively. MTE 3. Petitioner moves to seal and expunge the unredacted versions—Exhibits 2004 and 2013. MTS 3–4; MTE 1–6.

Having reviewed these exhibits, we determine that Exhibits 1032 and 1033 are narrowly redacted. Further, the Final Written Decision did not discuss in detail or rely on any confidential information included in Exhibits 2004 and 2013 in deciding any of the issues presented. *See generally* Paper 60. Thus, expunging Exhibits 2004 and 2013 would not hinder the public's ability to understand the Final Written Decision based on an understandable file history of the trial. Accordingly, we grant Petitioner's motions to seal and expunge Exhibits 2004 and 2013.

*C. Papers 19, 25, 30, 38, and 45*

In the Final Written Decision, we denied without prejudice Petitioner's motion to seal unredacted versions of various papers allegedly containing confidential information—including Preliminary Response (Paper 19), Reply to Preliminary Response (Paper 25), Sur-Reply to Preliminary Response (Paper 30), Patent Owner Response (Paper 38), and Sur-Reply (Paper 45)—because the redacted versions of these papers were

not narrowly tailored. Paper 60, 77–78. Pursuant to the Order Authorizing Petitioner’s Renewed Motion to Seal (Paper 62), Petitioner submitted revised, redacted versions of these papers, which Petitioner argues include “more targeted redactions to keep highly confidential information from the public.” MTS 4; MTE 3–4 (identifying the revised, redacted versions of Papers 19, 25, 30, 38, and 45 as Papers 63, 64, 65, 66, and 67, respectively). Petitioner identifies the alleged confidential information contained in the unredacted versions and explains why the information sought to be sealed qualifies as confidential information under 37 C.F.R. § 42.54. MTS 4–5.

Having reviewed these papers, we determine that the proposed redactions in the revised, redacted versions of the papers are narrowly tailored. Further, the Final Written Decision did not discuss in detail or rely on any confidential information included in Papers 19, 25, 30, 38, and 45 in deciding any of the issues presented. *See generally* Paper 60. Thus, expunging Papers 19, 25, 30, 38, and 45 would not hinder the public’s ability to understand the Final Written Decision based on an understandable file history of the trial. Accordingly, we grant Petitioner’s motions to seal and expunge Papers 19, 25, 30, 38, and 45.

#### *D. Final Written Decision*

Pursuant to our order (Paper 62), Petitioner submitted a redacted version of the Final Written Decision as Paper 68 and moves to seal and expunge the unredacted version of the Final Written Decision (Paper 60). MTS 5; MTE 1–6.

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