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Paper_____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner

v.

SYNKLOUD TECHNOLOGIES, LLC,
Patent Owner

Case No. IPR 2019-01655

Patent No. 9,098,526

PATENT OWNER'S MOTION TO SEAL
37 C.F.R. §§42.54, 42.55

Patent Owner Syncloud Technologies, LLC (“PO” herein) moves to submit confidential information as evidence in support of its position in the above-captioned matter, and accordingly moves that Exhibit 2011, submitted contemporaneously herewith, be accepted but not made public and maintained confidential to a Modified Protective Order submitted herewith as Exhibit 2012. In so moving, PO is guided by this Board’s Decision in IPR2017-01053, Paper No. 27, and decisions cited therein, including IPR2012-00001, Paper No. 34.

PO, as an element of its position that the claims challenged in the above-captioned IPR are not obvious over prior art cited, wishes to submit a license extended under the patent at issue, U.S. Patent 9,098,526 as secondary indicia of non-obviousness pursuant to well-established caselaw. See, e.g., *Rothman v. Target Corp.* 556 F. 3d 1310, 1321 (Fed. Cir. 2009). The public is not denied essential information by sealing Exhibit 2011. The Exhibit is a license between the owner of the ‘526 Patent and a recognized corporation, in consideration of payment of fees. No other issues, such as sales, conditions, promotions or other issues are set forth in or raised by the license, and thus, questions such as nexus and the like are not raised. PO does not rely on the identity of the Licensee, other than to note it is a recognized major corporation in the computer technology field. PO does not rely on the specific terms of the license, other than to note the license

extended is in consideration of payment of money, and no other consideration flows between the parties.

By its terms, further information with respect to the license is confined to outside counsel only. To that end, PO has fashioned a Protective Order premised on the Board's Standing Protective Order, but altered to limit the confidential information submitted to the specific counsel appearing for Petitioner in this matter. Submission of this information, which Court's have often found of value in considering questions of obviousness, without seal or protection, would potentially vitiate the license as a possible breach thereof and/or expose PO to liability.

Undersigned counsel has conferred with opposing counsel. After an initial exchange of emails, the Modified Protective Order that is Exhibit 2012 was fashioned and forwarded to counsel for Petitioner in a good faith effort to arrive at resolution of the question of submission. Counsel for Petitioner acknowledged receipt of the proposed Modified Protective Order by email on June 10, 2020. Counsel for Petitioner indicated he would "take a look and revert back" but as of the filing of this Motion, had not further responded or indicated if the Motion would be opposed. Accordingly, PO respectfully requests Exhibit 2011 be held confidential to the Board provisionally, pending grant of this Motion or expungement if this Motion is denied.

Respectfully, PO submits it has met the Board's standard for submission under seal, *Argentum Pharmaceuticals LLC v. Alcon Research*, IPR 2017-01053, Paper 27 (January 19, 2018) at p. 4. 1) The confidential information, a patent license, is truly confidential – it is confidential by its terms. 2) Concrete harm would result upon public disclosure of Exhibit 2011, it would constitute a potential breach of the very license at issue. 3) There exists a genuine need to rely in the trial on the specific information sought to be sealed. It is PO's strong evidence of a judicially recognized indication of non-obviousness – a patent license. 4) On balance, the interest in maintaining confidentiality as to this one exhibit outweighs the strong public interest in having an open record.

On this basis, and in light of the proposed Modified Protective Order that is Exhibit 2012, PO respectfully requests grant of this Motion and acceptance of Exhibit 2011 under seal.

Respectfully submitted,

Date: June 12, 2020

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