

Paper No. _____
Filed: June 15, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRADESTATION GROUP, INC.,
TRADESTATION SECURITIES, INC, IBG LLC, and
INTERACTIVE BROKERS LLC,

Petitioner

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

Case CBM2015-00161¹
U.S. Patent 6,766,304 B2

PATENT OWNER'S MOTION TO SEAL

¹ Case CBM2016-00035 has been joined with this proceeding.

I. Introduction

Patent Owner requests that the confidential versions of its Motion for Additional Discovery and Exhibits 2143-2151, 2154, and 2156-2158 be sealed under 37 C.F.R. § 42.54. Good cause to seal these documents exists because a public version of the Motion has also been filed, and because the redacted information and Exhibits 2143-2151, 2154, and 2156-2158 contain information identified by Petitioners as sensitive, non-public information that a business would not make public. Petitioners have requested that Patent Owner file this Motion.

II. Governing Rules and PTAB Guidance

Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public but a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion.

Similarly, 37 C.F.R. § 42.14 provides:

The record of a proceeding, including documents and things, shall be made available to the public, except as otherwise ordered. A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion.

It is, however, only “confidential information” that 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”). In that regard, the *Office Trial Practice Guide*, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012) provides:

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.

* * *

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. § 42.54.

The standard for granting a motion to seal is “for good cause,” 37 C.F.R. § 42.54, and the moving party has the burden of proof in showing entitlement to the requested relief, 37 C.F.R. § 42.20(c).

A motion to seal is also required to include a proposed protective order and a certification that the moving party has in good faith conferred or attempted to confer with the opposing party in an effort to come to an agreement as to the scope of the proposed protective order for this *inter partes* review. 37 C.F.R. § 42.54.

III. Identification of Confidential Information

The confidential information consists of internal TradeStation documents relating to its products and customers, the deposition transcripts of Mr. Bartleman (TradeStation's President) and Mr. Galik (IB's head of software development) and quotations from those documents and transcripts in the confidential version of the Motion for Additional Discovery. Patent Owner has been advised by counsel for Petitioners that this information has not been published or otherwise been made public.

IV. Good Cause Exists for Sealing the Confidential Information

Petitioners have asserted that the identified information is either confidential or highly confidential under the protective order in the corresponding district court litigation. Through these designations, Petitioners represented to Patent Owner that the information at issue consists of sensitive information that a business would not make public and that good cause thus exists for sealing the information in this proceeding. Petitioners have accordingly requested that Patent Owner file this Motion to preserve the confidentiality of this material.

Moreover, all of the non-confidential information will be publically available in the non-confidential versions of the documents that have been filed. Accordingly, there is good cause to grant this motion to seal.

V. Proposed Protective Order

The parties have agreed to the terms of the Default Protective Order located in Appendix B of the Trial Practice Guide, for the purposes of Patent Owner's citation of the documents and transcripts in its Motion for Additional Discovery. In accordance with the terms of the Default Protective Order, both confidential and non-confidential versions of the documents have been filed.

VI. Conclusion

For the reasons set forth above, Patent Owner respectfully requests that the Board grant this motion to seal.

Respectfully Submitted,

Date: June 15, 2016

By: /Rachel L. Emsley/
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