

Paper No. \_\_\_\_\_

Filed: June 23, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

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Case CBM2015-00161<sup>1</sup>  
U.S. Patent 6,766,304

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**PATENT OWNER'S MOTION TO MAINTAIN CONFIDENTIAL  
INFORMATION UNDER SEAL PENDING DISPOSITION OF  
APPEAL**

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<sup>1</sup> Case CBM2016-00035 has been joined with this proceeding.

## **I. Statement of Relief Requested**

Pursuant to this Board's authorization on June 13, 2017, Patent Owner respectfully requests that all sealed documents in CBM2015-00161 be preserved in non-public form pending disposition of any appeals. Moreover, within 10 days of the disposition of all appeals in this matter, Patent Owner respectfully requests that all confidential information filed by Patent Owner be expunged from the record pursuant to Rule 42.56 and not be made public.

Patent Owner has conferred with Petitioner on both requests and Petitioner does not oppose.

## **II. Reasons Why Requested Relief Should Be Granted**

### **A. The Record Should be Preserved Pending Appeal So the Federal Circuit Has Full Access to the Record**

The Federal Rules of Appellate Procedure and the Federal Circuit Rules require that the record be retained by the Board pending appeal. Specifically, Federal Circuit Rule 17(a) states that "the agency must retain the record." Federal Circuit Rule 17(d), titled "Access of Parties and Counsel to Original Record" also requires that the parties and their counsel have access to both the sealed and unsealed portions of the record "when a petition for review or notice of appeal is filed." Petitioner's Notice of Appeal was filed March 3, 2017, and Patent Owner's Notice of Cross-Appeal was filed March 7, 2017.

If the record is not preserved in its entirety, including any sealed portions, and an

appeal is taken, the Federal Circuit will not be able to fully consider the issues, which would cause prejudice to Patent Owner and violate the appellate rules. Moreover, as the Board did not rely on any of this confidential information in its final written decision or decisions denying rehearing, such information may properly be maintained under seal here.

**B. Subsequent to the Disposition of Appeal, Confidential Information Should be Expunged**

Additionally, Patent Owner respectfully requests that subsequent to the dispositions of all appeals, all sealed confidential information filed on the CBM docket be expunged for the reasons set forth below.

**1. The Board Found Good Cause to Seal Patent Owner's Confidential Information**

In connection with its Patent Owner's Response, TT filed four Motions to Seal. (Papers 53, 62, 91, and 93). These motions covered certain pleadings, declarations and exhibits containing or referring to Patent Owner's confidential business information. (Papers 54, 63, 68, 89, and 94; Exhibits 2169, 2172, 2224, 2225, 2232, 2247, 2270, 2286, 2294, and 2295).

All four Motions to Seal were granted. (Paper 130). Such information should be maintained under seal because this Board has already found that there was good cause to grant the motions to seal in the first instance. (Paper 130, at 3). Specifically, TT identified that the sealed papers contain sensitive business information that would not

otherwise be published or made available to the public. As this information was not relied on in the Final Written Decision here, protecting the confidential material throughout the appeals does not impact the public interest in obtaining access to these proceedings. Further, any impact to the public interest has been minimized as non-confidential versions of the papers have already been filed. *Id.*

## **2. The Sealed Documents Contain Confidential and Sensitive Business Information That was not Relied on by the Board in the Final Written Decision**

For the same reasons set forth in Patent Owner’s Motions to Seal, namely that the sealed information “contain[s] sensitive business information that would not otherwise be published or made available to the public,” all the information filed under seal in this matter should be expunged from the record within 10 days of the disposition of all appeals. Expunging the sealed information will avoid the prejudice to parties that would be caused by public disclosure of their sealed information. The information Patent Owner seeks to have expunged after the disposition of appeals is as follows: Papers 54, 63, 68, 89, and 94, and Exhibits 2169, 2172, 2224, 2225, 2232, 2247, 2270, 2286, 2294, and 2295.

Because Patent Owner has already filed redacted versions of the sealed documents, expunging confidential materials after appeal addresses the “public interest in maintaining a complete and understandable file history for public notice purposes” while protecting the confidential and proprietary information of other parties. (*See* 77

FED. REG. 48623). A short summary of these materials follows.

First, Patent Owner's Motion for Additional Discovery (Paper 54) was not cited in the Board's Final Written Decision and contains (1) confidential information consisting of internal TradeStation documents relating to its products and customers, (2) the deposition transcripts of Mr. Bartleman (TradeStation's President) and Mr. Galik (IB's head of software development) and (3) quotations from those documents and transcripts. This information has not been published or otherwise made public. The redacted information is not specifically referenced in the Board's final decision.

Second, the redacted versions of Confidential Patent Owner's Response (Paper 63) and Confidential Corrected Patent Owner's Response (Paper 68) were cited in the Board's Final Written Decision and contain declarations and exhibits that contain highly sensitive, non-public information that a business would not make public. Specifically, the redacted portions of Patent Owner's Response (Paper 64) and Corrected Patent Owner's Response (Paper 69) contain business sensitive statements in the context of licensing Patent Owner's products. The redacted information is not specifically referenced in the Board's final decision.

Third, the redacted versions of Patent Owner's Motion To Submit Supplemental Information And Briefing Under 37 C.F.R. § 42.223(B) (Paper 90) and Patent Owner's Reply in Support of Its Motion To Submit Supplemental Information And Briefing Under 37 C.F.R. § 42.223(B) (Paper 95) contain confidential information consisting of

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