

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC, INTERACTIVE BROKERS LLC,
TRADESTATION GROUP, INC., TRADESTATION
SECURITIES, INC., TRADESTATION
TECHNOLOGIES, INC., and IBFX, INC.,
Petitioners,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2015-00172¹
Patent No. 7,783,556

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

¹ Case CBM2016-00040 has been joined with this proceeding.

I. Statement of Relief Requested

Pursuant to this Board's authorization on October 11, 2017, Trading Technologies International, Inc. ("TT" or "Patent Owner"), respectfully requests that all sealed documents in CBM2015-00172 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 "[t]he 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 "[w]hen a petition for review or notice of appeal is filed." Patent Owner's Notice of Appeal was filed July 19, 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 decision denying rehearing, such information may properly be maintained under seal here. (*See* Paper 84, at 2).

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 the Confidential Information

In connection with its Motion for Additional Discovery, TT filed a Motion to Seal. (Paper 33). This motion covered certain documents and exhibits containing or referring to confidential business information. (Paper 34 and Exhibits 2143-51, 2154, and 2156-58).

On March 31, 2017, the Board granted TT's Motion to Seal. (Paper 84). The information covered by the granted Motion to Seal should be maintained under seal because this Board has already found that there was good cause to grant the motion to seal. (Paper 84, at 2). 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, (*see id.*), 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 a non-confidential version of the Motion for Additional Discovery has 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 Motion to Seal, namely that the sealed information “contain[s] information identified . . . as sensitive, non-public information that a business would not make public,” (Paper 33, at 2), 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: Paper 34 and Exhibits 2143-51, 2154, and 2156-58.

Because Patent Owner has already filed a redacted version of the Motion for Additional Discovery (Paper 32), 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). These materials include:

[I]nternal 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.

(Paper 33, at 4). These materials were “not relied on in the Final Written Decision.” (Paper 84, at 2).

III. Conclusion

Patent Owner respectfully requests that the entire CBM record be preserved in its present form pending appeal, including preservation of documents filed under seal in non-public form.

Within 10 days after disposition of any appeals, Patent Owner requests that the sealed materials be expunged from the CBM docket.

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