

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM2015-00161 (Patent No. 6,766,304 B2)¹
CBM2015-00179 (Patent No. 7,533,056 B2)
CBM2015-00181 (Patent No. 7,676,411 B2)
CBM2015-00182 (Patent No. 6,772,132 B1)

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION

Denying Patent Owner's Motions to Submit
Supplemental Information and Briefing
37 C.F.R. § 42.223(b)

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

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On August 16, 2016, Patent Owner filed, in each of the above listed proceedings, a Motion to Submit Supplemental Information and Briefing in both unredacted and redacted forms. Papers 89, 90 (“Motion(s) to Submit” or “Mot.”).² In each of the above listed proceedings, Petitioner filed an Opposition (Paper 92; “Opposition” or “Opp.”), and Patent Owner filed a Reply in both unredacted and redacted forms (Papers 94, 95; “Reply”). Patent Owner also filed Motions to Seal the unredacted versions of its motions and replies (Papers 91 and 93; “Motions to Seal”). For the reasons stated below, the Motions to Submit are *denied* and the Motions to Seal are *dismissed*.

ANALYSIS

On June 27, 2016, Patent Owner filed its Patent Owner Responses. Paper 64. According to Patent Owner, it did not include certain documents and arguments in connection with its Responses, because it was prevented from doing so due to a protective order in the related district court proceeding. Mot. 2. On July 1, 2016, Patent Owner sought relief from the district court protective order, which the district court granted on July 7, 2016. Mot. 4. On August 10, 2016, Patent Owner requested leave to file motions for supplemental information and briefing in each of the above listed proceedings. We authorized Patent Owner to file the Motions to Submit (Paper 86), and on August 16, 2016, Patent Owner did so.

Patent Owner moves to submit supplemental information and briefing in the form of ten documents and ten pages of additional briefing pursuant to

² Citations are to CBM2015-00161. This decision references only the redacted Motion to Submit.

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37 C.F.R. § 42.223(b). Mot. 2, 6–7. The ten documents Patent Owner seeks to enter into the record are as follows:

- 1) Deposition Transcript of John Bartleman dated June 8, 2016 (Ex. 2150);
- 2) Deposition Transcript of John Bartleman dated June 9, 2016;
- 3) TradeStation Matrix Requirements, dated May 19, 2003 (Ex. 2144);
- 4) Trading Technologies Webpage describing MD Trader, dated April 11, 2003;
- 5) Trading Options with TradeStation OptionStation, dated April 13, 2010 (Ex. 2145);
- 6) Barron’s Presentation dated February 15, 2011 (Ex. 2143);
- 7) Email from J. Bartleman, dated December 20, 2008;³
- 8) Deposition Transcript of Milan Galik dated June 13, 2016 (Ex. 2154);
- 9) Email from M. Galik, dated June 14, 2010 (Ex. 2156);⁴ and
- 10) Email from M. Galik, dated July 19, 2011 (Ex. 2158).

As the moving party, Patent Owner bears the burden of proving that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). Pursuant to 37 C.F.R. § 42.223(b), a party seeking to submit supplemental information more than one month after the date a trial is instituted “must show why the supplemental information reasonably could not have been obtained earlier, and that consideration of the supplemental information would be in the interests-of-justice.”

Patent Owner presents two arguments why it could not have obtained the above documents earlier as follows: 1) Patent Owner did not receive all of the documents, testimony, or authentication of the evidence until the

³ Patent Owner does not seek to file this exhibit in CBM2015-00179.

⁴ Patent Owner does not seek to file this exhibit in CBM2015-00179.

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second week of June 2016; and 2) Petitioner objected to Patent Owner's filing of any of Petitioners' confidential information in the instant proceedings that were submitted under the district court's protective order. Mot. 2.

As to the first argument, Patent Owner does not explain sufficiently the availability of the documents it now seeks to file in these proceedings. Based on the dates listed on the documents themselves, or described by Patent Owner,⁵ only three of the ten documents contain a date sometime in June of 2016. The rest predate June 2016 significantly. Further, Patent Owner indicates that it obtained at least four of the ten documents from Petitioner prior to June 2016. For example, Patent Owner indicates that Petitioner produced Exhibit 2144 on December 23, 2015. Mot. 11. Patent Owner argues that certain portions of the June 2016 documents authenticate some of the earlier documents, and that it did not discover the relevance of one document (number 4 from the above list) until June 8, 2016. *See, e.g.* Mot. 9, 12. Patent Owner, however, does not explain why it needed to wait to authenticate the documents produced by Petitioner before filing those documents in these proceedings or why it waited until June 2016 to authenticate documents described as having dates, in some instances, many years ago. For example, Patent Owner argues that the deposition of John Bartleman obtained on June 8 and 9, 2016 authenticates Exhibit 2144; a document described as TradeStation Matrix Requirements, which has a May 2003 date and which was produced on December 23, 2015. *Id.* Patent

⁵ Some of the documents were filed previously in the proceedings, while others have not been filed per Board instructions. *See, e.g.*, Paper 86, 2.

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Owner has not explained why it waited until June 2016 to authenticate Exhibit 2144. No sufficient explanation in that regard is provided. Nor does Patent Owner explain the circumstances surrounding its late discovery that the one document was relevant. Mot. 12. The document (number 4 from the above list) dates back to 2003. The document has not changed and presumably was available to Patent Owner many months before it filed its responses. For these reasons, we are not persuaded by Patent Owner's first argument.

We also are not persuaded by Patent Owner's second argument. Patent Owner argues that Petitioner prevented Patent Owner from filing the documents. Mot. 2–5. In particular, Patent Owner argues that the documents are protected by a district court protective order, and that Petitioner has relied on paragraph 11 of the protective order to object to the submission of documents in the instant proceedings. *Id.* at 2, fn 3.⁶ Paragraph 19 of the protective order, however, includes that the “order is without prejudice to the right of any party to seek relief from the Court upon good cause shown, from any of the provisions contained herein.” Ex. 2407, 19. Accordingly, a party may seek relief from the protective order from the district court. It is not apparent to us, as Patent Owner asserts, that the relief had to come from Petitioner.

⁶ Paragraph 11 from the April 22, 2011 district court protective order, includes that protected “material shall not be used for any purpose other than in this Proceeding. Specifically, but without limitation, it shall not be used in any proceedings in any other court, tribunal, or patent office (including in any opposition, reexamination or other proceeding).” Ex. 2407, 10.

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