

Paper No. ____
Filed: June 27, 2016

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.

Petitioner

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

Case CBM2015-00182
U.S. Patent 6,772,132

PATENT OWNER'S MOTION TO SEAL

I. Introduction

Patent Owner requests that the confidential versions of its Patent Owner's Response, Exhibits 2172 (Declaration of J. Knobloch), 2169 (Declaration of C. Thomas), and eight exhibits to the Declaration of C. Thomas, i.e., Exhibits 2224; 2225; 2232; 2247; 2270; 2286; 2294; 2295 be sealed under 37 C.F.R. § 42.54.

Good cause to seal these documents exists because a public version of the Patent Owner's Response and Declarations have also been filed, and because the unredacted Patent Owner's Response, unredacted Declarations (Exhibits 2172 and 2169), and Exhibits 2224; 2225; 2232; 2247; 2270; 2286; 2294; and 2295, contain information identified by Patent Owner and third parties as sensitive, non-public information, that a business would not make public. Patent Owners contacted Petitioners regarding this Motion, and they do not oppose.

II. Governing Rules and PTAB Guidance

Under 35 U.S.C. § 326(a)(1), the default rule is that all papers filed in a post-grant 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. § 326(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 CBM review. 37 C.F.R. § 42.54.

III. Identification of Confidential Information

The confidential information consists of:

(1) Trading Technologies International, Inc.'s internal financial information appearing in the Declaration of J. Knobloch, Ex. 2172, who currently serves as the Director of Intellectual Property, Licensing and Litigation, and relating to the amount of money derived from royalty and settlement payments. *See Exhibit 2172, ¶ 11.* In total, the confidential material is less than 1 line of printed text in the six page Declaration of J. Knobloch. The surrounding text makes clear that royalty and settlement payments are discussed, with only the dollar amount redacted. Patent Owner certifies that its detailed royalty information has not been published or otherwise been made public.

(2) Other third-party business strategy information and third-party admissions/statements appearing in the Declaration of J. Knobloch, ¶ 9. In total, the confidential material is less than 3 lines of printed text in the six page Declaration of J. Knobloch. The surrounding text makes clear that two specifically named individuals, third parties Raymond Deux and Goldenberg Hehmeyer, made business sensitive statements in the context of a passage on licensing TT products.

To Patent Owner's knowledge, this business strategy information has not, and should not, be made public.

(3) Third-party business strategy information and third-party admissions/statements appearing in the Declaration of C. Thomas, Ex. 2169, ¶¶ 127-28. The surrounding text makes clear that two specifically named individuals, third parties Raymond Deux and Charles McElveen, made sensitive business statements in the context of competitive analysis. In total, it is less than 7 lines of printed text in the 153 page Declaration of C. Thomas. To Patent Owner's knowledge, this business strategy information has not, and should not, be made public.

(4) Eight exhibits attached to the Declaration of C. Thomas which are confidential third-party materials in their entirety, containing business strategy information and confidential admissions/statements (i.e., Exhibits 2224 (excerpts of district court Deposition Transcript of D. Martin marked "Highly Confidential"); 2225 (excepts of district court Deposition Transcript of C. McElveen marked as containing "Confidential Material"); 2232 (excerpts of district court Deposition Transcript of E. Lapan marked as "Highly Confidential")); 2247 (excerpts of district court Deposition Transcript of R. Deux marked as "Confidential Videotape Deposition"); 2270 (eSpeed_PTX0036 (district court trial exhibit marked "Highly Confidential"))); 2286 (excerpts of district court Deposition

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