Paper No. ____
Filed: August 16, 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 version of its Motion for Supplemental Information and Supplemental Briefing 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 Motion has also been filed, and because the unredacted Motion contains information identified by Petitioners as confidential, which they indicated must be filed under seal. *See, e.g.*, Ex. 2393, 19.

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.

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 discussions in Patent Owner's Motion relating to Petitioners' confidential information. 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. 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 signed acknowledgements for the Default Protective Order located in Appendix B of the Trial Practice Guide, indicating agreement to treat the materials in accordance with the Default Protective Order. In accordance with the terms of the Default Protective Order, both confidential and non-confidential versions of the document 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: August 16, 2016

By: /Rachel L. Emsley/
Rachel L. Emsley, Reg. No. 63,558

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