

Paper No. _____
Filed: June 23, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC and INTERACTIVE BROKERS LLC,
Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

Case CBM2016-00009
Patent 7,685,055

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

I. Statement of Relief Requested

Pursuant to this Board's authorization on June 13, 2017, Patent Owner respectfully requests that all sealed documents in CBM2016-00009 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." No notice of appeal has yet been filed, and the deadline for filing a notice of appeal is June 28, 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, 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 a Motion to Seal. (Paper 30). This motion covered certain exhibits containing or referring to third-party confidential business information. (Exhibits 2294 and 2295).

The Board granted the Motion to Seal. (Paper 73). The information covered by the Motion to Seal 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 73, 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] information identified as [] sensitive, non-public information that a business would not make 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. Patent Owner seeks to have the confidential information in Exhibits 2294 and 2295 expunged after the disposition of all appeals.

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.

The confidential information contained in Exhibits 2294 and 2295 was not relied upon in the Board’s Final Written Decision. (Paper 73, at 2). These exhibits contain highly sensitive and proprietary third-party information, including confidential third-

party business strategy information and third-party admissions and statements. To Patent Owner's knowledge, these transcripts have not, and should not, be made public.

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.

Respectfully submitted,

Dated: June 23, 2017

By: /Cole B. Richter/

*Counsel for Patent Owner
Trading Technologies International, Inc.
Inc.*

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