

Paper No. \_\_\_\_\_  
Filed: September 25, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,  
Patent Owner.

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Case CBM2016-00051  
Patent No. 7,904,374

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**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 September 20, 2017, Trading Technologies International, Inc. ("TT" or "Patent Owner"), respectfully requests that all sealed documents in CBM2016-00051 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 plans to file a timely Notice of Appeal from the Board's Final Written Decision (Paper 44).

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. (*See* Paper 44, at 23).

**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 Motion to Seal Covered Confidential Business Information**

In connection with its Patent Owner's Response, TT filed a Motion to Seal. (Paper 20). This motion covered certain exhibits containing or referring to confidential business information. (Exhibits 2294-2295). 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, (Paper 44, at 23), protecting the confidential material throughout the appeals does not impact the public interest in obtaining access to these proceedings.

## 2. The Sealed Documents were 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 20, 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: Exhibits 2294-2295. These materials include, "excerpts of district court Deposition Transcript of Dr. J. Mellor marked 'Confidential - Attorneys' Eyes Only'" and "excerpts of district court Deposition Transcript of R. Ferraro vol. II marked 'Confidential.'" (Paper 20, at 4). To TT's knowledge, these transcripts have not been made public. (*Id.*). These materials were not relied on in the Final Written Decision. (Paper 44, at 23).

### 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: September 25, 2017

By: *Jennifer M. Kurcz*

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