

Paper No. ____
Filed: November 15, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRADESTATION GROUP, INC.,
TRADESTATION SECURITIES, INC., IBG LLC, AND
INTERACTIVE BROKERS LLC

Petitioner

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

Case CBM2016-00051
U.S. Patent 7,904,374

PATENT OWNER'S MOTION TO SEAL

I. Introduction

Patent Owner requests that the confidential versions of two exhibits to the Declaration of Christopher Thomas, i.e., Exhibits 2294 and 2295, be sealed under 37 C.F.R. § 42.54. Good cause to seal these documents exists because Exhibits 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 Owner contacted Petitioners regarding this Motion, and Petitioners 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 two exhibits attached to the Declaration of Christopher Thomas, which are confidential third-party materials in their entirety, containing business strategy information and confidential

admissions/statements: Exhibit 2294 (excerpts of district court Deposition Transcript of Dr, J. Mellor marked “Confidential - Attorneys’ Eyes Only”); and Exhibit 2295 (excerpts of district court Deposition Transcript of R. Ferraro vol. II marked “Confidential”). To Patent Owner’s knowledge, these transcripts have not, and should not, be made public.

IV. Good Cause Exists for Sealing the Confidential Information

In *Athena Automation Ltd. v. Husky Injection Molding Systems Ltd.*, IPR2013-00167, paper 25 at 2 (PTAB 2013), the Board permitted Patent Owner to file redacted versions of exhibits that third parties had objected to entering the public domain because they contained their confidential information. The Board stated that as long as the documents were under seal, “we see no reason why the entirety of these documents, which are being relied on by Patent Owner, should not be available for Petitioner to use in these proceedings.” *Id.* Accordingly, the Board permitted the third-party exhibit to be sealed, shielding the information from the public while still making it available to the parties under the terms of a Protective Order. In this case, the third parties have also objected to the release of their confidential business information into the public domain. The information of third parties in the entirety of Exhibits 2294 and 2295 is confidential business strategy information and/or testimony that has not been published or otherwise been made public and that is sensitive information that a business would not make public. As

Petitioners have signed acknowledgements to the Default Protective Order, all parties to the proceedings—Patent Owner and Petitioners—will still be able to rely on these third party statements and exhibits in their entirety, while respecting the confidentiality designations of the third parties through a motion to seal.

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 documents will be filed, as appropriate. For Exhibits 2294 and 2295, the entirety of the documents are confidential.

VI. Conclusion

Based on Patent Owner’s representations and the limited scope of the protection sought, there is good cause to grant the motion to seal. 37 C.F.R. § 42.54. For all the reasons set forth above, Patent Owner respectfully requests that the Board grant this motion to seal.

Respectfully Submitted,

Date: November 15, 2016

By: /Cory C. Bell/
Cory C. Bell, Reg. No. 75,096

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