

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,

Patent Owner.

CBM2016-00054
U.S. Patent 7,693,768

PATENT OWNER'S MOTION TO SEAL

I. Introduction

Patent Owner requests that the confidential version of its Patent Owner's Demonstratives (Exhibit 2359) be sealed under 37 C.F.R. § 42.54.

Good cause to seal this exhibit exists because a public version of the Patent Owner's Demonstratives has also been filed, and because the unredacted Patent Owner's Demonstratives contain information identified by Petitioners 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 Petitioners' confidential information appearing on page 26 of Patent Owner's Demonstratives. Specifically, the confidential information contains information related to internal technical specifications. Patent Owner obtained the confidential information in a related U.S. District Court proceeding¹ involving Patent Owner and Petitioners. Patent Owner has been previously authorized by Petitioners to present this information in the present Covered Business Method proceeding pursuant to the protective order in that District Court proceeding and the default protective order, attached hereto as Exhibit A. Patent Owner has been advised by counsel for Petitioners that this information has not been published or otherwise been made public.

¹ This proceeding is *Trading Techs. Int'l, Inc. v. BCG Partners, Inc.*, Case No. :10-cv-00715 (N.D. Ill.) (*consolidated with Trading Techs. Int'l, Inc. v. IBG LLC*, Case No. 1:10-cv-00721 (N.D. Ill.) and *Trading Techs. Int'l, Inc. v. TradeStation Sec., Inc.*, Case No. 1:10-cv-00884 (N.D. Ill.)).

In total, the confidential material only appears on one page of the 32 page presentation. To Patent Owner's knowledge, this business information has not, and should not, be made public. Further, this Board previously granted a Motion to Seal in a related proceeding that contained the same confidential information at issue. *TradeStation Group, Inc. v. Trading Technologies Int'l, Inc.*, CBM2015-00161, Paper 130, at 2-3.

IV. Good Cause Exists for Sealing the Confidential Information

Petitioners have asserted that the information on page 26 of Patent Owner's Demonstratives 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 on page 26 of Patent Owner's Demonstratives consists of sensitive information that a business would not make public. Thus, good cause exists for sealing the information in this proceeding. Accordingly, there is good cause to grant this motion to seal.

V. Proposed Protective Order

The parties have agreed to use the Default Protective Order located in Appendix B of the Trial Practice Guide and attached hereto as Exhibit A. In accordance with this Default Protective Order, both confidential and non-confidential versions of the Patent Owner's Demonstratives have been filed.

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