

Paper No. _____
Filed: November 1, 2017

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.

Case CBM2016-00054
Patent No. 7,693,768

**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 October 23, 2017, Trading Technologies International, Inc. ("TT" or "Patent Owner"), respectfully requests that all sealed documents in CBM2016-00054 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 the parties be expunged from the record pursuant to Rule 42.56 and not be made public.

Patent Owner has conferred with Petitioners on both requests and Petitioners do 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 61).

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. Accordingly, TT requests that all sealed documents be preserved in non-public form pending appeal.

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.

In connection with its Patent Owner's Response, TT filed a Motion to Seal. (Paper 23). This motion covered the confidential version of the Patent Owner's Response (Paper 20), confidential versions of Exhibits 2172 (Declaration of J. Knobloch) and 2169 (Declaration of C. Thomas), and thirty-seven exhibits to the Declaration of C. Thomas (Exhibits 2143, 2144, 2154, 2224, 2225, 2232, 2247, 2270, 2286, 2294, 2295, 2501, 2502, 2503, 2504, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2520, 2521, 2522, 2524, 2525, 2526, 2527, 2529, and 2530). TT identified that the sealed papers contain sensitive business information that would not otherwise be published or made available to the public. Additionally, TT made all of the non-confidential information publically available in non-confidential versions. (Paper 23, at 6-7).

In connection with their Reply, Petitioners also filed a Motion to Seal (Paper 39). This motion covered two exhibits (1063 and 1064)—the deposition transcripts of Christopher H. Thomas—which were marked confidential by TT pursuant to the Protective Order. (Paper 39, at 1). Petitioners represented that, to the best of their knowledge, the documents had not been made publically available. (*Id.*).

Finally, Patent Owner filed a second Motion to Seal in connection with its Demonstratives. (Paper 56). Specifically, TT requested that its Demonstratives (Exhibit 2359) be sealed because they contained sensitive business information that would not otherwise be published or made available to the public. TT filed a public version of its Demonstratives. (Paper 56, at 1).

For the same reasons set forth in the parties' motions to seal, namely that the sealed information "contain[s] information identified . . . as sensitive, non-public information, that a business would not make public," (Paper 23, at 0; *see also* Paper 39, at 1; Paper 56, at 1), 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 the parties that would be caused by public disclosure of their sealed information.

In particular, the confidential materials covered by Patent Owner's first motion to seal (Paper 23) include TT's internal financial information relating to the

amount of money derived from royalty and settlement payments, third-party business strategy information and third-party admissions/statements, and discussions of Petitioners' own confidential information obtained in a related district court proceeding. (Paper 23, at 3-6). The materials covered by Petitioner's motion to seal (Paper 39) include the deposition transcripts of Christopher H. Thomas, which were marked confidential by TT pursuant to the Protective Order. (Paper 39, at 1). Finally, the confidential materials covered by Patent Owner's second motion to seal (Paper 56) include information related to internal technical specifications that TT obtained in a related district court proceeding pursuant to a protective order. (Paper 56, at 3-4). With the exception of portions of Exhibits 2169, 2247, 1063, and 1064, (*see* Paper 61, at 57, 68, 70-71), none of the materials filed under seal were relied on in the Final Written Decision. (*See generally* Paper 61).

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.

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