

Paper No. _____
Filed: October 10, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC, INTERACTIVE BROKERS LLC,
TRADESTATION GROUP, INC., TRADESTATION SECURITIES, INC.,
TRADESTATION TECHNOLOGIES, INC., and
IBFX, INC.,

Petitioners,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,

Patent Owner.

Case CBM2015-00181
U.S. Patent 7,676,411

PATENT OWNER'S MOTION TO EXPUNGE

I. Statement of Relief Requested

Pursuant to this Board's authorization on October 10, 2019, Trading Technologies International, Inc., ("TT" or "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 this request and Petitioner does not oppose.

II. Reasons Why Requested Relief Should Be Granted

A. The Board Found Good Cause to Seal the Confidential Information

In connection with its Patent Owner's Response, TT filed four Motions to Seal. (Papers 61, 69, 96, and 99). These motions covered certain pleadings, declarations and exhibits containing or referring to Patent Owner's confidential business information. (Papers 62, 70, 75, 94, and 98; Exhibits 2169, 2172, 2224, 2225, 2232, 2247, 2270, 2286, 2294, and 2295).

The Board granted two Motions to Seal and dismissed the other two Motions to Seal after denying and expunging the underlying confidential Motions to Submit Supplemental Information and Briefing. (Papers 101 and 139). The information covered by the two granted Motions to Seal should be expunged because this Board has already found that there was good cause to grant the motions to seal in the first instance. (Paper 139, at 4). 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, expunging the confidential material 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.*).

On February 13, 2019, the Federal Circuit affirmed the Final Written Decision of the Board in this case, and the formal mandate issued on May 7, 2019. On July 24, 2019, Petitioner IB filed a petition for writ of certiorari, which the Supreme Court denied on October 7, 2019. Because the appeals in this case have been concluded, this motion to expunge is now ripe for decision.

B. 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. 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: Papers 62, 70, and

75, and Exhibits 2169, 2172, 2224, 2225, 2232, 2247, 2270, 2286, 2294, and 2295.¹

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.

First, Patent Owner’s Motion for Additional Discovery (Paper 62) was not cited in the Board’s Final Written Decision (Paper 139, at 3), and contains (1) confidential information consisting of internal TradeStation documents relating to its products and customers, (2) the deposition transcripts of Mr. Bartleman (TradeStation’s President) and Mr. Galik (IB’s head of software development), and (3) quotations from those documents and transcripts. The redacted information is not specifically referenced in the Board’s final decision.

Second, the redacted versions of Confidential Patent Owner’s Response (Paper 70) and Confidential Corrected Patent Owner’s Response (Paper 75) were cited in the Board’s Final Written Decision and contain declarations and exhibits that contain highly sensitive, non-public information that a business would not make public. Specifically, the redacted portions of Patent Owner’s Response

¹ Papers 94 and 98 were already expunged. (Paper 139, at 2 n.1).

(Paper 71) and Corrected Patent Owner's Response (Paper 76) contain business sensitive statements in the context of licensing Patent Owner's products. The redacted information is not specifically referenced in the Board's final decision.

Third, the confidential information contained in Exhibits 2169, 2172, 2224, 2225, 2232, 2247, 2270, 2286, 2294, and 2295 was not relied upon in the Board's Final Written Decision. (Paper 139, at 3). These exhibits contain highly sensitive and proprietary Patent Owner information, including internal financial information, third-party business strategy information, and third-party admissions and statements.

III. Conclusion

Patent Owner respectfully requests that because all appeals have been exhausted in this matter, the sealed materials be expunged from the CBM docket.

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