

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CME GROUP, INC.,  
Petitioner,

v.

VOLATILITY PARTNERS, LLC,  
Patent Owner.

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Case CBM2016-00024  
Patent RE43,435 E

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Before MICHAEL W. KIM, TRENTON A. WARD, and KEVIN W. CHERRY,  
*Administrative Patent Judges.*

WARD, *Administrative Patent Judge.*

ORDER  
Motion to Seal  
*37 C.F.R. § 42.54*

*Motion to Seal*

On December 26, 2015, CME Group, Inc. (“Petitioner”) filed a motion to seal portions of its Petition (Paper 4, “Unredacted Petition”) along with Exhibits 1004 and 1005. Paper 3, 1. Petitioner argues that good cause exists for placing these materials under seal because they contain confidential negotiations between Petitioner and Volatility Partners, LLC (“Patent Owner”). *Id.* Patent Owner did not oppose this motion. Additionally, Petitioner submitted a copy of the Board’s default protective order as a proposed protective order (Paper 3, Appendix A).

There is a strong public policy in favor of making information filed in a *inter partes* review open to the public, especially because these proceedings determine the patentability of claims in issued patents and, therefore, affect the rights of the public. Under 35 U.S.C. § 326(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in a *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal, and the information at issue is sealed pending the outcome of the motion. It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48760 (Aug. 14, 2012). The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). The party moving to seal bears the burden of proof in showing entitlement to the requested relief, and must explain why the information sought to be sealed constitutes confidential information. 37 C.F.R. § 42.20(c).

We have reviewed the material in the Unredacted Petition along with Exhibits 1004 and 1005 which Petitioner seeks to seal. As identified by Petitioner, this information pertains primarily to Petitioner’s allegation that it has been charged with infringement under 37 C.F.R. §42.302(a). Accordingly, we are persuaded that good causes exists to have these documents remain under seal.

Furthermore, the Board hereby enters the protective order provided by Petitioner (Paper 3, Appendix A) to govern the treatment of confidential information in these proceedings.

*Potential Expungement of Confidential Information*

Title 37 C.F.R. § 42.56 is reproduced below:

**§ 42.56 Expungement of confidential information**

After denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.

Further guidance with respect to expungement of confidential information is set forth in the Trial Practice Guide, 77 Fed. Reg. at 48761:

*6. Expungement of Confidential Information:* Confidential information that is subject to a protective order ordinarily would become public 45 days after denial of a petition to institute a trial or 45 days after final judgment in a trial. There is an expectation that information will be made public where the existence of the information is referred to in a decision to grant or deny a request to institute a review or is identified in a final written decision following a trial. A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public. § 42.56. The rule balances the needs of the parties to submit confidential information with the public interest in maintaining a complete and understandable file history for public notice purposes. The rule encourages parties to redact sensitive information, where possible, rather than seeking to seal entire documents.

Thus, should Petitioner seek to maintain the confidentiality of the material that is the subject of its Motion to Seal, Petitioner should file a motion to expunge the information from the record before 45 days from the entry of judgment in this proceeding.

CBM2016-00024  
Patent RE43,435 E

Accordingly, it is hereby:

ORDERED that the Petitioner's proposed protective order (Paper 3, Appendix A) is entered and governs the treatment of confidential information in these proceedings; and

FURTHER ORDERED that that Petitioner's Motion to Seal (Paper 3) is granted, and the Unredacted Petition (Paper 4) and Exhibits 1004 and 1005 will be kept under seal under the terms of the protective order.

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