

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CME GROUP, INC.,
Petitioner,

v.

VOLATILITY PARTNERS, LLC,
Patent Owner.

Case CBM2016-00024
Patent RE43,435 E

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*
Sealed Decision to Institute, *37 C.F.R. § 42.14*

On April 19, 2016, Volatility Partners, LLC (“Patent Owner”) filed a motion to seal portions of its Preliminary Response (Paper 10, “Unredacted Preliminary Response”) along with Exhibits 2002, 2003, 2004, and 2005. Paper 12, 1. Patent Owner 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, Patent Owner agreed with Petitioner’s previous submission of a copy of the Board’s default protective order as a proposed protective order (Paper 3, Appendix A).

On April 19, 2016, the Board entered an Order granting Petitioner’s previous motion to seal Petitioner’s Unredacted Petition (Paper 4) and Exhibits 1004 and 1005. *See* Paper 11. This Order also entered Petitioner’s proposed protective order (Paper 3, Appendix A (“CBM2016-00024 Protective Order”)) to govern the treatment of confidential information in this proceeding.

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. 48,756, 48,760 (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 Preliminary Response along with Exhibits 2002, 2003, 2004, and 2005 which Patent Owner seeks to seal. As identified by Petitioner, this information pertains primarily to agreements between Petitioner and Patent Owner. Accordingly, we are persuaded that good cause exists to have these documents remain under seal at this time.

Additionally, we note that Patent Owner filed a public version of its Preliminary Response (Paper 12, Attachment A) and a public version of Ex. 2002 (Paper 12, Attachment B). Both of these papers will be separately entered into the record.

Concurrent with this Order, we issued a Decision denying institution an *inter partes* review in this proceeding. The Decision has been designated “For Board and Parties Only,” because it cites to papers and exhibits that are subject to seal under the above referenced Protective Order. The parties are ordered to jointly file a proposed redacted version of the Decision within ten business days of this Order. If redactions are proposed, the party desiring the redactions shall file a Motion to Seal the Decision on Institution, providing good cause why the proposed redacted portions of the Decision should be maintained under seal.

We note that in light of the public’s interest in maintaining a complete and understandable file history, there is an expectation that confidential information relied upon in a decision will be made public. *See* Office Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760–61 (Aug. 14, 2012). The parties’ proposed redactions to the Decision should be informed by this guidance. The parties may request a conference call with the panel if further guidance is necessary.

Once a redacted Decision is entered, the parties may request expungement of any currently sealed confidential information pursuant to 37 C.F.R. § 42.56. Alternatively, either party may file a motion to preserve the record of the proceeding until after the resolution of any appeal or time for appeal. If granted, the determination of whether to make any confidential information public or expunge the confidential information will be made after the resolution of any appeal or time for appeal. The parties are advised to consider the guidance set forth herein, when making such a request.

Accordingly, it is hereby:

ORDERED that that Patent Owner's Motion to Seal (Paper 12) is granted, and the Unredacted Preliminary Response (Paper 10) and Exhibits 2002, 2003, 2004, and 2005 will be kept under seal under the terms of the CBM2016-00024 Protective Order at this time;

FURTHER ORDERED the public version of Patent Owner's Preliminary Response (Paper 12, Attachment A) and the public version of Ex. 2002 (Paper 12, Attachment B) will be separately entered into the record;

FURTHER ORDERED that parties shall jointly file a proposed redacted version of the concurrently entered Decision on Institution within ten business days of this Order; and

FURTHER ORDERED that if any redactions are proposed, a Motion to Seal should accompany the proposed redacted version as set forth above.

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