

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.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM2016-00054
U.S. Patent No. 7,693,768

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION

Granting Motions to Seal and Motions to Preserve Record Pending Appeal
37 C.F.R. §§ 42.14, 42.54, 42.56

INTRODUCTION

Motions to Seal

Pursuant to 37 C.F.R. § 42.14, Patent Owner and Petitioner filed motions to seal certain confidential versions of exhibits as indicated in the table below. Papers 23, 56, 63¹.

Paper No.	Paper and Exhibits Requested to be Sealed
23	Paper 20, 2143, 2144, 2154, 2169, 2172, 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
56	2359
63	1063 and 1064

The motions are not opposed. *Id.* at 1.

There is a strong public policy for making all information filed in a covered business method patent review open to the public. Under 35 U.S.C. § 326(a)(1), the default rule is that all papers filed in a covered business method patent review are open and available for access by the public; a party, however, may file a concurrent motion to seal (37 C.F.R. § 42.14). The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54. 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).

¹ Petitioner filed a motion to seal Exhibits 1063 and 1064 as Paper 39. On November 7, 2017, via email, the Board informed the parties that the motion to seal would be denied and authorized the filing of revised joint motion to seal. *See* Ex. 3002. The parties filed the revised joint motion as Paper 63.

The parties assert that there is good cause to seal the exhibits because they contain third-party sensitive business information and confidential admissions/statements that would not otherwise be published or made available to the public. Paper 23, 6–7; Paper 56, 3–4; Paper 63, 1–2. We agree. The information the parties seek to seal was not relied on in the Final Written Decision. As such protecting the confidential information from public disclosure only minimally impacts the public’s interest in maintaining a complete file history. Further, the third-parties object to the release of their confidential information into the public domain. *See e.g.*, Paper 23, 3.

A motion to seal is 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 covered business method patent review. 37 C.F.R. § 42.54. Patent Owner indicates that the parties have conferred and agree to entry of the default protective order located at Office Trial Practice Guide, 77 Fed. Reg. 48756, 48771 (Aug. 14, 2012) (Appendix B). Paper 23, 8.

Based on Patent Owner’s unopposed representations and the reasonably limited scope of the protection sought, we determine that good cause exists to grant the motions to seal. 37 C.F.R. § 42.54.

Motion to Preserve Record Pending Appeal

Patent Owner filed an unopposed motion requesting that the records in these proceedings be preserved pending outcome of appeal. Paper 62. A notice of appeal has not yet been filed in CBM2016-00054. Petitioners do not oppose the request. Paper 62, 1. Sealed information ordinarily becomes

publicly available after final judgment. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48761 (Aug. 14, 2012). A party may file a motion to expunge confidential information from the record, however, if wishing to preserve its confidentiality. 37 C.F.R. § 42.56.

Here, Patent Owner asks that the records be preserved as is, i.e., without removal or disclosure to the public of the information filed under seal, pending appeal. Paper 62, 1. Under the present circumstances, it is reasonable to maintain the records undisturbed pending outcome of any appeal that is taken. Patent Owner requests that the information filed under seal in these proceedings be expunged from the record within ten days of the disposition of all appeals. *Id.* at 2–4. Patent Owner’s request is denied as premature. For each of these proceedings, at the conclusion of appeal, or if no appeal is taken within ten business days of the expiration of the period to file a notice of appeal, Patent Owner may contact the Board for authorization to file a motion to expunge confidential information. If Patent Owner does not contact the Board, then the information filed under seal may be made public in due course. *See* 77 Fed. Reg. at 48761.

It is:

ORDERED that Patent Owner’s motions to seal (Paper 23, 56) and the join motion to seal (Paper 63) are *granted*;

FURTHER ORDERED that, for each of these proceedings, within ten business days of the conclusion of appeal, or if no appeal is taken within ten business days of the expiration of the period to file a notice of appeal, Patent Owner may contact the Board for authorization to file a motion to expunge confidential information; and

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FURTHER ORDERED that the record in each proceeding shall remain undisturbed as discussed herein until such time that a motion to expunge confidential information is filed or, if the Patent Owner fails to contact the Board as required herein, the information filed under seal shall be made public in due course.

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