

Paper No. _____
Filed: March 9, 2020

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 EXPUNGE

I. Statement of Relief Requested

Pursuant to this Board's authorization on February 25, 2020, Trading Technologies International, Inc. ("TT" or "Patent Owner"), respectfully requests that all confidential information be expunged from the record pursuant to Rule 42.56 and not be made public. Patent Owner has conferred with Petitioners on this request and Petitioners do 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 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 publicly 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 publicly available. (*Id.*). On November 7, 2017, the Board denied Petitioners’ motion to seal, but authorized the parties to jointly file a revised motion to seal along with redacted exhibits. On November 16, 2017, the parties filed a Joint Motion to Seal (Paper 63) requesting that the Board maintain as confidential and under seal portions of Exhibits 1063 and 1064.

Finally, Patent Owner filed a 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).

On November 21, 2017, the Board granted the motions to seal (Paper 64, at 2-3), finding that “good cause exists.” It also found, however, that Patent Owner’s request “that the information filed under seal in these proceedings be expunged from the record within ten days of the disposition of all appeals” was “premature.” (Paper 64, at 4). The Board instructed Patent Owner to request authorization to file

a renewed motion to expunge at the conclusion of appeal. (*Id.*). Because the appeals in this case have now been concluded, with the Supreme Court denying Patent Owner's petition for a writ of certiorari, this motion to expunge is now ripe for decision. Because the Board already found good cause to seal these materials, the motion to expunge should be granted.

Additionally, Exhibits 2403-2404 and 2406 were confidentially filed on the docket and should be expunged for the same reasons as above. Namely, these exhibits consist of deposition transcripts of TradeStation's employee, John Bartleman, and an exhibit used in such depositions. These confidential exhibits contain sensitive business information that would not otherwise be published or made available to the public. Accordingly, these materials should also be expunged from the record.

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 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," (*E.g.*, Paper 56, at 1), all the information filed under seal in this matter should be expunged from the record. 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), and later the parties' joint motion to seal (Paper 63), include the deposition transcripts of Christopher H. Thomas, which include confidential licensing information and information regarding compensation. (Paper 39, at 1; Paper 63, at 1-2). 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). None of the sealed information was relied on in the Final Written Decision (Paper 64, at 3).

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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