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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED

TRADING TECHNOLOGIES INTERNATIONAL,)
INC.,)

MAY 30 2008

Plaintiff,)

v.)

No. 04 C 5312

eSPEED, INC., eSPEED INTERNATIONAL,)
LTD., ECCO LLC, and ECCOWARE, LTD.,)

Chicago, Illinois
October 4, 2007

Defendants.)

10:30 o'clock a.m.

VOLUME 17-A
TRIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. MORAN, and a JURY

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CLERK, U.S. DISTRICT COURT

17-17

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MR. BERGHOFF, CLOSING ARGUMENT

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MR. LOMBARDI, CLOSING ARGUMENT

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14:39:34 1 basically what their testimony was. They had the TT
14:39:40 2 patent and the TT claims in front of them, and they
14:39:44 3 said, Oh, I find this part in the prior art. Oh, I find
14:39:52 4 this part over here.

14:39:52 5 That is hindsight. That is not what Judge
14:39:57 6 Moran is going to tell you you need to do when you look
14:39:59 7 at obviousness.

14:40:00 8 Then the other thing that they were fond of
14:40:03 9 doing in their testimony is that they took the patent,
14:40:06 10 TT's own patent, and used it as a road map to argue
14:40:11 11 that, Well, once I know what the invention is, I would
14:40:16 12 know how to build it. Well, that is right, that is
14:40:16 13 right.

14:40:20 14 TT, once Harris Brumfield came up with the
14:40:24 15 idea for the combination, was able to build it for him,
14:40:28 16 although it took many months to work out the software
14:40:31 17 kinks. But that is legally improper to say, Once I know
14:40:39 18 about the invention, I can build it. That is the wrong
14:40:41 19 approach.

14:40:42 20 eSpeed's expert also just want to ignore
14:40:46 21 the many disadvantages with Mr. Brumfield's proposal:
14:40:56 22 Might miss the market, slower than the conventional grid
14:41:00 23 screen, less accurate for orders at the market, you are
14:41:03 24 using up a lot of screen real estate.

14:41:06 25 They want to ignore those disadvantages

14:41:12 1 because they undercut the obviousness argument we are
14:41:13 2 trying to make here and they want to minimize the
14:41:19 3 benefits.

14:41:19 4 These are all benefits that they enjoy in
14:41:19 5 their product that they copied from MD Trader: The
14:41:22 6 user has a better view of the market place, what it is
14:41:26 7 doing.

14:41:26 8 The user, trader, has increased confidence
14:41:28 9 that he or she is going to get the right price, and
14:41:32 10 overall, it is a faster trading tool, a more profitable
14:41:37 11 trading tool.

14:41:38 12 They want to ignore that real world
14:41:41 13 evidence, and instead, they want you to focus on four
14:41:44 14 things that have a static price axis -- and they do, we
14:41:51 15 never disputed that. But what they don't have, these
14:41:57 16 four things, is single-action order entry; they don't
14:41:57 17 have working orders in alignment; they don't have
14:42:02 18 single-action cancellation; and two of them, Midas
14:42:06 19 Kapiti and Trade Pad, aren't even prior art.

14:42:19 20 They also want to ignore what happened in
14:42:19 21 the Patent Office. Mr. Godici had to agree. The Patent
14:42:24 22 Office considered the combination of static and
14:42:25 23 single-action. Not only considered it, but found that
14:42:28 24 this was the closest prior art.

14:42:30 25 The first patent was one that showed static

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