

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TD AMERITRADE HOLDING CORPORATION, TD AMERITRADE, INC., and
TD AMERITRADE ONLINE HOLDINGS CORP.,
Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.
Patent Owner

Case CBM2014-00131
Patent 7,533,056

**PETITIONERS' OBJECTIONS TO PATENT OWNER'S
EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Petitioners TD Ameritrade Holding Corp., TD Ameritrade, Inc., and TD Ameritrade Online Holdings Corp. ("Petitioners") object to the admissibility of the following evidence Trading Technologies International, Inc. ("Patent Owner") submitted with its Patent Owner's Response. 37 C.F.R. § 42.64. Petitioners ask the Patent Trial and Appeal Board to deny the admission and consideration of the following documents on the following bases:

Trading Tech Exhibit 2201 - Corrected Expert Report of C. Thomas

Petitioners object to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402, or as confusing or a waste of time under FRE 403, because cited portions are not relevant to any issue remaining in this proceeding, such as patentability of the subject matter, written description of the invention, broadest reasonable interpretation of the claims, indefiniteness of the claims, anticipation of the claims by the prior art, or obviousness of the claims in view of the prior art.

To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioners object to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805 or 807.

Petitioners object to this document as not properly authenticated under FRE 901 because Patent Owner has not presented any evidence that the document is authentic nor that the document is self-authenticating under FRE 902.

Petitioners object to the document to the extent it offers opinion under FRE 701 - 703. The declarant is not qualified to offer expert testimony in this proceeding, the testimony is not based on sufficient facts or data, and there is no indication that declarant has the expertise necessary to apply the law to the facts as would be necessary to opine under FRE 702. Further, there is no indication that the declarant based those opinions on facts or data upon which an expert in the relevant field would reasonably rely, as any facts or data that the testimony is based on have not been submitted as exhibits. FRE 703. Further, testimony at these paragraphs falls outside acceptable lay opinion testimony under FRE 701. A party may not evade the expert witness requirements of FRE 702 by simply designating the testimony as lay testimony under FRE 701.

Petitioners object to the document for lack of foundation. Patent Owner has not shown that the declarant has personal knowledge of the subject matter of the testimony as required by FRE 602.

Petitioners object to the document as citing exhibits not served with the document as required by 37 C.F.R. § 42.51(b)(1)(i)

Trading Tech Exhibit 2202 - Patent Eligible Subject Matter presentation

Petitioners object to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402, or as confusing or a waste of time under FRE 403, because cited portions are not relevant to any issue remaining in this proceeding, such as patentability of the subject matter, written description of the invention, broadest reasonable interpretation of the claims, indefiniteness of the claims, anticipation of the claims by the prior art, or obviousness of the claims in view of the prior art.

To the extent Patent Owner relies on the contents of this document for the truth of the matter asserted, Petitioners object to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805 or 807.

Petitioners object to this document as not properly authenticated under FRE 901 because Patent Owner has not presented any evidence that the document is authentic nor that the document is self-authenticating under FRE 902.

Petitioners object to the document for lack of foundation. Patent Owner has not shown that the declarant has personal knowledge of the subject matter of the testimony as required by FRE 602.

To the extent Patent Owner relies on the contents of this document to prove the content of the original document, Petitioners object to this document as not

being an original document under FRE 1002, an authentic duplicate under FRE 1003, nor a document that falls under any exceptions to the original-document requirement, including those of FRE 1004.

Petitioners object to this document under FRE 1006 as an improper summary because Patent Owner has not shown that the contents of the original cannot be conveniently examined in court nor made the original or duplicates available for examination or copying.

Petitioners object to the document as an improper demonstrative. Patent Owner has not established a proper foundation for the evidence set forth in the document.

Trading Tech Exhibit 2206 - User Companion for thinkorswim

Petitioners object to this document as irrelevant under FRE 401 and thus inadmissible under FRE 402, or as confusing or a waste of time under FRE 403, because cited portions are not relevant to any issue remaining in this proceeding, such as patentability of the subject matter, written description of the invention, broadest reasonable interpretation of the claims, indefiniteness of the claims, anticipation of the claims by the prior art, or obviousness of the claims in view of the prior art.

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