

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TD AMERITRADE HOLDING CORP., TD AMERITRADE, INC., AND
TD AMERITRADE ONLINE HOLDINGS CORP.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM2014-00131 (Patent 7,533,056)
CBM2014-00133 (Patent 7,676,411)
CBM2014-00135 (Patent 6,772,132)
CBM2014-00136 (Patent 6,766,304)
CBM2014-00137 (Patent 7,685,055)

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION
Petitioner's Motion to Expunge Exhibit
37 C.F.R. § 42.71

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INTRODUCTION

On August 25, 2014, Petitioner filed a motion to expunge, in each proceeding, an exhibit styled “Memorandum from James M. Hilmert to eSpeed file regarding direct examination of TSE’s 30(b)(6) witness” (Exhibit 1006;¹ “the Hilmert memo”). Paper 13 (“Mot.”). Patent Owner filed an opposition. Paper 14 (“Opp.”). The motion is *granted*.

ANALYSIS

Petitioner argues that the Hilmert memo should be expunged because the memo is (i) a confidential document of a third party, (ii) not needed to decide whether to institute a covered business method patent review of the involved patents, and (iii) cited only once in the Petition. Mot. 1. Although Patent Owner “does not flatly oppose expunging the memo” (Opp. 1), Patent Owner argues that expunging the Hilmert memo would prejudice it because Petitioner might attempt to (i) limit the scope of discovery in future requests based on the removal of the memo, and/or (ii) limit Patent Owner’s ability to cross-examine Petitioner’s declarant on materials considered in forming his opinion based on removal of the memo from the record. Opp. 3.

Pursuant to 35 U.S.C. § 326(b), rules for *inter partes* proceedings were promulgated to take into account the “regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings.” The promulgated rules provide that they are to “be construed to secure the just, speedy, and inexpensive resolution of every proceeding.” 37 C.F.R. § 42.1(b). By way

¹ Citations are to CBM2014-00131.

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of rule 37 C.F.R. §42.20, Petitioner moves to expunge the Hilmert memo from the record. Petitioner bears the burden of proof to establish that it is entitled to the requested relief. 37 C.F.R. §42.20(c).

Petitioner meets its burden of proof to establish that the Hilmert memo should be expunged from the record. In particular, Petitioner demonstrates sufficiently that the Hilmert memo is minimally relied on in its Petitions. The Hilmert memo is cited twice in the Petition. Paper 4, 17-18. Petitioner also explains that there is another exhibit that it relies on in support of its Petitions that is even better than the Hilmert memo for evidencing the contents of a deposition. Mot. 1. In other words, Petitioner argues that the Hilmert memo is not necessary to these proceedings. We agree. Maintaining the memo in these proceedings may add unnecessary complexities and complications that will hinder the ability to resolve the proceedings in a just, speedy and inexpensive resolution. While Patent Owner argues against expunging the Hilmert memo due to possible prejudice to it, the reasons provided are too speculative to outweigh expunging a document that appears unnecessary to any of these proceedings. Lastly, the memo will be expunged prior to the due date for a Patent Owner preliminary response, and thus, Patent Owner will have one less piece of evidence to which it needs to consider.

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Accordingly, it is:

ORDERED that Petitioner's motion to expunge the Hilmert memo is *granted*; and

FURTHER ORDERED that the Hilmert memo be expunged from the record in each proceeding.

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