

And by the way, what do the products that are accused of infringement here do? They both use single clicks. There is no mystery here. MD Trader uses single clicks to enter orders. Ecco uses single clicks to enter orders. eSpeed's software uses single clicks to enter orders. There is no confusion there at all.

And as Judge Moran told you, they have to convince you by clear and convincing evidence, and they will not be able to do that we believe, given the evidence in the case that will be presented to you, that we are not entitled to that March 2nd date that is printed on the face of the patent, and the only difference is single click versus single action. It is their version. The evidence will convince you the other way, we are right, we are entitled to the March 2nd date.

The Patent Office subjected these patents to a rigorous examination, the evidence will show, and all of these issues that are being raised today by eSpeed were considered by the Patent Office.

Novelty, it is also called anticipation, the Patent Office considered that, obviousness, the Patent Office considered that, different from the prior art, definiteness, are the claims right, and the Patent

Office decided in a very thorough fashion that all of the requirements were met in this patent.

This patent was examined by an experienced examiner. There were over 50 pieces of information considered by the examiner, prior types of software, publications, patents, and the evidence will show that it got a second quality review, a second set of eyes to look at these patents, and gave them the stamp of approval. And yet eSpeed will try and convince you through this case, and we don't believe they will be successful, that these patents are invalid, and they have to prove it by clear and convincing evidence.

Let me just highlight as an example one issue that they are raising. It is indefiniteness.

One of the issues that the Patent Office examiner and the quality review would always look at in a patent is whether the claims are definite or not. But in this case the evidence will show that we don't need to speculate about whether the Patent Office examiner considered this issue or not. This very issue on indefiniteness, alleged indefiniteness, was in front of the examiner, and he looked at those and he said, No, the claims are -- the claims are fine, and they issued the way they were. Now eSpeed wants to go back and re-argue that issue that was already considered by the

office.

Given that history, we don't believe it is at all possible that they will be able to meet their burden of proof -- next slide please -- of clear and convincing evidence, given that the examiner already considered this issue of indefiniteness, the same identical issue the evidence will show. We don't believe there is any way that they should be able to convince you -- that they will be able to convince you that the TT patent claims are indefinite.

Now, they also say that Mr. Brumfield's invention was obvious, and that argument is complete hindsight. Once somebody shows you an invention, sometimes you can look at it and say, Oh, yeah, yeah, that is -- and this is my favorite example, after the fact you see one of these (indicating), and somebody will say, Oh, that's just glue on paper, anybody could have thought of that, but they didn't, and it is only hindsight.

What is the antidote to that? It is the real world evidence. What really happened in the real world relative to Mr. Brumfield's invention of MD Trader. And we believe the evidence will show that actions speak louder than the words that you will hear from eSpeed's attorneys and from the interested

witnesses who are on eSpeed's side of the case.

What are these real world indicators?

Well, did others copy the invention, the patented features of the invention, when it came out? That would seem to indicate that there is some value to it, that it wasn't obvious. And the evidence here will show that lots of people copied the invention when it came out, including the defendants here, eSpeed and Ecco.

Initial skepticism? An invention isn't obvious if when people first see it they say, Oh, no, that is not such a good idea, no, that is not so good. But then, once they get the hang of it, they praise it and they say, Hey, this is pretty good stuff.

The evidence will show that is exactly what happened with MD Trader. First because of those problems we walked through, the downsides to MD Trader, traders went, Oh, I am not so sure, but once they got the hang of it and saw how it worked in the real world, then skepticism turned to praise. The evidence will show then they had commercial success due to the invention.

We saw the chart before of TT's commercial success. The evidence will also show unexpected benefits to the invention, benefits that weren't obvious, that weren't clear, because of the problems

with the MD Trader concept.

And then finally -- not finally, but finally for my slides in my presentation, the real world will show that many companies have taken licenses under these very same patents and have paid royalties, and that is evidence that those companies respected TT's patents, patent rights.

We talked about the downsides of the invention. These alone make it clear the invention was not obvious because the proposal by Mr. Brumfield had problems, it is only when you actually used it that you could see that, Wow, wait a minute, even with these problems, there may be something here, and the something here in part was the fact that you could feel the market move, you fixed those prices, you didn't let the prices flip around, and that let you see that market movement, and that was an advantage, and an unexpected one, because the evidence will show that traders would have considered that to be a disadvantage, not an advantage, until they actually got their hands on it and worked with it.

In fact, we believe the evidence will show that Mr. Brumfield really went just the opposite direction from the conventional thinking, he went completely against the grain. In fact, we believe the

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