~~IN THE UNITED STATES DISTRICT COURT~~
~~FOR THE NORTHERN DISTRICT OF ILLINOIS~~
~~EASTERN DIVISION~~

DECLARATION OF JOHN PHILLIP MELLOR, PH.D.
IN SUPPORT OF CQG'S
~~**MOTION FOR SUMMARY JUDGMENT THAT THE**~~
~~**'304 AND '132 PATENTS ARE INVALID UNDER 35 U.S.C. § 112, ¶ 1**~~
~~**FOR LACK OF WRITTEN DESCRIPTION**~~**CBMR PETITION**

I. Introduction

~~1.~~ I, John Phillip Mellor, Ph.D., ~~submit this Declaration in Support of CQG's Motion for Summary Judgment that the '304 and '132 patents Are Invalid Under 35 U.S.C. § 112, ¶ 1 for Lack of Written Description.~~

~~II. Background~~

~~2.~~1. ~~I~~ am a resident of Terre Haute, Indiana and I have more than 18 years of professional experience in computer science and software engineering. I hold a doctorate in electrical engineering and computer science and presently work as a professor at Rose-Hulman Institute of Technology ("Rose-Hulman") in Computer Science and Software Engineering. In addition to my academic research in computer science and programming, I have served as a computer science and programming consultant and engineer to private industry, and an expert witness and consultant in several patent cases. I also invented and patented a new system for transforming graphical images~~. My experience is more fully detailed below and in my Curriculum Vitae attached as Exhibit 1.~~

~~III.~~II. Scope of Assignment

~~3.~~2. CQG Attorneys explained to me that Trading Technologies International, Inc. ("TT") brought a lawsuit against CQG for infringement of U.S. Patent Nos. 6,766,304 ("the '304 patent") and 6,772,132 ("the '132 patent"). I understand that the lawsuit is pending in the United

States District Court for the Northern District of Illinois, Eastern Division and was assigned case number 05-cv-4811.

~~4.~~3. CQG Attorneys explained that TT is interpreting the claim terms "common static price axis" and "static display of prices" (collectively, the "Static Limitation") of the independent claims of the '304 and '132 patents as covering both a price column where all prices are static and a price column where only some displayed prices levels in the column are static, and other displayed price levels are dynamic. I will refer to TT's interpretation and/or application of the patents in this manner as "TT's Static Interpretation."

~~5.~~4. CQG Attorneys also explained to me that the patent law requires the inventor to have demonstrated at the time of the filing date of the patent application that he was in actual possession of the invention as claimed or asserted against others. CQG Attorneys referred to this requirement as the "written description requirement," and explained that this requirement prevents the inventor from claiming or asserting more than they actually invented as determined by the patent disclosure and figures. CQG Attorneys asked me to determine whether the '304 and '132 patents disclose written description support for TT's Static Interpretation.

~~IV.~~III. Documents Reviewed in Forming my Opinions

~~6.~~5. I formed my opinions based upon my knowledge, background, education, experience and review of the following documents and things:

(a) U.S. Patent No. 6,766,304 (Ex. ~~2~~1).

(b) U.S. Patent No. 6,772,132 (Ex. ~~3~~2).

~~(c) The Prosecution History for the '304 patent (excerpts included in Ex. 4).~~

~~(d) The Prosecution History associated with the Reexamination of the '304 patent (excerpts included in Ex. 5).~~

~~(e) The Prosecution History for the '132 patent (excerpts included in Ex. 6).~~

~~(f) The Prosecution History associated with the Reexamination of the '132 patent (excerpts included in Ex. 7).~~

~~(g~~(c) Provisional Patent Application No. 60/186,322 (Ex. ~~8~~3).

(~~h~~d) A Memorandum and Opinion dated October 31, 2006 from Judge Moran for Case No. 04-cv-5312 bearing Document #: 425 (Ex. ~~9~~4). CQG Attorneys explained to me that this Memorandum and Opinion represents the "Claim Construction Order" from the related *Trading Technologies v. eSpeed* case regarding the '304 and '132 patents. I will call this case the *eSpeed* Case.

(~~i~~e) A Memorandum and Opinion dated February 21, 2007 from Judge Moran for Case No. 05-cv-4811 bearing Document #: 120 (Ex. ~~10~~5). CQG Attorneys explained to me that this Memorandum and Opinion represents the "Supplemental Claim Construction Order" from the *eSpeed* Case.

(~~j~~f) A Westlaw document dated June 20, 2007 bearing citation 507 F.Supp.2d 854 (Ex. ~~11~~6). CQG Attorneys explained to me that this document represents Judge Moran's decision on TT's motion for summary judgment of infringement. I will call this document the "*eSpeed* District Court Decision".

(~~k~~g) A Westlaw document dated February 25, 2010 bearing citation 595 F.3d 1340 (Ex. ~~12~~7). CQG Attorneys explained to me that this document represents the appellate decision issued by the United States Court of Appeals for the Federal Circuit from the *eSpeed* Case regarding claim construction, direct infringement, infringement under the doctrine of

equivalents, definiteness, priority date, and prior use. I will call this document the *eSpeed* Federal Circuit Decision.

(~~l~~h) The Random House College Dictionary, Revised Edition having a copyright date of 1980. Excerpts from the Random House College Dictionary are attached as Ex. ~~13~~8.

(~~m~~i) Webster's Collegiate Thesaurus, having a copyright date of 1988. Excerpts from Webster's Collegiate Thesaurus are attached as Ex. ~~14~~9.

(~~n~~j) Electric Circuit Analysis, Third Edition (1999) by David E. Johnson, Johnny R. Johnson, John L. Hilburn, Peter D. Scott. Excerpts from this text are attached as Ex. ~~15~~10.

(~~o~~k) Microelectronic Circuits, Fourth Edition (1998) by Adel S. Sedra, Kenneth C. Smith. Excerpts from this text are attached as Ex. ~~16~~11.

(~~p~~l) Excerpts from TT's Opening Statement in the *eSpeed* Case (Ex. ~~17~~12).

(~~q~~m) Excerpts from Brumfield testimony in the *eSpeed* Case (Ex. ~~18~~13).

~~V.~~IV. Understanding of the Patent Law

~~7.~~6. While I have some familiarity with general patent law principles from my professional experiences, I do not consider myself an expert on patent law. ~~So~~ CQG Attorneys provided me with additional guidance on legal principles relating to those laws and in particular a primer on the component parts of a patent, claim, construction, and the written description requirement.

~~8.~~7. I understand that a patent is composed of four main parts: (1) an abstract of disclosure; (2) one or more drawings or figures illustrating the invention, (3) a disclosure of the invention (sometimes called the specification), and (4) the claims. The abstract is a concise statement of the technical disclosure of the invention and generally identifies that which is new or improved to the industry. Drawings or figures of the invention are required when necessary to understand

the invention. The disclosure is a textual description of the invention and the figures. The words of the claims, as interpreted by the court, determine the scope of the invention. The words or phrases in the claims are sometimes referred to as "elements" or "limitations."

~~9.~~8. I understand that when a patent application is filed with the U.S. Patent and Trademark Office, it is examined by an Examiner. The Examiner is an employee of the U.S. Patent and Trademark Office who reviews the application to determine if it meets all of the requirements for patentability as determined by the patent law. I understand that the Examiner and patent applicant often exchange written correspondence regarding whether the application satisfies the requirements for patentability. If a patent application meets all of the requirements for patentability, then it is allowed and ultimately issues as a patent. The collection of written correspondence between the patent applicant and Examiner is sometimes called the prosecution history or file wrapper.

~~10.~~9. I understand that claim words are generally given their plain and ordinary meaning as understood by a person of ordinary skill in the relevant art. I also understand that this ordinary person should read the claims in view of the rest of the patent, including the disclosure and figures. I understand that statements made by the patent applicant during prosecution as recorded in the prosecution history may also be used to interpret the meaning of claim words. Accordingly, I understand that the claims are generally construed based on their plain and ordinary meaning as understood by a person of ordinary skill in the art and in view of the rest of the patent and the prosecution history.

~~11.~~10. I also understand that a court generally interprets the claims when the parties dispute the meaning of the claim words (and therefore dispute the scope of the invention). Once a court

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