

## Emsley, Rachel

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**From:** Emsley, Rachel  
**Sent:** Tuesday, May 31, 2016 8:44 PM  
**To:** Rob Sokohl; Arner, Erika  
**Cc:** Lori Gordon; Richard M. Bembem; PTAB Account; gannon@mbhb.com; sigmond@mbhb.com; tt-patent-cbm@tradingtechnologies.com; Trading-Tech-CBM; Adam Kessel; John Phillips  
**Subject:** RE: Kawashima Deposition

Rob -

We are available for a meet/confer tomorrow from 10-12 Eastern. Please circulate a dial in number. A Board call on Thursday afternoon also works, but our preference would be to seek a call for Friday morning.

We are available on June 17 for Mr. Kawashima's deposition. The scope will be governed by the Board's rules on cross-examination (37 CFR 42.53(d)(5)(ii)), and should include TSE's bias. Because of overlapping due dates in these and other proceedings, the due date should be July 1st. We cannot extend Petitioners' deadline further than September 2, 2016, unless the Board will move the Hearing Deadline and allow appropriate time for Due Dates 4-7.

In addition, we would like to discuss the following discovery issues with all TS counsel of record in each of the CBM proceedings on the phone. First, it's our understanding that Petitioners have been producing documents recently pursuant to Judge Kendall's order and in advance of the John Bartleman deposition. Will petitioners agree to reproduce the documents it has been producing in the district court in the PTAB proceedings? If we cannot reach agreement, TT will raise this issue with the Board. The limited number of documents produced so far has proved to be highly relevant. For example, we have been informed that TS0111352 (which is not market confidential) states at the time of the Matrix windows first release (TS's first product embodying the claimed invention) that "the Matrix window provides users with an exciting new view of the market including an innovative graphical display of market depth and trade activity for a given instrument along with lightning fast order execution with its one-click trading capability. This combination allows for unprecedented market feel and efficiency for the frequent trader." We also understand that there are even more relevant documents in the limited documents produced so far that have been marked as confidential. TS should not be allowed to avoid production of this material based on the protective order. Second, we understand that TS's counsel has objected to the production of certain documents in the district court litigation so that the production that has been occurring has been very limited. For example, we understand that TS has refused to produce emails that reflect customer interactions. TT believes that these documents contain highly relevant information relating to non-obviousness, and asks that all of these types of documents be produced to TT in the PTAB proceedings. We plan to raise this issue with the Board as well if TS refuses to do so.

Thanks,  
Rachel

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**From:** Rob Sokohl [mailto:RSOKOHL@skgf.com]  
**Sent:** Tuesday, May 31, 2016 3:32 PM  
**To:** Arner, Erika <erika.arner@finnegan.com>; Emsley, Rachel <Rachel.Emsley@finnegan.com>  
**Cc:** Lori Gordon <LGORDON@skgf.com>; Richard M. Bembem <RBEMBEN@skgf.com>; PTAB Account <PTAB@skgf.com>; gannon@mbhb.com; sigmond@mbhb.com; tt-patent-cbm@tradingtechnologies.com; Trading-Tech-CBM <Trading-Tech-CBM@finnegan.com>; Adam Kessel <Kessel@fr.com>; John Phillips <phillips@fr.com>  
**Subject:** RE: Kawashima Deposition

Erika, thank you for your email. Please send our well wishes to Steve for a full discovery.

However, we need to meet and confer on a number of issues, including the points raised in my email last week, as soon as possible. We also need your availability for a conference call with the Board tomorrow (anytime) or Thursday afternoon should our meet and confer not be fruitful.

Mr. Kawashima is available for deposition on June 17<sup>th</sup>. The deposition will be held in either California or Hawaii. Due to the inconvenience to Mr. Kawashima, we are permitting him to decide the exact location to minimize any further impact to him.

We recognize that his will require a further extension to the due date for TT's reply. We therefore propose to extend TT's POR due date by one week and make a commensurate change to our due date.

We look forward to hearing from you later today about a meet and confer. Please also confirm that June 17<sup>th</sup> works since Mr. Kawashima needs to make his travel plans immediately.

Rob

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**From:** Arner, Erika [<mailto:erika.arner@finnegan.com>]  
**Sent:** Tuesday, May 31, 2016 9:51 AM  
**To:** Rob Sokohl; Emsley, Rachel  
**Cc:** Lori Gordon; Richard M. Bembem; PTAB Account; [gannon@mbhb.com](mailto:gannon@mbhb.com); [sigmond@mbhb.com](mailto:sigmond@mbhb.com); [tt-patent-cbm@tradingtechnologies.com](mailto:tt-patent-cbm@tradingtechnologies.com); Trading-Tech-CBM; Adam Kessel; John Phillips  
**Subject:** RE: Kawashima Deposition

Rob,  
We will get back to you as soon as possible with our availability for a meet and confer. TT's counsel, Mr. Borsand, has been dealing with some medical issues and is hopefully able to get an MRI today. Thank you for your patience.  
Regards,  
Erika

**Erika H. Arner**  
Attorney at Law  
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[Finnegan AIA Blog](#) | [www.finnegan.com](http://www.finnegan.com) | [PTAB Guidebook](#)



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**From:** Rob Sokohl [<mailto:RSOKOHL@skgf.com>]  
**Sent:** Friday, May 27, 2016 8:57 PM  
**To:** Emsley, Rachel  
**Cc:** Lori Gordon; Richard M. Bembem; PTAB Account; [gannon@mbhb.com](mailto:gannon@mbhb.com); [sigmond@mbhb.com](mailto:sigmond@mbhb.com); [tt-patent-cbm@tradingtechnologies.com](mailto:tt-patent-cbm@tradingtechnologies.com); Trading-Tech-CBM; Adam Kessel; John Phillips  
**Subject:** Re: Kawashima Deposition

Rachel, are you available for a meet and confer on Tuesday to discuss our proposal? We would also like to know your availability for a call with the Board on Wednesday.

Rob

Sent from my iPhone

On May 27, 2016, at 5:36 PM, Emsley, Rachel <[Rachel.Emsley@finnegan.com](mailto:Rachel.Emsley@finnegan.com)> wrote:

Rob,

We would prefer that Mr. Kawashima be made available in the continental United States. If you could please provide us with Mr. Kawashima's counsel's contact information, we would like to communicate directly to discuss the location of the deposition and also the scope of his deposition to avoid any misunderstandings.

We cannot agree to a 4-hour deposition. While we respect that Mr. Kawashima is a third-party witness, his testimony is central to a key issue and will be subject to translation and check-translation. The rules allow at least for a seven hour deposition for Mr. Kawashima's testimony, and we cannot agree to less given the challenges this deposition will pose.

Thanks,  
Rachel

**Rachel L. Emsley**  
Attorney at Law

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**From:** Rob Sokohl [<mailto:RSOKOHL@skgf.com>]

**Sent:** Thursday, May 26, 2016 1:44 PM

**To:** Emsley, Rachel; Lori Gordon; Richard M. Bembem; PTAB Account

**Cc:** [gannon@mbhb.com](mailto:gannon@mbhb.com); [sigmond@mbhb.com](mailto:sigmond@mbhb.com); [tt-patent-cbm@tradingtechnologies.com](mailto:tt-patent-cbm@tradingtechnologies.com); Trading-Tech-CBM

**Subject:** RE: Kawashima Deposition

Counsel,

We wanted to let you know that TSE is reconsidering whether to make Mr. Kawashima available for deposition. We will likely be able to confirm their decision early next week. In the meantime, we wanted to discuss the scope of the potential deposition and logistics.

Given the limited use of his deposition testimony, we propose that the deposition be limited to two issues: public availability of the TSE Operation Guide and Mr. Kawashima's alleged bias. We also propose limiting the deposition to 4 hours. Mr. Kawashima is a third party and we do not believe he should be significantly inconvenienced.

We also propose that this deposition be admissible in all pending or to be filed CBMs (whether instituted or not). There is simply no reason to take Mr. Kawashima's deposition more than once.

The location of the deposition is still uncertain, but two possible locations are Hong Kong or Guam. We

will confirm the date and location early next week once we hear back from TSE.

Please let us know if you are agreeable to the terms outlined above. Please let us know by COB tomorrow. If you are not, we intend to reach out to the Board for relief when we receive confirmation of Mr. Kawashima availability.

Rob

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**From:** Rob Sokohl  
**Sent:** Wednesday, May 04, 2016 3:08 PM  
**To:** 'Emsley, Rachel'; Lori Gordon; Richard M. Bemben; PTAB Account  
**Cc:** [gannon@mbhb.com](mailto:gannon@mbhb.com); [sigmond@mbhb.com](mailto:sigmond@mbhb.com); [tt-patent-cbm@tradingtechnologies.com](mailto:tt-patent-cbm@tradingtechnologies.com); Trading-Tech-CBM  
**Subject:** RE: Kawashima Deposition

Rachel, as we have previously indicated, Mr. Kawashima has informed us he is unwilling to voluntarily be deposed in the United States or Japan. Further, Mr. Kawashima is a third party witness and is not under our control. Nevertheless we have made another inquiry as to whether he will agree to be deposed.

Rob

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**From:** Emsley, Rachel [<mailto:Rachel.Emsley@finnegan.com>]  
**Sent:** Monday, April 25, 2016 9:54 PM  
**To:** Rob Sokohl; Lori Gordon; Richard M. Bemben; PTAB Account  
**Cc:** [gannon@mbhb.com](mailto:gannon@mbhb.com); [sigmond@mbhb.com](mailto:sigmond@mbhb.com); [tt-patent-cbm@tradingtechnologies.com](mailto:tt-patent-cbm@tradingtechnologies.com); Trading-Tech-CBM  
**Subject:** Kawashima Deposition

Counsel,

The Board's Order (Paper 39, CBM2015-00179; Paper 34, CBM2015-00181; Paper 25, CBM2015-00182) makes clear that Petitioners must produce Mr. Kawashima for cross-examination, and Patent Owner notes that its request to depose Mr. Kawashima from March 22, 2016, remains outstanding. As the dates in our original request have passed, we note that Patent Owner has availability from May 10-13 and May 18-20 for the deposition of Mr. Kawashima.

Regards,  
Rachel

**Rachel L. Emsley**  
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