

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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IBG LLC,  
INTERACTIVE BROKERS LLC, TRADESTATION GROUP, INC.,  
TRADESTATION SECURITIES, INC.,  
Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.  
Patent Owner

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Case CBM2015-00161  
Patent No. 6,766,304

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**PETITIONERS' OPPOSITION TO PATENT OWNER'S  
MOTION TO SUBMIT SUPPLEMENTAL INFORMATION  
AND BRIEFING UNDER 37 C.F.R. § 42.223(b)**

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U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**TABLE OF CONTENTS**

**I. TT could have approached the district court at any time to seek relief from the protective order, but it chose to wait. ....3**

A. TT does not explain why it delayed until June 2016 when it had much of the material since late in 2015. ....3

B. TT’s ability to get relief from the protective order never depended on Petitioners’ waiver, or the Board granting TT any discovery. ....5

C. TT should have promptly sought relief from the district court once it knew of a need to use discovery subject to the protective order.....5

**II. It is not in the interests of justice to allow TT to submit new arguments and evidence less than three weeks before Petitioners’ Reply is due. ....7**

A. TT fails to establish the relevance of this evidence under the applicable legal standards for patentability.....8

B. Petitioners would be further prejudiced if TT’s motion is granted. ....14

**III. Conclusion .....15**

The Board should deny Trading Technologies International, Inc.'s (TT) motion to submit supplemental information and briefing in this case. (Paper 90.)

TT seeks to introduce over 1,000 pages of additional evidence and 10 pages of new argument to an already enormous record. But TT has not demonstrated why the interests of justice merit a supplementation of its 77 page Patent Owner Response and thousands of pages of evidence submitted in support thereof. Rather, TT expends most of its motion attempting to shift the blame to Petitioners for its own failure to seek appropriate relief under the district court's protective order.

In the district court, the parties agreed long ago in 2011 to the terms of the protective order, and the parties produced confidential discovery in reliance thereon. The terms of that protective order preclude any party—Petitioners and TT—from using confidential information in proceedings before the Office without either the consent of the disclosing party or a further order from the district court. That restriction makes sense because this proceeding concerns different issues and is supposed to be a streamlined, cost-effective procedure with very limited discovery. Because TT has had at least some of the documents it now seeks to submit since 2015, it could have sought relief from the district court sooner but elected to wait until June 13, 2016. TT has nobody but itself to blame for its own delay.

TT also offers no reasonable explanation for its delay. Instead, TT casts blame on Petitioners for not consenting to TT's unrestricted use of their confiden-

tial information. (Paper 90 at 5.) But Petitioners have consented to limited uses of their information, while objecting to TT's demand for a wholesale abrogation of the protective order. For example, Petitioners agreed that TT could submit a subset of confidential documents to the Board so that TT could refer to them when asking for additional discovery. And for purposes of this motion, Petitioners agreed that TT could summarize and refer to Petitioners' confidential information. Petitioners have been reasonable; TT has not.

TT has also not shown that the interests of justice warrant the submission of supplemental information. Among other things, TT is attempting to shift its theory of commercial success from its own product to TS and IBG products. TT acknowledges that its Patent Owner Response does not address whether Matrix and Book-Trader windows embody the challenged claims, promising to cover this issue in supplemental briefing. But Rule 42.223(b) is not a vehicle for changing theories. Even if the Board authorizes TT to file supplemental evidence, TT should not be permitted to argue new theories of patentability midstream.

Finally, TT's request for 10 additional pages of briefing would be unduly prejudicial to Petitioners. Petitioners' Reply is due in 15 business days. The burden of responding to any brief submitted by TT accompanied by these numerous, voluminous exhibits would be a significant hardship. While the number of documents at issue has been narrowed from almost 100 to the present 10, that is still 10 docu-

ments too many two months too late.

**I. TT could have approached the district court at any time to seek relief from the protective order, but it chose to wait.**

Under Rule 42.223(b), TT bears the burden of establishing that it “reasonably could not have” obtained the information earlier and submitted it with its Patent Owner Response. TT cannot establish that it reasonably could not have gone to the district court for relief from the protective order earlier than it did.

TT has had many of the documents it now seeks to introduce in its possession since 2015. Thus, TT had reason to know that it needed relief from the protective order last year. TT attempts to excuse its delay by accusing Petitioners of obstruction. That characterization is false. TT’s ability to get relief from the protective order never depended on Petitioners’ waiving any objection. Nor did it depend on the Board granting TT any discovery. TT had the obligation to seek relief from the district court once it knew that it wanted to use Petitioners’ confidential information in this proceeding. TT offers no explanation for what it did, if anything, to approach the district court before June, when it filed its emergency motion.

**A. TT does not explain why it delayed until June 2016 when it had much of the material since late in 2015.**

TT obscures how long it has had many of these documents, claiming that it “did not receive all of the documents, testimony, or authentication of the evidence until the second week of June” and thus could not have submitted it sooner. (Paper

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