UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

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Case CBM2015-00161[1]
Patent No. 6,766,304

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**PETITIONERS' OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE UNDER 37 C.F.R. 42.64(C)**

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I.   INTRODUCTION

Patent Owner, Trading Technologies International, Inc. ("TT"), moves to exclude Exhibits 1016, 1017 and 1025. TT's objections to Exhibits 1016 and 1017 relate to the so-called TSE (or "Tokyo Stock Exchange") manual. First, TT challenges the authenticity and relevance of the TSE manual. (Exhibit 1016.) Second, TT contends that the affidavit certifying the English translation of the TSE manual (Exhibit 1017) does not comply with the rules. Finally, TT seeks to exclude cross-examination testimony (Exhibit 1025) from TT's own declarant that TT finds too prejudicial for the Board to hear. Petitioners request that the Board deny TT's motion because it fails to establish any valid basis to exclude clearly relevant evidence.

First, no legitimate challenge can be made to the authenticity of the TSE manual. There is unequivocal and reliable evidence to support the finding that Exhibit 1016 is what it purports to be: namely, a 1998 publication issued by the Tokyo Stock Exchange. In a parallel proceeding, CBM2015-00179, TT deposed an employee of the Tokyo Stock Exchange, Atshushi Kawahima, who authenticated the manual during his deposition. (Exhibit 2163.) TT had also deposed Atshushi Kawahima in a district court litigation in 2005. (CBM2015-00179, Ex. 1007.)

Second, Petitioners have presented evidence in a parallel proceeding establishing that TSE is prior art describing a GUI used in electronic trading. TSE is

thus relevant to the issue of whether the claims under review are directed to an inventive concept.

TT's attempts to exclude the English translation of TSE (Exhibit 1017) likewise lack merit. The affidavit submitted certifying the accuracy of the translation was issued by a manager with personal knowledge of the rigorous standards employed at every step of the translation of the TSE manual to ensure its accuracy. Further, the law that TT cites to argue that the affidavit is improper does not apply to the sworn affidavit at issue here.

Finally, TT's efforts to exclude the cross-examination testimony of its own declarant should be rejected. TT's expert admitted that the claimed inventions do not improve computers. (*See, e.g.*, Ex. 1025, 57:18-58:13.) That testimony is relevant to whether or not TT's patent claims are patent eligible. TT had a full and fair opportunity to try to rehabilitate its witnesses through redirect. It chose not to do so. Instead, TT uses this motion as a thinly-disguised attempt to argue the merits of whether "the claimed inventions do not improve computers." (Paper 104 at 9.) But TT has exhausted its opportunities to submit briefs arguing the merits and could have attempted to rehabilitate its declarants at their depositions. Thus, the Board should deny TT's motion.

II.   ARGUMENT

A. The TSE manual has been properly authenticated.

1.   Admissible evidence shows that Exhibit 1016 is what Petitioners purport it to be.

2.   Mr Kawashima's testimony authenticates Exhibit 1016.

In a parallel proceeding, Petitioners have produced unequivocal and unrebutted evidence showing that Exhibit 1016 is the TSE manual. CBM2015-00179, Exhibit 1007. That evidence meets the requirement for authentication under each of Fed. R. Evid. 901, 902(11), and 901(b)(4). Specifically, CBM2015-00179, Exhibit 1007 consists of a deposition transcript of Mr. Kawashima's testimony establishing that: (1) CBM2015-00179, Exhibit 1007 is "the current futures options trading system—trade manual" (CBM2015-00179 Ex. 1007, 9:19-10:9); (2) the document was prepared on or around August of 1998 by the Tokyo Stock Exchange (CBM2015-00179 Ex. 1007, 11:3); (3) Mr. Kawashima prepared Exhibit 1007 in the ordinary course of business, as a regular practice of the Tokyo Stock Exchange (CBM2015-00179 Ex. 1007, 11:4-14); and (4) the TSE manual was maintained by the Tokyo Stock Exchange in the ordinary course of business. (CBM2015-00179 Ex. 1007, 11:14-24.)

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