

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioner

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

Case CBM2015-00161¹
U.S. Patent 6,766,304 B2

**REPLY IN SUPPORT OF PATENT OWNER'S MOTION TO
EXCLUDE UNDER 37 C.F.R. 42.64(C)**

¹ Case CBM2016-00035 has been joined with this proceeding.

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I. TSE has not been authenticated under FRE 901.

Petitioners assert that Exhibit 1016 (“TSE”) was “actually disseminated and otherwise available to the interested public in August 1998” and specifically “disseminated to 200 participants in the Tokyo Stock Exchange.” *See* Paper 106 at 8. Nothing in the record proves, however, that TSE is the specific document that Petitioners allege, and not some other TSE document.

A. Petitioners improperly rely on the 2005 Kawashima deposition transcript.

In their Opposition, Petitioners cite to a deposition transcript taken from another proceeding, Ex. 1007 of CBM2015-00179, to attempt to authenticate TSE (Ex. 1016). This is improper. Ex. 1007 of CBM2015-00179 has not been filed as an exhibit in the present proceeding and is therefore not a part of the record and cannot be cited in this way.

B. TSE is not authenticated under FRE 902(11) or 901(b)(4).

Whether or not TSE is a business record or appears to be an authentic TSE document, nothing establishes that it is the document allegedly “disseminated to 200 participants in the Tokyo Stock Exchange.”

C. The 2016 Kawashima deposition transcript does not cure the authentication issues with TSE.

Rather than authenticating TSE in the way Petitioners need, the 2016

Kawashima deposition transcript suggests that Mr. Kawashima could not have examined the document in a way that would have differentiated it from any other version. Ex. 2163 at 45-46. Accordingly, it does not establish that TSE is the document allegedly “disseminated to 200 participants in the Tokyo Stock Exchange.”

II. TSE is irrelevant under FRE 401.

As pointed out in TT’s motion, TSE is irrelevant because it is not prior art. Paper 104 at 3-4. Even if TSE was prior art, however, it would still be irrelevant to analysis under 35 U.S.C. § 101.

III. The O’Connell Affidavit is does not comply with the rules.

Petitioners assert that Ms. O’Connell’s personal knowledge of TransPerfect’s execution of the translation project qualifies her to certify that the resulting translation was a true and accurate translation. Personal knowledge of the project is not, however, personal knowledge of the accuracy of the translation and is thus insufficient to satisfy 37 C.F.R. § 42.63(b). As described in Patent Owner’s motion, Ms. O’Connell did not and cannot attest to the accuracy of the translation itself. Paper 104 at 6.

IV. Expert Testimony

As pointed out in TT's motion, its expert's answers to certain vague and ambiguous questions yielded irrelevant testimony that Petitioners are using in a confusing and misleading manner. Nothing in Petitioners' opposition changes that.

Date: October 14, 2016 Respectfully Submitted,
By: Joshua L. Goldberg (Reg. No. 59,369)

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