

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC; INTERACTIVE BROKERS LLC;
TRADESTATION GROUP, INC.; TRADESTATION SECURITIES,
INC.; TRADESTATION TECHNOLOGIES, INC.;
and IBFX, INC.

Petitioner

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

CBM2015-00161 (Patent No. 6,766,304 B2)
CBM2015-00172 (Patent No. 7,783,556 B1)
CBM2015-00179 (Patent No. 7,533,056 B2)
CBM2015-00181 (Patent No. 7,676,411 B2)
CBM2015-00182 (Patent No. 6,772,132 B1)

Deposition of ERIC GOULD-BEAR, taken at
McDonnell Boehnen Hulbert & Berghoff LLP,
before Donna M. Kazaitis, CSR, RPR, CLR, and
CRR, commencing at the hour of 9:10 a.m. on
Thursday, August 4, 2016.

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1 ERIC GOULD BEAR,
 2 having been first duly sworn, was examined and
 3 testified as follows:
 4 EXAMINATION
 5 BY MR. SOKOHL:
 6 Q. Could you state your name for the
 7 record.
 8 A. Eric Gould Bear.
 9 MS. KURCZ: Once again, can we
 10 introduce ourselves for the record, please.
 11 MR. SOKOHL: Absolutely.
 12 MS. KURCZ: Good morning. Jennifer
 13 Kurcz on behalf of the Patent Owner Trading
 14 Technologies and the witness. I also have with me
 15 Cory Bell.
 16 MR. SOKOHL: And Robert Sokohl on
 17 behalf of IBG and Tradestation, petitioners, from
 18 Sterne Kessler Goldstein & Fox, and with me is
 19 Richard Bemben.
 20 BY MR. SOKOHL:
 21 Q. Good morning.
 22 Have you been deposed before?

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1 again, if we speak over each other she has trouble
 2 taking that down.
 3 If you don't understand a question
 4 I'm asking, I would ask you just to let me know
 5 that and I'll try to rephrase it. If you've
 6 answered the question, I'm going to assume you
 7 understood it. Is that acceptable?
 8 A. Yes.
 9 Q. Are you on any medications today?
 10 A. No.
 11 Q. Any reason you can't give truthful
 12 testimony today?
 13 A. No.
 14 Q. You understand you're under oath?
 15 A. Yes.
 16 Q. How did you prepare for today's
 17 deposition?
 18 MS. KURCZ: Objection. Just counsel
 19 the witness to the extent it would call for
 20 revealing attorney-client communications or work
 21 product information, not to do so.
 22

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1 BY MR. SOKOHL:
 2 Q. You can answer.
 3 A. Are you asking about the preparation
 4 this week in advance, or are you talking about the
 5 preparation and the writing of my report?
 6 Q. Separating the two. So all I'm
 7 interested in right now is how did you prepare for
 8 today's deposition?
 9 A. I reviewed my report, I reviewed some
 10 of the materials, and spent time with counsel.
 11 Q. What counsel did you meet with?
 12 A. Present counsel.
 13 Q. How long did you meet with counsel?
 14 A. Two days.
 15 Q. Was there anyone else present other
 16 than counsel during those meetings?
 17 A. Yes.
 18 Q. Who?
 19 A. Other attorneys and representatives of
 20 Trading Technologies.
 21 Q. Who from Trading Technologies?
 22 A. Jay.

Page 7

1 Q. Knobloch?
 2 A. Yes. Thank you.
 3 Q. Anyone else?
 4 A. I don't think so.
 5 Q. And other attorneys -- that's fine.
 6 Just other attorneys.
 7 A. Yes.
 8 Q. You mentioned that you reviewed your
 9 report and some documents. I don't want to
 10 mischaracterize that, but I think that's what you
 11 said.
 12 What documents did you review in
 13 preparation for this deposition?
 14 MS. KURCZ: Objection, work product.
 15 To the extent you didn't rely on any information
 16 or any information refreshed your recollection, I
 17 instruct the witness not to respond to that.
 18 BY MR. SOKOHL:
 19 Q. You can answer.
 20 A. I'm going to follow counsel's advice.
 21 Q. The documents you reviewed, were they
 22 provided to you by counsel?

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1 A. Yes.
 2 Q. All the documents that you reviewed
 3 were provided to you by counsel?
 4 A. No.
 5 Q. What documents did you review that
 6 were not provided by counsel?
 7 A. The exhibits to my report.
 8 Q. And you reviewed other documents other
 9 than what was attached to your report?
 10 A. Yes.
 11 Q. And I'll ask you what those documents
 12 were.
 13 MS. KURCZ: Objection, work product.
 14 MR. SOKOHL: I don't believe that's
 15 work product, Counsel. In fact, your own
 16 co-counsel asked the exact same question of our
 17 expert and he answered that question.
 18 MS. KURCZ: And your own co-counsel
 19 provided the same objection with respect to
 20 Mr. Roman's testimony regarding which documents he
 21 reviewed.
 22 MR. SOKOHL: And ultimately it was

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1 withdrawn and we allowed the witness to answer the
 2 questions.
 3 BY MR. SOKOHL:
 4 Q. So you can answer the question.
 5 A. If you could repeat the question,
 6 please.
 7 Q. Sure. What other documents did you
 8 review that were provided to you by counsel?
 9 MS. KURCZ: Objection, work product.
 10 BY MR. SOKOHL:
 11 Q. You can answer.
 12 A. So that puts me in a bind.
 13 Q. It doesn't put you in a bind. You can
 14 answer the question. Unless counsel instructs you
 15 not to answer, you can answer the question. She
 16 objected, you can now answer.
 17 A. Okay. Thanks for the clarification.
 18 Q. That's the way it works, is that if
 19 counsel instructs you not to answer, you're free
 20 to take her advice and not answer a question. But
 21 if she doesn't --
 22 MR. SOKOHL: I'm not trying to counsel

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1 your client. Hopefully you understand that.
 2 BY MR. SOKOHL:
 3 Q. If she objects, you can answer the
 4 question, moving forward.
 5 A. Okay.
 6 I reviewed three of the patents
 7 that were provided by counsel and articles I had
 8 written in the past.
 9 Q. Anything else?
 10 A. I don't believe counsel provided me
 11 any other materials this week in preparation.
 12 Q. You mentioned that you had been
 13 deposed approximately five times before.
 14 Do you recall the specifics of
 15 those depositions?
 16 MS. KURCZ: Objection, form.
 17 THE WITNESS: What sort of specifics
 18 are you looking for?
 19 BY MR. SOKOHL:
 20 Q. Sure. Do you remember the specific
 21 cases where you were deposed?
 22 A. Yes.

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1 Q. What were those cases?
 2 A. If I could have a copy of my CV, that
 3 would help.
 4 Q. Absolutely.
 5 So let me hand you your expert
 6 report which I believe -- actually, let me
 7 rephrase that.
 8 Let me hand you your declaration,
 9 and that has been marked Trading Tech Exhibit
 10 2168. And this is in the following CBM
 11 proceedings: CBM2015-00161, CBM2015-00172,
 12 CBM2015-00179, CBM2015-00181, and CBM2015-00182.
 13 (Document tendered to the witness.)
 14 A. Thank you.
 15 Q. Do you recognize this document?
 16 A. It looks like my declaration.
 17 Q. And is that your signature on Page 29?
 18 A. Yes, it is.
 19 Q. And you signed it on June 26, 2016?
 20 A. Yes.
 21 Q. And so my previous question was do you
 22 recall the specific cases where you were deposed?

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1 A. Yes. In Mad Catz Interactive v. Razor
 2 USA, in MONKEYmedia v. Apple, in MONKEYmedia v.
 3 Walt Disney, et al. Those are the ones I can
 4 recall.
 5 Q. I'll put a little star next to it.
 6 Since I can't seem to find it,
 7 where is Mad Catz?
 8 A. It's on the bottom of the first page
 9 of my CV.
 10 Q. Thank you.
 11 Why were you deposed in Mad Catz
 12 Interactive versus Razor?
 13 A. McKool Smith represented Razor and
 14 hired me as a testifying expert in the matter.
 15 Q. Were you hired as an expert?
 16 A. Yes.
 17 Q. And what was your area of expertise in
 18 that case?
 19 A. In user experience, user interface,
 20 human factors.
 21 Q. Do you know if that case went to
 22 trial -- let me rephrase that.

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1 Do you know the outcome of that
 2 case?
 3 A. I believe it settled.
 4 Q. How many times were you deposed in
 5 that case?
 6 A. Once.
 7 Q. Was Razor the defendant or the patent
 8 holder -- that's a horrible question.
 9 Was Razor the patent holder?
 10 A. They were a patent holder. They were
 11 the defendant in a patent suit by Mad Catz with
 12 counterclaims of their own patents.
 13 Q. And were you an expert on behalf of
 14 Razor in regard to their patents, or were you an
 15 expert in regard to defending a lawsuit that was
 16 brought against Razor regarding patents?
 17 A. Both.
 18 Q. And in MONKEYmedia versus Apple, what
 19 was the context of your deposition in that case?
 20 A. MONKEYmedia filed patent infringement
 21 suits against Apple, and so I was deposed
 22 regarding claim construction.

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1 Q. Which side did you represent?
 2 A. MONKEYmedia.
 3 MS. KURCZ: Objection, form.
 4 THE WITNESS: To be clear, I didn't
 5 represent anybody. I'm not a lawyer.
 6 BY MR. SOKOHL:
 7 Q. What was the -- did you work for
 8 MONKEYmedia?
 9 A. Yes. I'm an owner of MONKEYmedia.
 10 Q. So you were being deposed for what
 11 purpose in MONKEYmedia versus Apple?
 12 A. As expert testimony.
 13 Q. So you act as an expert for
 14 MONKEYmedia?
 15 A. Yes.
 16 Q. And you're the owner of MONKEYmedia?
 17 A. Yes.
 18 Q. Okay. How many times were you deposed
 19 in that case, MONKEYmedia versus Apple?
 20 A. At least three times.
 21 Q. Did you provide an expert report in
 22 MONKEYmedia versus Apple?

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1 A. I provided several declarations.
 2 Q. Did you -- just going back to Mad Catz
 3 versus Razor. Did you provide an expert report in
 4 that case?
 5 A. It was either a report or a
 6 declaration. I don't recall.
 7 Q. What was the outcome of MONKEYmedia
 8 versus Apple lawsuit?
 9 A. It's still pending.
 10 Q. In MONKEYmedia versus Walt Disney
 11 Company, et al., in what context were you deposed
 12 in that case?
 13 A. The same as in the Apple case.
 14 Q. And you acted as an expert for
 15 MONKEYmedia?
 16 MS. KURCZ: Objection, form.
 17 THE WITNESS: Could you reframe the
 18 question?
 19 MR. SOKOHL: Sure.
 20 BY MR. SOKOHL:
 21 Q. Were you deposed as an expert in the
 22 MONKEYmedia versus Walt Disney Company case?

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1 A. Yes.
 2 Q. And did you provide an expert report
 3 or declaration in that case?
 4 A. Several declarations.
 5 Q. How many times were you deposed in the
 6 MONKEYmedia versus Walt Disney case?
 7 A. At least three. And those were the
 8 same depositions with Apple.
 9 Q. Okay. So they happened at the same
 10 time?
 11 A. Yes.
 12 Q. You said that you had been deposed on
 13 claim construction; is that correct?
 14 A. That's correct.
 15 Q. Has the court ruled in that case
 16 regarding claim construction?
 17 A. Yes.
 18 Q. Did the court agree with your analysis
 19 in that case?
 20 MS. KURCZ: Objection, form.
 21 THE WITNESS: On several points, yes.
 22

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