

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.,  
TRADESTATION TECHNOLOGIES, INC., and IBFX, INC.,  
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,  
Patent Owner.

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CBM2015-00161 (Patent No. 6,766,304 B2)<sup>1</sup>  
CBM2015-00172 (Patent No. 7,783,556 B1)<sup>2</sup>  
CBM2015-00179 (Patent No. 7,533,056 B2)  
CBM2015-00181 (Patent No. 7,676,411 B2)  
CBM2015-00182 (Patent No. 6,772,132 B1)

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Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK and JEREMY  
M. PLENZLER, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

ORDER

*Oral Argument*  
37 C.F.R. § 42.70

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<sup>1</sup> Case CBM2016-00035 has been joined with this proceeding.

<sup>2</sup> Case CBM2016-00040 has been joined with this proceeding.

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CBM2015-00181 (Patent No. 7,676,411 B2)  
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The Scheduling Orders in these proceedings provide for an oral hearing if an oral hearing is requested by the parties and granted by the panel. Petitioners and Patent Owner requested oral hearing pursuant to 37 C.F.R. § 42.70. Papers 100, 101.<sup>3</sup> The requests are *granted*.

The hearing will commence at **9:00 a.m. Eastern Time on October 19, 2016**, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing.

#### *Schedule of Arguments*

The patents at issue in CBM2015-00161<sup>4</sup> and CBM2015-00181 both claim priority to the patent at issue in CBM2015-00182. Arguments in these proceedings are consolidated, and each party will have 90 minutes total time to present arguments.

Arguments for CBM2015-00179 and CBM2015-00172 are not consolidated with arguments for any other proceeding. Each party will have 30 minutes total time, for each of these proceedings, to present arguments.

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<sup>3</sup> For the purposes of this Order, CBM2015-00161 is representative and all citations are to papers in CBM2015-00161 unless otherwise noted.

<sup>4</sup> CBM2016-00035 and CBM2016-00040 are joined to CBM2015-00161 and CBM2015-00172, respectively. No additional time is allotted for argument from Petitioners in CBM2016-00035 and CBM2015-00040. *See* Paper 41, 4 (indicating that Petitioners agreed to take a "back-seat" role in the joined proceeding).

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Arguments will be heard according to the following schedule:

| Proceeding              | Time                    |
|-------------------------|-------------------------|
| CBM2015-00179           | 9:30 a.m. – 10:30 a.m.  |
| CBM2015-00172           | 10:45 a.m. – 11:45 a.m. |
| Break                   | 11:45 p.m. – 1:30 p.m.  |
| CBM2015-00161, 181, 182 | 1:30 p.m. – 4:30 p.m.   |

### *Order of Arguments*

Petitioners bear the ultimate burden of proof that the challenged claims are unpatentable. Petitioners will open each hearing by presenting its arguments regarding the challenged claim for which we instituted trial. Thereafter, Patent Owner will argue its opposition to Petitioners' arguments. Petitioners may reserve time to rebut Patent Owner's opposition.

### *Prohibition of New Arguments or Evidence*

The parties are not permitted to raise new arguments or evidence at oral hearing. *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). Any new arguments or evidence will not be considered.

### *Demonstratives*

Demonstrative exhibits are intended to be visual aids to assist a party in making its oral presentation. *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case No. IPR2013-00033, slip op. at 3, (PTAB Oct. 23, 2013)(Paper 118). Demonstrative exhibits are not evidence and as such, the exhibits cannot add new evidence to the record of the proceeding. *St. Jude*

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*Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case No. IPR2013-00041, slip op. at 2 (PTAB Jan. 27, 2014) (Paper 65). Demonstrative exhibits are not an opportunity for additional briefing. *Id.* at 3. Arguments that have not been made previously cannot be made at the trial hearing, and thus, cannot be in a demonstrative exhibit. *Id.* Similarly, the exhibits cannot rely on evidence that, although it is in the record, was never specifically discussed in any substantive paper before the Board. *Id.*

Demonstrative exhibits are limited to reproduction of portions of papers of record or portions of the evidence specifically discussed in the substantive papers of record. Demonstrative exhibits must include a citation to where the reproduced portion of the paper is in the record or to where the evidence is discussed in a substantive paper in the record.

#### *Objections to Demonstratives*

Under 37 C.F.R. § 42.70(b), the parties shall serve any demonstrative exhibits upon each other at least five business days prior to the hearing. The parties shall file the demonstrative exhibits at least two business days prior to the hearing.

We expect that the parties will meet and confer in good faith to resolve all objections to demonstrative exhibits, but if such objections cannot be resolved, the parties may file objections to demonstratives with the Board no later than two business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are

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subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. We will consider any objections and schedule a conference call if deemed necessary. Otherwise, we will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely filed will be considered waived.

### *Counsel*

Lead counsel for each party is expected to be present in person at the oral hearing. Any counsel of record, however, may present the party's arguments. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the panel no later than two business days prior to the oral hearing to discuss the matter.

Each party will designate one counsel to present arguments for each of CBM2015-00172 and CBM2015-00179 and one counsel to present consolidated arguments for CBM2015-00161, CBM2015-00181, and CBM2015-00182. Only designated counsel may make objections or otherwise address the panel during the oral hearing. The designated counsel may seek permission from the panel for other counsel of record to address the panel, if necessary.

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