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**From:** Goldberg, Joshua  
**Sent:** Tuesday, May 10, 2016 10:49 AM  
**To:** trials@uspto.gov  
**Cc:** phillips@fr.com; CBM41919-0004CP1@fr.com; CBM41919-0005CP1@fr.com; CBM41919-0002CP1@fr.com; PTABInbound@fr.com; rsokohl-PTAB@skgf.com; rsokohl@skgf.com; lgordon-ptab@skgf.com; rbemben-PTAB@skgf.com; jstrang-PTAB@skgf.com; mrosato@wsgr.com; margenti@wsgr.com; tt-patent-cbm@tradingtechnologies.com; Arner, Erika; Emsley, Rachel; Rodkey, Kevin; Bell, Cory; Trading-Tech-CBM  
**Subject:** Request for Conference Call in CBM2015-00161 (CBM2016-00035), CBM2015-00172 (CBM2016-00040), CBM2015-00179, CBM2015-00181, CBM2015-00182, CBM2016-00009  
**Attachments:** EvidencesummaryforPetitioners.xlsx

Dear PTAB,

As pointed out in Patent Owner's mandatory notices, these proceedings involve patents that have been heavily litigated. They have survived numerous invalidation attempts both in district court and in the patent office, sometimes by consent judgement and sometimes by court/jury/examiner findings. During the course of the many proceedings involving these patents, millions of documents have been produced and scores of individuals have provided testimony. Although Patent Owner should not be prejudiced as a result of the inability of these CBMs to accommodate the large volume of material from these earlier proceedings supporting its positions, Patent Owner has spent the past few months identifying a very small subset of the documents and individuals, which it would be willing to move forward with in these CBMs if an agreement on their admissibility could be reached with Petitioners and if it was clear Patent Owner would not be prejudiced by such a compromise. To that end, Patent Owner has spent the last month trying to reach a compromise with Petitioners on how to get this small subset of material into these proceedings without unnecessarily increasing the cost of these proceedings. Although not required to do so, Patent Owner has even identified to Petitioners the specific documents and testimony (with pincites) from the prior proceedings that it seeks to rely on in its patent owner responses. Despite Patent Owner's attempts, the parties have been unable to reach a compromise. Accordingly, Patent Owner requests:

- Waiver of FRE 901 (authentication) in these proceedings such that either party in these proceedings can directly rely on (as opposed to only via an expert) documentary evidence without authenticating such evidence if the evidence was (i) produced by a party to a previous litigation (as opposed to a third party) from its own records in the previous litigation, (ii) admitted as a trial exhibit in the previous litigation, and (iii) not subject to any dispute concerning authenticity in the prior litigation.
- Waiver of FRE 802 (hearsay) in these proceedings such that either party can directly rely on (as opposed to only via an expert) sworn testimony from other proceedings without preparing a new declaration for these proceedings so long as the opposing party has the opportunity to depose the testifying individual if it desires such a deposition;
- Additional discovery in the form of subpoenas to facilitate depositions of individuals listed on the attached spreadsheet, which was provided to Petitioners on May 2, 2016;
- The Board's guidance on Petitioners' duty to produce evidence related to how the GUI tools in their products were developed, which contradicts their positions that the claims are obvious because such evidence, for example, will show the state of mind of a POSITA, failure of others, copying, and other secondary considerations;

- An extension of the deadline for the Board to issue its final written decisions to facilitate further extensions of time for TT's patent owner responses; and
- To the extent these proceedings cannot be timely completed without depriving Patent Owner of a full and fair opportunity to defend its patents due to the limitations of these proceedings, which are not set up to deal with the volume of evidence Patent Owner has supporting the validity of its patents, and due to positions being taken by Petitioners, that the institution decisions be vacated.

The parties are available for a conference call to discuss these issues on May 11, 2016, after 1:30pm Eastern.

Best regards,

Joshua L. Goldberg

Backup Counsel for Patent Owner

**Joshua L. Goldberg**

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Witnesses

Last Name	First Name	Cite	Relevance including but not limited to:
Anthony	David	Declaration: fin00049	secondary considerations; shortcomings of alleged prior art
Feltes	Dave	Declaration: fin00027; Deposition: fin00011 at pp. 1-60, 64, 70-71; 98-100, 107-108, 112-150, 152-155, 164, 186-192	mindset of Posa; secondary considerations; shortcomings of alleged prior art
Garrow	Nick	Deposition 1: fin00035 at pp. 1-5, 9-41, 43-70, 74-75, 79-115, 122-126, 138-144, 150, 152-154, 156-174, 193-195; Deposition 2: fin00035-01 at pp. 1-15, 19, 22-	mindset of Posa; secondary considerations; shortcomings of alleged prior art
Grisafi	Tom	Declaration: fin00060	secondary considerations; shortcomings of alleged prior art
Lapan	Elliott	Deposition: fin00118 at pp. 1-9, 34-87; 99-114, 116-145; 147, 150-154, 157-165, 169, 175, 210-212, 266-267, 271-273, 282-286, 294-297, 299-316	mindset of Posa; secondary considerations; shortcomings of alleged prior art
Martin	David	Declaration: fin00067; Deposition: fin00081 at pp. 1-7, 11-12, 28-29, 37-39, 42-45, 47-110, 114-123, 126-129, 141-147,	secondary considerations; shortcomings of alleged prior art
McCausland	Robert	Deposition: fin00036 at pp. 1-4, 8, 13, 35-62, 65-67, 71-81, 87-90,	mindset of posa; secondary considerations
Mellor		Declaration: fin00169; Deposition: fin00168 at pp. 39-	CBM and 101
Zellinger	James	Declaration: fin00080	mindset of Posa; secondary considerations; shortcomings of alleged prior art

Documents

Def. Ex. 116		fin00035-02	
Def. Ex. 118		fin00021	
Def. Ex. 119		fin00022	
Def. Ex. 120		fin00023	
Ex. 621 from		fin00118-01	
Ex. 644A from		fin00118-02	
Ex. 651 from		fin00118-03	
Ex. 652 from		fin00118-04	
Ex. 653 from		fin00118-05	
Ex. 654 from		fin00118-06	
Ex. 261 from		fin00081-01	
Ex. 262 from		fin00081-02	
Ex. 263 from		fin00081-03	
Ex. 10 from		fin00036-01	
DTX 119	state of technology; Pats	fin00022	
DTX 155	state of technology; LIFFE brochure	fin00005	
PTX 38	copying; eSpeed	fin00098	
PTX 78	mindset of Posa, copying; eSpeed	fin00090-01	
PTX 79	copying; eSpeed	fin00090	
PTX 80	copying; eSpeed	fin00089	
PTX 81	copying; eSpeed	fin00099	
PTX 110	copying; eSpeed	fin00096	
PTX 123	copying; eSpeed	fin00091	
PTX 279	copying; eSpeed	fin00086	
PTX 281	copying; eSpeed	fin00085	
PTX 286	copying; eSpeed	fin00092	
PTX 294	copying; eSpeed	fin00097	
PTX 356	state of art; LIFFE brochure	fin00002	
PTX 357	state of art; LIFFE brochure	fin00003	
PTX 359	state of art; LIFFE brochure	fin00006	

PTX 440	copying; eSpeed	fin00087	
PTX 441	copying; eSpeed	fin00101	
PTX 448	copying; eSpeed	fin00088	
PTX 2064	copying and mindset of POSA; GL	fin00115	
PTX 2077	copying and mindset of POSA; GL	fin00116	
PTX 600	copying; CQG	fin00114	

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