

Emsley, Rachel

From: Emsley, Rachel
Sent: Wednesday, June 8, 2016 2:57 PM
To: Lori Gordon
Cc: Rob Sokohl; Arner, Erika; Goldberg, Joshua; Rodkey, Kevin; Trading-Tech-CBM; 'tt-patent-cbm@tradingtechnologies.com'; gannon@mbhb.com; sigmond@mbhb.com; Richard M. Bemben; Adam Kessel (Kessel@fr.com); John Phillips (phillips@fr.com); Rodkey, Kevin
Subject: RE: Availability for call with the Board (if requested by TT)

Counsel,

Thank you for the meet-and-confer yesterday and the additional discussion last evening with Mr. Borsand. As we all noted, we did not reach agreement, and therefore TT will bring this discovery issue to the Board's attention and initiate a call.

You asked us to inform you of the specific relief that we will request from the Board. We intend to ask the Board for discovery under Routine and Additional Discovery. You also asked for further detail about what in the documents is inconsistent with Petitioners' PTAB positions. Upon further reflection and review of our communications, we believe that Steve's email provides a specific description of why the documents are inconsistent with Petitioners' positions in their petitions. We gave specific bates numbers for a set of documents that TT spent significant time locating by reading through many more documents. It is untrue that we are leaving Petitioners' to "guess" what TT's position is. As you pointed out, many of the documents relate to TS's Matrix product, but that does not make them any less "inconsistent" and certainly does not make them "irrelevant." Steve's prior email provided the following clear example:

TS0111352 appears to be part of a manual describing TS's Matrix product (its first commercial embodiment of the claimed invention at issue in the CBMs) when it was released around 2003: "The Matrix window provides users with an exciting new view of the market including an innovative graphical display of market depth and trade activity for a given instrument along with lightning fast order execution with its one-click trading capability. This combination allows for unprecedented market feel and efficiency for the frequent trader." Many of the other documents on the attached list contain equally, if not more relevant, statements that contradict TS's obviousness positions and characterizations of TT's inventions. For example, some documents provide similar praise, discuss extensive usage of TS's trading GUI that implements the claimed invention, reflect requests by customers to expand use of the invention to other platforms, etc.

Last night, we understand that Steve pointed to TS0107054 and explained how this early requirements document for TS's Matrix heaps praise on the Matrix GUI describing the claimed features in glowing terms and actually comparing it to and describing its advantages over the conventional prior art screens. The document contradicts Petitioners' position that the claimed

GUI features were routine and conventional in the late 1990s, let alone 2003. Petitioners' position that such a document is "irrelevant" and that is not contrary in any way to their positions is plainly incorrect. Such documents are the type that any court would find *most* relevant, and are the type that lawyers on either side would flag as problematic or as excellent for their positions.

Nonetheless, to the extent that Petitioners require further examples, we note the following, which reflects our understanding of the documents from litigation counsel:

TS0002266, TS0002270, TS001132, TS1452693, TS1527002, TS1244458 also praise the claimed features. Multiple documents reflect requests by customers to have TS expand the use of the Matrix GUI to other platforms, such as ipads. *E.g.*, TS1245173; TS1247248; TS1252581; TS1254247; TS1253260; TS12516138; TS1256406; TS1257878; TS1258091, TS1262147; TS1264269; TS1269846; TS1269897; TS1269993; TS1270054; TS1272177.

Other documents measure the use of different trading GUIs and shows significance of the Matrix GUI to TS, which embodies the claimed features. TS1261405; TS1268720; TS1274603-604; TS153387; TS1533975; TS1533977.

Some documents talk about the technology being a GUI used for data entry, not as a business practice of trading or viewing market information. *E.g.*, TS1482217.

Many documents are plainly relevant to non-obviousness and secondary considerations. For example, documents describe enhancements to the Matrix that relate to claimed features (in either independent or dependent claims) and which occurred much later than TT's invention date (e.g., 2007 (auto center), 2013, 2015). *E.g.*, TS0005734 and TS1525746. Several documents show various features originating from customer complaints or feedback (as opposed to being an "obvious" feature to those designing the Matrix in the first place). *E.g.*, TS0107044; TS0107076 (relating to TT's 055 auto re-centering patent); TS 0107079 (relating to TT's '556 P&L patent). Several documents show a development history that contradicts Petitioner's position that the claimed GUI features were obvious in 1999 because they show that prior to the Matrix introduction in 2003, TS had conventional screens. *E.g.*, TS0005734 and TS1525746. Other documents relate to copying (e.g., TS1528404 and TS 1547001, 005 (shows indirect copying)) and some documents show that TS regularly monitors competitors including ladder (the claimed invention) functionality (e.g., TS1528470; TS1528462; TS1528489; TS1528491; TS1528565; TS1528568; TS1528571; TS1528799; TS1528813; TS1528827; TS1529254; TS1531456) and several documents show that TS was regularly monitoring news with respect to TT (e.g., TS1234823; TS1528395; TS1529064; TS1529945; TS1531456; TS1531463; TS1532722).

Many of the documents make clear that additional highly relevant documents exist, but TS has withheld documents referencing customers. TS0083544 shows that TS gets new feature ideas from its customers and lists some from 2012. No such document has been produced yet from 2003-2004 and this particular document appears to be redacted with many blank pages at the

track of pertinent information and such forms have not been produced for the Matrix window. The documents include example support tickets that we now know exist and will reflect customer feedback for the Matrix. *E.g.*, TS1296799.

We will also seek routine discovery and, if needed, authorization for a motion for additional discovery for the documents as well as the deposition testimony. To be clear, Patent Owner will seek relief from the Board to have the following discovery produced in the PTAB:

- The documents listed in the attachment to Steve's email of 6/3/16 (TT may be supplementing that list shortly based on more recently produced documents).
- Transcripts of the TS and IB depositions scheduled on June 8, 9 and 13.
- Documents already collected, but withheld in the District Court because they contain customer information.

If Petitioners require further protection than the default protective order provides in the PTAB, they should propose an appropriate order.

We understand that Rob and Lori are available Thursday morning, but that for Adam Kessel to join, we would need to coordinate a break in the district court depositions. We will accordingly ask the Board for a time between 11:00-1 (eastern) on Thursday for the call, which should allow the call to occur during a lunch break.

Thanks,
Rachel

From: Emsley, Rachel
Sent: Wednesday, June 8, 2016 2:49 PM
To: 'Lori Gordon'
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Lori,

Can you extend us the courtesy of another 10 minutes? I've been having a lot of trouble getting a hold of Steve. He's just now being able to get on the phone.

Thanks,
Rachel

From: Lori Gordon [<mailto:LGORDON@skgf.com>]
Sent: Wednesday, June 8, 2016 2:21 PM
To: Emsley, Rachel
Cc: Rob Sokohl; Arner, Erika; Goldberg, Joshua; Rodkey, Kevin; Trading-Tech-CBM; 'tt-patent-cbm@tradingtechnologies.com'; gannon@mbhb.com; sigmond@mbhb.com; Richard M. Bemben; Adam Kessel

(Kessel@fr.com); John Phillips (phillips@fr.com); Emsley, Rachel; Rodkey, Kevin

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Rachel –

As we indicated on our various meet and confers yesterday, Petitioners require at least 24 hours after receiving TT's requested relief in order to prepare for a call with the Board. We have yet to receive an email articulating the points TT intends to raise on a call with the Board. Therefore, the times we provided for tomorrow are no longer an option.

Please let us know if you still intend to approach the Board for relief and we will provide additional availability.

Regards-

Lori



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