

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)¹
CBM2015-00172 (Patent No. 7,783,556 B1)²
CBM2015-00179 (Patent No. 7,533,056 B2)
CBM2015-00181 (Patent No. 7,676,411 B2)
CBM2015-00182 (Patent No. 6,772,132 B1)

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

PETRAVICK, *Administrative Patent Judge.*

ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5

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

² Case CBM2016-00040 has been joined with this proceeding.

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A conference call was held between counsel for the parties and Judges Petravick and Plenzler on October 18, 2016. The purpose of the call was to discuss the parties' demonstratives for the oral hearing, scheduled for the next day. This Order summarizes the call.

In an Order entered on September 28, 2016 ("the Oral Argument Order"), we explained that demonstrative exhibits are not an opportunity to add new evidence to the record or an opportunity for additional briefing. Paper 110, 3–4.³ The Order stated:

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.

Id. at 4 ("the demonstrative requirement").

On October 17, 2016, the parties filed demonstrative exhibits. Exs. 1058, 2410. As authorized by the Oral Argument Order (*id.* at 4–5), the parties also filed objections to the demonstrative exhibits. Papers 118, 121. Both parties object to the others' demonstratives on the basis that the demonstratives do not comply with the demonstrative requirement. *Id.*

After review of the demonstrative exhibits and based upon information discussed during the conference call, we determine that the demonstratives do not comply with the demonstrative requirement. For

³ For the purposes of this Order, CBM2015-00181 is representative and all citations are to papers in CBM2015-00181 unless otherwise noted.

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example, Patent Owner's demonstrative exhibits contain pages reproducing claims at issue in Federal Circuit Decisions. For example, page 74 of Patent Owner's demonstrative exhibit reproduces a claim from *In re TLI Commc 'ns LLC Patent Litig.*, 823 F.3d 607 (Fed. Cir. May 16, 2016). Page 74 does not include a citation to where that Decision is discussed in a substantive paper in the record. Indeed, *TLI Commc 'ns* does not appear to be discussed in any substantive paper in the record.

During the conference call, we ordered the parties to review its demonstrative exhibits and remove any material that does not comply with our demonstrative requirement. The parties may replace the material with corresponding reproductions of portions of the record that comply with the demonstrative requirement. We authorized the parties to refile demonstrative exhibits by the end of day on October 18, 2016. The refiled demonstrative exhibits must comply with the demonstrative requirement and any other applicable requirements provided for in our Rules.

Along with the refiled demonstrative exhibits, lead counsel for the parties must certify that the new 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 and the new demonstrative exhibits include correct citations to where the reproduced portions of the paper is in the record or to where the evidence is discussed in a substantive paper in the record.

Should a party determine upon review that the originally filed demonstrative exhibits comply with the demonstrative requirement, lead

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counsel for the party must certify that the original 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 and the original demonstrative exhibits include correct citations to where the reproduced portions of the papers is in the record or to where the evidence is discussed in a substantive paper in the record.

The originally filed demonstrative exhibits will be expunged from the record, unless the certification described above is filed by the end of day on October 18, 2016. *See* 37 C.F.R. § 7(a).

As stated in our Oral Argument Order, “[t]he 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. If a party desires to bring a new argument, evidence, or authority to our attention, the party should contact us at the trials@uspto.gov box to request authorization, for example, to file supplemental information, supplemental briefing, or a notice of additional authority, as appropriate under our Rules. *See* 37 C.F.R. §§ 42.20, 42.223.

Additional housekeeping matters were also addressed during the conference call. First, Patent Owner sent an email to the trials@uspto.gov box requesting to permission to use multiple computers during the oral hearings. We indicated that Patent Owner may use multiple computers.

Second, with regards to CBM2015-00181 and CBM2015-00182, Petitioner sent an email to the trials@uspto.gov box informing us of a

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typographical error in the Petitioner's Replies. In several places in these Replies, Petitioners mistakenly refer to Exhibit 2233 to refer to the group of traders' declarations that Patent Owner filed as Exhibit 2223. We noted the correction.

It is so ORDERED.

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