

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.

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

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

PETRAVICK, *Administrative Patent Judge*.

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

On June 6, 2016, a conference call was held between counsel for
Petitioners, counsel for Patent Owner, and Judges Medley, Petravick and

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Plenzler. Petitioner provided a court reporter and transcript of the call appears in the record (Ex. 1052¹).

i. Deposition Length

Mr. Kawashima, Petitioner's witness, is scheduled to be cross-examined on June 17, 2016. During the call, Petitioner requested that cross-examination be limited to four hours because the scope of Mr. Kawashima's testimony is limited to the sole issue of the date of public accessibility of the TSE reference. Patent Owner requested that cross-examination be limited to seven hours, as provided for in 37 C.F.R. § 42.53(b)(2). Although Patent Owner indicated that it did not foresee using the entire seven hours for cross-examination, it argued that there was no reason to deviate from the Rule. Patent Owner also argued that if translators were required, the pace of the cross-examination could be slowed.

Upon consideration of the information presented during the call, the Board limited cross-examination of Mr. Kawashima to five hours. *See* 37 C.F.R. § 42.53(b)(2) (allowing the Board to set the time limit for cross-examination). Unlike most cross-examination in covered business method patent review proceedings, the cross-examination of Mr. Kawashima is limited to one issue. The Board, indicated, however that if translation impeded the cross-examination to such an extent that additional time is necessary, the parties may agree to an extension of time.

¹ For the purposes of this Order, CBM2015-00179 is representative and all citations are to papers in CBM2015-00179 unless otherwise noted.

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ii. Depositions in a Foreign Language

37 C.F.R. § 42.53(e) states that “[i]f an interpreter will be used during the deposition, the party calling the witness must initiate a conference with the Board at least five business days before the deposition.” During the call, Petitioner indicated that an interpreter may be used during Mr. Kawashima’s deposition.

Rule 42.53 governs the taking of testimony, including cross-examination testimony. In addition to adhering to the requirements of that rule, the following guidelines are to be used when conducting a deposition in a foreign language. *See Ariosa Diagnostics v. ISIS Innovation Ltd.*, Case IPR2012-00022, Paper 55 (PTAB Aug. 7, 2013). Below, “party” refers to the party proffering the witness, and “opponent” refers to the party cross-examining the witness.

1. The party proffering the witness is responsible for providing a “first interpreter” who can interpret using a consecutive mode of interpretation.
2. At least three (3) business days before the cross-examination deposition, the party shall provide to the opponent the name, business address, business telephone number, e-mail address, and resume of the first interpreter.
3. The opponent may engage the services at the counsel table of a “second interpreter.”
4. At least three (3) business days before the cross-examination deposition, the opponent shall provide to the party the name, business

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address, business telephone number, e-mail address, and resume of the second interpreter.

5. The consecutive mode of interpretation shall be used.

6. If the second interpreter has a disagreement with the first interpreter regarding the interpretation of the question and/or the answer, the second interpreter should inform counsel by note. If counsel desires to raise the disagreement on the record, the second interpreter, using the consecutive mode, will be allowed to interpret the question for the witness, as well as the witness' answer to the second interpreter's interpretation of the question.

7. If there is a disagreement as to interpretation, and the first and second interpreter cannot work out a mutually agreeable interpretation, an objection should be made on the record, and the first and second interpreter should specify on the record what they believe to be the correct interpretation.

8. In such an event, the Board will determine which interpretation, if any, is to be accorded more weight.

9. Collateral attacks with respect to the qualifications of any interpreter, or the manner in which any question or answer was interpreted, shall not be allowed after the conclusion of the deposition.

10. Copies of any documents which an interpreter will be required to "sight translate" at the deposition shall be provided to the interpreter no later than two days before the deposition is to take place. Failure to timely provide the documents may result in their exclusion from

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evidence. Unless agreed to by both parties, the interpreter shall not reveal to opposing counsel the nature of any document so provided.

11. If, at any time during the deposition, the interpreter is unable to interpret or translate a word, expression, or special term, the interpreter shall, on the record, advise the parties of the issue.

12. An individual may not serve simultaneously as both an attorney for a party and as an interpreter.

iii. Disputes During the Deposition

Petitioner requested guidance concerning contacting the Board if a dispute arose during Mr. Kawashima's cross-examination, which will occur in California. The Board indicated that the parties should follow the testimony guideline in Appendix D of the Trial Practice Guide. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (Aug. 14, 2012) (Final Rule). Under the guidelines, an objection at the time of examination should be put on the record, but the examination still proceeds. *Id.*

"Counsel may instruct a witness not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the Board, or to present a motion to terminate or limit the testimony." *Id.*

If the parties follow the testimony guidelines and the additional guidelines above, it is unlikely that the parties will need to contact the Board. As to Petitioner's concern that the Board will be unavailable should a dispute arise, due to the Board's headquarters and California being located in different time zones, Mr. Kawashima's deposition may be scheduled for early in the day.

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