

1 UNITED STATES DISTRICT COURT  
 2 NORTHERN DISTRICT OF ILLINOIS  
 3 EASTERN DIVISION

4 TRADING TECHNOLOGIES INTERNATIONAL, )  
 INC., )  
 5 )  
 Plaintiff, )  
 6 )  
 v. ) No. 04 C 5312  
 7 )  
 eSPEED, INC., eSPEED INTERNATIONAL, )  
 8 LTD., ECCO LLC, and ECCOWARE, LTD., ) Chicago, Illinois  
 ) September 26, 2007  
 9 Defendants. ) 10:00 o'clock a.m.

10  
 11 VOLUME 11-A  
 TRIAL TRANSCRIPT OF PROCEEDINGS  
 12 BEFORE THE HONORABLE JAMES B. MORAN, and a JURY

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| 1  |  |      |
| 2  | JOSEPH NOVIELLO, DIRECT EXAMINATION      | 2193 |
| 3  | BY MR. LOMBARDI:                         |      |
| 4  | JOSEPH NOVIELLO, CROSS-EXAMINATION       | 2218 |
| 5  | BY MR. BERGHOFF:                         |      |
| 6  | JOSEPH NOVIELLO, REDIRECT EXAMINATION    | 2250 |
| 7  | BY MR. LOMBARDI:                         |      |
| 8  | ATSUSHI KAWASHIMA, DIRECT EXAMINATION BY | 2254 |
| 9  | DEPOSITION                               |      |
| 10 | BY MR. HILMERT:                          |      |
| 11 | DAVID SILVERMAN, DIRECT EXAMINATION      | 2295 |
| 12 | BY MR. PERKINS:                          |      |
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1 (The following proceedings were had in open court,  
10:10:14 2 outside the presence and hearing of the jury:)

10:10:14 3 THE COURT: Good morning. The one motion  
10:10:15 4 that -- I think I only got one motion pending, don't I?

10:10:22 5 MR. CARDEN: It's the one on the  
10:10:24 6 non-infringement --

10:10:26 7 THE COURT: Yes. As I understand eSpeed's  
10:10:38 8 position, it is that with a centering mechanism in the  
10:10:44 9 software that -- an automatic centering, that eSpeed  
10:10:57 10 doesn't -- couldn't directly infringe because it would  
10:11:00 11 have to be used without the centering to be infringement  
10:11:06 12 so that it is a contributory infringement claim, and  
10:11:14 13 eSpeed says unless we induce people to not use the  
10:11:21 14 centering mechanism, then -- well, plaintiff has to show  
10:11:27 15 inducement.

10:11:30 16 And as I understand the previous evidence, I  
10:11:35 17 think only one witness touched on this and that was  
10:11:38 18 basically that traders who are using multiple screens,  
10:11:45 19 most of which are inactive at any given time so they are  
10:11:48 20 concentrating on one screen, are going to use the  
10:11:51 21 centering, automatic centering, because they are really  
10:11:55 22 not paying any attention to it, and if they turn to  
10:11:58 23 them, they want to have it centered, but the screen  
10:12:02 24 they're using that's active that in those circumstances  
10:12:07 25 traders by and large don't want a centering device

10:12:11 1 automatic because they want to have control over what's  
10:12:15 2 happening. And am I correct in understanding what  
10:12:20 3 eSpeed's position is?

10:12:22 4 MR. PERKINS: I believe that's essentially  
10:12:24 5 correct, yes, your Honor.

10:12:25 6 THE COURT: Okay.

10:12:26 7 MR. SAMPSON: Your Honor, there's one  
10:12:28 8 addition to that from TT's position and that is that,  
10:12:33 9 you know, the demonstration and training is also use of  
10:12:38 10 the method by eSpeed and the witness addressed that as  
10:12:42 11 well.

10:12:42 12 THE COURT: Yes, they show them both ways.

10:12:44 13 MR. SAMPSON: Right.

10:12:46 14 MR. CARDEN: So that would actually be a  
10:12:47 15 direct infringement.

10:12:48 16 MR. SAMPSON: That is a direct infringement.

10:12:50 17 THE COURT: So given that circumstance, do  
10:12:52 18 people want to rely on what they've given me already, or  
10:12:56 19 anybody want to file anything more?

10:12:59 20 MR. PERKINS: Just one further point on the  
10:13:01 21 inducement, your Honor. There's also an intent element  
10:13:04 22 to it that eSpeed --

10:13:06 23 THE COURT: I'm sorry?

10:13:07 24 MR. PERKINS: There is an intent element to  
10:13:08 25 the inducement.

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