

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC and INTERACTIVE BROKERS LLC,
Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner

Case CBM2016-00009
Patent 7,685,055 B2

**PETITIONERS' OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE**

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I. INTRODUCTION

TT's Motion to Exclude is improper because it includes an unauthorized motion to strike Petitioners' Reply. Despite two requests, the Board *has not* granted TT authorization to file a motion to strike Petitioners' Reply. TT is well aware that the PTAB Rules prohibit the filing of unauthorized motions because this Panel admonished TT in related CBMs for the same transgression (i.e., filing unauthorized motions). The Board should deny outright *at least* Section IV(A) of TT's Motion to Exclude because it is an unauthorized motion to strike. Should the Board consider Section IV(A), Petitioners' Reply and Mr. Rho's Reply Declaration *do not* include new arguments and are responsive to TT's POR (Paper 32).

TT's Motion to Exclude also raises three evidentiary objections, each of which should be denied. The first challenges the authenticity of TSE (Exhibit 1007). The second alleges that the certified English translation of TSE (Exhibit 1008) is inaccurate. And, the third seeks to exclude testimony from TT's own declarant (Exhibit 1038) that TT finds too prejudicial for the Board to hear.

None of TT's objections have merit. *First*, TSE has been properly authenticated. Unequivocal and reliable evidence supports the finding that TSE is what it purports to be: a 1998 publication issued by the Tokyo Stock Exchange. Atushi Kawashima—the employee of the Tokyo Stock Exchange who *actually prepared the document*—has *twice* been deposed by TT and has *twice* authenticated TSE.

Indeed, TT concedes that Mr. Kawashima's 2005 deposition transcript (Exhibit 1011) is permissible hearsay. TT does not point to any evidence suggesting that Exhibit 1007 is not the 1998 TSE publication. And, in any event, Mr. Kawashima authenticated Exhibit 1007 *again* during his 2016 deposition. (Exhibit 2163).

Second, TT asserts that the certified English translation of TSE (Exhibit 1008) is inaccurate because it does not include two notes from TT's translator, Mr. Abilock. But Exhibit 1008 is not inaccurate: Mr. Cohen *twice* certified the accuracy of the translation. (Exhibits 1009 and 1044.) And, Mr. Abilock is not an objective translator; he's an advocate for TT. (*See* Exhibits 2334 and 2339.)

Third, TT's efforts to exclude the cross-examination testimony of its *own* declarant should be rejected. TT's expert admitted that the '055 claims permit continuous movement. This admission is highly relevant to whether TT's patent claims are obvious. Accordingly, the Board should deny TT's Motion to Exclude.

II. THE BOARD SHOULD DENY TT'S UNAUTHORIZED MOTION TO STRIKE PETITIONER'S REPLY.

A. TT's Motion to Exclude is improper because it includes an unauthorized Motion to Strike Petitioners' Reply.

TT's Motion to Exclude is improper because it includes an unauthorized motion to strike Petitioners' Reply. TT has *twice* sought authorization to file a motion to strike Petitioners' Reply. The Board *has not* granted either request. The Rules prohibit the filing of unauthorized motions. 37 C.F.R. § 42.20.

TT first sought authorization to file a motion to strike Petitioners' Reply on November 14, 2016. (Exhibit 1041.) In response, the Board authorized TT "to file a listing identifying the portions of the Petitioner's Reply that allegedly raise new arguments for the first time," but *did not* authorize TT to file a motion to strike. (Exhibit 1042.) TT renewed its request on December 12, 2016. (Exhibit 1043.) In response, the Board conducted a conference call with the parties on December 14, 2016, and took TT's request under advisement but *again did not* authorize the requested motion to strike. (Exhibit 2343 at 28:9-24.)

TT is well aware that filing unauthorized motions is prohibited. In related CBMs, the Board admonished TT "that our Rules prohibit the filing of motions without Board authorization and prohibit combining motions with other papers." *IBG LLC v. Trading Tech's Int'l, Inc.*, CBM2015-00182, Paper 65 at 2 (P.T.A.B. Jun. 30, 2016). In those CBMs, the Board required TT's lead counsel to certify she would follow the Rules and refrain from filing unauthorized motions. *Id.* at 3. TT's counsel certified that she would oblige. *See* CBM2015-00182, Paper 68.

Nevertheless—without prior authorization and despite the Rules, the Board's prior admonishment, and TT's prior certification—TT's Motion to Exclude includes an unauthorized motion to strike. Section IV(A) of TT's Motion to Exclude requests that portions of Petitioners' Reply are excluded (Motion at 6-10), which is a poorly-disguised and unauthorized motion to strike, which should be denied.

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