Paper No. _____
Filed: December 22, 2016

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

CBM2016-00009
Patent No. 7,685,055 B2

PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE UNDER 37 C.F.R. 42.64(c)

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I. TT'S MOTION TO EXCLUDE WAS NOT AN UNAUTHORIZED MOTION TO STRIKE

TT's Motion to Exclude is proper because it is not unauthorized Motion to Strike—it seeks to exclude improper evidence on which the Reply improperly relies. Petitioners cite no case law supporting their argument to the contrary.

Petitioners attempt to distract the Board from the new arguments raised in the Rho Reply Declaration by arguing TT has ignored 37 C.F.R. § 42.20(b). However, TT's authorization request is irrelevant to TT's Motion to Exclude. Indeed, Petitioners do not dispute TT's argument that ¶¶ 20-25 of Exhibit 1035 ("Rho Dec. II") are inadmissible under FRE 401 and 402 because these paragraphs are irrelevant to the grounds of invalidity instituted by the Board. Petitioners also do not address TT's argument that ¶¶ 20-25 of Rho Dec. II are inadmissible under FRE 403 because the prejudice to TT far outweighs the probative value.

A. Petitioners' Reply Improperly Relies on the Rho Reply Declaration to Make New Arguments

The Board should exclude portions of Rho Dec. II that relate to new arguments made in the Reply. *Id.* at ¶¶ 20-25. Petitioners argue that the Petition and Exhibit 1004 ("Rho Dec. I"): (1) "are unequivocal" that TSE's price axis is static in compressed scrolling mode and (2) support the claimed "adjusting" step when transitioning from the non-compressed board x4 mode to the non-compressed board x2 mode. Paper 55, at 4-5. Petitioners are wrong.

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For example, Petitioners' cites merely state that "TSE's price axis is 'static' when the display is in certain modes…[for] example, 'the price display positions do not change automatically' when the Board Screen is in the Scrolling Screen mode." Pet. at 43. The Petition states "TSE can be shifted to scrolling mode (static axis) by scrolling and shifted back to basic mode (which allows the axis to move) by clicking the Home button." *Id.* at 50. But this does not support that TSE discloses that the user is able to enter scrolling screen mode *in the compressed price display mode*. Indeed, every example of scrolling screen mode in TSE is in the *uncompressed* mode. *See, e.g.*, Ex. 1008 at 116.

But more appropriately, these citations do not demonstrate that the Petition *argued that this was possible*. As such, TT has had no opportunity to put in evidence rebutting the allegation that TSE describes this mode and/or evidence that this mode does not meet the static limitation. Accordingly, this evidence should be excluded pursuant to at least 37 C.F.R. § 42.23(b) and 5 U.S.C. § 554(b)(3), as well as under FRE 403 given the prejudice to TT not being permitted to respond.

Further, the Petition and Rho Dec. I also do not support the claimed "adjusting" step when transitioning from the non-compressed board x4 mode to the non-compressed board x2 mode. The portions of the Petition and Rho Dec. I cited by petitioners merely describe "TSE [supporting] many display options and modes" including the board x2 mode and board x4 mode. Rho Dec. I. at ¶¶ 30-31.

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This does not describe the claimed "adjusting" step nor establish that Petitioners argued that this amounted to the "adjusting" step. Thus, the Board should exclude ¶¶ 20-25 of Rho Dec. II because they raise new arguments.

B. Certain Portions of the Olsen Transcript are Inadmissible Under Fed. R. Evid. 611 and Fed. R. Evid. 403

The quoted testimony from Dr. Olsen should be excluded as vague, confusing, and exceeding the scope of direct testimony in violation of FRE 403 and 611. Whether a witness responds to improper questioning does not alter the propriety of the questioning, and Petitioners cite no caselaw to the contrary.

II. TSE EXHIBITS 1007, 1008, AND 1011 SHOULD BE EXCLUDED AS UNAUTHENTICATED AND/OR INADMISSIBLE HEARSAY

TT's evidence from district court litigation and the 2005 Kawashima deposition transcript should stand or fall together based on mutual hearsay objections. Paper 59 at 4. The Board must treat TT's district court evidence and the 2005 Kawashima transcript in the same way because they differ only in that TT exerted greater efforts to obtain better evidence than Petitioners. To the extent this difference impacts the admissibility of the evidence, it favors admitting TT's evidence, not the 2005 Kawashima transcript.

Qualification for the residual exception to hearsay requires that evidence be more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts. FRE 807. While TT exerted

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