

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC;
INTERACTIVE BROKERS LLC;
TRADESTATION GROUP, INC.; and
TRADESTATION SECURITIES, INC.,

Petitioners,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,

Patent Owner.

CBM2016-00032
U.S. Patent 7,212,999

**PATENT OWNER'S MOTION TO EXCLUDE
UNDER 37 C.F.R. § 42.64(c)**

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I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.64(c) and 42.61(a) and the Federal Rules of Evidence, Patent Owner Trading Technologies International, Inc. (“TT”) respectfully moves to exclude certain deposition testimony of Christopher Thomas (Ex. 1047) under FRE 403 because those portions’ probative value is substantially outweighed by a danger of unfair prejudice and confusing the issues as a result of vague questioning.

II. STANDARD

A Motion to Exclude must (a) identify where in the record the objection was made, (b) identify where in the record the evidence sought to be excluded was relied upon by an opponent, (c) address objections to exhibits in numerical order, and (d) explain the objection. Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012).

III. CERTAIN PORTIONS OF THOMAS’ TESTIMONY SHOULD BE EXCLUDED

A. TT Timely Objected

TT timely objected to the relevant testimony during the deposition. Ex. 1047 at 248, 263-269.

B. Petitioners Rely on This Evidence in Their Reply

Petitioners rely upon pages 248 and 263-269 of the Thomas deposition transcript (Ex. 1047) in their Reply at page 7. Paper 29 at 7.

C. The Probative Value of the Cited Testimony is Outweighed By Prejudice and Confusion

The answers at page 248 and 263-269 in Exhibit 1047 were in response to vague and ambiguous questions yielding irrelevant testimony that Petitioners are using in a confusing and misleading manner to imply that the claimed inventions do not improve computers.

9 Q. So I'm going to ask my question again.

10 Does the GUI in Claim 1 in any way improve the
11 speed of the computer?

12 MR. GANNON: Object to the form.

13 BY MR. SOKOHL:

14 Q. And you said that's not how it
15 improves the function of the computer.

16 A. Correct.

17 Q. Okay. Does it improve the efficiency?

18 Does the GUI tool of Claim 1 improve the
19 efficiency of the computer in any way?

20 MR. GANNON: Object to the form.

21 THE WITNESS: The GUI from Claim 1

22 improvements the functionality of the computer by

1 specifically the combination of the elements of
2 the claim.

* * *

5 Q. Okay. You can read it but at the end
6 of the day I'm asking you whether or not those
7 elements as recited in Claim 1 processed the data
8 faster than a Figure 2 type GUI?

9 MR. GANNON: Object to the form.

10 BY MR. SOKOHL:

11 Q. If you don't know, you don't know. I
12 mean I don't know how to rephrase that question.

13 A. Okay. This has got nothing to do with
14 the patent or the claim?

15 Q. It does have to do with the patent.

16 Does Claim 1 recite a GUI? What
17 does Claim 1 recite? If you're going to just
18 repeat the claim, that's fine. But do you have a
19 generalization for what Claim 1 recites?

20 A. A GUI tool.

21 Q. Okay. Does the GUI tool of Claim 1

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