

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
Patent 7,212,999

PETITIONERS' MOTION TO EXCLUDE

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U.S. Patent and Trademark Office
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I. Introduction

Petitioners move to exclude Patent Owner's Exhibits 2030, 2168, 2174, 2183-2189, and 2192-2194 because these documents are irrelevant or constitute hearsay to which no exception applies.

II. Argument

A. Exhibit 2030: *eSpeed* Jury Verdict Form

The Board should exclude Exhibit 2030, which purports to be a jury verdict form associated with *Trading Technologies Int'l, Inc. v. eSpeed, Inc.*, No. 04-cv-05312. The *eSpeed* jury's findings are not probative of any issue before the Board. Accordingly, this evidence is irrelevant and inadmissible. *See* FRE 401.

Patent Owner offered Exhibit 2030 as evidence that TSE does not qualify as prior art. (Paper 12 at 10.) Petitioners timely objected to Exhibit 2030 for lack of relevance and hearsay. (Paper 20 at 2-3.)

The fact that the *eSpeed* jury found that a third party defendant did not meet its burden of proving a patent obvious under the *clear and convincing evidence* standard is not relevant to whether Petitioners have met their burden of demonstrating the '999 patent to be unpatentable under the *preponderance of the evidence* standard. Nor are these documents relevant to whether the '999 patent claims eligible subject matter under 35 U.S.C. § 101. Accordingly, Exhibit 2030 should be excluded as irrelevant. FRE 401.

B. Exhibits 2168 and 2192-2194: Mr. Gould-Bear's Declaration and Attachments

The Board should exclude Exhibits 2168 and 2192-2194 as irrelevant and as hearsay. Exhibit 2168 is Mr. Gould-Bear's Declaration from CBM2016-00051, which is a CBM of U.S. Patent No. 7,904,374. Exhibits 2192-2194 are attachments to Mr. Gould-Bear's Declaration.

Patent Owner relies on Exhibit 2168 to argue that graphical user interfaces are technology, that the '999 claims are patent eligible, and that the '999 patent's computer readable medium claims do not cover signals. (Paper 24 at 19-20, 47, 49.) Petitioners timely objected to Exhibits 2168 and 2192-2194 for lack of relevance and hearsay. (Paper 26 at 2-3.)

Mr. Gould-Bear's testimony about an unrelated patent from a different proceeding is not probative of any of the issues in this proceeding. It is irrelevant, confusing, and a waste of time. Thus, the Board should exclude this evidence under FREs 401-403.

Additionally, Mr. Gould-Bear's testimony is hearsay because it was not made while testifying for the current proceeding and is being offered for the truth of the matters asserted. FRE 801. His testimony is not excluded from the hearsay rule because it is not being used for a purpose permitted under FRE 801(d). And, Patent Owner has not shown that any specific exception under FRE 803 or the residual exception under FRE 807 applies here. Accordingly, the Board should

exclude Mr. Gould-Bear's Declaration and its attachments as hearsay.

C. Exhibits 2174 and 2183-2189: Dr. Olsen's Declaration and Attachments

The Board should exclude Exhibits 2174 and 2183-2189 as irrelevant and as hearsay. Exhibit 2174 is Dr. Olsen's Declaration from CBM2016-00051, which is a CBM of U.S. Patent No. 7,904,374. Exhibits 2183-2189 are attachments to Dr. Olsen's Declaration.

Patent Owner relies on Exhibit 2174 to argue that graphical user interfaces are technology and that the '999 claims are patent eligible. (Paper 24 at 19-21, 47.) Petitioners timely objected to Exhibits 2174 and 2183-2189 for lack of relevance and hearsay. (Paper 26 at 2-3.)

Dr. Olsen's testimony about an unrelated patent from a different proceeding is not probative of any of the issues in this proceeding. It is irrelevant, confusing, and a waste of time. Thus, the Boards should exclude this evidence under FREs 401-403.

Additionally, Dr. Olsen's testimony is hearsay because it was not made while testifying for the current proceeding and is being offered for the truth of the matters asserted. FRE 801. His testimony is not excluded from the hearsay rule because it is not being used for a purpose permitted under FRE 801(d). And, Patent Owner has not shown that any specific exception under FRE 803 or the residual exception under FRE 807 applies here. Accordingly, the Board should exclude Dr.

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