

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 OPPOSITION TO PETITIONERS'
MOTION TO EXCLUDE**

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I. INTRODUCTION

37 C.F.R. § 42 governs these proceedings, and it “shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding.” § 42.1(b). The “just” requirement mandates that the Board consider all of the evidence introduced by Patent Owner Trading Technologies International, Inc. (“TT”).

II. STANDARD

As the movant, Petitioners bear the burden of proving that the challenged exhibits are inadmissible. *Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.*, CBM2012-00002, Paper 66 at 59 (January 23, 2014); 37 C.F.R. § 42.20(c). Petitioners have failed to meet this burden. As a matter of policy, the Board disfavors excluding evidence; “it is better to have a complete record of the evidence submitted by the parties than to exclude particular pieces.” *Id.* at 60-61.

III. eSPEED JURY VERDICT (EXHIBIT 2030)

This exhibit is offered for the relevant purpose of showing how another party and a jury reacted to the evidence in these proceedings. *See, e.g.*, Paper 12 at 10. Specifically, TT offered Exhibit 2030 for the purpose of disqualifying TSE as prior art. Petitioners argue the evidence is irrelevant because it relates to a different proceeding with different evidentiary standards. Paper 39 at 1. These arguments carry no weight because whether the evidence was from a different proceeding with a different evidentiary standard is irrelevant when determining

whether TSE qualifies as prior art. TSE's prior art status doesn't depend on what it is asserted against or where it is asserted. Thus, Exhibit 2030 is relevant to this proceeding.

IV. GOULD-BEAR AND OLSEN DECLARATIONS AND ATTACHMENTS (EXHIBITS 2168, 2174, 2183-89, and 2192-94)

A. The Gould-Bear and Olsen Declarations and Attachments Are Relevant

This exhibit is offered for the relevant purpose of patent eligibility. Indeed, as Petitioners point out, Mr. Gould-Bear did not review the '999 patent or its claims in Exhibit 2168. Regardless of whether Mr. Gould-Bear indicated his testimony was applicable to the '999 patent, his analysis and opinions were directed to graphical user interfaces (GUIs). And indeed the '999 patent claims a GUI. *See, e.g.*, Exhibit 1001, 14:7-47.

For example, Mr. Gould-Bear states “. . . graphical user interfaces are inherently technology” and that

[a] POSITA would know that rearranging the makeup of known GUI elements (structures) on a computer screen often dictates a dramatic change in the functionality of the GUI. And because the makeup of any set of user interface structures – whether involving numerical display regions, lists, table cells, graphical buttons, or what have you – establishes the specific meaning and technical capabilities of that

user interface, such functionality cannot, by definition, avoid being deemed technology.

Ex. 2168 at ¶¶ 3, 38. Likewise, Mr. Olsen states:

For example, buttons, sliders, exist in both fields for study, and just as changes to these features may provide an improvement in a mechanical device, improving the equivalent features in a GUI allows a computer to function better or even in ways that were not previously conceived,

* * *

In my opinion, at least two basic GUI principles, which are scientific and engineering-based, cause users to perceive the claimed GUI as an improvement over prior GUIs, namely: human visual search, and optimizing human effort.

Ex. 2174, at ¶¶ 6, 15. These statements are equally applicable to the '999 patent because the '999 patent is likewise directed to the construction, makeup, and functionality of a GUI and shares common elements with the '374 patent analyzed by Messrs. Gould-Bear and Olsen. Thus, Messrs. Gould-Bear's and Olsen's testimony regarding the claims of '374 patent and other TT patents are directly relevant to this proceeding.

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