

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

Case CBM2016-00051
Patent No. 7,904,374

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

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I. INTRODUCTION

Patent Owner (“TT”) raises two evidentiary objections in its Motion to Exclude. (Paper 34.) The first challenges the authenticity of the TSE manual, (Ex. 1003) and the second seeks to exclude the authenticating evidence, the transcript of a 2005 deposition of Atshushi Kawashima (Ex. 1009) because it is allegedly hearsay under FRE 801 and supposedly irrelevant as Petitioners have not cited it thus far.

Both objections lack merit. Notably, the Board has already rejected an admissibility challenge based on similar arguments and the same evidence in a related proceeding, and it should do so here for the same reasons. (*See* CBM2015-00182 Paper 129 at 22-27.)

First, no legitimate challenge can be made to the authenticity of the TSE manual. There is unequivocal and reliable evidence to support the finding that Exhibit 1003 is what it purports to be: namely, a 1998 publication issued by the Tokyo Stock Exchange. (Ex. 1009, 9:19-10:9, 10:19-24, 11:1-3, 11:11-24; Ex. 1040, 45:7-46:3.) This 1998 publication has been twice authenticated by an employee of the Tokyo Stock exchange, Atshushi Kawashima, who TT has twice deposed—once in a related CBM proceeding (CBM2015-00181, Ex. 2163, Ex. 1040 in this proceeding) and once in 2005 (Ex. 1009). Given these circumstantial guarantees of trustworthiness, TT conceded that the 2005 deposition transcript is permissible hearsay in a related proceeding. (CBM2015-00181, Paper 109 at 3). TT does not

point to any evidence suggesting that Exhibit 1003 is not the 1998 TSE manual. Moreover, TT's argument that the transcript should be excluded as irrelevant because Petitioners have not relied on it thus far should be rejected. Petitioners filed Exhibit 1009 and served Exhibit 1040 anticipating that TT would challenge the authenticity of the TSE manual. Now that TT has indeed filed a motion to exclude, Petitioners now rely on Exhibit 1009 (and 1040) to overcome TT's authenticity objection to the TSE manual thus rendering TT's irrelevancy argument moot. Accordingly, the Board should deny TT's Motion to Exclude.

II. ARGUMENT

A. The TSE manual has been properly authenticated.

1. TT has conceded that the 2005 Kawashima deposition transcript is permissible hearsay; TT thus moots its own evidentiary objection.

TT asserts that Petitioners failed to authenticate the TSE manual (Exhibit 1003) because the 2005 Kawashima deposition transcript—which authenticates the TSE manual—is allegedly hearsay. Yet TT undermined all of its alleged “doubts” about the authenticity of the TSE manual when it conceded that it is admissible hearsay in a related CBM proceeding. (CBM2015-00181, Paper 109 at 2-7, 3.) (“[T]he residual hearsay objection of FRE 807 applies to . . . the 2005 Kawashima deposition transcript.”) TT presumably took that position hoping to receive favorable treatment of its *own* unrelated testimonial evidence from the related

district court litigation, arguing that “Patent Owner’s evidence from district court litigation and the 2005 Kawashima deposition transcript should stand or fall together.” (*Id.* at 6, emphasis added.) Now that TT does not see any benefit to conceding the admissibility of the 2005 Kawashima deposition transcript in this proceeding, TT wants to retract its previous concessions. TT should not be allowed to do so. Having conceded that Exhibit 1009 is permissible hearsay, TT should be taken at its word. As such, its motion fails.

2. Admissible evidence shows that Exhibit 1003 is what Petitioners purport; TT’s arguments to the contrary are without merit.

Petitioners have produced unequivocal and unrebutted evidence showing that Exhibit 1003 is the TSE manual. That evidence meets the requirement for authentication under each of Fed. R. Evid. 901, 902(11), and 901(b)(4). The certified English translation bears the name of the “Tokyo Stock Exchange Operation System Division” and the date “August, 1998.” (Ex. 1003 at 5.) The 2005 deposition of Mr. Kawashima provides further supporting evidence of authenticity. (Ex. 1009.) Mr. Kawashima’s testimony establishes that: (1) Exhibit 1003 is “the current futures options trading system -- trade manual” (compare Ex. 1003 at 1, marked “DX 179” with bates numbering “TSE 647-981”; with Ex. 1009, 9:19-10:9); (2) confirmed that the document was prepared and disseminated in 1998 by the Tokyo Stock Exchange (Ex. 1009, 10:19-24, 12:22-24); (3) that Mr. Kawashima had personal knowledge of

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