

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.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2016-00051
Patent 7,904,374 B2

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

SCHEDULING ORDER

A. *INITIAL CONFERENCE CALL*

No initial conference call is scheduled for this case. The parties are encouraged to contact the Board to request a call if any issues arise during trial. The parties are directed to the following matters:

1. *Discovery Disputes*

The panel encourages parties to resolve disputes relating to discovery on their own and in accordance with the precepts set forth in 37 C.F.R. § 42.1(b). To the extent that a dispute arises between the parties relating to discovery, the parties shall meet and confer to resolve such a dispute before contacting the Board. If a party has in its possession documents that are subject to a protective order issued by a court in another proceeding, that party should request relief from that court.

If attempts to resolve the dispute fail, a party may request a conference call with the Board and the other party in order to seek authorization to move for relief. In any request for a conference call with the Board to resolve a discovery dispute, the requesting party shall: (1) certify that it has complied with the requirements outlined above in an effort to resolve the dispute; (2) identify with specificity the issues for which agreement has not been reached; (3) identify the precise relief to be sought; and (4) propose specific dates and times at which both parties are available for the conference call.

2. *Motion to Amend*

Patent Owner is reminded that it must confer with the Board before filing a Motion to Amend. 37 C.F.R. § 42.221(a). Patent Owner should contact the Board to request a conference in sufficient time to ensure that the conference is conducted at least two weeks before DUE DATE 1. Patent

Owner and Petitioner are directed to the rules governing Motions to Amend, with particular regard to applicable page limits. 37 C.F.R. §§ 42.24(a)(1), 42.24(b)(3), 42.24(c)(3), 42.221(b).

3. *Confidential Information*

The parties must file confidential information using the appropriate availability indicator in PRPS (e.g., “Board and Parties Only”), regardless of whose confidential information it is. It is the responsibility of the party whose confidential information is at issue, not necessarily the proffering party, to file the motion to seal.

A protective order does not take effect until a protective order is filed in the case and approved by the Board. If a motion to seal is filed by either party, the proposed protective order should be presented as an exhibit to the motion. The parties are urged to operate under the Board’s default protective order. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, App. B (Aug. 14, 2012). If the parties propose a protective order deviating from the default protective order, they should submit the proposed order jointly. A marked-up comparison of the proposed and default protective orders should be presented as an additional exhibit to the motion to seal, so that differences are highlighted. The parties should contact the Board if they cannot agree on the terms of the proposed protective order.

a. Redactions

Redactions should be limited strictly to isolated passages consisting of confidential information. The thrust of the underlying argument or evidence must be discernable from the redacted version.

b. Confidential Information in Final Written Decision

Information subject to a protective order will become public if identified in a final written decision in this proceeding. A motion to expunge the information will not necessarily prevail over the public interest in maintaining a complete and understandable file history. *See* Office Patent Trial Practices Guide, 77 Fed. Reg. at 48, 761.

B. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of the stipulation, specifically identifying the changed due dates, must be promptly filed. The parties may not stipulate to an extension of DUE DATES 6 and 7.

In stipulating to different times, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (see section B, below). The parties should be mindful that pursuant to 37 C.F.R. § 42.300(c), the pendency of the review is normally no more than one year. *See* 35 U.S.C. § 326 (11). The effect of any stipulations on the ability to complete review within the one year will be taken into account should a party request any other extensions of time from the Board. The parties are reminded that the Testimony Guidelines appended to the Office Trial Practice Guide, 77 Fed. Reg. at 48,772 (Appendix D), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony

Guidelines. 37 C.F.R. § 42.12. For example, reasonable expenses and attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

1. DUE DATE 1

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.220), and
- b. A motion to amend the patent (37 C.F.R. § 42.221).

The patent owner must file any such response or motion to amend by DUE DATE 1. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.

2. DUE DATE 2

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

3. DUE DATE 3

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

4. DUE DATE 4

a. Each party must file any motion for an observation on the cross-examination testimony of a witness (see section C, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

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