

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

U.S. Patent 7,904,374 B2

**Patent Owner's Objections to
Evidence Pursuant to 37 C.F.R. § 42.64**

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner objects to the following

Petitioner Exhibits:

- 1003 (Certified Translation of “Futures/Options Purchasing System Trading Terminal Operational Guide”);
- 1004 (U.S. Patent No. 5,297,031 to Gutterman);
- 1005 (WO 90/11571 to Belden, et al.);
- 1006 (Certificate of Translation for “System for Buying and Selling Futures and Options Transaction Terminal Operational Guidelines”);
- 1009 (Deposition Transcript of Atsushi Kawashima, *Trading Techs. Int’l, Inc., v. eSPEED, Inc.*, Case No. 04-cv-5312, United States District Court, Northern District of Illinois, Eastern Division, dated November 21, 2005);
- 1010 (“Futures/Option Purchasing System Trading Terminal Operation Guide,” Tokyo Stock Exchange);
- 1011 (Expert Declaration of Kendyl A. Roman);
- 1012 (Lodewijk Petram, The World’s First Stock Exchange);
- 1013 (History of the American and NASDAQ Stock Ex-changes);

- 1016 (The American Heritage Dictionary of the English Language, 3d ed. 1992);
- 1017 (MPEP 2106);
- 1020 (Weiss, “After the Trade is Made”);
- 1021 (U.S. Patent No. 5,375,055 to Togher et al.);
- 1034 (U.S. Patent No. 5,960,411 to Harman Peri et al.);
- 1035 (Dictionary of Computing (4th Ed, Oxford University Press, 1996)); and
- 1036 (Inside Macintosh, Promotional Edition).

I. OBJECTION TO PETITIONER EXHIBIT 1011

Patent Owner objects to Exhibit 1011 because it contains unreliable testimony under **FRE 702** and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). In particular, Mr. Román’s declaration includes numerous purported “expert” opinions on matters about which Mr. Román is not qualified to offer such “expert” testimony. Mr. Román has insufficient knowledge, skill, experience, training, and education regarding trading and/or trading GUI design. Yet Mr. Román repeatedly opines about the understanding of a person of ordinary skill in

the art in the relevant time period with respect to such subjects. *See, e.g.*, ¶¶ 67, 73, and 76-84.

II. OBJECTION TO PETITIONER EXHIBITS 1003-1006, 1010, 1012, 1013, 1016, 1017, 1020, 1021, and 1034-1036

Patent Owner objects to Exhibits 1003-1006, 1010, 1012, 1013, 1016, 1017, 1020, 1021, and 1034-1036 to the extent that Petitioner relies on their contents for the truth of the matters asserted therein. Exhibits 1003-1006, 1010, 1012, 1013, 1016, 1017, 1020, 1021, and 1034-1036 are inadmissible hearsay under **FRE 801 and 802**, and no exception applies.

III. OBJECTION TO PETITIONER EXHIBITS 1003, 1006, and 1010

Petitioner has submitted no evidence to authenticate Exhibit 1010, and deficient evidence for Exhibit 1003 as set forth below, making both inadmissible under **FRE 901**.

Patent Owner also objects to Exhibit 1003, 1006, and 1010 under **FRE 602**. Petitioner fails to provide a credible translation of TSE and fail to conform with the Board's rules for submitting translations of foreign language documents. In particular, **37 C.F.R. § 42.63(b)** requires that “[w]hen a party relies on a document or is required to produce a document in a language other than English, a translation

of the document into English and an affidavit attesting to the accuracy of the translation must be filed with the document.” The record lacks such an affidavit under Rule 42.63(b) attesting to the accuracy because Mr. Cohen: (1) incorrectly refers to “2014.05.19 - 1003 – TSE” as an English translation; and (2) on information and belief, he did not, himself, translate the Japanese language TSE into English, thereby demonstrating his lack of personal knowledge regarding the matter for which he is testifying. *See* **FRE 602** (requiring personal knowledge to testify to a matter). Exhibit 1006 is noncompliant with **37 C.F.R. § 42.63(b)**. This makes Exhibit 1010 and 1003 inadmissible under **37 C.F.R. § 42.61(a)** (“Evidence that is not taken, sought, or filed in accordance with this subpart is not admissible.”). Furthermore, Exhibit 1003 is an inherently subjective translation from Japanese to English and prejudicial and misleading under **FRE 403**.

Patent Owner further objects to Exhibit 1010 under **FRE 403 and FRE 1003**. The copy of the Japanese language TSE document (Exhibit 1010) is illegible in many places (*e.g.*, 54-63, 91-120, 137-143) and therefore cannot be used to verify the accuracy of the translation.

Patent Owner further objects to Exhibit 1003 under **FRE 403**. Exhibit 1003 substitutes nearly verbatim Patent Owner’s own translation of the TSE’s Chapter 7

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