

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
U.S. Patent No. 7,904,374

PETITIONERS' OBJECTIONS TO EVIDENCE

IBG LLC, Interactive Brokers LLC, TradeStation Group, Inc., and TradeStation Securities, Inc. (collectively, “Petitioners”) object under 37 C.F.R. § 42.64 to the admissibility of evidence Trading Technologies International, Inc. (“TT” or “Patent Owner”) filed and served on November 15, 2016.

Petitioners ask the Patent Trial and Appeal Board to deny the admission and consideration of the following documents on the following basis:

1. FRE ARTICLE IV – RELEVANCE AND ITS LIMITS

Petitioners object to Exhibit Nos. 2183, 2185, 2184, 2186, 2188, 2189, 2193, 2194, 2195, 2196, 2197, 2204, 2206, 2207, 2208, 2209, 2210, 2211, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2226, 2230, 2233, 2234, 2236, 2238, 2250, 2279, 2280, 2281, 2282, 2287, 2292, 2293, 2294, 2295, 2296 and 2297, as irrelevant under FRE 401 and thus inadmissible under FRE 402, or as confusing or a waste of time under FRE 403, because cited portions are not relevant to any issue remaining in this proceeding, such as patentability of the subject matter, broadest reasonable interpretation of the claims, anticipation of the claims in view of the prior art, or obviousness of the claims in view of the prior art.

2. FRE ARTICLE VI - WITNESSES

Petitioners object to Exhibit Nos. 2169, 2214, 2220, 2287, 2292, 2293, 2295, and 2296 for lack of foundation. Patent Owner has not shown that the declarant has personal knowledge of the subject matter of the testimony as required by FRE 602.

Petitioners object to Exhibit No. 2214 as an improper demonstrative. Patent Owner has not established a proper foundation for the evidence set forth in the exhibits.

3. FRE ARTICLE VII – OPINIONS AND EXPERT TESTIMONY

Petitioners object to Exhibit Nos. 2168, 2169, 2170, 2171, 2174, 2208, 2210, 2214, 2216, 2218, 2219, 2221, 2223 and 2295 to the extent they offer opinion under FRE 701-703. The declarant is not qualified to offer expert testimony, the testimony is not based on sufficient facts or data, and there is no indication that declarant has the expertise necessary to apply the law to the facts as would be necessary to opine under FRE 702. Further, there is no indication that the declarant based those opinions on facts or data upon which an expert in the relevant field would reasonably rely. FRE 703. Further, testimony at these paragraphs falls outside acceptable lay opinion testimony under FRE 701. A party may not evade the expert witness requirements of FRE 702 simply by designating the testimony as lay testimony under FRE 701.

4. FRE ARTICLE VIII - HEARSAY

To the extent Patent Owner relies on the contents of Exhibit No(s). 2169, 2170, 2171, 2174, 2204, 2206, 2207, 2208, 2209, 2210, 2211, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2226, 2230, 2233, 2234, 2236, 2238, 2250, 2279, 2280, 2281, 2282, 2287, 2292, 2293, 2294, 2295, 2296, and 2297 for

the truth of the matter asserted, Petitioners object to such contents as inadmissible hearsay under FRE 801 and 802 that does not fall under any exceptions, including those of FRE 803, 804, 805 or 807.

5. FRE ARTICLE IX – AUTHENTICATION AND IDENTIFICATION

Petitioners object to Exhibit Nos. 2187, 2204, 2206, 2207, 2208, 2209, 2210, 2211, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2226, 2230, 2233, 2234, 2236, 2238, 2250, 2279, 2280, 2281, 2282, 2287, 2292, 2293, 2294, 2295, 2296, 2297, 2411, 2412, 2413, 2414, 2415, and 2416 as not properly authenticated under FRE 901 because Patent Owner has not presented any evidence that these documents are authentic nor that the documents are self-authenticating under FRE 902.

6. FRE ARTICLE X – CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

To the extent Patent Owner relies on the contents of Exhibit Nos. 2210, 2214, 2216, 2218, 2219, 2221 and 2223 to prove the content of the original document, Petitioners object to these documents as not being original documents under FRE 1002, authentic duplicates under FRE 1003, nor documents that fall under any exceptions to the original-document requirement, including those of FRE 1004.

Petitioners object to Exhibit No. 2214 under FRE 1006 as an improper summary because Patent Owner has not shown that the contents of the original

cannot be conveniently examined in court nor made the original or duplicate available for examination or copying.

CITING EXHIBITS NOT SERVED

Petitioners object to Exhibit Nos. 2169, 2208 and 2214 as citing exhibits not served with the documents as required by 37 C.F.R. § 42.51(b)(1)(i).

These objections are made within five business days from the November 15, 2016 filing and service of TT's exhibits.

Dated: November 22, 2016

Respectfully submitted,

/John C. Phillips/

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Attorney for Petitioners

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