

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.

CBM2016-00054
U.S. Patent 7,693,768

CBM2016-0090
U.S. Patent 7,725,382

**PATENT OWNER'S OPPOSITION
TO PETITIONERS' MOTION TO STRIKE**

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I. INTRODUCTION

Petitioners fail to establish that any arguments were improperly incorporated by reference in TT's Patent Owner Response ("POR"). Petitioners further fail to establish that striking incorporated exhibits is the appropriate remedy under 37 C.F.R. § 42.6(a)(3). The Board should deny Petitioners' motion for either or both of these reasons.

II. TT'S POR DOES NOT INCORPORATE ARGUMENTS

Petitioners have failed to establish that TT's POR improperly incorporates by reference arguments from Exhibit 2233, or the exhibits cited in the alleged string cites. The Board should deny Petitioners' request to strike these exhibits for this reason alone.

A. Exhibit 2233

First, TT's PORs do not incorporate arguments from Exhibit 2233 because Exhibit 2233 does not contain *arguments*. Exhibit 2233 is evidence. *See Silicon Labs., Inc. v. Cresta Technology Corp. et al*, IPR2015-00626, Paper 65, p. 17 (PTAB Aug. 11, 2016) (denying motion to strike for improper incorporation by reference, explaining that "42.6(a)(3) prohibits incorporation of *arguments*, and an expert declaration, such as that at issue here, generally is considered *evidence*, not argument.") (emphasis added).

Specifically, Exhibit 2233 is a claim chart prepared by TT’s technical expert, Mr. Thomas, showing his expert opinion on how TT’s commercial product, MD_Trader and the accused products fall within the scope of the claims. Ex. 2169, ¶76 (“In Exhibit 2233, I explain how all versions of TT’s MD Trader meet each and every element of several exemplary claims of the ‘382 patent, as well as how Petitioners’ products meet each and every element of these same claims.”); *id.* at ¶125 (“Petitioners’ products . . . also embody the ‘382 patent, as I set forth in Exhibit 2233.”); *see also* ‘768 CBM, Ex. 2169, ¶¶76, 122. This claim chart is not an argument; it is evidence from TT’s technical expert that supports TT’s argument that the claimed invention was embodied by TT in a commercial product. Indeed, TT makes these arguments throughout its POR, as summarized by several examples below:

- “The invention turned conventional screens on their head by fixing the price levels along a price axis so that the inside market moves up and down relative to the price axis.” (‘768 POR at 36-37; *see also* ‘382 POR at 41.)
- “The claimed invention was embodied by TT in a commercial product, MD_Trader, in the fall of 2000. Ex.2169, ¶97; Ex. 2233.” (‘768 POR at 37; *see also* ‘382 POR at 42.)

- “[Brumfield’s] solution was to combine a price axis with relative movement with single action order entry that occurs by selecting a location corresponding to a price level along the price axis to both set a price and send the order.” (‘768 POR at 74; *see also* ‘382 POR at 72-73.)
- “As noted above, TT first introduced the invention in the late summer of 2000 under the trade name MD_Trader. Ex.2169, ¶97; Ex. 2233. Even though it was launched *about two years after* Brumfield first conceived of the invention, MD_Trader was the *first* product available in the industry that combined a price axis with relative movement and single action order entry, as set forth in the claims.” (‘768 POR at 74-75; *see also* ‘382 POR at 73.)

See also ‘768 POR at 48-49; ‘382 POR at 51 (“This unexpected benefit has a direct nexus to the claimed features. Indeed, the faster order entry is a direct result of the claimed order entry region with fixed locations corresponding to price levels, wherein the fixed locations receive single action commands to set parameters and send trade orders.”); *see also* ‘768 POR at 49; ‘382 POR at 51-52 (“The [invention’s] unexpected result of improved visualization was a direct result of the claimed features, namely “updating the display of the first indicator such that the first [/second] indicator is moved relative to the price axis.”)

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