

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 CBM2016-00054
U.S. Patent 7,693,768 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
of Petitioners' Exhibits:

- 1007 (Expert Declaration of Kendyl A. Roman);
- 1010 (U.S. Patent No. 5,077,665 to Silverman);
- 1011 (U.S. Patent No. 5,297,031 to Gutterman);
- 1012 (WO 90/11571 to Belden);
- 1015 (U.S. Patent No. 5,960,411 to Hartman);
- 1016 (“Futures/Option Purchasing System Trading Terminal
Operation Guide,” Tokyo Stock Exchange);
- 1017 (Certified Translation of “System for Buying and Selling
Futures and Options Transaction Terminal Operational Guidelines”);
- 1018 (Certificate of Translation for “System for Buying and Selling
Futures and Options Transaction Terminal Operational Guidelines”);
- 1019 (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);

- 1020 (Weiss, “After the Trade is Made”);
- 1021 (Deel, “The Strategic Electronic Day Trader”);
- 1022 (Cooper, “About Face: The Essentials of User Interface Design”);
- 1023 (Shneiderman, “Designing the User Interface: Strategies for Effective Human-Computer Interaction”);
- 1024 (Microsoft Computer Dictionary, Fifth Edition, 2002);
- 1030 (U.S. Patent No. 6,408,282 to Buist);
- 1036 (Inside Macintosh, Promotional Edition);
- 1037 (Dictionary of Computing (4th Ed, Oxford University Press, 1996));
- 1041 (Merriam-Webster’s Collegiate Dictionary, Tenth Edition, 1998);
- 1042 (Super Mario Brothers image);
- 1043 (Metal Warrior V1.6 source code); and
- 1044 (U.S. Patent No. 6,205,260 to Crinon).

I. OBJECTION TO PETITIONERS' EXHIBIT 1007

Patent Owner objects to Exhibit 1007 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.*, ¶¶ 53, 57, 88-90, 93, 95, 105, 109, 110, 123, 125, 136, 140, 142, 144, 151, 162, 163, 165, and 166.

II. OBJECTION TO PETITIONERS' EXHIBITS 1010-1012, 1015-1024, 1030, 1036, 1037, and 1041-1044

Patent Owner objects to Exhibits 1010-1012, 1015-1024, 1030, 1036, 1037, and 1041-1044 to the extent that Petitioner relies on their contents for the truth of the matters asserted therein. Exhibits 1010-1012, 1015-1024, 1030, 1036, 1037, and 1041-1044 are inadmissible hearsay under **FRE 801 and 802**, and no exception applies.

III. OBJECTION TO PETITIONER EXHIBITS 1016-1018

Petitioner has submitted no evidence to authenticate Exhibit 1016, and deficient evidence for Exhibit 1017 as set forth below, making both inadmissible under **FRE 901**.

Patent Owner also objects to Exhibit 1016-1018 under **FRE 602**. Petitioner fails to provide a credible translation of TSE and fails 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 its accuracy because Mr. Cohen, on information and belief, did not translate the Japanese language TSE into English, has not stated that he reviewed or edited the English translation, 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). Therefore, Exhibit 1018 is noncompliant with **37 C.F.R. § 42.63(b)**. This makes Exhibits 1016 and 1017 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 1017 is an inherently subjective translation from Japanese to English and prejudicial and misleading under **FRE 403**.

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