Paper No. _____
Filed: June 7, 2017

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 CBM2016-0054
U.S. Patent 7,693,768

PATENT OWNER'S OPPOSITION
TO PETITIONERS' MOTION TO EXCLUDE

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I. INTRODUCTION

37 C.F.R. § 42 governs these proceedings, and it "shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding." § 42.1(b). The "just" requirement mandates that the Board consider all of the evidence introduced by Patent Owner Trading Technologies International, Inc. ("TT").

II. STANDARD

As the movant, Petitioners bear the burden of proving that the challenged exhibits are inadmissible. *Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.*, CBM2012-00002, Paper 66 at 59 (January 23, 2014); 37 C.F.R. § 42.20(c). Petitioners have failed to meet this burden. As a matter of policy, the Board disfavors excluding evidence; "it is better to have a complete record of the evidence submitted by the parties than to exclude particular pieces." *Id.* at 60-61.

III. GOULD-BEAR, OLSEN, & ABILOCK DECLARATIONS (EXHIBITS 2168, 2174, and 2178)

Petitioners argue that these experts did not analyze the '768 patent from the perspective of a POSA. Mot. at 2-3. But this assumes a rule that no expert testimony, no matter the topic, is admissible unless that expert can opine from the perspective of a POSA. There is no such rule. *SEB S.A. v. Montgomery Ward & Co., Inc.*, 594 F.3d 1360, 1373 (Fed. Cir. 2010) (finding admission of expert testimony proper because expert had the "knowledge, skill, experience, training, [and] education" of a "specialized" nature that was likely to "assist the trier of fact

to understand the evidence); *Qomo Hitevision, LLC v. Pathway Innovations and Techs., Inc*., IPR2016-00661, 2016 WL 5404096 *4 (PTAB 2016) (declining to disregard expert declaration because expert's scientific, technical, and other specialized knowledge would be helpful in understanding the evidence).

Each expert declaration offers relevant testimony on areas of expertise for which a POSA is not needed. For instance, the Abilock testimony (Exhibit 2178) was offered solely to explain the meaning of particular elements of TSE when translated from Japanese to English. That Mr. Abilock did not review the '768 Patent, or opine from the perspective of a POSA, is irrelevant because he is not offering an opinion on obviousness. Mr. Abilock's testimony was directed to identifying and clarifying ambiguous portions of TSE when translated from Japanese to English. POR at 28. Mr. Thomas properly relied on Mr. Abilock's testimony in forming his opinion under § 103. *See, e.g.*, Exhibit 2169 at ¶ 167.

Likewise, Mr. Gould-Bear's (Exhibit 2168) and Mr. Olsen's (Exhibit 2174) testimony was offered for the relevant purpose of opining on the nature of GUIs as a general matter in support of patent-eligibility under § 101. More specifically, these declarations were offered to support, *inter alia*, that (i) GUI tools are technology; (ii) GUIs are integral components of a computer; (iii) allowing a computer to be used in new and inventive ways through the use of a GUI is an improvement to the computer; and (iv) usability issues are technical, classical

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