

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.

CBM2016-00086 (Patent No. 7,818,247 B2)
CBM2016-00087 (Patent No. 7,412,416 B2)
CBM2016-00090 (Patent No. 7,725,382 B2)

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK and JEREMY
M. PLENZLER, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER
Oral Argument
37 C.F.R. § 42.70

Petitioner and Patent Owner request oral hearing in the above
identified proceedings pursuant to 37 C.F.R. § 42.70. Papers 21, 22.¹ The
requests are *granted*.

¹ Citations are to CBM2016-00086.

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The hearing will commence at **1:00 p.m. Eastern Time on August 10, 2017**, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.

The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing.

The panel is familiar with the issues presented in the proceedings, as those issues substantively overlap issues previously presented during oral argument in related cases. As such, each party will have 45 minutes total time to present arguments for the above identified proceedings. Petitioner bears the ultimate burden of proof that the challenged claims are unpatentable. Petitioner will present its arguments regarding the challenged claims for which we instituted trial in the above identified proceedings. Thereafter, Patent Owner will argue its opposition to Petitioners' arguments. In addition, Patent Owner may present argument concerning its Motions to Exclude Evidence in CBM2016-00087 and CBM2016-00090. Petitioners may reserve time to rebut Patent Owner's arguments regarding the challenged claims and to oppose any arguments concerning the Motions to Exclude Evidence. Finally, Patent Owner may reserve time to rebut Petitioner's opposition to any arguments concerning the Motions to Exclude Evidence.

Prohibition of New Arguments or Evidence

The parties are not permitted to raise new arguments or evidence at oral hearing. *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). Any new arguments or evidence will not be considered.

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Demonstratives

Demonstrative exhibits are intended to be visual aids to assist a party in making its oral presentation. *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, Case No. IPR2013-00033, slip op. at 3, (PTAB Oct. 23, 2013)(Paper 118). Demonstrative exhibits are not evidence and as such, the exhibits cannot add new evidence to the record of the proceeding. *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, Case No. IPR2013-00041, slip op. at 2 (PTAB Jan. 27, 2014) (Paper 65). Demonstrative exhibits are not an opportunity for additional briefing. *Id.* at 3. Arguments that have not been made previously cannot be made at the trial hearing, and thus, cannot be in a demonstrative exhibit. *Id.* Similarly, the exhibits cannot rely on evidence that, although it is in the record, was never specifically discussed in any substantive paper before the Board. *Id.*

Demonstrative exhibits are limited to reproduction of portions of papers of record or portions of the evidence specifically discussed in the substantive papers of record. Demonstrative exhibits must include a citation to where the reproduced portion of the paper is in the record and to where the evidence is discussed in a substantive paper in the record.

Objections to Demonstratives

Under 37 C.F.R. § 42.70(b), the parties shall serve any demonstrative exhibits upon each other at least seven business days prior to the hearing.

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Additionally, the parties shall file the demonstrative exhibits at least two business days prior to the hearing.

We expect that the parties will meet and confer in good faith to resolve all objections to demonstrative exhibits, but if such objections cannot be resolved, the parties may file objections to demonstratives with the Board no later than two business days before the hearing. The objections should identify with particularity which portions of the demonstrative exhibits are subject to objection, include a copy of the objected-to portions, and include a one-sentence statement of the reason for each objection. No argument or further explanation is permitted. We will consider any objections and schedule a conference call if deemed necessary. Otherwise, we will reserve ruling on the objections. Any objection to demonstrative exhibits that is not timely filed will be considered waived.

Counsel

Lead counsel for each party is expected to be present in person at the oral hearing.² Any counsel of record, however, may present the party's arguments. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference with the panel no later than two business days prior to the oral hearing to discuss the matter.

Each party will designate one or two counsel to present argument. Only designated counsel may make objections or otherwise address the

² Lead counsel for Petitioner in CBM2016-00086 was granted authorization to participate remotely.

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panel during the oral hearing. The designated counsel may seek permission from the panel for other counsel of record to address the panel, if necessary.

Special Requests

Any special requests for audio visual equipment or reserved seating should be directed to Trials@uspto.gov. Request for special equipment or reserved seating will not be honored unless presented in a separate communication directed to the above email address not less than five days before the hearing.

Public Attendance

The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first served basis. The records of these proceedings include confidential information subject to a protective order. The parties should avoid disclosing confidential information in its demonstratives or oral arguments. If the parties have any concern about disclosing confidential information, they should to contact the Board at least two days in advance of the hearing to discuss the matter.

It is so ORDERED.

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