

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC, INTERACTIVE BROKERS LLC,
TRADESTATION GROUP, INC., TRADESTATION SECURITIES, INC.,
TRADESTATION TECHNOLOGIES, INC., and IBFX, INC.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2015-00179
Patent No. 7,533,056 B2

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

PETRAVICK, *Administrative Patent Judge.*

DECISION
Conduct of the Proceeding
37 C.F.R. § 42.5

On March 23, 2016, a conference call was held between counsel for Petitioner, counsel for Patent Owner, and Judges Petravick and Plenzler. Petitioner requested the conference call to seek an extension of time to serve supplemental evidence pursuant to 37 C.F.R. § 42.64 or alternatively authorization to file a motion to submit supplemental information pursuant

to 37 C.F.R. § 42.123. Patent Owner also sought authorization to file a motion to stay related Reexamination Control No. 90/013,578 during the conference call. A court reporter was present on the conference call.

i. Supplemental Evidence or Information

On March 9, 2015, Patent Owner filed an objection to Exhibit 1007, a transcript of a Deposition of Atsushi Kawashima taken in connection with *Trading Technologies International, Inc. v. eSpeed, Inc.*, Case No. 04-cv-5312 (N.D. Ill). Paper 30. During the call, Petitioner stated that it was attempting to contact Atsushi Kawashima to obtain supplemental evidence to respond to Patent Owner's objection, as provided for by 37 C.F.R. § 42.64(b)(2). Rule 42.64(b)(2) requires that supplemental evidence must be served within ten business days of service of the objection, which here, would be March 23, 2016. Petitioner stated that it "recently" made attempts, but was unable, to contact Atsushi Kawashima, who is most probably in Japan. Petitioner, thus, sought an extension of time to file supplemental evidence until April 15, 2016.

Patent Owner opposed Petitioner's request. Atsushi Kawashima's testimony is relied upon to establish that Exhibit 1003, an operation guide to a trading terminal of the Tokyo Stock Exchange, is prior art. *See* Paper 9, 21–22. According to Patent Owner, an extension to the time period for filing supplemental evidence is not appropriate because Petitioner should have known of the deficiencies of Atsushi Kawashima's testimony prior to filing the Petition and Petitioner is allegedly attempting to cure, improperly, deficiencies of its *prima facie* case through supplemental evidence.

Upon consideration of the parties' contentions, we are not persuaded by Petitioner that deviating from 37 C.F.R. § 42.64(b)(2) by extending the

time for filing supplemental evidence is appropriate under these circumstances. The prior art status of Exhibit 1003 and the reliability of the testimony of Atshushi Kawashima was a contested in *Trading Technologies International, Inc. v. eSpeed, Inc.* and in related CBM2014-00131. See Paper 21, 61–62; *Trading Technologies Int’l, Inc. v. TD Ameritrade Holding Corp.*, CBM2014-00131 (PTAB) (Paper 38, 33–34, Paper 48, 19–20). Petitioner, thus, should have been aware prior to filing of the Petition in this proceeding that it may need to locate Atsushi Kawashima if it relied upon the testimony in Exhibit 1007 to establish that Exhibit 1003 is prior art.

Petitioner alternatively requested authorization to file a motion to submit supplemental information should it contact Atsushi Kawashima. At this time, Petitioner’s request is premature as Petitioner indicates that it has been unable to contact Atsushi Kawashima and, thus, is not in possession of such supplemental information. Should Petitioner possess such supplemental information, Petitioner may contact the Board to renew its request at that time.

ii. Motion to Stay Related Reexamination

Prior to this institution of covered business method patent review in this proceeding, Petitioner requested authorization to file a motion to terminate, consolidate, or stay Reexamination Control No. 90/013,578¹. Paper 18, 4–5. The Board denied Patent Owner’s request as premature because the Board, at that time, had not decided whether to institute a review. *Id.* During the call, Patent Owner renewed its request for

¹ U.S. Patent No. 7,533,056 B2 is the subject of covered business method patent review CBM2015-00179 and the subject of Reexamination Control No. 90/013,578

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authorization to file a motion stay the related reexamination. Petitioner did not oppose the request.

Patent Owner may file a motion to stay Reexamination Control No. 90/013,578 no later than March 31, 2016. Should Petitioner oppose the motion, the opposition must be filed no later than one week from the filing date of the motion. No reply is authorized at this time.

Accordingly, it is:

ORDERED that Petitioner's request for an extension of time to file supplemental evidence is denied;

FURTHER ORDERED that Petitioner's request to file a motion to submit supplement information is denied; and

FURTHER ORDERED that Patent Owner's request to file a motion to stay the related reexamination is granted, the motion should be filed no later than March 31, 2016, and the opposition should be filed no later than one week from the filing date of the motion.

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