

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)	
Trading Technologies International, Inc.,)	
)	Civil Action No. 04 C 5312
Plaintiff,)	
)	Judge: James B. Moran
v.)	
)	Magistrate: Sidney I. Schenkier
eSpeed, Inc., eSpeed International, Ltd.,)	
Ecco LLC, and EccoWare Ltd.,)	
)	
Defendants.)	
_____)	

**PLAINTIFF TRADING TECHNOLOGIES INTERNATIONAL, INC’S
EMERGENCY MOTION TO VACATE PERMANENT INJUNCTION
ORDER PENDING FORMAL ENTRY OF FINAL JUDGMENT**

TT requests this Court’s immediate assistance to resolve a dispute between the parties arising from this Court’s issuance of a permanent injunction prior to a formal entry of final judgment. TT seeks immediate relief because the narrow window for lodging objections and filing appellate briefs before the Federal Circuit is already ticking.

Although TT believes that this Court entered a final decision by granting the permanent injunction on May 22, 2008--the very last issue this Court was required to decide¹--eSpeed is relying on the timing of the permanent injunction in an attempt to usurp TT’s right to be the appellant in this case on appeal. On May 27, 2008, eSpeed filed a limited appeal of the Court’s order granting the permanent injunction. Dkt. 1236. Later that day, TT filed a Notice of Appeal on all issues already decided for which TT seeks appellate review. Dkt. 1237. However, eSpeed

¹ Although TT had previously requested that this Court also decide TT’s attorneys fees motion prior to deciding all other issues, there is no *requirement* that this Court rule on the attorneys fees motion prior to entry of final judgment. Nonetheless, TT submits that it makes sense for this Court to rule on the motion prior to entry of final judgment so that each party can file one clean notice of appeal that addresses all issues.

now argues that TT's Notice of Appeal is improper because this Court had not yet entered final judgment. eSpeed, however, is the party advancing an improper interlocutory appeal by attempting to appeal only the permanent injunction (without an appeal of all of the issues in the case) when the case is already over on the merits.

eSpeed apparently has done this to try to take advantage of the appellate rules. The rules state that the first-filed notice of appeal is the appellant, but when both parties file an appeal on the same day, the plaintiff is deemed the appellant. F.R.A.P. 28.1. Where there is a cross-appeal, the appellant has the advantage of having higher word limits in its briefs and also files the first brief focused solely on the issues it seeks to appeal. The general rule is that a plaintiff, like TT here, has the right to be an appellant if it wants to appeal an issue. Typically, permanent injunction orders are entered the same day as a final judgment. Here, however, eSpeed is arguing that the injunction order was entered before final judgment and is attempting to take advantage of the rule that interlocutory appeals of injunctions (such as, for example, preliminary injunctions) are permitted because such injunctions cast a cloud over the enjoined party for a period of time before the case is over on the merits. But this clearly is not the situation here, where the case is over on the merits. In other words, the Court's permanent injunction order is not interlocutory.

While TT disputes eSpeed's argument that TT's Notice of Appeal was improper, TT requests that, in order to save the parties time and expense in briefing the issue and to make the appeal process more orderly, this Court should remedy the situation by 1) vacating the entry of permanent injunction; 2) ruling on the attorneys fees motion; and 3) entering final judgment the same day as re-entering the ruling on the permanent injunction. TT submits that such action by

this Court is required to enable each party to file one clean Notice of Appeal dealing with all issues.

Respectfully submitted,

Date: June 3, 2008

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on June 3, 2008 as follows:

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