IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

OANDA CORPORATION, Plaintiff, v. GAIN CAPITAL HOLDINGS, INC. and GAIN CAPITAL GROUP, LLC, Defendants.	Civil Action No.: 20-05784-ZNQ-DEA **JURY TRIAL DEMANDED**

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to Local Patent Rule 4.3 and the Court's September 29, 2021, Scheduling Order (Dkt. No. 96), Plaintiff OANDA Corporation ("OANDA" or "Plaintiff") and Defendants GAIN Capital Holdings, Inc. and GAIN Capital Group, LLC ("GAIN" or "Defendants") submit their Joint Claim Construction and Pre-hearing Statement.

I.   Background

OANDA's Complaint alleges that GAIN infringes two patents, U.S. Patent Nos. 7,146,336 ("the '366 patent") and 8,392,311 ("the '311 patent") ("Asserted Patents"). GAIN owns and operates electronic foreign exchange trading systems, certain of which OANDA has accused of infringement.   GAIN alleges that the asserted claims are invalid, not infringed, and/or unenforceable.

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II.   Claim Construction

A.   <u>The Construction of the Terms on Which the Parties Agree</u>

Pursuant to Local Patent Rule 4.3(a), the parties met and conferred to narrow the number

of terms in dispute and agreed on the construction of the following term.

"continuously checks" – '336 Patent, Claims 2-4	"repeatedly performs the process of checking"

B.   <u>Claim Terms in Dispute and the Parties' Proposed Construction</u>

Pursuant to Local Patent Rule 4.3(b), attached hereto as Exhibit A is a chart identifying the

claim terms and phrases in dispute and the parties' proposed constructions. Exhibit A also

identifies the intrinsic and extrinsic evidence known to each party on which it intends to rely upon

in support of its constructions or to oppose the other party's proposed constructions.

C.   <u>Significant or Dispositive Claim Terms</u>

Plaintiff's Position:

Pursuant to Local Patent Rule 4.3(c), Plaintiff states that the following terms are more

significant because they are terms whose construction would aid the jury in understanding the

technology.

<u>The '336 Patent:</u>
"server front-end"
"rate server"
"pricing engine"

<u>The '311 Patent:</u>
"dynamically maintaining"
"current exchange rate(s)"
"requested trade price"

OANDA disagrees with GAIN's assertion below that its infringement contentions are lacking.

Furthermore, contrary to GAIN's contention, OANDA has not received all of GAIN's relevant

source code and still awaits GAIN's production of its API source code that GAIN has improperly

maintained is not part of this case. *See* Joint Status Report (Dkt. 102).

Defendants' Positions:

Pursuant to Local Patent Rule 4.3(c), Defendants state that the following terms are more

significant than the others because they are found in at least all asserted independent claims:

The '336 Patent:
"in communication with"
"server front-end"
"rate server"
"pricing engine"

The '311 Patent:
"trading client system"
"determining" or "determined"
"dynamically maintaining"
"determining and dynamically maintaining a plurality of currency exchange rates"
"current exchange rate(s)"
"current exchange rate at the time"
"requested trade price"

Defendants further state that the constructions of the following terms are potentially

dispositive of at least certain Claims-in-Suit because if the Court adopts Defendants' proposed

construction, several of the claims will be invalidated for indefiniteness and/or lack of written

description:

The '336 Patent:
"pricing engine"
"hedging engine"

The '311 Patent:
"trading client system"
"dynamically maintaining"
"determining and dynamically maintaining a plurality of currency exchange rates"
"current exchange rate(s)"
"current exchange rate at the time"

GAIN's identification of significant terms is limited by the lack of fulsome infringement

contentions by OANDA. Despite having had access to GAIN's technical documents since at least

October 30, 2021, and GAIN's source code for at least the current versions of the accused products since November 12, 2021, OANDA has not provided a chart identifying specifically where each limitation of each asserted claim is found within each accused instrumentality, as required by Local Patent Rule 3.1(c). Without these mandatory disclosures, GAIN is unable to assess which claim terms are most relevant to OANDA's allegations. GAIN disagrees that OANDA is entitled to any backend API source code or that it is necessary or even needed to provide proper contentions as to the currently accused products.

D.   Anticipated Length of Time Necessary for the Claim-Construction Hearing

Pursuant to Local Patent Rule 3.4(d), the parties state that they anticipate that the Court will be able to conduct a hearing on the meaning of the disputed terms in about 4 to 6 hours.

E.   Identification of Witness for the Claim-Construction Hearing

Pursuant to Local Patent Rule 4.3(e), as set forth in Exhibit A, the parties may rely on expert testimony that would be submitted to the Court by declaration. The parties defer to this Court's preference regarding live testimony and would be pleased, if the Court requests, to present such testimony in person if the Court's rules permit or through a Zoom hearing.

Dated: January 18, 2022   Respectfully submitted,

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