

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BLOOMBERG INC.; BLOOMBERG L.P.;  
BLOOMBERG FINANCE L.P.;  
THE CHARLES SCHWAB CORPORATION;  
CHARLES SCHWAB & CO., INC.;  
E\*TRADE FINANCIAL CORPORATION; E\*TRADE SECURITIES LLC;  
E\*TRADE CLEARING LLC; OPTIONSXPRESS HOLDINGS INC.;  
OPTIONSXPRESS, INC.; TD AMERITRADE HOLDING CORP.;  
TD AMERITRADE, INC.; TD AMERITRADE IP COMPANY, INC.; and  
THINKORSWIM GROUP INC.

Petitioner

v.

MARKETS-ALERT PTY LTD.

Patent Owner

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Case CBM2013-00005

Patent 7,941,357

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Before JAMESON LEE, SALLY C. MEDLEY, and JONI Y. CHANG,  
*Administrative Patent Judges.*

MEDLEY, *Administrative Patent Judge.*

FINAL WRITTEN DECISION  
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

## I. INTRODUCTION

Petitioner “Bloomberg” filed a petition on October 15, 2012, requesting a covered business method patent review of U.S. Patent No. 7,941,357 (“the ’357 patent”) pursuant to section 18(a) of the Leahy-Smith America Invents Act (“AIA”).<sup>1</sup> Paper 1 (“Pet.”). Patent Owner Markets-Alert filed a patent owner preliminary response. Paper 16 (“Prelim. Resp.”). Taking into account Markets-Alert’s preliminary response, the Board determined that it was more likely than not that the challenged claims are unpatentable. Pursuant to 35 U.S.C. § 324, the Board instituted this trial on March 29, 2013, as to claims 1-4 of the ’357 patent. Paper 18 (“Dec. on Inst.”).

Subsequent to institution, Markets-Alert filed a patent owner response (Paper 38; “PO Resp.”) and a substitute motion to amend (Paper 42; “Mot. to Amend”)<sup>2</sup> requesting cancellation of claims 1-4 and addition of proposed claims 5-8. Mot. to Amend 1-2. Bloomberg filed a reply to the patent owner response (Paper 51; “Pet. Reply”) and an opposition to the substitute motion to amend (Paper 50; “Opp.”). Markets-Alert filed a reply to the motion to amend. Paper 54 (“PO Reply”).

Markets-Alert also filed a motion to exclude (Paper 58; “Mot. to Exclude”) certain testimony of the second declaration of Bloomberg’s declarant, Steven R. Kursh and certain exhibits. Bloomberg filed an

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<sup>1</sup> Pub. L. No. 112-29, 125 Stat. 284, 329 (2011).

<sup>2</sup> Markets-Alert requested, and received authorization from the Board, to file a substitute motion to amend, which replaced an earlier motion. Paper 41. It is the substitute motion to amend that is before us for consideration.

opposition to the motion to exclude (Paper 62; “Exclude Opp.”), and Markets-Alert filed a reply (Paper 64; “Exclude Reply”).

An oral hearing was held on December 19, 2013.<sup>3</sup>

The Board has jurisdiction under 35 U.S.C. § 6(c). This decision is a final written decision under 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73.

For the reasons that follow, the portion of Markets-Alert’s substitute motion to amend requesting cancellation of claims 1-4 is granted; however, that portion of the motion requesting the addition of proposed claims 5-8 is denied.

#### *A. Related Litigation*

“Bloomberg” is comprised of fourteen individual entities. Pet. 58. In compliance with 37 C.F.R. § 42.302(a), Bloomberg certifies that it has been sued for infringement of the ’357 patent. Pet. 7-8. The identified related cases are before the U.S. District Court for the District of Delaware, and are stayed pending this review. Exs. 1018-1021, 3001.<sup>4</sup>

#### *B. The ’357 Patent*

The ’357 patent, entitled “Trading System,” issued from the National Stage (Application No. 10/415,022) of a PCT International Application (PCT/AU01/01380; PCT Pub. No. WO02/35400) filed October 26, 2001, and claims priority to Australian application (AU) PR1097, filed October 27, 2000. The ’357 patent issued on May 10, 2011.

The ’357 patent generally relates to a trading system that monitors

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<sup>3</sup> A transcript of the oral hearing is included in the record as Paper 70 (“Tr.”).

<sup>4</sup> Ex. 3001 is a copy of the decision to stay the related cases.

stock data and provides notification to a remote device using a network based system. Ex. 1001.

Figure 1 of the '357 patent is reproduced below.

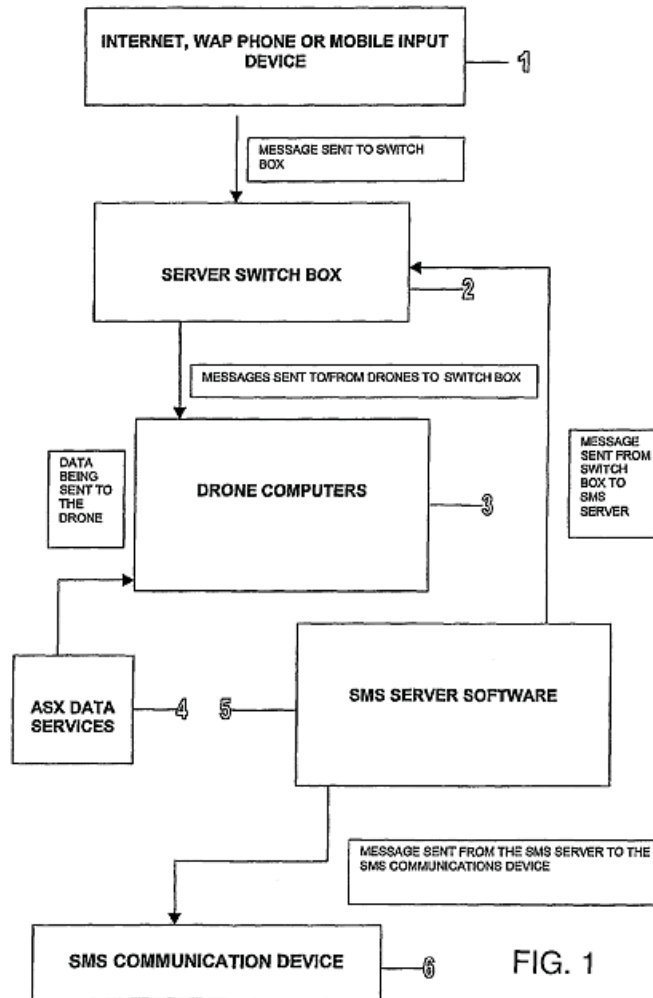


Figure 1 shows an arrangement of the trading system.

Figure 1 shows drone computers 3, which receive and process technical indicator instructions from user's device 1 through switch 2. *Id.* at 3:47-48. Drone computers analyze the stock market at a specified interval and apply the user's technical indicator instructions to the data. A message

is sent ultimately to the user's device from the SMS server indicating that a valid technical response has been reached. *Id.* at 3:62-64.

Figure 2 is of the '357 patent is reproduced below.

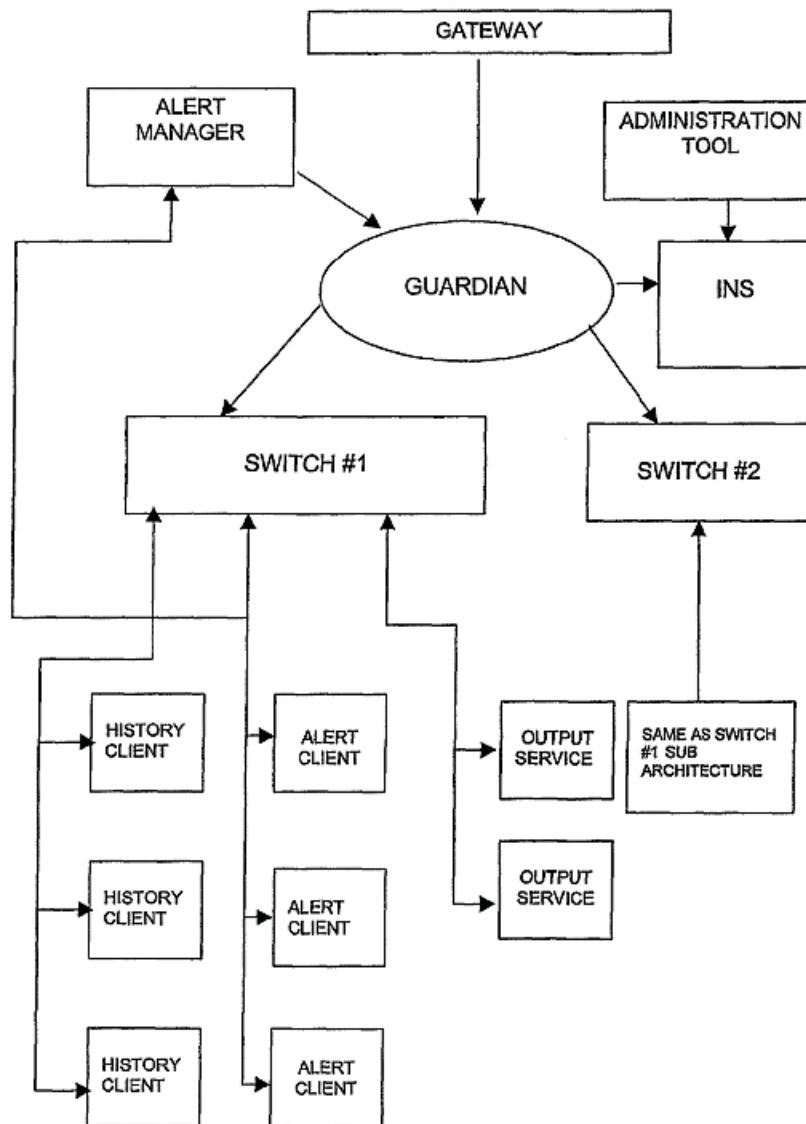


FIG. 2

Figure 2 shows an internal server infrastructure of the trading system.

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