

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.  
Petitioners,

v.

MARKETS-ALERT PTY LTD.  
Patent Owner.

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Case CBM2013-00005 (JYC)  
Patent 7,941,357

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

**PATENT OWNER MARKETS-ALERT  
MOTION TO EXCLUDE PURSUANT TO 37 C.F.R. §42.64**

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## **I. STATEMENT OF REQUESTED RELIEF**

Pursuant to 37 C.F.R. §42.64 and Patent Owner Markets-Alert Objections To Evidence (“Objections”), Markets-Alert hereby seeks the exclusion of Paragraph Nos. 7, 12-15, 17, 32-34, 44, and 46-57 of Exhibit No. 1043 (“Second Kursh Decl.”) and newly submitted references in Exhibit Nos. 1036-1041 (“New References”) for failing to comport with the Federal Rules of Evidence.

## **II. STATEMENT OF MATERIAL FACTS**

(1) On October 2, 2013, Petitioners submitted the Second Kursh Decl. and New References in support of Petitioner’s Opposition to Patent Owner Markets-Alert Motion to Amend (Paper 50) (“Opposition”) and Petitioner’s Reply to Patent Owner Markets-Alert Response (Paper 51) (“Reply”). Markets-Alert timely served its Objections to this evidence on October 8, 2013.

(2) The Second Kursh Decl. contains testimony in the form of alleged expert opinions at Paragraph Nos. 7, 12-15, 17, 32-34, 44, and 46-57.

(3) Petitioners cite previously submitted Exhibit Nos. 1006-1014 and 1025-1033 as teaching “methods of technical analysis-based stock market data monitoring and alerting.” Ex. 1043 at 31.

(4) On March 29, 2013, the Board held that these references (among others to which Petitioners no longer cite) presented grounds for unpatentability

redundant to the four grounds instituted. Decision, Paper 18, at 40.

(5) Petitioners cite previously submitted Exhibit No. 1004 (*Satow*) as teaching “server-based, scalable and redundant,” Ex. 1043 at 27, and a “network of computers,” Ex. 1002 at 52.

(6) Petitioners cite *Satow* as an anticipating reference for a “network-based stock trading system” and “technical analysis,” Ex. 1002 at 51-56, and “monitors stock market data in real-time and executes a trade upon satisfaction of the selected criteria, with the user concurrently being notified in real time of trade execution,” Ex. 1043 at 34.

(7) Petitioners cite previously submitted Exhibit No. 1033 (*eSignal*) as teaching “a server-based, scalable and redundant network.” Ex. 1043 at 40.

(8) Petitioners submit New References in Exhibit Nos. 1037 (*Chapraty*), 1038 (*Keilani*), 1039 (*Ambrose*), and 1040 (*Lim*) solely for their alleged teaching of “server-based, scalable and redundant networks.” Ex. 1043 at 41-43.

(9) Petitioners submit New Reference in Exhibit No. 1041 (*Toy*) for its alleged teachings of a “method and system for monitoring stock market information and notifying users in real time when an event of interest occurs... over a network of computers.” Ex. 1043 at 47.

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