

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TRADING TECHNOLOGIES INTERNATIONAL, INC.	)	
	)	Case No. 10 C 715
	)	<b>(Consolidated with:</b>
Plaintiff,	)	10 C 716, 10 C 718,
	)	10 C 720, 10 C 721,
v.	)	10 C 726, 10 C 882,
	)	10 C 883, 10 C 884
BCG PARTNERS, INC.	)	10 C 885, 10 C 929,
	)	10 C 931)
	)	
Defendant.	)	Judge Virginia M. Kendall
	)	

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF JOINT  
MOTION FOR SUMMARY JUDGMENT THAT THE '056 PATENT IS  
INVALID UNDER 35 U.S.C. § 112 ¶ 1 FOR LACK OF WRITTEN  
DESCRIPTION**

TDA 1028

## TABLE OF CONTENTS

	Page(s)
TABLE OF AUTHORITIES .....	ii
I. PRELIMINARY STATEMENT .....	1
II. UNDISPUTED FACTS .....	1
A. The Specification .....	2
1. Priority View Embodiment .....	3
2. The Value/Quantity View Embodiment .....	6
3. Trading Pit View Embodiment .....	7
B. The Originally Presented Claims .....	8
C. The 2007 Amended Claims .....	10
III. ARGUMENT .....	12
A. The Written Description Requirement .....	12
B. The '056 Patent is Invalid for Lack of Written Description .....	14
IV. CONCLUSION.....	18

**TABLE OF AUTHORITIES**

	Page(s)
<b>CASES</b>	
<i>Agilent Technologies, Inc. v. Affymetrix, Inc.</i> , 567 F.3d 1366 (Fed. Cir. 2009).....	14
<i>Amgen Inc. v. Hoechst Marion Roussel, Inc.</i> , 314 F.3d 1313 (Fed. Cir. 2003).....	13, 18
<i>Anascape, Ltd. v. Nintendo of America</i> , 601 F.3d 1333 (Fed. Cir. 2010).....	15, 16, 18
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	12
<i>Ariad Pharmaceuticals, Inc. v. Eli Lilly &amp; Co.</i> , 598 F.3d 1336 (Fed. Cir. 2010) (en banc).....	12, 13, 14, 17
<i>Centocor Ortho Biotech, Inc. v. Abbott Laboratories</i> , 636 F.3d 1341 (Fed. Cir. 2011) .....	14
<i>ICU Medical, Inc. v. Alaris Medical Systems</i> , 558 F.3d 1368 (Fed. Cir. 2009).....	13, 16, 18
<i>In re NTP, Inc.</i> , No. 2010-1277, 2011 WL 3250466 (Fed. Cir. Aug. 1, 2011) .....	14, 17, 18
<i>LizardTech, Inc. v. Earth Resource Mapping, Inc.</i> , 424 F.3d 1336 (Fed. Cir. 2005).....	13
<i>Lockwood v. American Airlines</i> , 107 F.3d 1565 (Fed. Cir. 1997) .....	13
<i>Martin v. Mayer</i> , 823 F.2d 500 (Fed.Cir.1987) .....	13
<i>New Railhead Mfg., LLC v. Vermeer Mfg. Co.</i> , 298 F.3d 1290 (Fed. Cir. 2002).....	14
<i>PowerOasis, Inc. v. T-Mobile USA, Inc.</i> , 522 F.3d 1299 (Fed. Cir. 2008).....	13, 14, 17, 18
<i>Reiffin v. Microsoft Corp.</i> , 214 F.3d 1342 (Fed. Cir. 2000). .....	12, 18
<i>Technology Licensing Corp. v. Videotek, Inc.</i> , 545 F.3d 1316 (Fed. Cir. 2008) .....	14
<i>United States v. Diebold, Inc.</i> , 369 U.S. 654 (1962).....	12
<i>Vas-Cath Inc. v. Mahurkar</i> , 935 F.2d 1555 (Fed. Cir. 1991) .....	13

**STATUTES AND RULES**

35 U.S.C. § 112.....	<i>passim</i>
35 U.S.C. § 120.....	14
Fed. R. Civ. P. 56(c) .....	12

The Undersigned defendants in consolidated patent infringement cases 10-C-715, -716, -718, -720, -721, -882, -883, -884, -885 & 929 (“Defendants”) respectfully submit this memorandum of law in support of their joint motion for summary judgment of invalidity of United States Patent No. 7,533,056 (the “‘056 Patent”) (DSUF Ex. A) under 35 U.S.C. § 112, ¶ 1.

## I. PRELIMINARY STATEMENT

This motion focuses on a single limitation of the ‘056 Patent:

... receiving a user input indicating a default quantity to be used to determine a quantity for each of a plurality of orders to be placed by the user at one or more price levels. (DSUF Ex. A, col.14:11-14)

This method step is recited in the sole independent claim of the ‘056 Patent (claim 1) and is therefore also, by definition, incorporated into every dependent claim. 35 U.S.C. § 112, ¶ 4.

But no such step was disclosed in the parent patent application filed in 1999 from which the ‘056 Patent claims priority, or in the 2006 continuation patent application which later issued as the ‘056 Patent. To the contrary, the step first appeared when amended claims were filed in 2007, more than *eight years* after the parent patent application was filed. The ‘056 Patent is invalid under § 112, ¶ 1 because its specification fails to provide a written description adequate to show that the inventors were in possession of an invention that included the step of receiving a user-selected default quantity to be used to determine a quantity for multiple orders at one or more different price levels.

## II. UNDISPUTED FACTS

The ‘056 Patent issued on May 12, 2009 from U.S. Patent Application Serial No. 11/417,544 (the “‘544 Application”). Certificates of Correction were issued on February 9,

2010, March 22, 2011, and April 19, 2011. (Defendants' Rule 56.1 Statement of Undisputed Facts ["DSUF"], ¶ 1)

The '544 Application was filed in the United States Patent and Trademark Office ("PTO") on May 3, 2006 as a continuation of U.S. Patent Application Serial No. 09/289,550 (the "'550 Application"), which was filed on April 9, 1999 and issued as U.S. Patent No. 7,212,999 on May 1, 2007. (DSUF, ¶ 2) The inventors listed on the '056 Patent are Richard W. Friesen and Peter C. Hart. (DSUF, ¶ 3)

Friesen and Hart assigned their invention to Epit, Inc. in 1999. Epit, Inc. assigned it to Hitachi, Ltd. in 2002, and Hitachi, Ltd. assigned it to Plaintiff Trading Technologies International, Inc. ("TT") in 2003. (DSUF, ¶ 4)

The specification of the '056 Patent as issued in 2009 is the same as the specification that was set forth in the '550 Application when it was filed in 1999, with the exception of a few corrections which, TT told the PTO, were not substantive. (DSUF, ¶ 5)

#### **A. The Specification**

The specification of the '056 Patent summarizes the "present invention" as "a user interface for an electronic trading system that allows a remote trader to view trends in the orders for an item, and provides the trading information in an easy to see and interpret graphical format." (DSUF, ¶ 6)

The specification further states that:

[I]n accordance with the present invention, each client terminal displays all of the outstanding bids and offers for an item, in contrast to the conventional systems and methods in which only the highest bid and lowest offer were known to the individual trader. This allows the trader to view trends in orders for an item, and thus better enables the trader to anticipate demand for the item. (DSUF, ¶ 7)

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.