

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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

TRADING TECHNOLOGIES INTERNATIONAL INC.'S

**(1) OPPOSITION TO DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT
THAT THE '056 PATENT IS INVALID UNDER 35 U.S.C. § 112 ¶ 1 FOR LACK OF
WRITTEN DESCRIPTION**

AND

**(2) CROSS MOTION FOR SUMMARY JUDGMENT THAT THE '056 PATENT MEETS
THE WRITTEN DESCRIPTION REQUIREMENT SET FORTH IN 35 U.S.C. § 112 ¶ 1**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. LEGAL STANDARDS..... 2

A. The Written Description Requirement..... 2

B. Burden of Proof 3

C. Summary Judgment 4

III. ARGUMENT 4

A. The Specification Discloses a Default Quantity 5

 1. *Figures 3A-C Convey a Default Quantity..... 8*

 2. *The Textual Description of Token Adjustment Conveys a Default Quantity 9*

 3. *The Textual Description of Order Placement Conveys a Default Quantity 10*

B. Defendants Misstate the Burden of Proof 11

C. Defendants Fail to Meet Their Burden of Proving Lack of Written Description..... 12

 1. *Defendants Fail to Present any Evidence Regarding the Understanding of a Person of Ordinary Skill in the Art..... 12*

 2. *Defendants’ Assertion that the Exact Term “Default Quantity” Is Not Used in the Specification Is Irrelevant..... 13*

 3. *Defendants’ Assertion that the Concept of “Default Quantity” Is Not Disclosed in the Specification Is Incorrect..... 13*

D. Defendants Cases Are Inapposite..... 16

IV. CONCLUSION 18

TABLE OF AUTHORITIES

Cases

All Dental Prodx, LLC v. Advantage Dental Prods., Inc., 309 F.3d 774 (Fed. Cir. 2002)..... 3

Anascape, Ltd. v. Nintendo of Am., 601 F.3d 1333 (Fed. Cir. 2010)..... 16

Ariad Pharm., Inc. v. Eli Lilly & Co., 598 F.3d 1336 (Fed. Cir. 2010)..... 2, 3, 12, 13

Bilski v. Kappos, 130 S. Ct. 3218 (2010)..... 3, 12

Brooktree Corp. v. Advanced Micro Devices, Inc., 977 F.2d 1555 (Fed. Cir. 1992) 3, 4

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 4

Commonwealth Scientific & Indus. Research Org. v. Buffalo Tech. (USA), Inc., 542 F.3d 1363 (Fed. Cir. 2008)..... 4

Cooper Cameron Corp. v. Kvaerner Oilfield Prods., Inc., 291 F.3d 1317 (Fed. Cir. 2002)..... 17

Crown Pkg’g Tech., Inc. v. Ball Metal Bev.e Container Corp., 635 F.3d 1373 (Fed. Cir. 2011) .. 4

Eiselstein v. Frank, 52 F.3d 1035 (Fed. Cir. 1995) 3, 13

Hynix Semiconductor Inc. v. Rambus Inc., 645 F.3d 1336 (Fed. Cir. 2011) 4

ICU Med., Inc. v. Alaris Med. Sys., 558 F.3d 1368 (Fed. Cir. 2009) 16

In re Alton, 76 F.3d 1168 (Fed. Cir. 1996) 2

In re NTP, Inc., No. 2010-1277, 2011 WL 3250466 (Fed. Cir. Aug. 1, 2011) 11, 16, 17

Koito Mfg. Co., Ltd. v. Turn-Key-Tech, L.L.C., 381 F.3d 1142 (Fed. Cir. 2004)..... 17

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)..... 4

Pandrol USA, LP v. Airboss Ry. Prods., Inc., 424 F.3d 1161 (Fed. Cir. 2005)..... 4

PowerOasis, Inc. v. T-Mobile USA, Inc., 522 F.3d 1299 (Fed. Cir. 2008)..... 11, 12, 16

Space Sys./Loral, Inc. v. Lockheed Martin Corp., 405 F.3d 985 (Fed. Cir. 2005) 17

Tech.Licensing Corp. v. Videotek, Inc., 545 F.3d 1316 (Fed. Cir. 2008) 4, 11, 12

Trading Technologies Int’l, Inc. v. eSpeed, Inc., 507 F. Supp. 2d 874 (N.D. Ill. 2007) 13

Trading Techs. Int’l, Inc. v. eSpeed, Inc., 595 F.3d 1340 (Fed. Cir. 2010)..... 2, 13, 17

Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555 (Fed. Cir. 1991) 2, 3

Wang Labs. v. Toshiba Corp., 993 F.2d 858 (Fed. Cir. 1993) 17

Statutes

35 U.S.C. § 112..... 2, 11

35 U.S.C. § 282..... 3

Rules

FED. R. CIV. P. 56..... 4

M.P.E.P § 2106 3, 12

I. INTRODUCTION

Defendants acknowledge that the written description issue is a “question of fact” that focuses on whether the disclosure apprises *one of ordinary skill in the art* that the inventor actually was in possession of, and had invented, the claimed invention. Dkt. 373, Def. Br. 13-14. And yet, Defendants fail to set forth who a person of ordinary skill in the art would be for this patented technology. Likewise, they fail to present any facts—either in the form of a declaration or otherwise—regarding whether *one of ordinary skill in the art* would understand the inventors possessed the concept of a default quantity in conjunction with the other claim elements. Instead, Defendants offer nothing more than litigation-induced attorney argument, without any factual support.

Defendants advance two arguments in support of their motion, but neither has any merit. First, Defendants argue that the exact term “default quantity” does not appear in the specification. This is irrelevant, however, as it is black letter law that the disclosure need not describe the claimed subject matter in exactly the same terms as used in the claims. In fact, the law is clear that the disclosure need not take any particular form, and could even be a figure standing alone. The law is also clear that the disclosure does not have to explicitly describe every claim element, so as long as every element is necessarily present in the disclosure such that it can be recognized by one of ordinary skill in the art.

Second, Defendants repeatedly assert, without any support, that the specification contains “no disclosure” of the claimed default quantity. As demonstrated below, there are numerous portions of the ‘056 patent specification conveying to those of skill in the art that the inventors were in possession of the claimed default quantity. This is confirmed by the Declaration of Richard Hartheimer (“Ex. 2, Hartheimer Decl.”), which is submitted herewith. In view of this factual evidence presented by TT—and the complete lack of any factual evidence from the

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.