

EXHIBIT 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)	
TRADING TECHNOLOGIES)	Case No. 10 C 715
INTERNATIONAL, INC.)	(Consolidated with:
)	10 C 716, 10 C 718,
Plaintiff,)	10 C 720, 10 C 721,
)	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
_____)	

SUPPLEMENTAL DECLARATION OF RICHARD HARTHEIMER

I, Richard Hartheimer, further declare as follows:

Introduction

26. I have now reviewed Defendants' Reply Memorandum of Law on Support of their Joint Motion for Summary Judgment that the '056 Patent is Invalid Under 35 U.S.C. § 112 ¶ 1 for Lack of Written Description and the supporting Declaration of Bernard S. Donefer.

27. Based on that review, I understand the Defendants are asserting that I did not find any disclosure in the '056 patent of (1) "receiving a user input indicating a default quantity" or (2) a default quantity that is "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." This is not correct.

"Receiving a User Input Indicating a Default Quantity"

28. In my initial declaration, I explicitly cited to the specification's disclosure of "the manner in which *a trader inputs a quantity* using the tokens 320, 324." Hartheimer Decl. ¶ 19

(citing '056 Patent, col. 8:30-36) (emphasis added); see also Hartheimer Decl. ¶ 12. This portion of the specification states:

After being selected, the trader *adjusts* the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order. Preferably, a pop-up window or other screen indicator is displayed to show in numerical terms the quantity of the *current size* of the token, to ease the process of creating a properly sized order token.

'056 Patent, col. 8:30-36 (emphasis added)).

29. In my initial declaration, I also cited to originally-filed claim 2, which I understand is part of the specification. Hartheimer Decl. ¶ 24. This claim recites “an order token whose size is *adjustable by the user to reflect the quantity of the order.*” '056 File History, at TTX01328002 (emphasis added).

30. This disclosure of the size (and thus the reflected default quantity) of a token 320, 324 being *adjustable by a user* serves as clear disclosure of a computer *receiving a user input indicating* the disclosed default quantity. Indeed, when the user “adjusts” a token’s size (and reflected default quantity), the user is clearly inputting into a computer—and the computer is thus receiving—a new token size that indicates a new default quantity to be used for subsequent orders.

31. Accordingly, I reiterate my conclusion that the specification conveys to a person of ordinary skill in the art that a computer receives a user input indicating the disclosed default quantity.

Default Quantity that is “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”

32. In my initial declaration, I concluded that “the specification conveys to a person of ordinary skill in the art that each token’s size and quantity remain unchanged between orders,

and thus that the inventors were in possession of the concept of a default quantity *to be used for multiple orders.*” Hartheimer Decl. ¶ 25 (emphasis added); *see also* Hartheimer Decl. ¶¶ 14-20. By this, I meant that the inventors were in possession of the concept of 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.”

33. The specification’s disclosure of the default quantity being “used to determine a quantity for each of a plurality of orders to be placed by the user at one or more price level” can also be illustrated by the following example. To begin, a user may adjust the size of bid token 324 to indicate a desired default quantity for buy orders. *See* ‘056 patent, col. 8:30-33; Hartheimer Decl ¶¶ 12, 19. Thereafter, the user may drag and drop a copy of the bid token 324 at a first value on the value axis 332 and then select “OK” in the order pop-up window to confirm a first buy order for the default quantity. *See* ‘056 patent, col. 8:36-53; Hartheimer Decl ¶¶ 13, 20. The default quantity reflected by the bid token 324 will thus be used to determine the quantity of the user’s first buy order at the first price level. After placing the first buy order, the bid token’s size and reflected default quantity will remain the same (unless adjusted by the user). Hartheimer Decl. ¶¶ 14-20, 25 (*citing* ‘056 Patent, Fig. 3A-C, col. 8:30-53). At some later time, the user may then drag and drop another copy of the bid token 324 at a second value on the value axis 332 and then select “OK” in the order pop-up window to confirm a second buy order for the default quantity. *See* ‘056 patent, col. 8:36-53; Hartheimer Decl ¶¶ 13, 20. The default quantity reflected by the bid token 324 will thus be used to determine the quantity of the user’s second buy order at the second price level. Accordingly, this example—which is based entirely on the disclosure in the specification—demonstrates that the default quantity reflected by token is “used

to determine a quantity for each of a plurality of orders to be placed by the user at one or more price levels."

34. In my initial declaration, I also concluded that the specification does not require a user to indicate a quantity for each and every order. Hartheimer Decl. ¶¶ 21-24. Instead, as disclosed in the specification, a user can adjust the size of a token 320, 324 once to indicate a desired default quantity parameter and the computer will then use this indicated default quantity parameter to determine the quantity for all subsequent orders placed with the token 320, 324 unless and until the user makes another adjustment of the token's size (or further adjusts the quantity in the order pop-up window).

35. I understand the Defendants are asserting that the specification's disclosure of a user entering orders for the same quantity by copying, dragging, and dropping a token representing that quantity for each order amounts to the user inputting a desired quantity parameter for each and every order. This is not correct. When the user takes the action of copying, dragging, and dropping a token, the user is simply placing a new order, which involves (1) inputting the type of order being placed (by selecting either the bid token 320 or the offer token 324) and (2) inputting a value (e.g., a price) for the order (by placing the selected token at a certain location along value axis 332). The process of copying, dragging, and dropping the token does not involve inputting a quantity, however. Rather, the action of inputting the quantity to be used for the order occurs *before* the user copies, drags, and drops the token, when the user adjusts the token to a new size that reflects a new default quantity. Moreover, as noted above, the user does not have to take this action of inputting a quantity parameter for each individual order. Rather, the user can simply rely on the preexisting default quantity reflected by the token—which was previously input by the user—as the quantity to be used for the order.

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.