Paper No. _______
Filed: December 16, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TD AMERITRADE HOLDING CORP., TD AMERITRADE, INC., AND TD AMERITRADE ONLINE HOLDINGS CORP.,
Petitioner

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner

Case CBM2014-00131
Patent 7,533,056

Patent Owner's Request for Rehearing under 37 C.F.R. § 42.71(c)

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I. Introduction

Trading Technologies ("TT") requests rehearing of the Decision on Institution because the Panel misapprehended or overlooked facts that establish that the '056 patent does not qualify as a CBM patent. In the first instance, the inventions claimed in the '056 patent are not business methods. The claims recite technology that Congress explicitly said was *not* a covered business method— "software tools and graphical user interfaces."[1] While the claimed invention is used in the financial industry, the claims do not recite a method of trading itself, as the Panel erroneously concludes. Congress clearly defined the metes and bounds of what constitutes a CBM, specifically exempting novel and nonobvious software tools and graphical user interfaces (GUIs). The Panel overlooked this legislative history and, more importantly, made a ruling that strikes directly against the intent of Congress. This erroneous view of the law constitutes an abuse of discretion.

Further, the Panel completely overlooked specific technological features in the claims that distinguish the claims from the prior art. By overlooking these claim limitations, the Decision misapprehended and misapplied the technological invention exception. Because the Decision overlooked evidentiary evidence, the Panel abused its discretion.

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[1] See section IV below.

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II. Standard of Review

On rehearing, a decision is reviewed for abuse of discretion.[2] An abuse of discretion "occurs when a court misunderstands or misapplies the relevant law," or makes erroneous factual findings.[3] A decision lacking evidentiary support in the record abuses discretion.[4] So does a decision based on an erroneous view of the law.[5] Because the Decision misapplies the law and lacks evidentiary support in the record, the Panel abused its discretion and thus erred in instituting trial.

III. Current State of the Proceeding

The inventions claimed in the '056 patent are *not* business methods, as Patent Owner repeatedly explained in its Preliminary Response by stressing that the claimed technology is a GUI tool and the associated structural and functional features. To state that "Patent Owner has not explained why facilitating trading in a system is not a method of doing business,"[6] misses the point of Patent Owner's argument. Patent Owner correctly argued that the inventive aspects of the claim do not lie in

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[2] 37 C.F.R. § 42.71(c).

[3] *Renda Marine, Inc. v. U.S.*, 509 F.3d 1372, 1379 (Fed. Cir. 2007).

[4] *MGIC v. Moore*, 952 F.2d 1120, 1122 (9th Cir. 1991).

[5] *Atl. Research Mktg. Sys. v. Troy*, 659 F.3d 1345, 1359 (Fed. Cir. 2011) (emphasis added).

[6] Decision, p. 6.

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any business practice. The preamble of the claim cited by the Panel merely provides context for the application of what is claimed. In its Preliminary Response, TT showed how the claims of the '056 patent recite particular features such as "displaying a plurality of bid indicators representing quantity associated with the plurality of bid orders, the plurality of bid indicators being displayed **at locations corresponding to prices of the plurality of bid orders along a price axis**"; "displaying a plurality of offer indicators representing quantity associated with the plurality of offer orders, the plurality of offer indicators being displayed **at locations corresponding to prices of the plurality [of] offer orders along the price axis**"; and "receiving a user input indicating a desired price for an order to be placed by the user, the desired price **being specified by selection of one of a plurality of locations corresponding to price levels along the price axis**."[7]. The Decision—like the Petition—fails to mention these technical elements leaving us to believe that the Panel failed to consider them.

As the '056 patent itself explains, the "invention relates generally to the field of graphical user interfaces and more particularly to the field of graphical user interfaces for electronic trading systems."[8] While the claims are directed to a method of using

[7] Preliminary Response, pp. 8-11.

[8] Preliminary Response, p. 6.

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the novel features of a GUI tool for trading, the claims are not merely directed to trading on a computer, but rather the structural and functional features of a GUI tool.

In its Preliminary Response, TT pointed to explicit statements by Congress confirming a patent claiming a novel GUI would be safe from Section 18 review.[9] The Decision did not respond.

TT also cited abundant evidence showing that GUIs have long been recognized as a technological field.[10] The Decision apparently failed to appreciate this evidence.

As will be explained in more detail below, for at least these reasons, rehearing should be granted.

IV. The Panel Failed to Consider the Metes and Bounds Set by Congress

The Board has recognized that "novel software tools and graphical user interfaces used within the electronic trading industry to implement trading and asset allocation strategies are not the type of patents targeted for covered business method patent review."[11] That conclusion comes directly from the legislative history, because,

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[9] Preliminary Response, pp. 16-20.

[10] Preliminary Response, pp. 6-7 (citing other government agencies, college and university programs, and legislative history discussion of GUIs).

[11] CBM2013-00005, paper 18, p. 6 (Opinion by APJ Medley, March 29, 2013).

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