

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 CBM2014-00133
Patent No. 7,676,411 B2

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

37 C.F.R. § 42.71

I. INTRODUCTION

TD Ameritrade Holding Corp., TD Ameritrade, Inc., and TD Ameritrade Online Holdings Corp. (collectively, “Petitioner”) filed a Petition (Paper 1, “Pet.”) on May 19, 2014, which requested review under the transitional program for covered business method patents of U.S. Patent No. 7,676,411 B2 (Ex. 1001, “the ’411 patent”). Trading Technologies International, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 18, “Prelim. Resp.”) on September 3, 2014. The Board instituted covered business method patent review of claims 1–28 of the ’411 patent under 35 U.S.C. § 101, and denied institution of any claims under 35 U.S.C. § 103. Paper 19 (“Decision”). Petitioner and Patent Owner each filed a Request for Rehearing asking that the Board reconsider its Decision – Petitioner requesting that we institute based on grounds 2 and 3 of the Petition because claims 1–28 are obvious based on Silverman, Gutterman, and Togher with or without Paal (Paper 21, “Petitioner’s Req. Reh’g”), and Patent Owner requesting that we deny institution because the ’411 patent does not qualify for covered business method patent review (Paper 22, “Patent Owner’s Req. Reh’g”).

We have considered each Request for Rehearing, but decline to modify the Decision.

II. ANALYSIS

A. Petitioner’s Request for Rehearing

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous

interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *See Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004). For the reasons that follow, Petitioner does not show that the Board abused its discretion.

Petitioner contends that our Decision is based upon a misapprehension that the Petition did not rely on Togher to disclose the single action limitation. Petitioner's Req. Reh'g, 2. According to Petitioner, had our Decision properly considered Petitioner's remarks regarding Togher's disclosure, we would have instituted review of claims 1–28 as obvious based on Silverman, Gutterman, and Togher with or without Paal. *Id.*

Although Petitioner cites to various portions of the Petition characterizing Togher's disclosure, for the following reasons we find that Petitioner relied on Silverman and Gutterman to render obvious claim 1's limitation "selecting a particular graphical area in the order entry region through a single action of the user input device to . . . set a price for the trade order and send the trade order . . . to the electronic exchange," and relied on Togher to disclose the claim limitation "the trade order having a default quantity." Thus, Petitioner's argument that Togher discloses "a single action of the user input device [] both set[ting] a price for the trade order and send[ing] the trade order having a default quantity" is not timely raised, and will not be a basis for instituting covered business method patent review.

Section B., 4., g) of the Petition included Petitioner's arguments regarding the obviousness of the limitation at issue. Here, Petitioner stated:

[I]n the *GUI of Silverman and Gutterman*, a user can "select[] a particular graphical area in the order entry region" "by touching the corresponding

order icon.” (Gutterman, 13:27–29.) *The touching of the corresponding order icon is “a single action of the user input device.”* When a mouse is utilized, the single action of the user input device in this embodiment of Gutterman would be a single or double mouse click. (Roman Dec., ¶119.)

Gutterman discloses that selecting (e.g., touching) an order icon sets “the order’s quantity, price, and timestamp.” (Gutterman, 13:29–31.) However, *Gutterman does not disclose “a trade order having a default quantity.” Togher discloses the use of default quantities.*

Pet. 43–44 (original emphases omitted, our emphases added). Based on the above, Petitioner clearly relied on Silverman and Gutterman, and not Togher, to disclose the claimed single action that sets a price and sends the trade order. This is consistent with other portions of the Petition which relied on Gutterman to disclose a single action that sets a price and sends a trade order – e.g.:

A trader may immediately transmit this electronic message to another party by pressing another “active” button - the “SEND FILL” button. (*Id.* at 13:29–43 (“In periods of heavy market activity”)) As described in the specification of the ’411 patent, any action by a user within a short period of time, whether comprising one or more clicks of a mouse button or other input device qualifies as a “single action.” Thus, Gutterman’s disclosure of a user making two selections within a short period of time is a single action. (Roman Dec., ¶77.)

Id. at 20.

Petitioner now points to other characterizations of Togher in the Petition in an attempt to establish that Petitioner relied on Togher to disclose the claimed single action that sets a default quantity and sends the trade order. *See* Petitioner’s Req. Reh’g, 3–8. We are not persuaded. For example, Petitioner points to the statement “the combination of Silverman and Gutterman does not explicitly disclose a single action ‘to both set a price for the trade order and send the trade order having a default quantity to the electronic exchange.’ However, Togher discloses this limitation.” *Id.* at 4, citing Petition 42 (emphases omitted). This statement is not properly interpreted, however, as meaning that Petitioner relied on Togher to disclose a single action that does each of the following: 1) sets a price for a trade order; 2) provides a default quantity for the trade order; and 3) sends the trade order having the set price and provided default quantity, as Petitioner seems to allege. Petitioner’s characterization of Togher which followed this broad statement did not, for example, sufficiently explain how Togher sets a price – rather the quoted portion of Togher establishes only that a trader may “respond to . . . [an] offer price.” Petition 42, citing Togher 9:1–6. Further, Petitioner stated in the next sentence of the Petition that “Togher discloses setting default values for trade orders,” and then quoted portions of Togher directed to setting a default trade value. *Id.* Importantly, in the Petition Petitioner did not discuss anything about what happens when a “Buy button” or a “Sell button” is activated in Togher (e.g., that the order is sent to an electronic exchange), or even how, specifically, either button is activated. Thus, we conclude that Petitioner was not concerned in describing in the Petition how Togher disclosed a single action that sets a price, provides a default quantity, and sends a trade order, because Petitioner was not relying

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