

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TD AMERITRADE HOLDING CORPORATION, TD AMERITRADE,
INC., and TD AMERITRADE ONLINE HOLDINGS CORP.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM2014-00131 (Patent 7,533,056)
CBM2014-00133 (Patent 7,676,411)
CBM2014-00135 (Patent 6,772,132)
CBM2014-00137 (Patent 7,685,055)

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

HOFFMANN, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Request for a Ten-Page Extension and
Denying Patent Owner's Request for Permission to File a Surreply
37 C.F.R. §§ 42.5 and 42.24

CBM2014-00131 (Patent 7,533,056)
CBM2014-00133 (Patent 7,676,411)
CBM2014-00135 (Patent 6,772,132)
CBM2014-00137 (Patent 7,685,055)

On April 23, 2015, Petitioner sent an electronic mail message¹ to the Board requesting, for each proceeding listed above, an additional ten (10) pages for its Reply to Patent Owner’s Response—a total of twenty-five (25) pages for a Reply—consistent with the United States Patent and Trademark Office Director Michelle K. Lee’s Posting on March 27, 2015 (“the Director’s Posting”²). In response, on April 24, 2015, Patent Owner sent an electronic mail message³ to the Board opposing Petitioner’s Request, arguing that Petitioner would be given an unfair advantage if permitted extra pages at this stage in the proceedings. Patent Owner also requested permission to file, in each of the listed proceedings, a ten (10) page surreply if we granted Petitioner’s request, arguing that such would be necessary to minimize the prejudice that would result to Patent Owner.

As indicated in the Director’s Posting, fifteen (15) pages for a Reply is not a commensurate number of pages to respond to a full Patent Owner’s Response. In each of the listed proceedings, Patent Owner’s Response was at least 52 pages, and as long as 73 pages, in length. Upon consideration of the facts before us, we are not persuaded by Patent Owner’s argument that a ten-page extension would provide an unfair advantage to Petitioner,

¹ Ex. 3004 in CBM2014-00131 and CBM2014-00137, Ex. 3003 in CBM2014-00133 and CBM2014-00135.

² The Director’s Posting is also available at: http://www.uspto.gov/blog/director/entry/ptab_s_quick_fixes_for. Ex. 3005 in CBM2014-00131 and CBM2014-00137, Ex. 3004 in CBM2014-00133 and CBM2014-00135.

³ Ex. 3006 in CBM2014-00131 and CBM2014-00137, Ex. 3005 in CBM2014-00133 and CBM2014-00135.

CBM2014-00131 (Patent 7,533,056)
CBM2014-00133 (Patent 7,676,411)
CBM2014-00135 (Patent 6,772,132)
CBM2014-00137 (Patent 7,685,055)

inasmuch as the extra pages are provided to Petitioner to remedy an imbalance favoring Patent Owner.

Further, we are not persuaded by Patent Owner that a surreply is necessary. As discussed above, Petitioner is being given extra pages because the Director's Posting indicates that fifteen (15) pages for a Reply is not a commensurate number of pages to respond to a full Patent Owner's Response, and, thus, the additional pages remedy this imbalance. Providing additional pages to Patent Owner would simply restore the imbalance we correct by providing additional pages to Petitioner.

For the foregoing reasons, we, hereby, exercising our discretion under 37 C.F.R. § 42.5(b), grant Petitioner's Request for a ten-page extension. We deny Patent Owner's request for permission to file a surreply.

Accordingly, it is

ORDERED that, notwithstanding the page limit set forth in 37 C.F.R. § 42.24(c), the page limit for Petitioner's Reply to Patent Owner's Response is increased to a total of twenty-five (25) pages, for each proceeding listed above. *See* 37 C.F.R. § 42.5(b)

CBM2014-00131 (Patent 7,533,056)
CBM2014-00133 (Patent 7,676,411)
CBM2014-00135 (Patent 6,772,132)
CBM2014-00137 (Patent 7,685,055)

PETITIONER:

Lori Gordon
Jonathan Strang
Robert E. Sokohl
STERN, KESSLER, GOLDSTEIN & FOX P.L.L.C.
lgordon-ptab@skgf.com
jstrang-ptab@skgf.com
rsokohl-ptab@skgf.com

PATENT OWNER:

Erika H. Arner
Joshua L. Goldberg
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
erika.arnier@finnegan.com
Joshua.goldberg@finnegan.com

Steven F. Borsand
TRADING TECHNOLOGIES INTERNATIONAL, INC.
Steve.Borsand@tradingtechnologies.com