

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 CBM2014-00136
Patent No. 6,766,304 B2

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

PETRAVICK, *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 4, “Pet.”) on May 20, 2014, which requested review under the transitional program for covered business method patents of U.S. Patent No. 6,766,304 B2 (Ex. 1001, “the ’304 patent”). Trading Technologies International, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 18, “Prelim. Resp.”) on September 3, 2014. The Board denied institution of a covered business method patent review of claims 1–40 based upon the following grounds:

Ground	Prior Art	Challenged Claim(s)
§ 101	n/a	1–40
§ 102	TSE ¹	1–3, 5–9, 11–15, 20–23, and 26–40
§ 103	TSE	4 and 10
§ 103	TSE and Gutterman ²	16–19, 24, and 25
§ 103	Silverman ³ and Gutterman	1–25 and 27–40
§ 103	Silverman, Gutterman, and Paal ⁴	26

¹ TOKYO STOCK EXCHANGE OPERATION SYSTEM DIVISION, FUTURES/OPTION PURCHASING SYSTEM TRADING TERMINAL OPERATION GUIDE (1998) (Ex. 1003).

² Gutterman et al., U.S. Patent No. 5,297,031 (issued Mar. 22, 1994) (Ex. 1007).

³ Silverman et al., U.S. Patent No. 5,077,665 (issued Dec. 31, 1991) (Ex. 1008).

⁴ Paal et al., U.S. Patent No. 5,263,134 (issued Nov. 16, 1993) (Ex. 1009).

Paper 19 (“Decision”).

Petitioner filed a Request for Rehearing asking that the Board reconsider its Decision and institute on the grounds based upon 35 U.S.C. §§ 102, 103. Paper 20 (“Req. Reh’g”). We have considered the Request for Rehearing, but decline to modify the Decision.

II. ANALYSIS

A. *Standard of Review*

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).

The party challenging the decision has the burden of showing a decision should be modified, and the request for rehearing must specifically identify all matters the party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d).

B. *Petitioner’s Request for Rehearing*

i. *Petitioner’s argument regarding the scope of claim 16*

Petitioner argues that the Board misapprehended the scope of the following limitation from independent claims 1 and 27:

in response to a selection of a particular location of the order entry region by a single action of a user input device, setting a plurality of parameters for a trade order relating to the

commodity and sending the trade order to the electronic exchange.

See Req. Reh’g 2–6. According to Petitioner, “[t]he Board interpreted this limitation to mean that a single action: selects the particular location, sets a plurality of parameters for a trade order, *and* sends the trade order to the electronic exchange” and this interpretation is overly narrow. *Id.* at 3 (citing Decision 17). Petitioner argues that the limitation only “requires the selection of a particular location of the order entry region be achieved by a single action” and, that when given this interpretation, both TSE and Gutterman meet the limitation. *Id.* at 3–6.

We are not persuaded by Petitioner’s argument that we abused our discretion because Petitioner’s argument is based upon a mischaracterization of our Decision. We did not interpret the limitation to require that “a single action: selects the particular location, sets a plurality of parameters for a trade order, *and* sends the trade order to the electronic exchange” (*Id.* at 3).

Our Decision states: “[t]he limitation requires that both the setting of the parameters and the sending of the order occur *in response* to a selection of a particular location of the order entry region by a single action of a user input device.” Decision 17 (emphases original). In other words, we interpreted the limitation to require that one of the responses to the selection of a particular location is the sending of the order.

We, then, determined that neither TSE nor Gutterman taught that sending the order occurred *in response* to the selection of the particular location. *Id.* at 17–20. We stated:

TSE does not describe that *the order is sent in response to the selection* of the area on the Board/Quotation Screen. In TSE, the order is sent if or when the send button on the new order

entry window is selected

(*Id.* at 18 (emphasis added)) and

Gutterman does not send the order *in response to the selection* of the order icon in deck pane 135 (i.e., the claimed particular location of the order entry region). Instead, the order is sent to the fill pane 140 and then when the “SEND FILL” button is selected, the order is transmitted

(*Id.* at 20 (emphasis added)). We determined that neither TSE nor Gutterman taught sending the order in response to the selection of the particular location, because, in both TSE and Gutterman, the order is sent in response to the selection of a send button, not the selection of the particular location of the order entry region. In both references, the order is sent to the exchange when the send button is selected, if the send button is selected at all.

As can be seen from the above, we did not interpret the limitation at issue to require that “a single action: selects the particular location, sets a plurality of parameters for a trade order, *and* sends the trade order to the electronic exchange” (Req. Reh’g 3). Because Petitioner’s argument is based upon this mischaracterization of our Decision, we are not persuaded that we abused our discretion and decline to modify our Decision.

ii. Petitioner’s argument regarding the patentability of the claims over the combination of Silverman and Gutterman

Petitioner argues that we overlooked that the Petition relied upon the combination of Silverman and Gutterman, and not Gutterman alone, to meet the limitation of independent claims 1 and 27 reproduced above. Req. Reh’g 6–12. In particular, Petitioner argues that the Petition did not rely upon

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.