

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

Denying Institution of Covered Business Method Patent Review
37 C.F.R. § 42.208

I. INTRODUCTION

A. Background

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, that requests 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 on September 3, 2014. Paper 18 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 324, which provides that a post-grant review may not be instituted “unless . . . the information presented in the petition . . . would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.”

Petitioner challenges the patentability of claims 1–40 (“the challenged claims”) of the ’304 patent under 35 U.S.C. §§ 101, 102, 103. We determine that the Petition fails to demonstrate that it is more likely than not that the challenged claims are unpatentable, and we do not institute a covered business method patent review of claims 1–40 of the ’304 patent.

B. Related Matters

Petitioner and Patent Owner identify numerous related U.S. district court cases. Pet. 2–3; Paper 7, 2–5.

Patent Owner also states that related U.S. Patent No. 7,676,411 is the subject of *TD Ameritrade Holding Corp. v. Trading Technologies International, Inc.*, Case CBM2014-00133 (PTAB); that related U.S. Patent No. 6,772,132 is the subject of *TD Ameritrade Holding Corp. v. Trading*

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Technologies International, Inc., Case CBM2014-00135 (PTAB); and that related U.S. Patent No. 7,685,055 is the subject of *TD Ameritrade Holding Corp. v. Trading Technologies International, Inc.*, Case CBM2014-00137 (PTAB). Paper 7, 5. Patent Owner further states that the '304 patent was the subject of Reexamination, Control No. 90/008,577; and related U.S. Patent No. 6,772,132 was the subject of Reexamination, Control No. 90/008,576 and Reexamination, Control No. 90/011,250. *Id.*

Related U.S. Patent No. 7,533,056 is the subject of CBM2014-00131 (PTAB).

C. The '304 Patent (Ex. 1001)

The '304 patent is titled "Click Based Trading with Intuitive Grid Display of Market Depth," and issued July 20, 2004, from Application No. 09/894,637, filed June 27, 2001. Ex. 1001, 1. Application No. 09/894,637 is a divisional of Application No. 09/590,692, filed June 9, 2000, which claims priority to Provisional Application No. 60/186,322, filed March 2, 2000. *Id.*

The '304 patent discloses a "Mercury" display and method of using the Mercury display to trade a commodity. *Id.* at Abstract, col. 3, ll. 9–10. The Mercury display is a graphic user interface ("GUI") that dynamically displays the market depth of a commodity traded in a market and allows a trader to place an order efficiently. *Id.* at col. 3, ll. 15–28.

The Mercury display is depicted in Figure 3, which is reproduced below.

	E/W	10:48:44	BidQ	AskQ	Prc	LTQ
1009	L	3		104	99	
1010	R	5		24	98	
1011		720		33	97	
1012	X	10		115	96	
1013		0		32	95	
1014		10 1H		27	94	
		50 3H		63	93	
1007	S 0 W 24	1K 5H		45	92	
	S 0 W 7	CLR		28	91	
1015	X	10		20	90	10
1016		17		18	89	
1008	B 0 W 15	CXL		97	88	
	B 0 W 13	+ -		30	87	
1017		NET 0		43	86	
1018	B 0 W 17	NET REAL		110	85	
1019				23	84	
				31	83	
1021				125	82	
				21	81	

Fig. 3 depicts the Mercury display of the '304 patent

The Mercury display includes a plurality of columns. Column 1005 is a static price axis, which includes a plurality of price values for the commodity. *See id.* at col. 7, ll. 56–67. Columns 1003 and 1004 are aligned with the static price axis and dynamically display bid and ask quantities, respectively, for the corresponding price values of the static price axis. *See id.* at col. 7, l. 54–col. 8, l. 18. Column 1002 contains various parameters and information used to execute trades, such as the default quantity displayed in cell 1016. *See id.* at col. 8, l. 37–col. 9, l. 3.

A trader executes trades using the Mercury display by first setting the desired commodity and default parameters, such as default quantity. *Id.* at col. 9, ll. 35–49; Fig. 6, step 1302. Then, a trader can send a buy order or

sell order to the market with a single action, such as clicking on the appropriate cell in column 1003 or 1004. *See id.* at col. 9, l. 39–col. 11, l. 34; Fig. 6, steps 1306–1315. In the example shown in Figure 3, a left click on “20” in column 1004 will send an order to the market to buy 17 lots (i.e., the default quantity set in cell 1016 of column 1002) at a price of 90. *See id.* at col. 10, ll. 39–41.

Claim 1 of the ’304 patent is illustrative of the challenged claims and is reproduced below:

1. A method for displaying market information relating to and facilitating trading of a commodity being traded in an electronic exchange having an inside market with a highest bid price and a lowest ask price on a graphic user interface, the method comprising:

dynamically displaying a first indicator in one of a plurality of locations in a bid display region, each location in the bid display region corresponding to a price level along a common static price axis, the first indicator representing quantity associated with at least one order to buy the commodity at the highest bid price currently available in the market;

dynamically displaying a second indicator in one of a plurality of locations in an ask display region, each location in the ask display region corresponding to a price level along the common static price axis, the second indicator representing quantity associated with at least one order to sell the commodity at the lowest ask price currently available in the market;

displaying the bid and ask display regions in relation to fixed price levels positioned along the common static price axis such that when the inside market changes, the price levels along the common static price axis do not move and at least one of the first and second indicators moves in the bid or ask display regions relative to the common static price axis;

displaying an order entry region comprising a plurality of locations for receiving commands to send trade orders, each

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