UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

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Case CBM2014-00137
Patent No. 7,685,055 B2

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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 1, "Pet.") on May 19, 2014, which requested review under the transitional program for covered business method patents of U.S. Patent No. 7,685,055 B2 (Ex. 1001, "the '055 patent"). Trading Technologies International, Inc. ("Patent Owner") filed a Preliminary Response (Paper 17, "Prelim. Resp.") on September 3, 2014.

The Board instituted covered business method patent review of claims 1–19 of the '055 based upon the following grounds:

Ground	Prior Art	Challenged Claims
§ 101	n/a	1–19
§ 103	TSE[1]	1, 3, 4, 6–15, and 17–19
§ 103	TSE and Gutterman[2]	2 and 5

Paper 19 ("Decision") 27. The Board did not institute covered business method patent review of claim 16 under 35 U.S.C. § 103 over TSE (*Id.* at 20-23) and claims 1–19 of the '055 based upon the ground of obviousness over Silverman, Gutterman, and TSE (*Id.* at 24–26).

Petitioner and Patent Owner each filed a Request for Rehearing asking that the Board reconsider its Decision – Petitioner requesting that we institute on the grounds of claim 16 being obvious over TSE or obvious over

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[1] TOKYO STOCK EXCHANGE OPERATION SYSTEM DIVISION, FUTURES/OPTION PURCHASING SYSTEM TRADING TERMINAL OPERATION GUIDE (1998) (Ex. 1008).

[2] Gutterman et al., U.S. Patent No. 5,297,031 (issued Mar. 22, 1994) (Ex. 1006).

the combination of Silverman, Gutterman, and TSE (Paper 21, "Petitioner's Req. Reh'g"), and Patent Owner requesting that we deny institution because the '055 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. *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 identify specifically 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 claim 16:

> 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 Petitioner's Req. Reh'g 2–5. 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 25–26). Petitioner argues that the limitation "only
requires that the selection of a particular location of the order entry region to
be achieved by a single action" and, that when given this interpretation, both
TSE and Gutterman meet the limitation. *Id.* at 4–5.

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 22 (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 22–23. 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 22–23 (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 25–26 (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" (Petitioner's 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 claim 16 over the combination of Silverman, Gutterman, and TSE*

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 claim 16 reproduced above. Petitioner's Req. Reh'g 6–11. In particular, Petitioner argues that the Petition did not rely upon

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