

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TRADING TECHNOLOGIES INTERNATIONAL, INC.)	Case No. 10 C 715 (Consolidated with: 10 C 716, 10 C 718, 10 C 720, 10 C 721, 10 C 726, 10 C 882, 10 C 883, 10 C 884, 10 C 885, 10 C 929, 10 C 931)
Plaintiff,)	
v.)	
BCG PARTNERS, INC.,)	
Defendant.)	Judge Virginia M. Kendall Magistrate Geraldine S. Brown
<hr/>		
TRADING TECHNOLOGIES INTERNATIONAL, INC.)	Case No. 10 C 718
Plaintiff,)	
v.)	Judge Virginia M. Kendall
CQG, Inc. and CQGT, LLC,)	
Defendants.)	
<hr/>		

**CQG’S POSITION STATEMENT REGARDING
TD AMERITRADE’S MOTION TO STAY**

On May 19-20, 2014, the TD Ameritrade Defendants (“TD Ameritrade”) filed Covered Business Method (“CBM”) petitions with the U.S. Patent and Trademark Office (“PTO”) seeking to invalidate 5 patents at issue in this consolidated case. On May 22nd, TD Ameritrade filed a motion to stay these consolidated proceedings under Section 18(b) of the America Invents Act (Dkt. # 545). The CQG Defendants (“CQG”) submit this position statement to address this recent filing.

Without addressing the substance of TD Ameritrade's CBM petitions, CQG does not object to TD Ameritrade's request to stay this case pending the outcome of the PTO's review of the CBM petitions.

As indicated by SunGard's position statement (Dkt. # 548), TT recently asked the defendants whether they would agree to be estopped from asserting in this case any invalidity arguments made by TD Ameritrade in its CBM petitions. Because CQG did not join or assist in the filing of the CBM petitions, if the PTO issues a final written decision under 35 U.S.C. § 328(a), then only TD Ameritrade will be estopped from asserting invalidity positions raised in the CBM petitions, not CQG. *See Leahy-Smith America Invents Act*, Pub. L. No. 112-29, § 18(a)(1)(D), 125 Stat. 284, 330 (2011) (providing estoppel for petitioner where a final written decision has been issued).

Contrary to TT's suggestion, a non-petitioning defendant like CQG need not consent to a broad estoppel in order for this Court to grant TD Ameritrade's motion to stay (Dkt. # 545). In fact Courts frequently grant stays without estopping the non-petitioning parties. *See Progressive Cas. Ins. Co. v. Safeco Ins. Co.*, No. 1:10CV01370, 2013 U.S. Dist. LEXIS 54899, *18 (N.D. Ohio Apr. 17, 2013) (granting a stay pending CBM review of the patent without requiring estoppel from non-petitioning party); *Emp't Law Compliance, Inc. v. Compli, Inc.*, No. 3:13-CV-3574-N, slip op. at 4-5 (N.D. Tex. May 27, 2014) (granting a stay pending *inter partes* reexamination of the patent after applying similar factors without requiring estoppel for other defendants); and *Evolutionary Intelligence, LLC v. LivingSocial, Inc.*, No. 13-cv-047205-WHO, 2014 U.S. Dist. LEXIS 6804, *9 (N.D. Cal. Jan. 17, 2014) (granting a stay with no estoppel to

non-petitioning party pending *inter partes* reexamination)¹. Accordingly, at this time, CQG does not consent to be bound by any ruling on TD Ameritrade's CBM petitions.

Date: June 4, 2014

Respectfully submitted,

LOEB & LOEB LLP

By: /s/ Adam G. Kelly
One of Their Attorneys

Adam G. Kelly
William J. Voller III
J. Simone Jones
Loeb & Loeb LLP
321 N. Clark Street, Suite 2300
Chicago, Illinois 60654
Tel.: (312) 464-3100
Fax: (312) 464-3111
Attorneys for CQG, Inc. and CQGT, LLC

¹ Copies of unpublished decisions are included in Exhibit A.

CERTIFICATE OF SERVICE

I, Adam G. Kelly, certify that **CQG'S POSITION STATEMENT REGARDING TD AMERITRADE'S MOTION TO STAY** was served on all counsel of record on June 4, 2014 via CM/ECF system.

June 4, 2014

By: /s/ Adam G. Kelly

Adam G. Kelly
William J. Voller III
J. Simone Jones
Loeb & Loeb LLP
321 North Clark Street
Suite 2300
Chicago, IL 60654
Attorneys for Defendants
CQG, Inc. and CQGT, LLC