

# Denying Leave to File Motion for Additional Discovery

## CBM2014-00131, 133, 135, 136, 137

Posted on [August 18, 2014](#)



*Takeaway: Alleging that Petitioner was in possession of a memorandum regarding prior art prepared before the CBM review, that the memorandum may contain attorney work product, and that there are other parties in a related litigation, was not enough to authorize the filing of a motion for additional discovery on the issue of real-parties-in-interest.*

In its [Order](#), the Board denied Patent Owner's request to file a motion for additional discovery related to whether other parties are real-parties-in-interest. The Parties agreed to, and Petitioner answered, three initial questions related to the issue, but Petitioner refused to agree to two additional follow-up questions.

Patent Owner argued that certain facts related to a memorandum, which was prepared by a law firm that was discussed in the Petition and during a telephone call, suggested that "perhaps" Petitioner and other unnamed parties are part of a joint defense group. Petitioner explained that the memo was prepared in 2005, and was not created for these proceedings. Further, Petitioner explained that the memorandum may be work product of the law firm and Petitioner, and that no other party provided work product for the Petitions in these proceedings.

According to the Board, Patent Owner did not sufficiently explain how it could demonstrate "good cause as to why the discovery is needed" to justify a motion for further additional discovery. Thus, the Board found that Patent Owner's explanation, based mainly upon Petitioner's possession of the 2005 memorandum and Petitioner's "work product" statement, is mere speculation that it will discover information regarding an alleged joint defense group between Petitioner and other unnamed entities.

***TD Ameritrade Holding Corp., TD Ameritrade, Inc., and TD Ameritrade Online Holdings Corp. v. Trading Technologies International, Inc.***, CBM2013-00131; CBM2013-00133; CBM2013-00135; CBM2013-00136; CBM2013-00137

**Paper 11: Order on Conduct of the Proceedings**

**Dated: August 14, 2014**

**Patents 7,533,056; 7,676,411; 6,772,132; 6,766,304; 7,685,055**

**Before: Sally C. Medley, Meredith C. Petravick, and Philip J. Hoffmann**

**Written by: Petravick**

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