

Paper No. _____
Filed: September 3, 2014

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.

Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

Case CBM2014-00137

Patent 7,685,055

Patent Owner's Preliminary Response

Table of Contents

I. PRELIMINARY STATEMENT 1

II. THE PATENTED TECHNOLOGY: THE '055 CLAIMS' NOVELTY IS IN GUI TECHNOLOGY, NOT A BUSINESS METHOD 4

III. TRIAL SHOULD NOT BE INSTITUTED BECAUSE THE INVENTIVE ASPECTS OF THE CLAIMS DO NOT INVOLVE A METHOD OF DOING BUSINESS 16

 A. Patents to Novel GUI Tools, Even if Used in the Field of Trading, are Not within the Scope of AIA § 18 17

 B. The Congressional Record Confirms that Patents to Novel GUIs, Even If Used for Trading, Are Not Within the Scope of AIA § 18 20

IV. THE PETITION'S CONCLUSORY STATEMENTS ARE INSUFFICIENT TO SHOW THE CLAIMS ARE NOT FOR A "TECHNOLOGICAL INVENTION" 25

V. THE '055 CLAIMS ARE FOR A TECHNOLOGICAL INVENTION, SO THE STATUTE PROHIBITS CBM REVIEW 28

 A. The '055 Claims Solve a Technical Problem 28

 B. The '055 Claims Provide a Technical Solution to the Technical Problem: a New GUI Tool that "Tracks" Bid/Ask Indicators Using Re-Positioning Off the Top/Bottom of a Display When the Number of Price Levels are Adjusted 32

 C. The Claimed Subject Matter that Solves the above Technical Problems using a Technical Solution Recites Technical Features that are Novel and Non-obvious... 35

VI. TD'S PETITION FAILS TO SATISFY THE THRESHOLD REQUIREMENTS FOR INSTITUTION OF ITS PROPOSED GROUNDS 37

 A. Petitioner's 35 U.S.C. § 101 Challenge is Uninstitutable. 38

 B. The Petition is Deficient because the Interpretation of Certain Claim Terms Leads to Inconsistent Results. 40

 C. The petition fails to articulate a complete obviousness analysis for independent claims 1 and 17 in any of its proposed grounds. 44

VII. TD's petition fails to articulate where the "single action" elements of claim 16 are found in the cited references. 46

A. TSE Fails to Disclose the Claimed Single Action47

B. The Combination of Silverman/Gutterman Fails to Disclose the Claimed
Single Action.....50

VIII. Conclusion52

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>KSR Int’l Co. v. Teleflex, Inc.</i> , 550 U.S. 398 (2007)	38, 44
<i>Trading Techs. Int’l, Inc. v. eSpeed, Inc.</i> , 595 F.3d 1340 (Fed. Cir. 2010)	48
<i>Trading Techs. Int’l, Inc. v. Open E Cry, LLC</i> , 728 F.3d 1309 (Fed. Cir. 2013)	5
Statutes	
35 U.S.C. § 101.....	38, 39, 40
35 U.S.C. § 103(a)	44
35 U.S.C. § 322.....	passim
35 U.S.C. § 324(a)	37, 38
AIA § 18.....	passim
Rules	
37 C.F.R. § 42.22(a)(2)	38, 44
37 C.F.R. § 42.301	28
37 C.F.R. § 42.304(b)(4)	38, 40, 46, 47
Other Authorities	
77 Fed. Reg. 48620 (Aug. 14, 2012)	37
<i>Agibsys, Inc. v. Ameranth, Inc.</i> , CBM2014-00015, Paper 20 (Mar. 26, 2014).....	3, 19

Experian Mktg Solutions, Inc. v. Rpost Commc'ns Ltd.,
CBM2014-00064, Paper 13 (July 31, 2014)27

Heart Failure Techs., LLC v. CardioKinetix, Inc.,
IPR2013-00183, Paper 12 (July 31, 2013)..... 44, 45

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.