

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 CBM2014-00137

Patent 7,685,055

Patent Owner's Request for Rehearing under 37 C.F.R. § 42.71(c)

I. Introduction

Trading Technologies (“TT”) requests rehearing of the Decision on Institution because the Panel misapprehended or overlooked facts that establish that the ’055 patent does not qualify as a CBM patent. Most importantly, the Decision overlooked the explicit scope of the claims, which recite particular features of a graphical user interface (“GUI”) that distinguish the claims from the prior art and were the reasons why the claims were allowed as novel and non-obvious during original examination. As a result, the Decision overlooked (and failed to address) the metes and bounds of CBM review defined by Congress. Indeed, the Decision contradicted the intent of Congress. While the claimed invention is used in the financial industry, the claimed invention is not directed in any way to a business method. Rather, the claimed invention is directed to novel and non-obvious technology—the features of a graphical device.¹ As such, the claims are outside the purview of CBM review as a threshold matter. In addition, by overlooking these claim features, the Decision misapprehended and misapplied the technological invention exception.

¹ Although Petitioner persuaded the Panel to institute trial as to whether certain claims are obvious, no administrative or judicial body has found any claim of the ’055 patent to be anticipated or obvious.

II. Standard of Review

On rehearing, a decision is reviewed for abuse of discretion.² An abuse of discretion “occurs when a court misunderstands or misapplies the relevant law,” or makes erroneous factual findings.³ A decision lacking evidentiary support in the record constitutes an abuse of discretion.⁴ Likewise, “[a] decision based on an erroneous view of the law . . . [also] *invariably constitutes an abuse of discretion.*”⁵ Because the Panel’s Decision lacks evidentiary support in the record and misapplies the law, the Panel abused its discretion and thus erred in instituting trial.

III. Current State of the Proceeding

The claims of the ’055 patent are directed to technology embodied in a GUI that is used for trading, which is a financial activity. But the ’055 patent cannot be subjected to Section 18 review because it “claims a novel GUI tool, not a method of doing business.”⁶ TT pointed to explicit statements by Congress confirming that a

² 37 C.F.R. § 42.71(c).

³ *Renda Marine, Inc. v. U.S.*, 509 F.3d 1372, 1379 (Fed. Cir. 2007).

⁴ *MGIC v. Moore*, 952 F.2d 1120, 1122 (9th Cir. 1991).

⁵ *Atl. Research Mktg. Sys. v. Troy*, 659 F.3d 1345, 1359 (Fed. Cir. 2011) (emphasis added).

⁶ Preliminary Response, p. 2.

patent claiming a novel GUI (like the '055 patent) would not be eligible for Section 18 review.⁷ The Decision did not respond.

TT cited abundant evidence showing GUIs are technology.⁸ The Decision agreed.⁹ TT showed how the claims of the '055 patent recite particular features of a GUI.¹⁰ Again, the Decision agreed.¹¹

TT also pointed out how the prosecution history tied allowance to the claimed elements of the GUI.¹² The Decision ignored this evidence.

As the Panel noted, TT “argue[d] that the claims recite a technical feature because they combine structural and functional features of the claimed GUI tool in a novel and non-obvious way.”¹³ TT also “argue[d] that the claims solve the technical

⁷ Preliminary Response, p. 3-4.

⁸ Preliminary Response, p. 31-32 (citing other government agencies, college and university programs, and legislative history discussion of GUIs).

⁹ Decision, p. 12 (referring to GUIs as technology).

¹⁰ Preliminary Response, pp. 6-14 (showing how the claims recite GUIs).

¹¹ Decision, p. 11 (finding claim 1 recites “a certain arrangement on a GUI and allows for the repositioning of the information on the display”).

¹² Preliminary Response, pp. 14-15.

¹³ Decision, p. 10.

problem of submitting orders to the exchange with speed and accuracy with the technical solution of the combined structural and functional features of the claimed GUI tool.”¹⁴ But the Decision failed to meet these arguments. Indeed, the Decision did not address any of the claimed structural and functional features of the GUI tool that are what distinguished the claims from the prior art. Instead, the Decision simply stated that “[c]laim 1’s use of a display, an input device, and a GUI (i.e., software) were all known technology.”¹⁵ But this misapprehends the fact that the invention *is* a GUI with specifically claimed features that were found to be lacking in the prior art. Just as surely as a new display device or a new input device would be a technological invention, so too is a new GUI tool. In particular, claim 1 requires much more than known technology. Claim 1 requires a GUI with certain structural and functional features, including a specific manner in which to re-position a static price axis and adjusting the number of price levels of the displayed price axis.¹⁶ This combination of GUI features was not “known technology” but novel and non-obvious technology.¹⁷

¹⁴ Decision, p. 10.

¹⁵ Decision, p. 12.

¹⁶ Preliminary Response, p. 14.

¹⁷ Petitioner’s patentability arguments based on prior art should not be considered as part of determining whether the ‘055 patent is a CBM. Otherwise, the technological

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.