

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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FILED

DECEMBER 4, 2006

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

TRADING TECHNOLOGIES)
INTERNATIONAL, INC.,)
Plaintiff,)
v.)
CQG, INC. and CQGT, LLC,)
Defendants.)
_____)

Civil Action No. 05cv4811
Hon. Judge Moran
Hon. Magistrate Judge Cole

**AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS OF
CQG, INC. AND CQGT, LLC**

Defendants CQG, Inc. and CQGT, LLC (“collectively CQG”) hereby files this Amended Answer, Affirmative Defenses and Counterclaims pursuant to Fed. R. Civ. P. 15(a).

PARTIES

1. Plaintiff Trading Technologies is a Delaware Corporation with a principal place of business at 222 South Riverside Plaza, Suite 1100, Chicago, Illinois 60606.

CQG is without knowledge or information sufficient to form a belief as to the truth of the allegations made in Paragraph 1 of the Complaint, and on that basis denies those allegations.

2. Defendant CQG is a Colorado Corporation with its principal place of business at 1050 17th Street, Suite 2000, Denver, CO 80265.

CQG admits the allegations in Paragraph 2 of the Complaint.

3. Defendant CQG has a regional office at 311 S. Wacker, Suite 3810, Chicago, IL 60606.

CQG admits the allegations in Paragraph 3 of the Complaint.

4. Defendant CQGT is a Colorado Limited Liability Company with its principal place of business at 1050 17th Street, Suite 2000, Denver, CO 80265.

CQG admits the allegations in Paragraph 4 of the Complaint.

CQG EXHIBIT 1014

5. Defendant CQGT was formed by CQG on August 12, 2005.

CQG admits the allegations in Paragraph 5 of the Complaint.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the acts of Congress relating to patents, namely the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court thereby has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

CQG admits the allegations of Paragraph 6 of the Complaint.

7. Defendant CQG regularly conducts business in this district. Defendant CQG has an office located in this district. Defendant CQG provides trading software that is for use with the exchanges in this district, including the Chicago Board of Trade (“CBOT”) and the Chicago Mercantile Exchange (“CME”). This Court has jurisdiction generally over Defendant CQG.

CQG admits that it has an office in this district and that it provides trading software that facilitates making trades on the CBOT and CME exchanges. Except as expressly admitted, CQG denies the allegations in Paragraph 7 of the Complaint.

8. Defendant CQGT is a wholly owned subsidiary of CQG.

CQG admits the allegations in Paragraph 8 of the Complaint.

9. Defendants have committed and continue to commit acts of patent infringement in this district. Therefore, this Court has specific jurisdiction over the Defendants.

CQG denies the allegations in Paragraph 9 of the Complaint.

10. Defendants CQG resides in this district, because Defendant is subject to personal jurisdiction in this district. Therefore, this District is a proper venue pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

CQG admits that the Court determined that it is personal jurisdiction in this district, and accordingly venue is proper.

**COUNT I:
Infringement of U.S. Patent No. 6,766,304**

11. Plaintiff Trading Technologies is the owner of U.S. Patent No. 6,766,304 (“the ‘304 patent”), titled “Click Based Trading with Intuitive Grid Display of Market Depth,” which issued on July 20, 2004. A true and correct copy of the ‘304 patent is attached as Exhibit A.

U.S. Patent No. 6,766,304 (“the ‘304 Patent”), identified in Exhibit A in the Complaint, is a document that speaks for itself. Except as expressly admitted, CQG is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 11 of the Complaint, and on that basis denies those allegations.

12. Plaintiff Trading Technologies is in compliance with any applicable marking and notice provisions of 35 U.S.C. § 287.

CQG is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint, and on that basis denies those allegations.

13. Defendants have and continue to infringe the ‘304 patent by making, using, selling and/or offering for sale products and methods covered by claims of the ‘304 patent without Plaintiff Trading Technologies’ authorization in violation of 35 U.S.C. § 271(a).

CQG denies the allegations in Paragraph 13 of the Complaint.

14. In addition, Defendants’ actions have and continue to constitute active inducement of and/or contributory infringement of the ‘304 patent in violation of 35 U.S.C. § 271(b) and (c).

CQG denies the allegations in Paragraph 14 of the Complaint.

15. Defendants’ infringement of the ‘304 patent is willful and deliberate.

CQG denies the allegations in Paragraph 15 of the Complaint.

16. Defendants’ infringement of the ‘304 patent has caused irreparable harm to Plaintiff Trading Technologies and will continue to do so unless enjoined.

CQG denies the allegations in Paragraph 16 of the Complaint.

**COUNT II:
Infringement of U.S. Patent No. 6,722,132**

17. Plaintiff Trading Technologies incorporates paragraphs 1-16 as if set forth in full.

CQG incorporates by reference its responses to Paragraphs 1-16, as set forth above, as though fully set forth herein.

18. Plaintiff Trading Technologies is the owner of U.S. Patent No. 6,773, 243 (“the ‘132 patent”), titled “Click Based Trading with Intuitive Grid Display of Market Depth,” which issued on August 3, 2004. A true and correct copy of the ‘132 patent is attached as Exhibit B.

U.S. Patent No. 6,772,132 (“the ‘132 Patent”), identified in Exhibit B in the Complaint, is a document that speaks for itself. Except as expressly admitted, CQG is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 18 of the Complaint, and on that basis denies those allegations.

19. Plaintiff Trading Technologies is in compliance with any applicable marking and notice provisions of 35 U.S.C. § 287.

CQG is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint, and on that basis denies those allegations.

20. Defendants have and continues to infringe the ‘132 patent by making, using, selling and/or offering for sale products and methods covered by claims of the ‘132 patent without Plaintiff Trading Technologies’ authorization in violation of 35 U.S.C. § 271(a).

CQG denies the allegations in Paragraph 20 of the Complaint.

21. In addition, Defendants’ actions have and continue to constitute active inducement of and/or contributory infringement of the ‘132 patent in violation of 35 U.S.C. §271(b) and (c).

CQG denies the allegations in Paragraph 21 of the Complaint.

22. Defendants’ infringement of the ‘132 patent is willful and deliberate.

CQG denies the allegations in Paragraph 22 of the Complaint.

23. Defendants' infringement of the '132 patent has caused irreparable harm to Plaintiff Trading Technologies and will continue to do so unless enjoined.

CQG denies the allegations in Paragraph 23 of the Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred by the doctrines of estoppel, acquiescence and/or unclean hands.
3. CQG has not directly or indirectly infringed, contributed to the infringement of, infringed through the doctrine of equivalents, or otherwise, nor induced others to infringe any valid claim of either the '304 Patent or the '132 Patent. In addition, CQG is not currently directly or indirectly infringing, contributing to the infringement of, nor inducing the infringement of any valid claim of either the '304 Patent or the '132 Patent.
4. The claims of the '304 Patent and '132 Patent are invalid or unenforceable for failure to comply with one or more provisions of Title 35 of the United States Code, including without limitation, Sections 101, 102, 103, and/or 112.
5. The claims of the '304 Patent and the '132 Patent are unenforceable based on the doctrine of patent misuse.
6. Plaintiff has failed to use proper and reasonable efforts to mitigate losses and damages incurred, the existence of which are denied, and CQG has therefore been released and discharged from liability.
7. The damages, if any, that were allegedly sustained by Plaintiff as a result of acts contained in the Complaint were caused in whole or were contributed to by reason of the acts, omissions, negligence, and/or intentional misconduct or third parties over which CQG had no control.

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