

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

Trading Technologies International, Inc.,)	
)	
Plaintiff,)	Civil Action No. 05-cv-4811
)	
v.)	Judge Sharon Johnson Coleman
)	
CQG, Inc. and CQGT, LLC,)	Magistrate Judge Sidney Schenkier
)	
Defendants.)	

**CQG'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT THAT THE '304 AND '132 PATENTS ARE INVALID
UNDER 35 U.S.C. § 112, ¶ 1 FOR LACK OF WRITTEN DESCRIPTION**

The patents-in-suit¹ are invalid for lack of written description under 35 U.S.C. § 112, ¶ 1, because TT has asserted patent rights beyond the scope of what the patent specification discloses. In other words, the specification (*i.e.*, the written description) fails to support TT's broad interpretation of its patent claims. According to TT, the Static Limitation covers both (1) price columns where *all* prices are static and (2) price columns where only *some* prices are static. Yet the specification only discloses a price column where *all* prices are static. Because the inventors' were not in possession of an invention where only some prices in a price column are static, as TT asserts, each of the asserted claims of the patents-in-suit lack written description support and are invalid under 35 U.S.C. § 112, ¶ 1, as a matter of law.

I. Statement of Facts

A. Undisputed Facts Regarding the Claims

TT's patents are directed to displaying market information related to and facilitating trading of a commodity being traded in an electronic exchange having an inside market with a highest bid price and a lowest ask price on a graphical user interface (or GUI). (SMF at ¶¶ 7-13.) The GUI described in each of the claims requires a Static Limitation. (*Id.*) The Static Limitation in the '304 patent is the "common static price axis," and in the '132 patent is the "static display of prices." (*Id.*)

In *Trading Techs. Int'l, Inc. v. eSpeed, Inc.* ("*eSpeed*"), the Federal Circuit construed the Static Limitation. *eSpeed*, 595 F.3d 1340, 1352-1355. The *eSpeed* construction for the term "common static price axis" is "a line comprising price levels that do not change positions unless a manual re-centering command is received." *Id.* at 1352. The *eSpeed* construction for the term "static display of prices" is substantially identical and requires "a display of prices comprising

¹ The patents-in-suit include U.S. Patent Nos. 6,766,304 and 6,772,132.

price levels that do not change positions unless a manual re-centering command is received.”²

Id. Although the claims refer to a price axis or display of prices, the patent specifications (discussed in the next section) only refer to a price column.³ For purposes of consistency, this motion refers to the Static Limitation as a static price column.⁴

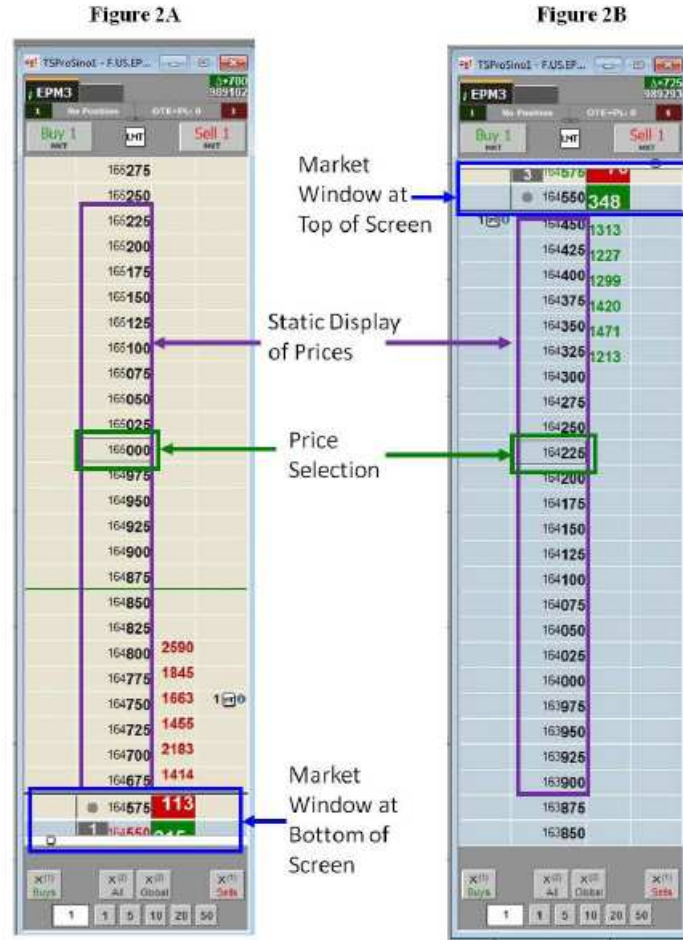
Despite its construction, *eSpeed* did not address whether all prices of the price column must be “static” or whether only some prices displayed in the price column must be “static.” *Id.* at 1352-55. Here, TT is interpreting the Static Limitation as covering both a price column where all prices are static and a price column where only some prices are static. (SMF at ¶¶ 26-35.) For example, TT’s Final Infringement Contentions allege that the middle subset of prices in CQG’s price column satisfies the Static Limitation. (*Id.*) TT refers to this subset of prices as “The price axis in the Non-Market Window Zone” because it excludes the so-called “Market Window [Zone] at Top of Screen” and the “Market Window [Zone] at Bottom of Screen” as depicted in TT’s Final Infringement Contentions and below.⁵ (*Id.*)

² *eSpeed*’s construction of the Static Limitation also included several clarifications. In particular, *eSpeed* held that the “the static condition requires permanency and thus, the price axis never changes positions unless by manual re-centering or re-positioning.” *Id.* at 1354. *eSpeed* also held that the Static Limitation requires the presence of a manual re-centering command. *Id.* Regarding the “common static price axis”, *eSpeed* clarified that “the line of prices corresponds to at least one bid value and one ask value.” *Id.* Although these clarifications are part of the construction of the Static Limitation, they are immaterial to the present motion.

³ Other than in the “Summary of the Invention” section, where the inventors referred to the invention as a static display of prices, the inventors adopted and used the term “price column” to describe the Static Limitation. (SMF at ¶¶ 14-20.) Although the specification notes that the price column may take any orientation (*e.g.*, vertical, horizontal, or diagonal), the preferred embodiment is a vertical price column. (*Id.* at ¶¶ 17, 19.)

⁴ The accused CQG products all have a vertical price column. (SMF at ¶¶ 21-25.) Accordingly, the only configuration of the price column relevant to non-infringement and invalidity based on written description is the vertical configuration.

⁵ CQG describes its products differently than TT. CQG refers to the so-called “Non-Market Window Zone” subset of prices in its price column as the “Market Pane Free Zone.” Also, CQG refers to the so-called “Top and Bottom Market Window Zones” as the “Top and Bottom Market Pane Zones.” To avoid any confusion, CQG will adopt TT’s terminology solely for purposes of this motion.



(SMF at ¶ 33.) In other words, TT alleges that CQG’s products satisfy the Static Limitation because some of the prices in the price column are allegedly static.

B. Undisputed Facts Regarding the Specification

The patents-in-suit share an identical written description. (SMF at ¶ 6.) The inventors referred to their alleged invention as either “the invention” or the “Mercury display.”⁶ (*Id.* at ¶¶ 17, 19.) The Mercury display has “a static vertical column of prices with the bid and ask

⁶ The inventors chose the term Mercury because the invention allegedly behaves like a thermometer. (SMF ¶ 38.) (“You can see the market through these [bid and ask] indicators moving up and down [the static scale] like [the mercury in] a thermometer. In fact, the patent uses the word ‘mercury’ to make an analogy to a thermometer. Obviously, the [static price column] scale here, the only scale is price, so the movement [of bid and ask indicators] up and down [the static price column] reflects price changes.”)

quantities displayed in vertical columns to the side of the price column and aligned with the corresponding bid and ask prices.” (*Id.* at ¶ 17.) The Mercury display is depicted below with the price column “Prc” (element 1005) outlined in red, and the bid column “BidQ” (element 1003) and ask column “Ask Q” (element 1004) collectively outlined in blue:

FIG. 3

	E/W	10:48:44	BidQ	AskQ	Prc	LTQ
1009	L	3		104	99	
1010	R	5		24	98	
1011		720		33	97	
1012	X	10		115	96	
1013		0				
1014		10 1H		32	95	
		50 3H		27	94	
1007	S 0 W 24	1K 5H		63	93	
	S 0 W 7	CLR		45	92	
1015	X	10		28	91	
1016		-17		20	90	10
1008	B 0 W 15	CXL		18	89	
	B 0 W 13	+		97	88	
1017		NET 0		30	87	
1018	B 0 W 17	NET REAL		43	86	
1019				110	85	
				23	84	
				31	83	
1021				125	82	
				21	81	

(*Id.* at ¶¶ 18, 36.) The values in the red price column are static; they do not move unless a manual re-centering command is received. (*Id.* at ¶ 17.) Over time, the values in the blue bid and ask columns are dynamic; they move up and down the price column to reflect the “market depth” (*i.e.*, the current bid and ask quantities in the market at each price for the commodity being traded). (*Id.*, at ¶¶ 17-20, 37.)

When TT’s interpretation of the Static Limitation became apparent during discovery, CQG served an interrogatory asking TT to identify all written description support for its

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