

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 CBM2014-00135

Patent 6,772,132

Patent Owner's Preliminary Response

CQG EXHIBIT 1021

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT 1

 A. The Patented Technology..... 4

 1. Technical Problems with the Prior Art..... 5

 2. The Inventors Created New Technology that Provides Improved Accuracy While Maintaining Speed 10

 3. The Claims Recite the Technical Elements of the Inventive Tool 17

 4. The Prosecution History Confirms that the ’132 Patent’s Novelty Is GUI Technology, Not Conducting a Trade 24

II. TRIAL SHOULD NOT BE INSTITUTED BECAUSE THE INVENTIVE ASPECT OF THE CLAIMS DOES NOT INVOLVE A METHOD OF DOING BUSINESS 26

 A. Patents to Novel GUI Tools, Even If Used in the Field of Trading, Are Not Within the Scope of AIA § 18 27

 B. The Congressional Record Confirms that Patents to Novel GUIs, Even If Used for Trading, Are Not Within the Scope of AIA § 18 32

III. THE PETITION’S CONCLUSORY STATEMENTS ARE INSUFFICIENT TO SHOW THE CLAIMS ARE NOT FOR A “TECHNOLOGICAL INVENTION” 38

IV. THE CLAIMS ARE FOR A TECHNOLOGICAL INVENTION, SO THE STATUTE PROHIBITS CBM REVIEW 41

 A. The Patent Is a Technological Invention in Every Way: It Solves a Technical Problem with a Technical Solution and Recites Novel and Nonobvious Technical Features 42

 1. Technical Problem: Prior Systems Required Significant Sacrificing of Accuracy for Speed and Vice Versa..... 42

2.	The Claimed Invention Provides a Technical Solution to the Technical Problems: A New GUI Tool that Increases Accuracy While Maintaining Speed and Improves Visualization.....	44
3.	The Claimed Subject Matter that Solves the Above Technical Problems Using a Technical Solution Recites a Technical Feature that Is Novel and Nonobvious	51
V.	PETITIONERS’ PETITION FAILS TO SATISFY THE THRESHOLD REQUIREMENTS FOR INSTITUTION OF ITS PROPOSED PRIOR ART GROUNDS	54
A.	Petitioners’ Petition Fails to Articulate Where the “Single Action” Elements of the Independent Claims Are Found in the Cited References.....	55
1.	Petitioners’ Petition Fails to Articulate Where the “Single Action” Elements of the Independent Claims Are Found in the Cited References of the TSE Combinations.....	56
2.	Petitioners’ Petition Fails to Articulate Where the “Single Action” Elements of the Independent Claims Are Found in the Cited References of the Silverman/Gutterman Combinations	59
B.	Petitioners’ Petition Fails to Articulate a Complete Obviousness Analysis for Independent Claim 14 in Any of Its Proposed Grounds	61
C.	Petitioners’ 35 U.S.C. § 101 Challenge Is Uninstitutable.....	63
VI.	PETITIONERS CANNOT SHOW THEY ARE “MORE LIKELY THAN NOT” TO PREVAIL ON THEIR OBVIOUSNESS GROUNDS 3-8, WHEN THE SAME ARGUMENTS HAVE BEEN REJECTED REPEATEDLY BY THE OFFICE AND THE COURTS.....	64
VII.	CONCLUSION.....	66

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>KSR Int’l Co. v. Teleflex, Inc.</i> , 550 U.S. 398 (2007)	54, 62
<i>Trading Techs. Int’l, Inc. v. eSpeed, Inc.</i> , 595 F.3d 1340 (Fed. Cir. 2010)	18, 50, 57, 64
<i>Trading Techs. Int’l, Inc. v. Open E Cry, LLC</i> , 728 F.3d 1309 (Fed. Cir. 2013)	4
Statutes	
35 U.S.C. § 101.....	63
35 U.S.C. § 103(a)	62
35 U.S.C. § 322.....	passim
35 U.S.C. § 324(a)	54
35 U.S.C. § 325(d).....	64
AIA § 18.....	passim
Rules	
37 C.F.R. § 42.22(a)(2)	54, 61
37 C.F.R. § 42.301	41
37 C.F.R. § 42.304(b)(4)	54, 55, 56
Other Authorities	
77 Fed. Reg. 48620 (Aug. 14, 2012)	54
<i>Agibsys, Inc. v. Ameranth, Inc.</i> , CBM2014-00015, Paper 20 (Mar. 26, 2014).....	3, 30

Conopco, Inc. v. The Proctor & Gamble Co.,
IPR2013-00510, Paper 9 (Feb. 12, 2014)63

Experian Mktg Solutions, Inc. v. Rpost Commc'ns Ltd.,
CBM2014-00064, Paper 13 (July 31, 2014)40

Heart Failure Techs., LLC v. CardioKinetix, Inc.,
IPR2013-00183, Paper 12 (July 31, 2013).....62

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.