

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRADESTATION GROUP, INC. and
TRADESTATION SECURITIES, INC., IBG LLC, and
INTERACTIVE BROKERS, LLC,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2015-00161¹
Patent No. 6,766,304 B2

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* PLENZLER.

Opinion dissenting filed by *Administrative Patent Judge* PETRAVICK.

PLENZLER, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
Covered Business Method Patent Review
37 U.S.C. § 328(a) and 37 C.F.R. § 42.73

¹ CBM2016-00035 has been joined with this proceeding.

I. INTRODUCTION

TradeStation Group, Inc. and TradeStation Securities, Inc. (collectively, “Petitioner”) filed a Petition (Paper 2, “Pet.”) on July 20, 2015, requesting review under the transitional program for covered business method patents of the AIA² of U.S. Patent No. 6,766,304 B2 (Ex. 1001, “the ’304 patent”). Pursuant to 35 U.S.C. § 324, we instituted a covered business method patent review as to claims 1–40 on the ground of claims 1–40 being unpatentable under 35 U.S.C. § 101. Trading Technologies, Inc. (“Patent Owner”) filed a Corrected Patent Owner Response on July 5, 2016. Paper 69 (“PO Resp.”). Petitioner filed a Reply. Paper 98 (“Pet. Reply”). An oral hearing in this proceeding was held on October 19, 2016. A transcript of the hearing is included in the record. Paper 123 (“Tr.”).

After oral hearing, the Federal Circuit issued a decision in *Trading Technologies International, Inc. v. CQG, Inc.*, No. 2016-1616, 2017 WL 192716 (Fed. Cir. Jan. 18, 2017), determining that the claimed subject matter of the ’304 patent is patent eligible under § 101. Petitioner and Patent Owner, with authorization (Paper 125), each filed supplemental briefing addressing the impact of that decision on this proceeding. Paper 128 (“Pet. Br.”); Paper 126 (“PO Br.”).

Petitioner filed a Motion to Exclude Evidence (Paper 103), and Patent Owner also filed a Motion to Exclude Evidence (Paper 104).

This Final Written Decision is issued pursuant to 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that claims

² Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011) (“AIA”).

1–40 of the '304 patent have not been shown to be unpatentable under 35 U.S.C. § 101.

II. DISCUSSION

Petitioner challenges claims 1–40 as directed to patent-ineligible subject matter under 35 U.S.C. § 101. Pet. 23–52; Pet. Reply 8–24. Patent Owner disagrees. PO Resp. 14–65. Our reviewing court also disagrees. *Trading Techs.*, 2017 WL 192716 at *4.

Under 35 U.S.C. § 101, we must first identify whether an invention fits within one of the four statutorily provided categories of patent-eligibility: “processes, machines, manufactures, and compositions of matter.” *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 713–14 (Fed. Cir. 2014). There is no dispute that the claims fit within one of the four statutorily provided categories of patent-eligibility. For example, there is no dispute that claim 1 fits within the process category.

Section 101 “contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank. Int’l*, 134 S. Ct. 2347, 2354 (2014) (citing *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013) (internal quotation marks and brackets omitted)). In *Alice*, the Supreme Court reiterated the framework set forth previously in *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012) “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. The first step in

the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.*

There is no definitive rule to determine what constitutes an “abstract idea.” Rather, the Federal Circuit has explained that “both [it] and the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016); *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (explaining that, in determining whether claims are patent-eligible under § 101, “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided”).

The Federal Circuit has already decided that the claims at issue before us are not directed to an abstract idea. *Trading Techs.*, 2017 WL 192716 at *4. Petitioner provides no persuasive reason for us to ignore that guidance, particularly with respect to whether the claims are directed to an abstract idea. *See, e.g.*, Pet. Br. 3–5. For example, Petitioner offers no persuasive explanation as to why its characterization of the alleged abstract idea would affect the Federal Circuit’s determination that the claims are not directed to an abstract idea. *See id.* at 5. We are also not apprised of a persuasive reason to arrive at a different outcome with respect to whether the claims are directed to an abstract idea based on the differences between the record before us and that before the Federal Circuit alleged by Petitioner. *See id.* at 3–5.

Accordingly, we follow the Federal Circuit’s guidance and, in accordance with that guidance, determine the claims before us to be patent

eligible. The sole issue before us is the eligibility of the challenged claims. Based on the facts of this proceeding, we determine that it is not necessary to revisit whether the challenged patent is a covered business method patent as Patent Owner urges.

III. MOTIONS TO EXCLUDE EVIDENCE

Petitioner moves to exclude Exhibits 2029, 2211, 2220, 2222, 2224, 2225, 2228, 2232, 2247, 2251, 2274–2276, 2286–2288, and 2292–2296 (collectively, “the *eSpeed/CQG* Transcripts”); Exhibit 2223 (“the Electronic Trader Declarants Exhibits”); Exhibits 2240–2246, 2250, 2252–2273, and 2277 (“the Third Party Emails”); Exhibits 2212, 2213, and 2214 (“Brumfield Sketch and Animations”); Exhibits 2030, 2032, 2278 (“*eSpeed/CQG* Jury Verdict Forms & Docket Entry; Exhibit 2169B, ¶¶ 75, 83–86, 89–92, 94–97, 102–104, 106–111, 126–128, 131, 133–34, 136–138, 140, 141, 151–153, 172 (“Confidential Declaration of Christopher Thomas”). Paper 103. Patent Owner moves to exclude Exhibit 1016 (TSE), Exhibit 1017 (TSE Translation, and Exhibit 1025, 57:18–58:19 (Testimony of Dan Olsen). Paper 104.

The Petitioner’s Motion to Exclude Evidence and Patent Owner’s Motion to Exclude Evidence are dismissed because we do not rely on the Exhibits or portions of the Exhibits in reaching our Decision.

IV. CONCLUSION

We conclude Petitioner has failed to show that claims 1–40 are unpatentable under 35 U.S.C. § 101.

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