

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRADESTATION GROUP, INC. and
TRADESTATION SECURITIES, INC.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2015-00161
Patent No. 6,766,304 B2

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

PETRAVICK, *Administrative Patent Judge*.

DECISION
Denying a Second Request for
a Motion to Stay CBM Proceeding
37 C.F.R. § 42.5

On March 7, 2016, a conference call was held between counsel for TradeStation Group, Inc. and TradeStation Securities, Inc. (collectively, “Petitioner”), counsel for Trading Technologies International, Inc. (“Patent

Owner”), and Judges Medley, Petravick, and Plenzler.¹ The purpose of the call was to discuss Patent Owner’s second request to file a motion to stay this proceeding. Patent’s Owner second request seeks a stay pending a decision of the U.S. Court of Appeals for the Federal Circuit on a second petition for a writ of mandamus,² in view of our denial of Patent Owner’s first request for a motion to stay. Patent Owner indicates that it intends, but had not yet filed, such a petition for a writ of mandamus.

For reasons discussed below, Patent Owner’s second request is denied.

Background

During a conference call held on March 7, 2016, Patent Owner requested that the Board set a briefing schedule for a motion to stay. *See* Ex. 2098, 8 (transcript of March 7, 2016 conference call). Patent Owner sought to stay this covered business method patent review until the U.S. Court of Appeals for the Federal Circuit issues a decision in *Trading Technologies v. CQG, Inc.*,³ No. 2016-1616 (Fed. Cir. filed February 24, 2016). Ex. 2099, 10. Patent Owner estimated that a decision in the appeal would issue in

¹ Counsel for IBG LLC and Interactive Brokers LLC was present on the call because of the pending motion to join CBM2016-00035 and CBM2015-00161. IBG LLC and Interactive Brokers LLC are petitioner in CBM2016-00035.

² On March 8, 2016, Patent Owner filed a first petition for a writ of mandamus concerning this proceeding. Ex. 2099. The first petition was denied by the Federal Circuit on March 18, 2016. Ex. 2100.

³ CQG, Inc. is not a party to this proceeding. Petitioner in this proceeding is not a party to the appeal *Trading Technologies v. CQG, Inc.*, No. 2016-1616 (Fed. Cir. filed February 24, 2016)

January 2017. *Id.* at 10–11. Petitioner opposed Patent Owner’s request; disputed that the pending appeal would be controlling in this proceeding; and argued that cause existed to accelerate this proceeding so that it could catch up with the appeal at the Federal Circuit. *Id.* at 11. After hearing from both parties, the Board indicated that it would consider whether to authorize Patent Owner to file a motion to stay and issue an order. Ex. 2099, 8–12; *see* 37 C.F.R. § 42.20(b) (requiring authorization from the Board prior to filing a motion).

On March 10, 2016, after considering the issue, the Board entered an order declining to authorize Patent Owner to file a motion to stay. Paper 38, 1–3. The Board indicated that a stay, of approximately nine-months, would not allow this proceeding to be completed within the one-year period prescribed by 35 U.S.C. § 326(a)(11) and 37 C.F.R. § 42.300(c) and that, even if good cause existed to extend for six months, a stay would not allow the proceeding to be completed within the extended period. *Id.* at 2.

Petitioner in this proceeding is not a party to the appeal, and a final written decision in this proceeding may be entered months prior to January 2017. The Board determined that such a stay would be contrary to the requirement that our Rules “shall be construed to secure the just, *speedy*, and inexpensive resolution of every proceeding.” 37 C.F.R § 42.1 (b) (emphasis added). *See* 35 U.S.C. § 326 (b) (requiring the Director to consider “the ability of the Office to timely complete proceedings” when prescribing regulations).

During the conference call held March 17, 2016, Patent Owner sought a motion to stay pending a decision of the U.S. Court of Appeals for the Federal Circuit on a second not-yet-filed petition for a writ of mandamus. Patent Owner estimated that it would take about a week for it to file the

second petition for a writ of mandamus and about a month for the Federal Circuit to decide the second petition. Petitioner opposed Patent Owner's second request. A transcript of the conference call appears in the record as Exhibit 2101.

Discussion

As an initial matter, Patent Owner's second request is premature. As of the date of the conference call, the second petition for writ of mandamus was not filed and nothing in the record of this proceeding indicates that Patent Owner has since filed the second petition. We will not stay a proceeding pending a decision on a petition for writ of mandamus that has not been filed by the Patent Owner.

Nonetheless, we have considered the merits of Patent Owner's second request. Patent Owner contends that it would be prejudiced should this proceeding not be stayed because it would need to continue to work on its Patent Owner's Response and matters in other related cases. Ex. 2101, 17; Paper 30, 7. This, however, is not a sufficient reason to deviate from the normal course of covered business method patent review proceedings by staying this proceeding pending a decision by the Federal Circuit on a second, not-yet-filed petition for a writ of mandamus. *See* Ex. 2101, 19–20.

Patent Owner's Response is due April 21, 2016. Paper 30, 7. During the March 17, 2016 conference call, Patent Owner estimated that a stay would be for approximately for 5 weeks from the date of the conference call, i.e., approximately April 21, 2016. *See* Ex. 2101, 15. The Scheduling Order authorizes the parties to stipulate to a different due date for the Patent Owner's Response. Paper 30, 3. Patent Owner indicated that it had not tried

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to move the due date within the current schedule (Ex. 2010, 16), and
Petitioner indicated that it would be willing to listen to a proposal to move
the due date (Ex. 2010, 21). Given this, Patent Owner may alleviate the
alleged prejudice by conferring with Petitioner to adjust the due dates within
the current schedule.

Accordingly, it is:

ORDERED that Patent Owner's second request to file a motion to
stay is denied.

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