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 CBM2014-00136 Patent 6,766,304

Patent Owner's Preliminary Response

DOCKET

### TABLE OF CONTENTS

I.	PRELIMINARY STATEMENT					
	А.	The Patented Technology 4				
		1.	Technical Problems with the Prior Art			
		2.	The Inventors Created New Technology That Provides Improved Accuracy While Maintaining Speed			
		3.	The Claims Recite the Technical Elements of the Inventive Tool			
		4.	The Prosecution History Confirms that the Patent's Novelty is GUI Technology, Not Conducting a Trade			
II.	ASPI	RIAL SHOULD NOT BE INSTITUTED BECAUSE THE INVENTIVE SPECT OF THE CLAIMS DO NOT INVOLVE A METHOD OF OING BUSINESS				
	А.		nts to Novel GUI Tools, Even if Used in the Field of Trading, are within the Scope of AIA § 18			
	В.		Congressional Record Confirms that Patents to Novel GUIs, Even ed for Trading, are Not within the Scope of AIA § 18			
III.	TO S	THE PETITION'S CONCLUSORY STATEMENTS ARE INSUFFICIENT TO SHOW THE CLAIMS ARE NOT FOR A "TECHNOLOGICAL INVENTION"				
IV.	THE CLAIMS ARE FOR A TECHNOLOGICAL INVENTION, SO T STATUTE PROHIBITS CBM REVIEW					
	А.	A. The Patent Is a Technological Invention in Every Way: It Solves Technical Problem with a Technical Solution and Recites Novel Nonobvious Technical Features				
		1.	Technical Problem: Prior Systems Required Significant Sacrificing of Accuracy for Speed and Vice Versa			
		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			

		3.	The Claimed Subject Matter that Solves the Above Technical Problems Using a Technical Solution Recites a Technical Featur that Is Novel and Nonobvious		
V.	THE PETITION IS UNINSTITUTABLE BECAUSE IT LACKS MATERIAL FACTS NEEDED TO CONSTRUE THE CLAIMS				
VI.	REQ	UIREI	IERS' PETITION FAILS TO SATISFY THE THRESHOLD MENTS FOR INSTITUTION OF ITS PROPOSED PRIOR AR S		
	А.	Petitioners' Petition Fails to Articulate Where the "Single Action" Elements of the Independent Claims Are Found in the Cited References 			
		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		
		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		
	B. Petitioners' 35 U.S.C. § 101 Challenge is Uninstitutable		64		
VII.	PETITIONERS CANNOT SHOW THEY ARE "MORE LIKELY THAN NOT" TO PREVAIL ON THEIR OBVIOUSNESS GROUNDS 2-6, WHEN THE SAME ARGUMENTS HAVE BEEN REJECTED				
<b>X7TTT</b>			DLY BY THE OFFICE AND THE COURTS		
V 111.	CONCLUSION				

## **TABLE OF AUTHORITIES**

Page(s)
Cases
KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398 (2007)
<i>Trading Techs. Int'l, Inc. v. eSpeed, Inc.</i> , 595 F.3d 1340 (Fed. Cir. 2010)
<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
35 U.S.C. § 103(a)
35 U.S.C. § 322
35 U.S.C. § 324(a)
35 U.S.C. § 325(d)
AIA § 18
Rules
37 C.F.R. § 42.22(a)(2)
37 C.F.R. § 42.301
37 C.F.R. § 42.304(b)(4)
Other Authorities
77 Fed. Reg. 48620 (Aug. 14, 2012)
Agilysys, Inc. v. Ameranth, Inc., CBM2014-00015, Paper 20 (Mar. 26, 2014)

DOCKET ALARM Find authenticated court documents without watermarks at <u>docketalarm.com</u>.

Experian Mktg Solutions, Inc. v. Rpost Comme'ns Ltd.,	
CBM2014-00064, Paper 13 (July 31, 2014)	41

## DOCKET A L A R M



# 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.