

ATTACHMENT D

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

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Agilysys, Inc. v. Ameranth, Inc.,
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