

ATTACHMENT F

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TRADING TECHNOLOGIES)	Case No. 10 C 715
INTERNATIONAL, INC.)	(Consolidated with:
)	10 C 716, 10 C 718,
Plaintiff,)	10 C 720, 10 C 721,
)	10 C 726, 10 C 882,
v.)	10 C 883, 10 C 884
)	10 C 885, 10 C 929,
BCG PARTNERS, INC.,)	10 C 931)
)	
Defendant.)	Judge Virginia M. Kendal

**TRADESTATION DEFENDANTS' AMENDED MOTION AND MEMORANDUM IN
SUPPORT OF PARTIAL SUMMARY JUDGMENT**

Defendants TradeStation Securities, Inc. and TradeStation Group, Inc. (collectively “TradeStation” or the “TradeStation Defendants”), move for partial summary judgment under Federal Rule of Civil Procedure 56(a), that U.S. Patent Nos. 7,676,411, 7,693,768, and 7,725,382 (the “2010 Brumfield Patents”) (Kessel Decl., Exs. A through C¹), are not entitled to the 2000 priority date of U.S. Patent Nos. 6,772,132 and 6,766,304 (the “Original Brumfield Patents”) (Kessel Decl., Exs. D and E), but only to the actual filing dates of the applications from which each of the 2010 Brumfield Patents issued.

The dispute between TradeStation and Plaintiff Trading Technologies International, Inc. (“TT”) turns in large part on the legal interpretation and collateral estoppel effect of the Federal Circuit holding in *Trading Technologies International, Inc. v. eSpeed*, 595 F.3d 1340 (Fed. Cir. 2010): One key issue, among others, is the Federal Circuit’s holding on the scope of the disclosure of the Original Brumfield Patents. TradeStation moves for partial summary judgment that the scope of the Original Brumfield Patents’ disclosure as established by the Federal Circuit

¹ All exhibits are attached to the Declaration of Adam J. Kessel filed herewith.

is limited to the single method disclosed in those patents, which requires a graphical user interface for trading where the price axis only permits re-centering by a manual command under the user's control, never automatically.²

While TT alleges the Original Brumfield Patents have a broader scope than established by the Federal Circuit, the question on priority is *not to compare what TT says the Original Brumfield Patents disclose*, but rather to compare *what the Federal Circuit held was disclosed* as measured against the allegations TT makes now about the scope of the 2010 Brumfield Patents. Since TT has *alleged* that the 2010 Brumfield patents are broader in scope than the single invention held by the Federal Circuit to have been disclosed by the Original Brumfield Patents, the 2010 Brumfield Patents are not entitled to the priority date of the Original Brumfield Patents under 35 U.S.C. § 120.

TT alleges in its responses to TradeStation's interrogatories that the claims of the 2010 Brumfield Patents cover or are infringed by TradeStation's current "TradeStation 9.0" product TT Responses to 2nd Set of Interrogatories (Kessel Decl., Ex. F).³ There is no dispute that the

² TradeStation recognizes this disputed legal issue could be brought before the Court in different ways, but has elected the vehicle of a motion for partial summary judgment on priority of the 2010 Brumfield Patents because it isolates the legal issue of the scope of the disclosure, an issue clearly litigated by TT, and squarely decided by the Federal Circuit.

³ TT has alleged that TradeStation 9.0 infringes all of the Brumfield patents, both the Original and 2010 Patents, by, among other things, a function in the product that "disables" auto-centering for a "period of time:"

TT further states that TradeStation 9.0 meets the "static" limitation for at least the reason **that "auto-centering" is disabled for a period of time while the mouse cursor is within certain boundaries of the Matrix window** (e.g., when the cursor is over the price ladder). TT presently believes that the infringement analysis of TradeStation 9.0 for the remaining claim limitations of the Original Patents is substantially the same analysis presented in Exhibit A (infringement contentions incorporated by reference)." TT then relies on this same analysis for the other patents in suit. (While infringement is not in issue,

accused graphical user interface in this product (one of several) displays a price axis for the inside market that moves automatically (unless “disabled,” or paused, for a “period of time” by a manual command by the user). The actual operation of the TradeStation 9.0 product is not in issue: This is not a motion for non-infringement of the Brumfield patents.⁴ The only issue is that TT has asserted its 2010 Brumfield Patents against a product that TT has acknowledged in its interrogatory answers auto-centers a price axis.

Moreover, the claims of two of the three 2010 Brumfield Patents purport to remove the word “static” present in the claims of the Original Brumfield patents from their new claims. Specifically, the word “static” is omitted from all claims of the ’411 Patent (Claims 1-28) and all claims of the ’768 Patent (Claims 1-23). At a minimum, these claims cannot trace priority to the Original Brumfield Patents under the Federal Circuit’s description of the invention. The ’382 Patent, the third of the 2010 Brumfield Patents at issue here, does include the word “static” in all of its claims, but TT takes the position in its interrogatory answers that the claims of the ’382 Patent cover a system where the price axis auto-recenters. Although TT’s interrogatory answer is obscured by numerous objections and reference to other documents, by stating that infringement includes a movement of the cursor that “disables” “auto centering” for “a period of

TradeStation 9.0 delays auto-centering for up to 60 seconds, but auto-centering then resumes.)

⁴ TT has asserted both the Original and 2010 Brumfield, as well as the Friesen patents, against TradeStation 9.0 in its interrogatory answer. Because TradeStation 9.0 auto-centers it cannot infringe any of the Brumfield patents, and there are other issues regarding validity as to all or many claims, under Sections 102, 103 and 112 of Title 35 for each Brumfield patent asserted by TT. These other issues and issues on the Friesen patents need not be resolved in the decision on this motion.

time,” TT is acknowledging in its allegations there is “auto centering” in the first instance – otherwise, there would be nothing to be “disabled . . . for a period of time.”

Accordingly, the TradeStation Defendants⁵ move for partial summary judgment under Fed. R. Civ. P. 56(a) for a finding that the “effective filing date” (“priority”) for the three 2010 Brumfield Patents is not any earlier than the filing date of each of the actual applications from which they issued (2006): This is especially true for the claims in the two 2010 Brumfield Patents (‘411 and ‘768) that omit the word “static” from their claims.

Alternatively, the TradeStation Defendants move under Fed. R. Civ. P. 56(g) for an order determining “material facts” that cannot be disputed by TT in these consolidated cases on the scope of the disclosure in the written description in the Original Brumfield Patents as established by the Federal Circuit’s opinion and holding: That is, the disclosure is limited to a product that includes a graphical user interface for trading when the price axis (for example, the inside market) only permits re-centering by a manual command under the user’s control, and never automatically re-centers.⁶

BACKGROUND

The Original Brumfield Patents, filed in 2000 and 2001 respectively, share a common specification with each other, and also with the 2010 Brumfield Patents; which are “continuation

⁵ By way of background only, and to foreshadow one type of further relief that a decision on this motion might permit, the following description of TradeStation is offered: “TradeStation is the premier brokerage trading platform for rule-based trading. And we have the awards to prove it. Whether you trade stocks, options, futures or forex, TradeStation offers uniquely powerful strategy creation and testing tools, customizable analytics and fully automated trading technology in a single trading platform.” <http://www.tradestation.com/platform/overview.shtm> (Kessel Decl., Ex. I).

⁶ The disclosure of the Original Brumfield patents is also limited to commodities, but this issue is not raised in this motion.

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