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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Trading Technologies International, Inc., Plaintiff, v. CQG, Inc. and CQGT, LLC, Defendants.	Civil Action No. 05-CV-4811 Judge Sharon Johnson Coleman Magistrate Judge Sidney I. Schenkier

CQG'S OPENING BRIEF REGARDING THE PATENT-INELIGIBILITY / INVALIDITY OF THE TT PATENTS-IN-SUIT UNDER 35 U.S.C. § 101

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In *Alice Corp. Pty. Ltd. v. CLS Bank Int'l.*, the U.S. Supreme Court set out a two-part framework for analyzing patent eligibility under 35 U.S.C. § 101. 134 S. Ct. 2347, 2355 (2014). The framework requires a trial court to (1) determine whether the claims "are directed to a patent-ineligible concept[]," i.e., an abstract idea, and (2) if they are, determine whether the claims recite "additional elements [that] 'transform the nature of the claim' into a patent-eligible application." *Id.* But, the Court cautioned, adding a "generic computer" or reciting "conventional steps" cannot transform an abstract idea into a patent-eligible invention. *Id*. at 2357. As U.S. District Judge Donato (Northern District of California) aptly put it: "[T]ake a standard this and a standard that . . . and plug them all together, you're still in the town of standard." (Ex. 10 at 19,[1] Jan. 14, 2015 Hr'g Tr., *Open Text SA v. Box Inc.*, 3:13-cv-04910.)

TT alleges that CQG infringes various claims of U.S. 6,772,132 and U.S. 6,766,304 (Asserted Claims). The Asserted Claims recite the abstract idea of placing an order for a commodity on an electronic exchange, based on observed market information, as well as updating the market information. The abstract idea is nothing more than "a fundamental economic practice long prevalent in our system of commerce." *Cf. Alice*, 134 S. Ct. at 2356.

The elements recited in the Asserted Claims perform basic functions relating to electronic commodity trading and updating market information using unidentified and generic computer components. Using a generic computer to perform "basic functions," such as obtaining data, are "well-understood, routine, conventional activities previously known to the industry," and do not add "something more" to transform an abstract idea into a patent-eligible invention. *Id.* at 2354, 2359. An abstract idea cannot be transformed into a patent-eligible invention merely by reciting a generic computer or adding instructions to "apply it." *Id*. at 2357-58. This, however, is precisely what is claimed by the Asserted Claims, making them invalid as a matter of law. The

[1] Citations to Ex. __ are to exhibits to the Declaration of Kenneth R. Adamo, filed / submitted herewith.

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