

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

IBG LLC, INTERACTIVE BROKERS LLC,
TRADSTATION GROUP, INC., TRADESTATION SECURITIES, INC.,
TRADESTATION TECHNOLOGIES, INC., IBFX, INC., CQG, INC., and
CQGT, LLC,
Petitioner,

IBG LLC, INTERACTIVE BROKERS LLC,
TRADSTATION GROUP, INC, TRADESTATION SECURITIES, INC.,
TRADESTATION TECHNOLOGIES, INC., and IBFX, INC.,
Petitioner,

IBG LLC, INTERACTIVE BROKERS LLC, CQG, INC., and CQGT, LLC,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM2015-00161 (Patent No. 6,766,304 B2)
CBM2015-00172 (Patent No. 7,783,556 B1)
CBM2015-00179 (Patent No. 7,533,056 B2)
CBM2015-00181 (Patent No. 7,676,411 B2)
CBM2015-00182 (Patent No. 6,772,132 B1)
CBM2016-00009 (Patent No. 7,685,055 B2)

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and PHILIP J.
HOFFMANN *Administrative Patent Judges.*

CBM2015-00161(Patent No. 6,766,304 B2)
CBM2015-00172 (Patent No. 7,783,556 B1)
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CBM2016-00009 (Patent No. 7,685,055 B2)

PETRAVICK, *Administrative Patent Judge.*

ORDER¹
Conduct of Proceeding
37 C.F.R. § 42.5

On November 23, 2015, a conference call was held involving counsel for the respective parties and Judges Medley, Petravick, and Hoffmann. Patent Owner initiated the call to discuss the following topics: 1) authorization for Patent Owner to file a motion to dismiss; 2) Patent Owner's intention to suggest the need for an expanded panel; 3) authorization for Patent Owner to file a motion to terminate, consolidate, or stay pending reexaminations related to CBM2015-000179 and CBM2016-00009; and 4) confirmation of procedures for notifying the Board of communications with Under Secretary of Commerce for Intellectual Property and Director of the United State Patent and Trademark Office Michelle Lee.

Motion to Dismiss

Patent Owner requested authorization to file a single motion to dismiss all of these proceedings. The motion to dismiss would address

¹ This Order addresses the same or similar issues in the proceedings listed above. Therefore, we issue one Order to be filed in each proceeding. The parties, however, are not authorized to use this style of filing.

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CBM2016-00009 (Patent No. 7,685,055 B2)

issues that are allegedly common to all proceedings; specifically, whether the Board should dismiss the petitions because the Petitioners are allegedly a litigation joint defense group that is abusing the process by serially filing covered business method patent review petitions and because the patents are not covered business method patents.

Petitioners opposed the request because additional briefing is unwarranted. According to Petitioners, the issue of whether or not a patent is a covered business method patent is unique in each proceeding and such arguments are properly made in a preliminary response.

Based upon the information presented during the call, the Board denied Patent Owner authorization to file a motion to dismiss. A separate motion to dismiss would not be warranted as Patent Owner may include such arguments in its preliminary responses in CBM2015-00179, CBM2015-00181, CBM2015-00182, and CBM2016-00009, which have not yet been filed.

In CBM2015-00161 and CBM2015-00172, Preliminary responses have been filed. The Board authorized Patent Owner to file a replacement preliminary response, incorporating such arguments. Any replacement preliminary response must be filed no later than November 30, 2015 and must comply with the 80 page limit set out in 37 C.F.R. § 42.24(a)(1).

CBM2015-00161(Patent No. 6,766,304 B2)
CBM2015-00172 (Patent No. 7,783,556 B1)
CBM2015-00179 (Patent No. 7,533,056 B2)
CBM2015-00181 (Patent No. 7,676,411 B2)
CBM2015-00182 (Patent No. 6,772,132 B1)
CBM2016-00009 (Patent No. 7,685,055 B2)

Expanded Panel Suggestion

Patent Owner indicated an intention to suggest the need for an expanded panel to consider whether the patents are covered business method patents.

Parties are not permitted to request panel expansion. The Chief Judge, on behalf of the Director, may act to expand a panel on a “suggestion” from a judge or panel. Whether to expand the panel on a “suggestion” involves consideration of whether the issue is one of conflict with an authoritative decision of our reviewing courts or a precedential decision of the Board, or whether the issue raises a conflict regarding a contrary legal interpretation of a statute or regulation. *AOL, Inc. v. Coho Licensing LLC*, Paper 12, IPR2014-00771 (Mar. 24, 2015) (informative); *Conopco, Inc. v. Protec & Gamble Co.*, Paper 25, IPR2014-00506 (Dec. 10, 2014) (informative).

Patent Owner may include in its preliminary response or replacement preliminary response a discussion of why it believes an expanded panel is needed.

Motion to Terminate, Consolidate, or Stay Related Reexaminations

Patent Owner requested authorization for a motion to terminate, consolidate, or stay reexamination proceedings related to the patents in CBM2015-00179 and CBM2016-00009. U.S. Patent No. 7,533,056 B2 is the subject of covered business method patent review CBM2015-00179 and

CBM2015-00161(Patent No. 6,766,304 B2)
CBM2015-00172 (Patent No. 7,783,556 B1)
CBM2015-00179 (Patent No. 7,533,056 B2)
CBM2015-00181 (Patent No. 7,676,411 B2)
CBM2015-00182 (Patent No. 6,772,132 B1)
CBM2016-00009 (Patent No. 7,685,055 B2)

the subject of reexamination Control No. 90/013,578. U.S. Patent No. 7,685,055 B2 is the subject of covered business method patent review CBM2016-00009 and the subject of reexamination Control No. 90/013,624. Petitioner did not oppose the motion.

The Director has authority to stay a reexamination proceeding pursuant to 35 U.S.C. § 325(d), and the Board has authority to enter an order to effect such a stay pursuant to 37 C.F.R. § 42.222(a). *See also* 37 C.F.R. § 42.3(a) (permitting the Board to exercise exclusive jurisdiction within the Office over an involved patent during the proceeding).

The Board denied Patent Owner's request to file a motion to terminate, consolidate, or stay the related reexamination in CBM2015-00179 and CBM2016-00009. As noted by the panel during the conference call, the panel has not decided whether to institute a review in any of the instant proceedings. At such a preliminary stage, it would be premature to consider whether to stay the reexamination proceedings, which would not comport with the goal of administering the proceedings in a just, speedy and inexpensive way. 37 C.F.R. § 42.1. Should the Board decide not to institute review, any request to stay the reexamination proceedings would become moot. Patent Owner may renew its request if a decision to institute is entered in CBM2015-00179 and CBM2016-00009.

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