

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

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)

Deposition of DAN R. OLSEN, JR., taken at
McDonnell Boehnen Hulbert & Berghoff LLP,
before Donna M. Kazaitis, CSR, RPR, CLR, and
CRR, commencing at the hour of 9:07 a.m. on
Thursday, July 28, 2016.

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 If we go to Paragraph 27 on the
 2 '304 declaration, in the second sentence you state
 3 that "improvements to interfaces have long been
 4 the subject of patentable technologies and
 5 provides specific benefits."
 6 A. That's correct.
 7 Q. Are you aware of a Supreme Court
 8 decision called Alice versus CLS Bank?
 9 MS. KURCZ: Objection, form.
 10 THE WITNESS: No.
 11 BY MR. SOKOHL:
 12 Q. So you would have no opinions as to
 13 whether or not that decision impacts whether or
 14 not the claims of the '304 Patent are patentable?
 15 MS. KURCZ: Objection, form.
 16 THE WITNESS: I have no awareness of
 17 the decision.
 18 BY MR. SOKOHL:
 19 Q. And so you didn't take into account
 20 that decision in forming your opinions?
 21 A. I did not.
 22 Q. Let's go back to Paragraph 12.

Page 38

1 Before we do that, for completeness
 2 and so I don't have to repeat the same question
 3 later, in regard to the '132 declaration, would it
 4 be fair to say that you did not consider the
 5 Supreme Court case Alice in forming any opinions
 6 regarding patentability of the claims of the '132
 7 patent?
 8 A. That would be correct.
 9 Q. In regard to the '411 declaration,
 10 would it be fair that you did not consider the
 11 Supreme Court decision in Alice in regard to any
 12 opinions regarding patentability of the '411
 13 claims?
 14 A. That would be correct.
 15 Q. So let's go back to the '304 and
 16 Paragraph 12.
 17 You mention here in the second
 18 sentence of Paragraph 12, you say "user interface
 19 technology is the subject of study at institutions
 20 such as MIT, CMU" -- is "CMU" Carnegie Mellon?
 21 A. Yes.
 22 Q. -- Stanford, University of Washington,

Page 39

1 Georgia Tech.
 2 Is it your opinion that because
 3 they have a study, that it's technology?
 4 MS. KURCZ: Objection, form.
 5 THE WITNESS: It's my opinion that all
 6 of these programs are housed in their computer
 7 science departments or in their computer science
 8 schools, which I consider technology, yes.
 9 BY MR. SOKOHL:
 10 Q. Did you read the '304 Patent?
 11 A. Yes.
 12 Q. And did you read the '411 Patent?
 13 A. Yes.
 14 Q. And did you read the '132 patent?
 15 A. Yes.
 16 Q. So let's go to Paragraph 6. I said
 17 this was logical, but I'm going backwards; aren't
 18 I? I'll admonish myself.
 19 In the second sentence, it says "I
 20 had been asked to review the nature of the
 21 invention in the '304 Patent."
 22 A. Yes.

Page 40

1 Q. Do you feel qualified to review the
 2 nature of the invention in the '304 Patent?
 3 A. Yes.
 4 Q. Are you a person of ordinary skill in
 5 the art of the '304 Patent?
 6 MS. KURCZ: Objection, calls for a
 7 legal conclusion, and scope.
 8 THE WITNESS: If ordinary skill
 9 relates to what happened at the time this patent
 10 was filed or issued, I haven't actually looked or
 11 studied what that would mean, what that ordinary
 12 skill would be. So drawing that conclusion at
 13 this point would be not good on my part.
 14 BY MR. SOKOHL:
 15 Q. So you haven't studied the state of
 16 the art when these patents were filed?
 17 A. That's correct.
 18 Q. Does solving a technical problem
 19 require the use of a scientific or engineering
 20 knowledge -- let me rephrase that question.
 21 There's an extra word in there.
 22 Does solving a technical problem

Page 41

1 MS. KURCZ: Objection, form.
 2 THE WITNESS: Are all graphical user
 3 interfaces technology? It would depend what you
 4 meant by the graphical user interface. If you
 5 meant the software that implements it on a
 6 computer, yes.
 7 BY MR. SOKOHL:
 8 Q. What happens if I meant what's being
 9 displayed on a computer?
 10 A. If it meant what's being displayed on
 11 a computer, it would depend on the aspect of the
 12 display.
 13 In these particular claims which
 14 are claiming a particular structure for that
 15 display, that would be technology.
 16 Q. But not all graphical user interfaces
 17 regarding the display are technology?
 18 A. I'd have to look at a specific
 19 instance before making a blanket statement.
 20 Q. What about a web page that has text
 21 and a link to another website?
 22 MS. KURCZ: Objection, form.

Page 54

1 A. Figure 3.
 2 Q. Very good.
 3 Is there a graphical user interface
 4 displayed in Figure 3?
 5 A. Yes.
 6 Q. And does this graphical user interface
 7 shown in Figure 3 improve the functioning of the
 8 computer?
 9 A. Relative to Figure 2, yes.
 10 Q. How does Figure 3 relative to Figure 2
 11 improve the functioning of the computer?
 12 A. So the functioning of the computer
 13 would have to do with what it was being used for.
 14 And if I go back to my report, if we go to the
 15 elements for example, Paragraph 29, the axis
 16 alignment improves visual search by the fovea for
 17 a specific market price. Alignment along the axis
 18 gives the eye a very specific direction to look.
 19 I believe I'm in now Paragraph 29.
 20 "The alignment of ask information along the same
 21 axis as the bid information allows for a unified
 22 perception of both aspects of commodity trading."

Page 56

1 BY MR. SOKOHL:
 2 Q. Would that be technology?
 3 MS. KURCZ: Objection, scope.
 4 THE WITNESS: It depends on what
 5 context you were trying to evaluate relative to a
 6 technology. Is it built on a computer, does it
 7 use software, yes, it does. Is software
 8 technology, yes, it is. Does it have other
 9 purposes other than just executing the software,
 10 yes, it does. Are all those purposes technology,
 11 I don't know, I'd have to look at the specific
 12 instance.
 13 BY MR. SOKOHL:
 14 Q. Let's look at Figure 3 of the '304
 15 Patent.
 16 A. Okay.
 17 Q. Have you seen this before?
 18 A. Yes.
 19 Q. I believe this patent refers to it as
 20 a Mercury display. Do you recall that?
 21 A. I don't recall the name, no.
 22 Q. Do you have a name for this figure?

Page 55

1 That would be a sample from my
 2 report of things that are specifically
 3 improvements over what is shown in Figure 2.
 4 Q. I think everything you mentioned
 5 though was things that were improvement relative
 6 to the user; correct?
 7 MS. KURCZ: Objection, form.
 8 THE WITNESS: Well, they're relative
 9 to the structure of this particular tool.
 10 BY MR. SOKOHL:
 11 Q. Understood. But you talked about the
 12 user's eye, and my question earlier was how does
 13 the GUI in Figure 3 improve the functioning of the
 14 computer?
 15 A. Well, the functioning of the computer
 16 is to aid the user. That is the function of the
 17 computer. And it has improved that function.
 18 Q. Okay. Does the GUI in Figure 3 make
 19 the computer run faster?
 20 A. That's not the improvement claimed.
 21 Q. I'm asking. That's the question I'm
 22 asking.

Page 57

1 A. It does not.
 2 Q. Does it allow the computer to use less
 3 energy?
 4 MS. KURCZ: Objection, form.
 5 BY MR. SOKOHL:
 6 Q. Does the GUI in Figure 3 allow the
 7 computer to use less energy?
 8 A. That is not one of the claimed
 9 improvements, no.
 10 Q. Does the GUI in Figure 3 make the
 11 computer more efficient relative to the network?
 12 A. That's not one of the claimed
 13 improvements, no.
 14 Q. Does the GUI in Figure 3 allow the
 15 computer to make a trade faster?
 16 MS. KURCZ: Objection, form.
 17 THE WITNESS: That depends on what you
 18 mean by "faster." If you mean faster, does it
 19 allow the person using the tool to make faster
 20 trades, yes, it does.
 21 BY MR. SOKOHL:
 22 Q. But does it allow the computer to make

Page 58

1 a faster trade?
 2 A. If the computer is serving as a
 3 servant to the user, the computer is doing faster
 4 what the user desired it to do.
 5 Q. What operation of the computer is
 6 made -- let me rephrase that question.
 7 What operation of the computer is
 8 improved by the GUI by Figure 3?
 9 MS. KURCZ: Objection, form.
 10 THE WITNESS: What operation of the
 11 computer is improved by --
 12 BY MR. SOKOHL:
 13 Q. The operation of the GUI of Figure 3
 14 of the '304 Patent.
 15 MS. KURCZ: Same objection.
 16 THE WITNESS: So the computer as a
 17 tool operates better in the execution of its
 18 function of that tool, of that goal, whatever it
 19 was created as a tool for.
 20 BY MR. SOKOHL:
 21 Q. How does the computer operate better?
 22 MS. KURCZ: Same objection.

Page 59

1 THE WITNESS: It better performs the
 2 function for which it was created and being used.
 3 BY MR. SOKOHL:
 4 Q. So simply because the user has an
 5 advantage, that means the computer has an
 6 advantage?
 7 MS. KURCZ: Same objection.
 8 THE WITNESS: I would say that's true
 9 of every tool.
 10 BY MR. SOKOHL:
 11 Q. Going back to the '304 Patent. Given
 12 that I believe you testified you didn't know that
 13 this was a method claim, would you not have an
 14 opinion as to whether or not a method claim would
 15 be different from an apparatus claim?
 16 A. I would not have an opinion at this
 17 time, no.
 18 Q. Does every GUI having a unique
 19 arrangement of known GUI elements represent an
 20 advance in human computer interaction?
 21 MS. KURCZ: Objection, form.
 22 THE WITNESS: Repeat that again for me

Page 60

1 if you would, please.
 2 MR. SOKOHL: Sure.
 3 BY MR. SOKOHL:
 4 Q. Does every GUI having a unique
 5 arrangement of known GUI elements represent an
 6 advance in human computer interaction?
 7 MS. KURCZ: Objection, form.
 8 THE WITNESS: Okay. To have an
 9 advance, there has to be a basis for comparison.
 10 You've only given me one side of the basis. I'd
 11 have to have the other side to say whether or not
 12 there was an improvement.
 13 BY MR. SOKOHL:
 14 Q. So you'd need to know what came
 15 before?
 16 A. Yes.
 17 Q. In Paragraph 27 of your '304
 18 declaration, and I believe this is identical in
 19 the '411 declaration as well as the '132
 20 declaration, you say in the last sentence, "It is
 21 not the nature of commodity trading that is
 22 claimed in the '304 Patent but rather the

Page 61