Paper No. ____
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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

Case CBM2015-00179
U.S. Patent 7,533,056

PATENT OWNER'S RESPONSE
TO ORDER DATED JANUARY 23, 2017

I. What effect does the Federal Circuit's decision in *Trading Techs. Int'l, Inc., v. CQG, Inc.*, No. 16-1616, 2017 WL 192716 (Fed. Cir. Jan. 18, 2017) ("*CQG*") have on these proceedings?

A. *CQG*'s patent eligibility findings for the '304 and '132 patents resolve the § 101 grounds in CBM2015-00161 and -00182.

CQG reviewed the legal issue of § 101 *de novo*, as the Federal Circuit would in an appeal from the Board, and found the same claims challenged in these CBMs patent eligible under either step of *Alice*. *Id.* at *3-4. *CQG* fully analyzed the claims by discussing the technological problem and solution involved, *id.* at *1, 3-4, and explaining how the district court's opinion was "in accord with precedent," *id.* at *3. The Court's holding that "the subject matter claimed in the '132 and '304 patents is patent-eligible," *id.* at *4, resolves the § 101 grounds in these CBMs.

CQG's non-precedential designation means it "does not add significantly to the body of law," Fed. Cir. R. 32.1(b), but it is a Federal Circuit decision demonstrating how to apply the *Alice* framework to these claims. *CQG*, 2017 WL 192716 at *3-4. *CQG* affirmed that the district court's conclusion was proper under the same precedent that controls here. Also, because the CBM petitions mirror the arguments in *CQG*, *compare, e.g.*, Ex. 2412, 20-23, Ex. 2413 *with* 00161, paper 2 and 00182, paper 7, the law should not apply differently here.

In re Baxter would not apply to support a different legal conclusion on § 101 by the Board here. 678 F.3d 1357 (Fed. Cir. 2012). In *Baxter*, the prior Federal Circuit decision affirming non-obviousness did not find the claims "valid" under

§ 103. *Id*. at 1364. Instead, it found that the challenger did not meet its burden in district court. *Id*. *Baxter* thus permitted a different outcome at the PTO because the underlying factual findings were subject to different burdens of proof. *Id*. Here, it the does not matter whether the burden of proof is "clear and convincing" or "preponderance of the evidence" because the Federal Court ruled that "under either standard the legal requirements for patentability are satisfied" by these claims. *CQG*, 2017 WL 192716 at *2, FN2.

B. *CQG* supports finding the related CBMs' claims patent eligible.

CQG is the most relevant authority because it applied the *Alice* framework to GUI claims like those in TT's related patents. 2017 WL 192716 at *3. *CQG* affirms that GUI inventions that "impart[] a specific functionality to a trading system 'directed to a specific implementation of a solution to a problem in the software arts'" are patent eligible under § 101. *Id.* at *4 (quoting *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016)).

The '411 claims are patent eligible because, while different in scope, for purposes of patent eligibility they are indistinguishable from the '132 and '304 claims. Indeed, the '411 claims recite a combination of features—a dynamic display of bid and ask indicators that move relative to a price axis with single-action order entry—that address the same problem with prior GUIs (e.g., missing your price) as

the claims in the ’132 and ’304 patents. *Compare id.* at *1-4 *with* CBM2015-00181, Paper 76, Sec. I.

The ’056 claims are patent eligible because they “do not simply claim displaying information on a [GUI].” *See CQG*, 2017 WL 192716, at *3. Instead, the ’056 claims “require a specific, structured [GUI] paired with a prescribed functionality directly related to the [GUI]’s structure that is addressed to and resolves a specifically identified problem in the prior state of the art.” *See id*. In particular, the ’056 invention improves prior trading interfaces by providing market information in an intuitive format that allows traders to enter orders quickly by selecting locations on the axis using a default quantity. *See*, CBM2015-00179, Ex.1001, 1:15-17; 2:44-66; 8:28-40; Fig. 3A. Under *Alice* step two, the combined claim elements provide an inventive concept: “specific structure and concordant functionality of the [GUI],” e.g., displaying bid and offer indicators relative to a price axis, setting a default quantity, and locations along the price axis, selected to set a desired price for an order. *See CQG*, 2017 WL 192716, at *3.

The ’556 claims are patent eligible because they “do not simply claim displaying information on a [GUI].” *See id*. Like the ’132 and ’304 patents, the ’556 patent distinguishes its claimed GUI features from prior art GUIs, e.g., the ’132 patent GUI. CBM2015-00172, Ex. 1001, 3:12-16. Under *Alice* step two, the combined claim elements provide an inventive concept, and require “specific

structure and concordant functionality of the [GUI]," e.g., a new, particular value axis and display and movement of indicators along that value axis. *See id*.

C. *CQG*'s analysis of the inventions confirms that these patents are technological and should be excluded from CBM review.

The Federal Circuit's analysis in *CQG* demonstrates how these GUI inventions are technological, so they should be excluded from CBM review. AIA § 18. Consequently, the Board should terminate the proceedings and vacate its institution decisions, as it has done in the past. *See, e.g.*, *Global Tel*Link Corp. v. Securus Technologies Inc.*, CBM2015-00145, Paper 49 (Nov. 15, 2016).

While *CQG* was in the § 101 context, the nature of the patented invention should be the same for CBM jurisdiction purposes. Indeed, the Federal Circuit has looked to § 101 cases to determine the nature of an invention for CBM purposes. *See, e.g., Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1327 (Fed. Cir. 2015).

At least four findings in *CQG* signal that claims like those in the '304 and '132 patents cover technological inventions. First, "the challenged patents 'solve problems of prior [GUI] devices . . . in the context of computerized trading[] relating to speed, accuracy and usability.'" *CQG*, 2017 WL 192716, at *2-3. Second, the claims recite "specific technologic modifications to solve a problem or improve the functioning of a known system." *Id.* at *3. Third, the invention is "not simply the generalized use of a computer as a tool to conduct a known or obvious

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