

Paper No. \_\_\_\_\_  
Filed: April 22, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

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

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**PATENT OWNER'S OPPOSITION TO MOTION TO STAY**

Patent Owner's opportunity to amend its claims would be impinged if the reexamination was stayed in favor of the CBM. In contrast, Petitioners would suffer no prejudice from allowing the reexamination—a proceeding they have *no* present involvement in—to move forward with the CBM. Indeed, although 37 C.F.R. § 42.20 mandates that “[t]he moving party has the burden of proof to establish that *it* is entitled to the requested relief,” (emphasis added), Petitioners’ do not claim any such entitlement. This alone dooms their motion.

Rather than identifying even a single reason why they are entitled to the requested relief, Petitioners advocate on behalf of the USPTO—namely the CRU. Paper 40, pp. 1-5. But the CRU does not need Petitioners’ protection, particularly where, as here, proceeding with the reexamination is in the best interest of everyone, including the examiner, involved in the reexamination.

**I. Significant resources have already been invested, and the reexamination is not in its early stages.**

Both the CRU and Patent Owner have invested significant resources in advancing the reexamination and becoming familiar with the relevant issues. The examiner has not only issued an Office Action but has also participated in an interview with Patent Owner. With Patent Owner’s response to the Office Action is due in only one week, the examiner should not be forced set aside the

information currently in their brain to only have to relearn it months or years later.<sup>1</sup>

That would be the epitome of wasted resources and the opposite of judicial economy.

## **II. A stay would prejudice Patent Owner's ability to amend its claims.**

Patent Owner understands that the USPTO recently advocated for simplification of the issues in co-pending AIA reviews through the use of other mechanisms—such as reexaminations—to make amendments. Given the complexity of the issues in this and the other proceedings involving the parties, Patent Owner has been attempting to simplify the issues in this CBM. Indeed, as part of negotiations with Petitioners, Patent Owner agreed to forgo filing a motion to amend here—based on the availability of an opportunity to amend in the reexamination—to facilitate an extension of the due dates for both parties' papers in the CBM. *See* Paper 43. Patent Owner should not now be penalized for doing so by having its ability to amend its claims in the co-pending reexamination inhibited through a stay of that proceeding.

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<sup>1</sup> No matter the outcome of this proceeding, the examiner will still need to ultimately render an action on Patent Owner's amended claims.

**III. A stay of the reexamination proceeding would significantly delay Patent Owner's ability to amend the claims.**

Despite recognizing Patent Owner's statutory right to have its reexamination amendments considered with special dispatch, Paper 40, p. 2; *see also* 35 U.S.C. § 305, Petitioners assert that Patent Owner will not be deprived of its statutory right because it can amend after the proceeding, Paper 40, pp. 4-5. Petitioners imply that Patent Owners are causing delay in the reexamination based on the *one-month extension* of time Patent Owners were granted and the absence of an amendment to date. *Id.* But, Patent Owner plans to file amendments in the reexamination within the next week. And, the one-month delay is insignificant, whereas the requested stay has the potential to delay Patent Owner's ability to amend for *years*. For example, it could be more than a year from now before an appeal is filed for this proceeding (Feb. 24, 2017, being Petitioner's projected decision date, Paper 40, p. 2; 30 days after that date to request rehearing, 37 C.F.R. § 42.71(d)(2); 63 days after any decision on rehearing to file notice of appeal, 37 C.F.R. § 90.3(b)). And an appeal could take an additional year or more before it returns to the PTAB (Fed. Cir. statistics currently reflect a 10 month average time to panel decision, but any requests for rehearing, etc. could significantly extend the appeal length). Indeed, given the picture Petitioners paint of the time it could take to complete the reexamination, Paper 40, p. 2, and given this patent's April 1999 priority date, a stay could eliminate Patent Owner's ability to amend in the

reexamination because the delay could cause the '056 patent to expire prior to a time in which a certificate of reexamination for any confirmed claim amendments could issue. Accordingly, a stay has the potential to significantly prejudice Patent Owner.

#### **IV. Conclusion**

Accordingly, the Board should deny Petitioners motion to stay the reexamination. Petitioners make no attempt to explain why *they* are entitled to the relief they request and fail to point to any compelling reason that would justify a stay of the reexamination proceeding now that Patent Owner has chosen that venue to submit its claim amendments. Thus, given the potential prejudice to Patent Owner's statutory right to amend in the reexamination, the Board should deny Petitioner's motion to stay the reexamination.

Respectfully submitted,

Dated: April 22, 2016

By: /Rachel L. Emsley/  
Rachel L. Emsley, Back-up Counsel  
Reg. No. 63,558

*Counsel for Patent Owner*  
*Trading Technologies International, Inc.*

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