

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.,
Petitioners,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM 2015-00179
Patent 7,533,056 B2

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION

Denying Motion to Stay Concurrent *Ex Parte* Reexamination
35 U.S.C. § 325(d); 37 C.F.R. § 42.222(a)

On April 15, 2016, Petitioner filed a Motion to Stay Reexamination Control Number 90/013,578 (“the Reexamination”), a pending reexamination proceeding of the involved patent here, U.S. Patent No. 7,533,056 B2 (“the ’056 patent”). Paper 40 (“Motion” or “Mot.”). On April 22, 2016, Patent Owner filed an opposition. Paper 47 (“Opposition” or “Opp.”). For the reasons that follow, the Motion is *denied*.

BACKGROUND

On February 24, 2016, we instituted a covered business method patent review of claims 1–15 of the ’056 patent on the ground that claims 1–15 are unpatentable under 35 U.S.C. § 103 over TSE¹, Togher², Schott³, and Cooper⁴, along with two other grounds. Paper 23 (“Inst. Dec.”).

Reexamination of the ’056 patent was granted on September 22, 2015 and a rejection of claims 1–15 under 35 U.S.C. § 103 over TSE, Togher, and Schott was made on January 28, 2016. Ex. 2037. Patent Owner filed a response on April 24, 2016 in which, among other things, Patent Owner presented new claims 16–66. Ex. 3001.⁵

ANALYSIS

Under 35 U.S.C. § 325(d) and 37 C.F.R. § 42.222(a), the Board,

¹TOKYO STOCK EXCHANGE OPERATION SYSTEM DIVISION, FUTURES/OPTION PURCHASING SYSTEM TRADING TERMINAL OPERATION GUIDE (1998) (Ex. 1004) (“TSE”).

² U.S. Patent No. 5,375,055, issued Dec. 20, 1994 (Ex. 1008) (“Togher”).

³ U.S. Patent No. 5,619,631, issued Apr. 8, 1997 (Ex. 1009) (“Schott”).

⁴Alan Cooper, ABOUT FACE: THE ESSENTIALS OF USER INTERFACE DESIGN, First Edition (1995) (Ex. 1015) (“Cooper”).

⁵ Exhibit 3001 is a copy of the amendment entered April 24, 2016 and publically available through the USPTO Public Pair website at <http://portal.uspto.gov/pair/PublicPair>.

“during the pendency of any post-grant review,” may provide for the “stay, transfer, consolidation, or termination” of any other proceeding or matter before the Office that involves the same patent. 35 U.S.C. § 325(d); 37 C.F.R. § 42.222(a). The Board ordinarily will not stay a reexamination because, in the absence of good cause, reexaminations are conducted with special dispatch. *See* 35 U.S.C. § 305.

Petitioner argues that because the Reexamination is in the early stages, staying the Reexamination is warranted. Mot. 1–3. Petitioner also argues that a stay is necessary to avoid potentially inconsistent outcomes, to eliminate duplicative analysis, and to prevent wasting Board resources. *Id.* at 1, 3–4. Lastly, Petitioner argues that because Patent Owner has not yet amended its claims in the Reexamination, it will have an opportunity to amend after the Board has concluded review. *Id.* at 4–5.

We have considered all of Petitioner’s arguments, but determine that Petitioner has not shown sufficiently that a stay of the Reexamination is warranted. Contrary to Petitioner’s assertions that Patent Owner has not yet amended its claims in the Reexamination (Mot. 4–5), as noted above, Patent Owner filed new claims in the Reexamination. Ex. 3001. The new claims are not part of this proceeding and would appear to have no direct bearing on the claims and issues in this case. Staying the Reexamination would postpone a decision of the patentability of the new claims, all to the detriment of Patent Owner.

Moreover, we are not persuaded that the Board will waste its resources if the Reexamination is not stayed. Mot. 3–4. In the Reexamination, Patent Owner has not amended or cancelled its original claims; the claims involved in this proceeding. As such, we do not agree

that we will waste our resources deciding the issues before us. This proceeding includes whether the challenged claims are unpatentable under two grounds not included in the Reexamination. Nor do we agree with Petitioner that the third party requestor of the Reexamination will not be prejudiced by a stay. We believe that they would be.

We do recognize that one ground of unpatentability raised here is nearly identical to the rejection adopted by the examiner in the Reexamination. But even then, the proceedings are not identical. A decision in this proceeding would not necessarily be dispositive of the rejection in the Reexamination as to the original claims. And as even pointed out by Petitioner, the Reexamination is relatively in the early stages. The Reexamination can run in parallel with this proceeding without harm to third party requestor, Patent Owner, or even the public.

For all of these reasons, we *deny* Petitioner's Motion to Stay the Reexamination.

ORDER

Accordingly, it is:

ORDERED that Petitioner's Motion to Stay Reexamination Control No. 90/013,578 is *denied*.

CBM2015-00179
Patent 7,533,056 B2

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