

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.,  
IBFX, INC.

Petitioner

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

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Case CBM2015-00181  
U.S. Patent 7,676,411 B2

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**PATENT OWNER'S REPLY TO  
PETITIONER'S OPPOSITION TO MOTION FOR  
ADDITIONAL DISCOVERY**

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**I. PETITIONERS DO NOT DENY COOPERATING WITH CQG OR THAT CQG AIDED IN PREPARING THE '411 PETITION**

Petitioners do not deny cooperation, aid, or labor division with CQG.

Instead, Petitioners claim they “took pains to avoid creating a factual basis for the suggestion that CQG had any control over the content of the petition, or the decision to file it.” Paper 19 (“Opp.”) at 8. Using the same counsel and work product prepared with CQG is not taking “pains” to avoid control by CQG. *See* Mot. at 2. Counsel cannot forget what they did for CQG and many exhibits and sections are used in full from the earlier CBM2015-00179 proceeding jointly prepared by Petitioners and CQG. *E.g., compare* Ex. 1008 *with* CBM2015-00179, Ex. 1005 (reused new translation); *compare* Ex. 1032, ¶¶ 56-64, *with* CBM2015-00179, Ex. 1019, ¶¶ 58-66 (reused declaration section); *compare* Pet. § II.B.3 *with* CBM2015-00179, Paper 9, § III.C.3 (reused petition argument section).

Rather than taking “pains” to work independently, Petitioners told the district court they were, in fact, working jointly (when working jointly favored a stay). Now they deny it and argue that their statements “do not indicate which defendants were planning to file on which of TT’s patents” (Opp. at 6), and that TT “failed to appreciate” that parties can file separate petitions (*id.* at 9). But the district court briefing contradicts those assertions. The briefing defined “Defendants” to include both Petitioners and CQG. Ex. 2002 at 2; Ex. 2003 at 2. It then reported “*Defendants’* current efforts challenge the validity of the . . .

'411 [patent],” among others (Ex. 2003 at 9 (emphasis added)), and that “they [Defendants] ‘plan to . . . refile challenges to most (if not all) of the patents-in-suit’” (*id.* at 8). For those challenges, Petitioners’ stated that CQG “is preparing to file CBMR petitions on the ’411 [patent].” *Id.* In context, these statements show that the CBM petitions, particularly the ’411 petition, were coordinated actions by the Defendants—not solitary actions. That the Defendants *could* separately prepare petitions fails to erase the *admissions* of joint preparation.

Petitioners also argue that the evidence shows only that CQG prepared “a” ’411 petition, not “the” ’411 petition. *See Opp.* at 5-10. But Petitioners fail to explain why Defendants’ promise to file a ’411 petition “in the next several weeks” (*id.* at 8) does not implicate “the” ’411 petition—the only ’411 petition filed in that window. Thus, objective review of the facts warrants additional discovery on CQG’s involvement in “the” ’411 petition. Moreover, possible differences between CQG’s “a” petition and “the” petition ultimately filed fail to render Petitioners’ coordination with CQG on the ’411 patent irrelevant. Ex. 2003 at 8-9. That coordination directly relates to RPI status, even if CQG later relinquished control. To be clear, TT is not arguing that participation in a litigation joint defense group creates an RPI. This is not the issue here. The cases Petitioners cite relate to joint defense groups for district court—not groups coordinating on CBM petitions. *Opp.* at 6-7. Coordinated preparation of a petition is exactly the cooperation that

warrants additional discovery, as shown by *RPX* and *Reflectix*. And TT’s request—limited to communications and agreements between CQG and Petitioners related to a ’411 post-grant proceeding—seeks only pertinent evidence on that coordination.

This narrower request, despite Petitioners’ assertions (Opp. at 4), remedies the reasons the Board denied TT’s request in CBM2015-00161, because it is to the ’411 patent and specific types of documents (*see* Mot. at 11-12 (expressly addressing that denial)). And the Board already recognized it is not the same request. Ex. 2001 at 6:19-7:1. Accordingly, Petitioners unsupported characterization of the requests as being the same without explanation lacks merit.

The pending motion is not on CQG’s RPI status. Instead, the question before the Board is whether Petitioners (1) admitted coordination with CQG and (2) statements on CQG’s preparation of a petition for “Defendants” to challenge the ’411 patent show more than a possibility or mere allegation that evidence on Petitioners’ coordination with CQG exists. They do. Indeed, Petitioners do not deny that correspondence between Petitioners and CQG on filing a ’411 petition exist to certify their statements in Exs. 2002 and 2003 or that they coordinated and shared labor on filing a ’411 petition. *See generally* Opp.; *see also* Mot. at 5-6.

## **II. TT’S REQUESTS ARE NOT OVERBROAD**

Petitioners argue TT’s request improperly seeks information on “anticipated” filings against the ’411 patent. Opp. at 10-11. While Petitioners

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