

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 07-1021-US-CON3)

Appl. No. : 11/415,163 Confirmation No. 3958
Applicant : Kemp et al.
Filed : 05/02/2006
Art Unit : 3693
Examiner : Richard C. Weisberger

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COMMENTS ON ALLOWANCE

Dear Examiner,

Applicant thanks Examiner Weisberger for the thorough search and examination of the present application and the allowance of the pending claims. As indicated on the record, this application is a continuation of 10/237,131, which is a continuation of 09/590,692 (now U.S. Patent No. 6,772,132 or “the ‘132 patent”), which is a non-provisional of 60/186,322. This application is a parent of a number of cases including 11/585,966, which has issued as U.S. Patent No. 7,725,382 or “the ‘382 patent”. The claims in this application, the ‘382 patent, and the ‘132 patent, among others, recite a “static” price axis. Applicant wishes to make the record abundantly clear that both Applicant and Examiner interpreted the term “static” broader when prosecuting and examining the present application and other related cases (such as the ‘382 patent) than the courts did in the litigation of the ‘132 patent. As such, the scope of the allowed claims in this case, like the claims granted in the ‘382 patent, which include a “static” price axis, encompass systems in accordance with the broader construction of a “static” price axis utilized by Applicant and Examiner during the course of prosecution.

Particularly, the district court construed the phrase “common static price axis” in the ‘132 patent as “a line comprising price levels that do not change positions unless a manual re-

centering command is received.” Trading Techs. Int’l, Inc. v. eSpeed, Inc., 2006 U.S. Dist. LEXIS 80153, at 11 (N.D. Ill. Oct. 31, 2006), submitted in an IDS filed on May 20, 2008. The court applied this construction as requiring a mode or condition in which there is no possibility that the price levels change positions automatically. (The same construction was applied to related U.S. Patent No. 6,766,304 or “the ‘304 patent”). As previously advised, the Federal Circuit affirmed the lower court’s construction.

The intrinsic record has been further developed since the issuance of the ‘132 and ‘304 patents. In the present case, as in the ‘382 patent, neither Examiner nor Applicant limited the term “static” to the narrow meaning adopted by the courts in connection with the ‘132 and ‘304 patents. To the contrary, it has been understood, as confirmed by various discussions with the Examiner throughout the examination of this family of cases, including the present application, that a “static” price axis may include a mode or condition in which there *is* a possibility that the price levels change positions automatically (e.g., as reflected for example in the Interview summary of 5/20/2008 in the ‘382 patent). This understanding is founded on the specification, which states that the price levels “do not normally change positions unless a recentering command is received,” and provides a visual comparison of the display between a time 1 (FIG. 3) and a subsequent time 2 (FIG. 4), which by itself demonstrates the operation of a static price axis : “[i]n comparing FIGS. 3 and 4, it can be seen that the price column remained static, but the corresponding bids and asks rose up the price column.” Additionally, throughout the extensive file history of this and related applications, including a thorough reexamination confirming patentability of the ‘132 and ‘304 patents, Applicant has not disclaimed or disavowed (e.g., to distinguish over cited art or for any other reason) a “static” price axis in which there is a possibility that the price levels change positions automatically. Indeed, the fact that a price axis can be re-centered is indicative that the price axis is static, but a static price axis is not defined by how it is re-centered.

Accordingly, it is clear that in the present case, as in the ‘382 patent, automatic re-centering of a static price axis is merely an additional feature not precluded by the term “static.” This is illustrated by U.S. Pat. No. 7,685,055 (the ‘055 patent), which is a continuation-in-part of the ‘132 patent, filed well before the ‘132 patent issued as a patent and was litigated, and examined by the same Examiner as in this case. The ‘055 patent disclosed innovations that build upon the static price axis originally disclosed in the ‘132 patent. Specifically, the ‘055 patent

shows *and claims* automatic re-centering (or repositioning) of a “static” price axis. The fact that the static price axis can be automatically re-centered (or repositioned), as claimed in the ‘055 patent, demonstrates that “static” does not preclude automatic re-centering.

Respectfully submitted,

**MCDONNELL BOEHNEN
HULBERT AND BERGHOFF LLP**

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By: /Daniel P. Williams
Daniel P. Williams
Registration No. 58,704