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CBM2015-00161, Paper No. 134

CBM2015-00181, Paper No. 142

CBM2015-00182, Paper No. 133

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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.,
Petitioners,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM2015-00161 (Patent No. 6,766,304 B2)

CBM2015-00181 (Patent No. 7,676,411 B2)

CBM2015-00182 (Patent No. 6,772,132 B1)

Held: October 19, 2016

BEFORE: SALLY C. MEDLEY, MEREDITH C. PETRAVICK,
and JEREMY M. PLENZLER, Administrative Patent Judges.

The above-entitled matter came on for hearing on Wednesday,
October 19, 2016, commencing at 1:30 p.m., at the U.S. Patent
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

CBM2015-00161 (Patent No. 6,766,304 B2)
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CBM2015-00161 (Patent No. 6,766,304 B2)
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1 P R O C E E D I N G S

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3 JUDGE PETRAVICK: All right. This afternoon we
4 will be hearing consolidated arguments in CBM2015-00161, 181
5 and 182.

6 For the record, could you say your name again,
7 Mr. Kessel.

8 MR. KESSEL: Yes, good afternoon, Your Honors.
9 This is Adam Kessel from Fish & Richardson, I'm going to be
10 speaking on behalf of Petitioners, and I'm sharing this block of
11 time with Mr. Sokohl.

12 JUDGE PETRAVICK: Thank you.

13 And for Patent Owner?

14 MS. GANNON: Good afternoon, Your Honor, my
15 name is Mike Gannon, I represent the Patent Owner, Trading
16 Technologies. I will be doing a portion for this afternoon, and
17 with me, Ms. Arner will be handling another portion.

18 JUDGE PETRAVICK: Thank you. So, you have 90
19 minutes total time for argument this afternoon. How much time
20 would you like to reserve for rebuttal?

21 MR. KESSEL: We would like to reserve 30 minutes
22 for rebuttal.

23 JUDGE PETRAVICK: You may begin when you're
24 ready.

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1 MR. KESSEL: Thank you. I'll begin.

2 Good afternoon, Your Honors. I am going to speak
3 about the '304 patent, and then Mr. Sokohl will speak about the
4 '132 and '411 patents. The '304 patent just has a single ground for
5 institution, and that's under Section 101, and I will explain just
6 briefly today why the claims of the '304 patent are fatally abstract
7 under the test set out by the Supreme Court in *Mayo* and *Alice*,
8 and the Federal Circuit's interpretation of those cases.

9 Starting with step one, which is to look for whether the
10 patent is directed to an abstract idea, the Board correctly found in
11 the institution decision that the claims of the '304 patent are
12 directed to the fundamental economic practice of placing an order
13 based on displayed market information as well as updating
14 market information. This is an age-old economic practice of
15 trading in a market and having information about the market, and
16 the claims put that information on the screen, and allow the trader
17 to place an order. All very conventional and all abstract.

18 Now, one of the clues to patentability under step one of
19 *Alice* is whether the claims improve the functioning of a
20 computer, and in the Patent Owner's response, it repeatedly
21 characterizes the invention of the '304 patent as the structure,
22 makeup and functionality of a GUI, G U I, graphical user
23 interface tool. But that's not what the claims say.

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