

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.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM2015-00181 (Patent 7,676,411 B2)
CBM2015-00182 (Patent 6,772,132 B1)

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

PLENZLER, *Administrative Patent Judge*.

DECISION
Denying Patent Owner's Request for Rehearing
37 C.F.R. § 42.71

CBM2015-00181 (Patent 7,676,411 B2)
CBM2015-00182 (Patent 6,772,132 B1)

INTRODUCTION

On February 28, 2017, we entered a final written decision in CBM2015-00182, determining that claims 1–28, 30–38, 40–48, and 50–56 of U.S. Patent No. 6,772,132 B1 are unpatentable (CBM2015-00182, Paper 129), and on March 3, 2017, we entered a final written decision in CBM2015-00181, determining claims 1–28 (the “challenged claims”) of U.S. Patent No. 7,676,411 B2 are unpatentable (CBM2015-00181, Paper 138 (“Final Dec.”)). Patent Owner seeks rehearing of those decisions, but only with respect to whether the TSE reference (“TSE”)¹ qualifies as a printed publication. CBM2015-00181, Paper 142 (“Request” or “Reh’g Req.”); CBM2015-00182, Paper 134.²

STANDARD OF REVIEW

In covered business method review, the petitioner has the burden of showing unpatentability by a preponderance of the evidence. 35 U.S.C. § 326(e). The standard of review for rehearing requests is set forth in 37 C.F.R. § 42.71(d), which states:

The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.

¹ Tokyo Stock Exchange Operation System Division, Futures/Option Purchasing System Trading Terminal Operation Guide (1998) (Ex. 1006; Ex. 1007 is the English translation). Exhibits numbers are from the CBM2015-00181 record. The same reference is at issue in CBM2015-00182.

² Citations to the record hereinafter are with reference to CBM2015-00181, unless otherwise noted.

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ANALYSIS

Patent Owner's Request is based on disagreement with our determination that the TSE reference is a printed publication. Request 1–7. Petitioner presents two main groups of arguments: those directed to our alleged misunderstanding of Federal Circuit decisions (*id.* at 2–5), and those directed to alleged inconsistencies between our decision and those of other panels at the Board (*id.* at 5–7).

With respect to its discussion of Federal Circuit decisions, we note that Patent Owner fails to even once cite to “the place where each matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d). Patent Owner's Request simply sets forth its disagreement with our Final Decisions. We are aware of the Federal Circuit decisions addressing public accessibility, and we discussed those decisions in our Final Decisions. Final Dec. 34, 40. Disagreement with our determination alone is not sufficient basis for us to modify our Final Decisions.

As for Patent Owner's discussion of other decisions by other Board panels, we note that none of those decisions are precedential and, therefore, are not binding upon us.

Moreover, our Final Decisions also determined that even assuming that a person of ordinary skill in the art is narrowly limited to a “GUI designer” as Patent Owner asserts, we find that securities companies for banks (“participants”) provided their own front-end order entry software, and that such participants would have employed GUI designers to formulate the front-end order entry software to facilitate trading on the Tokyo Stock Exchange.

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Id. at 42 (citing Ex. 2169 ¶ 32). Accordingly, “[w]e determine[d] . . . that the record evidence supports a determination that TSE was publically accessible to persons interested *and* ordinarily skilled in the subject matter.”

Id. (emphasis added). Petitioner fails to identify, or even allege, error in our finding that “securities companies for banks (‘participants’) provided their own front-end order entry software, and that such participants would have employed GUI designers to formulate the front-end order entry software to facilitate trading on the Tokyo Stock Exchange.” *Id.* Whether TSE was required to be accessible to GUI designers, therefore, does not change our ultimate determination that TSE qualifies as a printed publication.

For all of these reasons, Patent Owner’s Request does not apprise us of sufficient reason to modify our Final Decisions.

Patent Owner additionally suggests an expanded panel to decide the issues noted above. Reh’g Req. 7–9. Discretion to expand a panel rests with the Chief Judge, who, on behalf of the Director, may act to expand a panel on a suggestion from a judge or panel. *AOL Inc. v. Coho Licensing LLC*, IPR2014-00771, slip op. at 2 (PTAB Mar. 24, 2015) (Paper 12) (informative). Patent Owner’s suggestion was considered by the Chief Administrative Patent Judge, who declined to expand the panel.

ORDER

Accordingly, it is:

ORDERED that Patent Owner’s Request is *denied* in each of CBM2015-00181 and CBM2015-00182.

CBM2015-00181 (Patent 7,676,411 B2)
CBM2015-00182 (Patent 6,772,132 B1)

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