

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Trading Technologies International, Inc.

Plaintiff,

v.

TradeStation Securities, Inc., and  
TradeStation Group, Inc.,

Defendants.

Civil Action No. 10-cv-884

Judge James F. Holderman

Magistrate Judge Arlander Keys

**TRADESTATION SECURITIES, INC.’S AND TRADESTATION GROUP, INC.’S  
INITIAL INVALIDITY CONTENTIONS PURSUANT TO LOCAL PATENT RULE 2.3**

Pursuant to Local Patent Rule 2.3(b), Defendants TradeStation Securities, Inc. and TradeStation Group, Inc. (collectively “Defendants” or “TradeStation”), by and through their undersigned attorneys, hereby disclose their initial invalidity contentions for the asserted claims of the asserted patents. TradeStation’s disclosure is limited to the following claims, which are the only claims asserted in this case by Plaintiff Trading Technologies International, Inc. (“Plaintiff” or “Trading Technologies”):

1. U.S. Patent No. 6,766,304 (the “304 Patent”): Claims 1-3, 5-9, 11-40.
2. U.S. Patent No. 6,772,132 (the “132 Patent”): Claims 1-4, 7-11, 14-17, 20, 22-30, 32-40, 42-56.
3. U.S. Patent No. 7,212,999 (the “999 Patent”): Claims 1, 3, 12-16, 18-21, 23, 26-28, 30-33, 35.
4. U.S. Patent No. 7,533,056 (the “056 Patent”): Claims 1-3, 5, 7, 9-10.

5. U.S. Patent No. 7,676,411 (the “411 Patent”): Claims 1-6, 8-22, 24-28.
6. U.S. Patent No. 7,693,768 (the “768 Patent”): Claims 1-2, 4-8, 10-23.
7. U.S. Patent No. 7,725,382 (the “382 Patent”): Claims 1-2, 4-19, 21-32.

TradeStation’s discovery and investigation are continuing. These disclosures are based on information obtained to date. The Court has not yet construed the asserted claims. By offering these contentions TradeStation does not adopt, endorse, or reject any particular claim construction, and TradeStation explicitly reserves all rights to amend and/or supplement these contentions in its Final Contentions at the appropriate time as provided by the Scheduling Order, and moreover TradeStation reserves all rights to make such other appropriate amendments or supplementation as may be required by any Claim Construction or other Orders entered in this case.

Pursuant to Patent Local Rule 2.3, TradeStation is providing these contentions to apprise Plaintiff of TradeStation’s current invalidity contentions – these contentions are not intended to proffer any proposed claim constructions. In many instances, TradeStation prepared its Preliminary Invalidity Contentions, in part, based on positions adopted by Plaintiff in its Preliminary Infringement Contentions. As a result, it is important to note that, where an element of a prior art reference is associated with a given claim element herein, this does not mean that TradeStation necessarily contends or agrees that the limitation is present in the prior art reference under the proper interpretation of the claim, but rather that the limitation may be present either under (1) the proper interpretation of the claim or (2) an interpretation apparently being urged by Plaintiff (as reflected in Plaintiff’s pleadings or as otherwise implied by Plaintiff by its accusations directed at TradeStation’s products), which may very well be erroneous. Indeed, it appears Plaintiff may be attempting to take positions that are contravened by the Federal

Circuit's opinion in Case Nos. 2008-1392, 2008-1393, 2008-1422; Plaintiff should be barred by principles of collateral estoppel from adopting such positions. TradeStation does not concede the accuracy of Plaintiff's proposed claim scope or constructions or application of such constructions to TradeStation's products and such inclusion should not be construed as an admission that the prior art meets the claims under all constructions. In light of the prior art disclosed herein, no asserted claim is both valid and infringed by any TradeStation product.

Moreover, TradeStation believes the asserted claims are directed to unpatentable subject matter under 35 U.S.C. § 101 in light of the United States Supreme Court's recent decision in *Bilski v. Kappos*, 130 S. Ct. 3218 (2010). Although the Local Rules do not mandate specific disclosure of defenses arising under § 101, TradeStation notes here that the asserted claims are all directed to basic economic practices represented in a graphical user interface and are thus unpatentable under *Bilski* and recent cases applying *Bilski*.

TradeStation reserves its right to amend and supplement these contentions based on fact and expert discovery are yet to be completed.

The reference cited in the attachments to this document disclose the elements of the asserted claims and in some instances obvious variants thereof, either explicitly or inherently, or may be relied upon to show the state of the art in the relevant timeframe. In addition, the cited references may disclose an obvious variation of a recited claim element.

**A. Patent Local Rules 2-3(b)**

**1. Identification of References**

Each of the references below (and/or the underlying products described therein) qualifies as prior art under one or more sections of 35 U.S.C. §§ 102 and/or 103. For example, many of the listed United States Patents qualify as prior art under at least 35 U.S.C. §§ 102(a), 102(b),

and/or 102(e). The invalidating disclosure in each of the listed references and materials is express and/or inherent. Also, as shown below, any document or product anticipating an asserted claim pursuant to 35 U.S.C. § 102 also renders the claim obvious pursuant to 35 U.S.C. § 103 when viewed alone or in combination with other prior art references provided herein. The references provided herein may also be relied upon to show the state of the art in the relevant time frames.

TradeStation contends that the following items of prior art anticipate each asserted claim of the '999 Patent, or render those claims obvious:

- A. U.S. Patent No. 6,408,282 (“Buist ’282”), issued June 18, 2002. Buist’282 is prior art against the ’999 Patent under 35 U.S.C. § 102(e). Buist ’282 anticipates or renders obvious the asserted claims 1-3, 12-16, 18-21, 23, 26-28, 30-33, and 35.
- B. The Wit Capital Digital Stock Market system (“DSM”), the operation of which is explained in various depositions of the developers of that system taken in Plaintiff’s litigation against eSpeed, as well as declarations of those developers from that case, and documents produced in that case that have not yet been made available to TradeStation, anticipates or renders obvious the asserted claims 1-3, 12-16, 18-21, 23, 26-28, 30-33, and 35. DSM is prior art against the ’999 Patent under 35 U.S.C. § 102(b).
- C. U.S. Patent No. 5,297,031 (“Gutterman ’031”), issued May 22, 1994. Gutterman is prior art against the ’999 Patent under 35 U.S.C. § 102(b). Gutterman ’031 anticipates or renders obvious the asserted claims 1-3, 12-16, 18-21, 23, 26-28, 30-33, and 35.

- D. Orientation Materials for Participants New Future Options Trading System, September 1997 (Tokyo Stock Exchange), produced at TSE609 et seq. (“TSE Orientation”) is prior art against the ’999 Patent under 35 U.S.C. § 102(b). TSE Orientation anticipates or renders obvious the asserted claims 1-3, 12-16,18-21, 23, 26-28, 30-33, and 35.
- E. Futures/Options Trading System Guidelines for Operating the Trading Terminals, August 1998 (Tokyo Stock Exchange), produced at TSE628 et seq. (“TSE Futures”) is prior art against the ’999 Patent under 35 U.S.C. § 102(b). TSE Futures anticipates or renders obvious the asserted claims 1-3, 12-16,18-21, 23, 26-28, 30-33, and 35.
- F. U.S. Patent No. 6,188,403 B1 (“Sacerdoti ’403”), issued February 12, 2001. Sacerdoti ’403 is prior art against the ’999 Patent under 35 U.S.C. § 102(b). Sacerdoti ’031 anticipates or renders obvious the asserted claim 15.
- G. U.S. Patent No. 5,619,631 (“Schott ’631”), issued April 8, 1997. Schott ’631 is prior art against the ’999 Patent under 35 U.S.C. § 102(b). Schott ’631 anticipates or renders obvious the asserted claim 15.
- H. GL’s Tradepad. Software (“Tradepad”), the operation of which was developed in discovery taken in Plaintiff’s litigation against eSpeed, the contents of which have not yet been made fully available to TradeStation. Tradepad is prior art under 35 U.S.C. § 102(b) and/or relevant to an obviousness analysis under § 103.

TradeStation contends that the following items of prior art anticipate each asserted claim of the ’304 Patent, or render those claims obvious:

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