**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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| In re Application of: | Kemp, II, et *al.* |
| Assigned to: | Trading Technologies International, Inc. |
| U.S. Patent No.: | 6,772,132 |
| Issued: | August 3, 2004 |
| Group Art Unit: | 3624 |
| Serial No: | 09/590,692 |
| Examiner: | Richard C. Weisberger |
| Filed: | June 9, 2000 |
| For: | **Click Based Trading with Intuitive Grid Display of Market Depth** |

September 22, 2010

Mail Stop *Ex Parte* Reexam
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

**REQUEST FOR REEXAMINATION**

GL Trade Americas, Inc. ("GL" or the "third party Requestor"), through its undersigned attorneys, requests that the U.S. Patent and Trademark Office ("PTO") reexamine U.S. Patent No. 6,772,132 (the "'132 patent") to Kemp, II, *et al.* under 35 U.S.C. §§ 302-307, and 37 C.F.R. § 1.510. The '132 patent states that it was assigned to Trading Technologies International, Inc. ("TT"). The term for enforcing the patent has not lapsed. A copy of the patent in accordance with 37 C.F.R. § 1.510(b)(4) is attached as Exhibit A.

## I. Other Proceedings Involving the '132 Patent

### A. Background

TT is seeking to enforce the '132 patent against a number of entities, including GL, in the United States District Court for the Northern District of Illinois. The GL action is captioned *Trading Technologies International, Inc. v. GL Consultants, Inc. et al.*, Civil Action No. 05C 4120. A number of other actions concerning the '132 patent are also pending in this same

district including: *Trading Technologies International, Inc. v. FuturePath Trading LLC*, Civil Action No. 05C 5164; *Trading Technologies International, Inc. v. CQG et al.*, Civil Action No. 05C 4811; and *Rosenthal Collins Group, LLC v. Trading Technologies International, Inc.,* Civil Action No. 05C 4088.

Yet another action concerning the '132 patent went to trial in the same district, *Trading Technologies International, Inc. v. eSpeed Inc., et al.*, Civil Action No. 04C 5312. The Federal Circuit affirmed the trial court's final judgment. *Trading Technologies International Inc. v. eSpeed Inc.*, 595 F.3d 1340, 93 U.S.P.Q.2d 1805 (Fed. Cir. 2010).

## II. Reexamination is Requested for Claims 1-2, 8, 14, 20, 22-23, 25, 27-28, 30, 32-33, 37-38, 40, 42-43, 47-48, and 53 of the '132 Patent

Reexamination is requested herein for Claims 1-2, 8, 14, 20, 22-23, 25, 27-28, 30, 32-33, 37-38, 40, 42-43, 47-48, and 53 of the '132 patent.[1] The third party Requestor submits that there is a substantial new question of patentability with respect to each of these claims – independent and dependent – of the '132 patent. Specifically, and as discussed in more detail below, each of these claims is invalid as anticipated by, or obvious in view of, Gutterman, Friesen, LIFFE CONNECT, and SWX, alone or in combination.

## III. Statement of Substantive New Questions of Patentability

### A. The Claimed Subject Matter

The '132 patent has three (3) independent claims – specifically Claims 1, 8, and 14 – and fifty-three (53) dependent claims. Twenty-one (21) of the dependent claims depend directly, or indirectly, from Independent Claim 1. Sixteen (16) of the dependent claims depend directly, or indirectly, from Independent Claim 8 and the remaining sixteen (16) dependent claims depend directly, or indirectly, from Independent Claim 14.

[1] The '132 patent matured from U.S. Application Serial No: 09/590,692 (hereinafter the "'692 application").

### 1. Claim 1 and its Dependent Claims

Claim 1 is a method claim which is directed to a method of placing a trade order on an electronic exchange that has an inside market (a best bid and ask) using a graphical user interface and user input device. The method in Claim 1 has four steps: (1) setting a preset parameter; (2) displaying the market depth of a commodity through a dynamic display of bids and asks quantities aligned with a static display of prices; (3) displaying an order entry region aligned with the static display prices; and (4) sending the trade order to an electronic exchange through a single action of the user input device by selecting a particular area of the graphical user interface.

Claim 1 recites:

*A method of placing a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, using a graphical user interface and a user input device, said method comprising:*

*setting a preset parameter for the trade order;*

*displaying market depth of the commodity, through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, including at least a portion of the bid and ask quantities of the commodity, the dynamic display being aligned with a static display of prices corresponding thereto, wherein the static display of prices does not move in response to a change in the inside market;*

*displaying an order entry region aligned with the static display prices comprising a plurality of areas for receiving commands from the user input devices to send trade orders, each area corresponding to a price of the static display of prices; and*

*selecting a particular area in the order entry region through single action of the user input device with a pointer of the user input device positioned over the particular*

*area to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange.*

Claims 2, 20-29, 53, and 55-56 depend directly from Claim 1. Claims 3-7 and 50 depend from Claim 2, and Claim 54 depends from Claim 53.

**2. Claim 8 and its Dependent Claims**

Claim 8 is directed to an article of manufacture, namely a computer readable medium having four program codes.

Claim 8 recites:

*A computer readable medium having program code recorded thereon, for execution on a computer having a graphical user interface and a user input device, to place a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, comprising:*

*a first program code for setting a preset parameter for the trade order;*

*a second program code displaying market depth of a commodity, through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, including the bid and ask quantities of the commodity, aligned with a static display of prices corresponding thereto, wherein the static display of prices does not move in response to a change in the inside market;*

*a third program code for displaying an order entry region comprising a plurality of areas for receiving commands from the user input device to send trade orders, aligned with the static display of prices, each area corresponding to a price of the static display of prices; and*

*a fourth program code for receiving a command as a result of a selection of a particular area in the order entry region by a single action of the user input device with a*

*pointer of the user input device positioned over the particular area, to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange.*

The article claimed – computer readable medium – is in a *Beauregard* form[2] and has four functional – but no structural – limitations: (1) code for setting a preset parameter; (2) code for displaying market depth; (3) code for displaying an order entry region; and (4) code for receiving an order command.

Claims 9 and 30-39 depend directly from Claim 8; Claims 10-12 and 51 depend from Claim 9; and Claim 13 depends from Claim 12.

**3. Claim 14 and its Dependent Claims**

Claim 14 is also directed to an article of manufacture, namely a client system for placing a trade order. The claimed client system has four constituent structural parts, namely (1) a parameter setting component; (2) a display device; (3) a user input device; and (4) a trade order sending component.

Claim 14 recites:

*A client system for placing a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, the system comprising:*

*a parameter setting component for setting a preset parameter for the trade order;*

*a display device for displaying market depth of a commodity, through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, including the bid and ask quantities of the commodity, aligned with a static display of prices corresponding thereto, wherein the static display of prices does not move when the*

[2] *In re Beauregard*, 53 F.3d 1583, 35 U.S.P.Q.2d 1383 (Fed. Cir. 1995).

*inside market changes, and for displaying an order entry region aligned with the static display of prices, comprising a plurality of areas for receiving commands to send trade orders, each area corresponding to a price of the static display of prices;*

*a user input device for positioning a pointer thereof over an area in the order entry region; and*

*a trade order sending component for receiving a command as a result of a selection of the area in the order entry region by a single action of the user input device with a pointer of the user input device positioned over the area, to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange.*

Claims 15 and 40-49 depend directly from Claim 14; Claims 16-18 and 52 depend directly from Claim 15; and Claim 19 depends directly from Claim 18.

**B. Summary of the Prosecution History of the '132 Patent**

The underlying '692 application that matured into the '132 patent was filed on June 9, 2000, and claimed priority from a provisional application dated March 2, 2000 ("March 2 Provisional"). On August 21, 2000, the applicants filed a Petition to Make Special which was granted on April 27, 2001. The Examiner issued an Office Action on June 8, 2001. Among other things, the June 8, 2001 Office Action indicates that in response to a restriction requirement, the applicants elected to prosecute claims 22-40. On October 11, 2001, the applicants filed a response and amendment to the June 8, 2001 Office Action. The Examiner then issued Notice of Allowability, which was received by the applicants on July 31, 2002. Thereafter, on November 12, 2002, the applicants submitted a Request for Continued Examination under 37 C.F.R. § 1.114 seeking consideration of some previously undisclosed prior art references. During continued examination, the applicants submitted a supplemental

amendment on March 21, 2003. A second Notice of Allowability was mailed on February 10, 2004, and the '692 application issued as the '132 patent on August 3, 2004.

### 1. The combination of a "dynamic display" of bids and asks, and a "static display" of prices

In the Petition to Make Special dated August 21, 2000, the applicants stated that the combination of the dynamic display of bids and asks with a static display of prices was novel and rendered the invention patentable over the prior art references. The Petition to Make Special stated, for example, when distinguishing the alleged invention over the prior art reference: "[t]here being no static display of prices, the references also do not disclose that the pluralities of bids and asks are dynamically displayed in alignment with the prices corresponding thereto." *See* Petition to Make Special of August 21, 2000 at 5.

Then again, on October 9, 2001, in response to the June 8, 2001 Office Action rejecting certain claims as anticipated under 35 U.S.C. § 102(e), applicants stated that the identified anticipatory reference "did not contain a dynamic display of bids or asks in alignment with a static display of prices corresponding thereto." '132 prosecution history, Amendment of October 9, 2001 at 16.

After receiving a number of communications from applicants' counsel, the Examiner accepted applicants' statements that the combination of a static price display and a dynamic display of bids and asks made their invention patentable. *See, e.g.,* Emails between Steve Borsand and Examiner Weisberger, attached to the August 11, 2006 "Affidavit" in the '132 patent image file wrapper. In the Notice of Allowance, the Examiner stated:

> the prior art fails to teach a method of placing a trade order, computer readable medium with instructions for placing a trade order, and/or a client system for placing a trade order comprising a dynamic display and a static display. The static display, directed to the commodity price, **does not change**. In contrast, the values of the bid/ask, reflecting the market depth for the commodity, are dynamically displayed and are aligned with the corresponding static price values.

> These features in combination with the claim features of claims 22, 29 and/or 35 render the claims allowable.

Examiner's Amendment of July 31, 2002 (emphasis added).

Thus, the '132 patent was allowed over the prior art on grounds that the claimed invention allegedly possessed the combination of a dynamic display of bid/ask values that are aligned with the corresponding static price values in the static display that "**does not change.**" *Id.*[3]

### 2. Setting the pre-set order parameters was not included within the definition of "single action."

The specification of the '132 patent states with respect to sending a trade order that "any action by a user within a short period of time, whether comprising one or more clicks of a mouse button or other input device, is considered a single action of the user for the purposes of the present invention." '132 patent, Col. 4, lines 14-19. This "single action," as made clear by the prosecution history, is a distinct action from the setting of any "pre-set" parameters.

As stated in TT's Petition to Make Special, TT stated:

> [t]rade orders of the commodity are initiated through a single action of a user input device with a pointer of the user input device positioned over an area in the dynamic displays of bids and asks. The contents of the trade order are based in part upon the preset parameters and the position of the pointer at the time of the single action.

Petition to Make Special at 5.

### 3. Reexamination No. 90/008,576

A complete third party Request for Reexamination of the '132 patent was filed on June 6, 2006 by attorney J. L. Katz (hereinafter "the '8756 Reexamination"). This Request for

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[3] The broadest reasonable construction of "does not change" must recognize that the price axis does change under some circumstances. For instance, when the system is initiated at the beginning of a trading session, one of ordinary skill in the art would anticipate that the system of the '132 patent centers the price axis about the then current inside market. Additionally, the '132 patent expressly describes re-centering in response to a manual command. *E.g.*, Col. 7: 46 – 48.

Reexamination was based on certain documents published by the Tokyo Stock Exchange ("TSE") alone or in combination with Friesen (Exhibit B) and/or the Amazon.com one click patent. Reexamination was ordered on August 1, 2007.

While the patent owner did not submit a "Patent Owner's Statement," the patent owner did submit to the PTO certain information and materials. However, the patent owner did not provide the PTO with any statement(s) as to the pertinence or relevance of any one or more of these submitted materials. The patentability of the claims of the'132 patent confirmed. In particular, the Examiner stated:

> "TSE (Orientation) A and TSE (Operation) B clearly teach that the display of prices is automatically updated every three seconds so as to keep the 'center price' in the middle of the screen. This teaching is directly counter to the static display of U.S. Patent No. 6, 772,132, which uses the static display of prices so that the user does not accidentally place an order at the unintended price . . . ."

Notice of Intent to Issue Ex parte Reexamination Certificate at 2 (Jan. 16, 2008).

Because there was no rejection or any other written consideration of any of the references submitted during the '8576 Reexamination, those references can support a finding that there is a substantial new question of patentability. *In re Swanson,* 540 F.3d 1368, 88 U.S.P.Q.2d 1196 (Fed. Cir. 2008).

**C. Construction of the Claims**

In reexamination, as with all proceedings before the PTO, the terms and phrases of a claim are given their broadest reasonable construction. *See, In re American Academy of Science Tech Center*, 367 F.3d 1359 (Fed. Cir. 2004) ("During examination, 'claims . . . are to be given their broadest reasonable interpretation …'" quoting *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990)).

Giving the terms and phrases of the claims of the '132 patent their broadest reasonable construction:

Claim 1 broadly encompasses methods[4] of: (1) setting a pre-set parameter; (2) displaying market depth; (3) displaying an order entry region; and (4) selecting an area of the order entry region.

Claim 8 broadly encompasses an article of manufacture having four program codes identified only by their functions. Because claim 8 is directed to an article of manufacture – *a computer readable medium having program code recorded thereon*, only structural or means-plus-function limitations in this claim can define can define subject matter that is patentable over the prior art. *E.g., Haliburton Oil Well Cementing Co. v. Walker,* 329 U.S. 1 (1946); *see also, Ex Parte Miyazaki,* 89 U.S.P.Q.2d 1207, 1216-17 (Bd. Pat. App. & Int. 2008) (precedential). In short, the patentability of an article of manufacture is determined based upon whether the structural elements – and not the prospective use – of the claim satisfy the requirements for patentability. *Ansonia Brass & Copper Co. v. Elec. Supply Co.*, 144 U.S. 11, 18 (1892) ("[T]he application of an old process or machine to a similar or analogous subject, with no change in the manner of application and no result substantially distinct in its nature, will not sustain a patent even if the new form of result had not before been contemplated.")

The Requestor also notes that "*a computer readable medium having program code recorded thereon*" encompasses "**paper** or another suitable medium **upon which the program is printed**, as the program can be electronically captured via for instance optical scanning of the paper or other medium, then compiled, interpreted or otherwise processed in a suitable manner . . .." *Ex parte Barber*, No. 2007-1536 at 4 (BPAI October 10, 2007) (emphasis added), *see also* page 13.

[4] The Requestor notes that the language of the preamble does not normally form a claim limitation. *E.g., Intirtool Ltd. v. Texar Corp. d/b/a ToolPro Inc.*, 369 F.3d 1289 (Fed. Cir. 2004).

Claim 14 is another article of manufacture claim. Again, only structural – or means-plus-function – limitations can define can define subject matter that is patentable over the prior art.[5] In this context, Claim 14 broadly encompasses an article of manufacture having: (1) a parameter setting component; (2) a display device; (3) a user input device; and (4) a trade order sending component. Moreover, because Claim 14 is directed to an article of manufacture, any intended use, or alleged property, of the article is ignored in determining the patentability of such a claim. *E.g., In re Wilder*, 429 F.2d 447, 1665 U.S.P.Q. 545 (C.C.P.A. 1970); *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985).[6]

**D. Newly Cited Prior Art**

The Requestor begins by noting that the '132 patent matured from a U.S. patent application filed June 9, 2000, which claims priority from a provisional application filed March 2, 2000. While the Requestor, for various reasons, does not believe that the claims of the '132 patent are entitled to the benefit of the March 2, 2000 filing date of the provisional application, for the purpose of this request, the Requestor will, nevertheless, suppose that the

[5] There is "a judicially created 'dead zone' for claims using purely functional language to define a structural component." *Sanada v. Reynolds*, 67 U.S.P.Q.2d 1459 (Bd. Pat. App. & Int. 2003) (unpublished) *citing Halliburton Oil Well Cementing Co. v. Walker*, 329 U.S. 1, 71 U.S.P.Q. 175 (1946).

[6] *See Also* Manual of Patent Examining Procedures, 2114 (E8r8) at 2100-53 which states that:

> A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was "for mixing flowing developer material" and the body of the claim recited "means for mixing ..., said mixing means being stationary and completely submerged in the developer material". The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

"Critical Date" for prior art relevant to the claims of the '132 patent, under 35 U.S.C. §§ 102(b) and 103(a) is the earlier date, namely, March 2, 1999.[7]

If a prior patent or publication described the claim subject matter, either expressly or inherently, before the Critical Date, then a claim reciting such subject matter is invalid as anticipated. "A person shall be entitled to a patent unless . . . the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States . . . ." 35 U.S.C. § 102(b).

Furthermore, a patent will not be issued "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." 35 U.S.C. § 103(a). If the subject matter of the claims of the '132 patent would have been obvious to one of ordinary skill in the relevant art before March 2, 1999, the claims are invalid as obvious.

The written record of the '132 patent, as well as that of the '8576 Reexamination, contains no consideration by any Examiner of whether the prior art, as currently presented and discussed, renders the claimed subject matter anticipated or obvious in view of the following art:

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[7] An application is not entitled to the benefit of the filing date of a prior provisional application where the prior provisional application does not need each of the requirements of 35 U.S.C. § 112, ¶ 1. 35 U.S.C. § 119(e)(1) ("An application for patent filed under section 111(a) . . . of this title for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in a provisional application filed under section 111(b) of this title . . . shall have the same effect . . ..").

35 U.S.C. § 112, ¶ 1 mandates that a U.S. patent application contain a "written description" of the subject matter latter claimed. *Ariad Pharmaceuticals Inc. v. Eli Lilly & Co.,* 598 F.3d 1336, 94 U.S.P.Q.2d 1161 (Fed. Cir. 2010).

The Requestor respectfully submits that the prior provisional application, Serial No. 60/186,322, describes a single click for placing an order, but does not describe the generic "single action of the user input device" recited in Claims 1, 8, and 14. Consequently, the Requestor respectfully submits that the '692 application is not entitled to an effective filing date before the actual filing date of June 9, 2000.

1) U.S. Patent Publication No. US 2003-0097325 A1 to Friesen ("Friesen"), attached as Exhibit B (and U.S. Patent No. 7,212,999 to Friesen which matured from the Friesen application, exhibit B1)[8];

2) U.S. Patent No. 5,297,031 to Gutterman et al ("Gutterman"), attached as Exhibit C;

3) LIFFE CONNECT API User Manual ("LIFFE CONNECT"), attached as Exhibit D; and

4) Swiss Exchange SWX TS User Manual ("SWX Manual"), attached as Exhibit E.

The Friesen publication was not cited to, or by, the Examiner during the prosecution of the '692 application. Though the PCT publication that corresponds to the Friesen publication was cited, the Friesen PCT publication is not prior art under § 102(e). The Friesen publication is, however, prior art under § 102(e). Thus, the teachings of the Friesen publication of a graphical user interface having a dynamic display of a market in a commodity in which a trade order is placed by a single action of a user input device was not considered. *See e.g.,* Fig. 3b of the Friesen publication. During the '8756 Reexamination, the Friesen publication was cited only as a secondary reference; the Central Reexamination Unit never considered or analyzed the above referenced teachings of the Friesen publication. Further, the Friesen publication was not applied in any rejection of the claims, nor discussed on the record during either the prosecution of the'692 application, or that of the '8756 Reexamination.

The Gutterman patent was cited by the patent owner in an information disclosure statement in the original examination. Although the Examiner initialed the information disclosure statement, no evidence exists that the Examiner considered any of the technical teachings of the Gutterman patent to a degree greater than documents are generally considered during a search of Office file records. The Gutterman patent teaches a client system for placing a

[8] Friesen and the patent which matured from Friesen are used interchangeably herein.

trade order having a parameter setting component, a display device, a user input device, and a trade order sending component, *i.e.,* the subject matter of Claim 8. *E.g.,* col. 7: 19-27. Furthermore, the Gutterman patent was not applied in any rejection of the claims, or discussed on the record during either the prosecution of the '692 application, or that of the '8756 Reexamination.

The LIFFE CONNECT publication was not cited to, or by, the Examiner during the prosecution of the '692 application. Thus, the teachings of the LIFFE CONNECT publication of a graphical user interface having a dynamic display of a market in a commodity were not considered. *See e.g.,* LIFFE CONNECT publication at F-65. The LIFFE CONNECT publication was cited in an information disclosure statement during the'8756 Reexamination, but the Central Reexamination Unit never considered the above-referenced teachings of the LIFFE CONNECT publication. Furthermore, the LIFFE CONNECT publication was not applied in any rejection of the claims, or discussed on the record during either the prosecution of the '692 application, or that of the '8756 Reexamination.

The SWX Manual publication was not cited to, or by, the Examiner during the prosecution of the '692 application. Thus, the teachings of the SWX Manual publication of a graphical user interface having a dynamic display of a market in a commodity in which a trade order is placed by the use of a single action of a user input device was not considered. *See e.g.,* SWX Manual publication at 6-14. The SWX Manual publication was cited in an information disclosure statement during the '8756 Reexamination, but the Central Reexamination Unit never considered the above-referenced teachings of the SWX Manual publication. Furthermore, the SWX Manual publication was not applied in any rejection of the claims, or discussed on the record during either the prosecution of the '692 application, or that of the '8756 Reexamination.

The Requestor respectfully submits that, with the exception of Friesen, the above-listed art was publicly accessible before March 2, 1999, and taught, or suggested, the subject matter of Claims 1-2, 8, 14, 20, 22-23, 27-28, 30, 32-33, 37-38, 40, 42-43, and 47-48 of the '132 patent. In addition, as discussed fully below, Friesen, while not publicly accessible before March 2, 1999, is prior art under 35 U.S.C. § 102(e), and also taught or suggested the subject matter of Claims 1-2, 8, 14, 20, 22-23, 25, 27-28, 30, 32-33, 37-38, 40, 42-43, 47-48, and 53 of the '132 patent. Indeed, the Requestor submits that the above-listed art, analyzed below, alone or in combination, anticipated, or at least rendered the subject matter of Claims 1-2, 8, 14, 20, 22-23, 25, 27-28, 30, 32-33, 37-38, 40, 42-43, 47-48, and 53 obvious to one of ordinary skill in the relevant art.

In addition, the above-listed references have never been fully considered by the PTO with respect to the '132 patent and thus raise a substantial new question of patentability. Nothing prevents these references from now being the basis of, and raising, a substantial new question of patentability.

In *In re Swanson*, the Federal Circuit held that despite the fact the Examiner expressly cited the Deutsch *et al.* patent as a secondary reference in an obviousness rejection, the Deutsch *et al.* patent when subsequently submitted as part of a Request for Reexamination, raised a substantial new question of patentability sufficient to declare a reexamination (and rejection of claims) of the Swanson Patent. 540 F.3d 1368, 1381, 88 U.S.P.Q.2d 1196 (Fed. Cir. 2008). This substantial new question of patentability existed despite the fact that the Federal Circuit had previously affirmed a district court decision that held that the Deutsch *et al.* patent did not render the Swanson Patent invalid. *Id.* at 1378.

In marked contrast to the facts in *Swanson*, during the initial examination of the application that matured into the '132 patent, as well as during the prior reexamination, Gutterman was never expressly relied upon to reject any claim as set forth below. The same is true for the Friesen, LIFFE CONNECT, and SWX references during the previous reexamination of the '132 patent.

In sum, the written record of the '132 patent is free of any consideration of whether any of the above cited references either (1) anticipate the claimed subject matter or (2) render it obvious in the manner described below. As a result, and at a minimum, the issue of whether any of the above-noted references renders any claim of the '132 patent obvious is a substantial new question of patentability. Thus, the previously cited references, relied upon and applied herein, raise substantial new questions of patentability and reexamination should be Ordered.

**E. Basis for Substantial New Questions of Patentability**

The claims of the '132 patent do not patentably distinguish the alleged invention over the above-noted, newly cited references, alone or in combination.

Invalidity for lack of novelty under 35 U.S.C. § 102 requires that each and every element of the claimed invention be disclosed expressly or inherently in a single prior art reference. *See, e.g., In re Paulson*, 30 F.3d 1475, 1478-79, 31 U.S.P.Q.2d 1671 (Fed. Cir. 1994). With respect to invalidity under 35 U.S.C. § 103, the Supreme Court identified three (3) factors that must be addressed when determining whether or not an item is unpatenable on account of obviousness.

> Under § 103, [1] the scope and content of the prior art are to be determined; [2] differences between the prior art and the claims at issue are to be ascertained; and [3] the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

*Graham v. John Deere Co.,* 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1966).

The Supreme Court reaffirmed the *Graham* analysis in *KSR v. Teleflex*, 550 U.S. 398, 82 U.S.P.Q.2d 1385 (2007). As stated by the Supreme Court, "[t]he combination of familiar elements according to know methods is likely to be obvious when it does no more than yield predictable results. *Id.* at 416.

Based on this review of the *Graham* factors, it is clear that the prior art taught, or at least suggested, the subject matter of claims 1-2, 8, 14, 20, 22-23, 25, 27-28, 30, 32-33, 37-38, 40, 42-43, 47-48, and 53 prior to the Critical Date. Consequently, the PTO must, at a minimum, find that the subject matter of these claims was obvious to one of ordinary skill at the time of its alleged invention. Therefore, the PTO must order reexamination and reject claims 1-2, 8, 14, 20, 22-23, 25, 27-28, 30, 32-33, 37-38, 40, 42-43, 47-48, and 53 of the '132 patent.

**1. Friesen**

The Requestor notes that Friesen published on May 22, 2003 based upon U.S. Patent Application No. 09/289,550 (the "'550 Application") filed on April 9, 1999. The '550 Application matured into U.S. Patent No. 7,212,999 (the "'999 patent") on May 1, 2007. Because April 9, 1999 is before any filing date to which any application for the '132 patent might be entitled, Friesen is prior art to the above-identified patent under 35 U.S.C. § 102(e). Unlike the PCT publication WO 00/62187 which is listed on the face of the '132 patent, WO 00/62187 does not qualify to be used as prior art whereas Friesen can.[9] That difference in whether the reference can be prior art makes Friesen non-cumulative.

PCT publication WO 00/62187 published on October 19, 2000, with an International Filing Date of April 7, 2000, and a U.S. priority filing date of April 9, 1999. Because the filing date of this International Patent Application was prior to November 29, 2000, this reference

[9] The Requestor notes the drawings in the published PCT application differ from the drawings in the published U.S. application.

cannot be prior art under § 102(e). U.S. Patent law limits the prior art effect of certain International Patent Applications. Specifically, all International Patent Applications filed prior to November 29, 2000, are not prior art under 35 U.S.C. § 102(e). *See* Manual of Patent Examining Procedure ("MPEP") § 2136.03 (describing the considerations in determining the Critical Reference Date for a published PCT application).

Because PCT publication WO 00/62187 cannot be used as prior art against the '692 application and Friesen is § 102(e) prior art, Friesen is not cumulative of the PCT publication WO 00/62187.

In marked contrast to the treatment given to published International Patent Applications filed prior to November 29, 2000 under 35 U.S.C. § 102(e), U.S. patent applications are prior art as of their filing date once they publish. Friesen published on May 22, 2003 and is based upon the '550 application, which was filed on April 9, 1999. Consequently, even if the '132 patent is entitled to benefit of the March 2, 2000 filing date of provisional patent application Serial No. 60/186,322, there is no evidence of record to show that the invention claimed in the '132 patent – invention requires both conception and an actual reduction to practice – occurred before the April 9, 1999 filing date of Friesen.

Indeed, the Requestor notes that Friesen was acquired by the assignee of the above-identified patent, Trading Technologies International, Inc. ("TT"), subsequent to Friesen's publication. According to the Public Pair web page, Friesen was prosecuted to allowance by attorneys for TT. If the invention of the '692 application had occured before April 9, 1999, it would have been incumbent upon the attorneys for TT to have disclosed that information to the Examiner considering Friesen. The absence of any such disclosure is an admission that the invention of the '692 application was made after April 9, 1999. Consequently, Friesen, which is

both a published U.S. patent application and an issued U.S. patent, is prior art against the above-identified patent under 35 U.S.C. § 102(e).

In sum, the Requestor submits that Friesen, taught and suggested the subject matter claimed by the '132 patent to those of ordinary skill before the invention date of the '132 patent. Because of these teachings and suggestions, reexamination must be Ordered and Claims 1-2, 8, 14, 20, 22-23, 25, 27-28, 30, 32-33, 37-38, 40, 42-43, 47-48, and 53 must be rejected. Indeed, Friesen, if not anticipatory, at least renders the combination obvious in view of the other disclosures herein and thus not patentable. Therefore, reexamination must be Ordered and these claims of the '132 patent rejected.

**a) Claim 1 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

Before the earliest filing date to which the '132 patent might be entitled, Friesen described the use of a graphical user interface to place trade orders for a commodity. More specifically Friesen disclosed:

| Claim 1 of the '132 patent | Friesen |
|---|---|
| A method of placing a trade order for a commodity on an electronic exchange | The Abstract of the '999 patent describes the claimed subject matter as "[a] user interface for an electronic trading exchange . . . ." (Emphasis added). The Summary of the Invention states that "[t]he user interface of the present invention operates in a system in which individual traders place orders including bids and offers . . . ." Col. 2: 6-10 (emphasis added). |
| having an inside market with a highest bid price and a lowest ask price, | "[I]n accordance with the present invention, each client terminal displays *all* of the outstanding bids and offers for an item, [not just] the highest bid and lowest offer . . . ." '550 application ¶ 0006 (emphasis added). |
| using a graphical user interface and | "The present invention relates generally to the field of graphical user interfaces . . . ." '550 application ¶ 0001 (emphasis added). |

| Claim 1 of the '132 patent | Friesen |
|---|---|
| a user input device, | "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 *using a pointing device*." '550 application ¶ 0038 (emphasis added). |
| said method comprising: | |
| setting a preset parameter for the trade order | Friesen expressly describes a procedure wherein the user (trader) presets the size of the order before entering the order in the following text: "After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order. . . ." Next,[10] the token is dragged to a location on the screen which corresponds to the desired value of the order." '550 application ¶ 0038 (emphasis added). |
| displaying market depth of the commodity, | "[I]n accordance with the present invention, each client terminal *displays all of the outstanding bids and offers* for an item, [not just] the highest bid and lowest offer. . . ." '550 application ¶ 0006 (emphasis added). |
| through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, | Claim 13 of '999 patent characterizes the display as being "updated dynamically" (emphasis added). |
| including at least a portion of the bid and ask quantities of the commodity, | "[I]n accordance with the present invention, each client terminal *displays all of the outstanding bids and offers* for an item. . . ." '550 application ¶ 0006 (emphasis added). |
| the dynamic display being aligned with a static display of prices corresponding thereto, | In the '550 application, the Examiner's Amendment of April 18, 2006 revised Claim 1 to state that: "each bid indicator at a location along a first scaled axis of prices corresponding to a price associated with the at least one bid. . . ." (emphasis added). |

[10] The choice of the word "Next" implies that the steps occur sequentially and that the size is set before selecting the value of the order, *i.e.*, the size of the order is preset.

| Claim 1 of the '132 patent | Friesen |
|---|---|
| wherein the static display of prices does not move in response to a change in the inside market; | The '550 application states that Figures 3b and 3c are taken at different times. ¶ 0042. During this undefined time interval, the value of some quantifying metric has changed. '550 application ¶¶ 0041-42. Nonetheless, value axis 332, which can represent prices has remained unchanged despite changes in the quantifying metric. '550 application ¶ 0032 Based on this information in the '550 application, one of ordinary skill would understand that the price axis is static and would remain so if the inside market changed.<br><br>As noted above, Friesen displays both the bid and ask [offer] display regions in relation to the scaled axis of values. In one embodiment, the values are prices. '550 application ¶ 0036, see also Application Claim 68 [*e.g.,* Amendment of June 21, 2005] ("[T]he values on the first scaled axis of values represent price.") |
| displaying an order entry region aligned with the static display prices comprising a plurality of areas for receiving commands from the user input devices to send trade orders, each area corresponding to a price of the static display of prices; and | "[P]riority view 312 [the graphical interface of Figures 3a, 3b, and 3c] is designed to allow traders to intuitively place orders. . . ." '550 application ¶ 0032. "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device. After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order." '500 application ¶ 0038 (emphasis added).<br><br>Application Claim 90 [*e.g.,* Amendment of June 21, 2005] (". . . displaying an order token associated with at least one preset order parameter; and in response to a user initiated command, moving the order token to a location associated with a desired value along the first scaled axis of values.") (emphasis added).<br>"Orders can be placed by a trader using the user interface of the present invention in variety of ways. In one embodiment, as shown in FIG. 3a, the trader can directly submit an order by using the order task bar 328. The options to specify value and quantity of either a bid or offer, and the expiration period are provided. After the information is entered, the trader selects Place Order, and the order is submitted to the transaction server 200 for the pit 220, and an offer or bid icon 304, 300 is generated and displayed at the desired location at the desired size. The order information is communicated to the transaction server 200 and from there to the other client terminals, so |

| Claim 1 of the '132 patent | Friesen |
|---|---|
| | that the new bid/offer appears in the displays of all other traders in this same pit. In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device." '550 application ¶ 0038 (emphasis added). |
| selecting a particular area in the order entry region through single action of the user input device with a pointer of the user input device positioned over the particular area to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | *E.g.,* Claim 35 of the '999 patent calls for, "a sixth program code for selecting the order icon and *moving the order icon with a pointer of a user input device to a location associated with a price* along the first scaled axis of prices; and a seventh program code for *sending an order associated with the order icon* to an electronic trading exchange, wherein the order is of a bid type or an offer type and the order has a plurality of order parameters comprising the particular quantity of the item and the price corresponding to the location at which the order icon was moved." (emphasis added). |

In sum, as shown above, Friesen anticipates Claim 1 of the '132 patent. Thus, Reexamination must be Ordered and Claim 1 rejected as anticipated.

**b) Claim 1 is rejected under 35 U.S.C. § 103 as unpatentable over Friesen**

Requestor respectfully submits that whether or not the '550 application describes a static price axis, the subject matter of Claim 1 is not patentable as obvious over Friesen. There are only two choices as to whether a price axis moves: either it is static (does not move) and not-static[11] (moves). When the number of choices is a small finite number, each option is obvious to try under the standard articulated by the U.S. Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.* 550 U.S. 398 (2007) ("a patent claim [can] be proved obvious merely by showing that the combination of elements was obvious to try. When there . . . are a finite number of identified, predictable solutions, a person of ordinary skill in the art has good reason to pursue the known

[11] The Requestor acknowledges that the class of not-static has a substantial number of options, but those options are not part of static or not-static choice.

options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.")

The Requestor respectfully submits that static and not-static were well known conditions among those of ordinary skill in designing software for trading commodities at the relevant time. This knowledge in the art is confirmed by Mr. Friesen. Specifically, Mr. Friesen's 09/651,301 application filed on August 30, 2000, shortly after the '692 application was filed,[12] states "[i]n an alternate embodiment, the interface 1200 freezes the scale at the initial values displayed when the interface 1200 is initiated or refreshed." In other words, in Mr. Friesen's later application, albeit contemporaneous with the '692 application, Mr. Friesen states that frozen – static – was a known acceptable alternative.

Thus, even if Friesen does not anticipate Claim 1, it renders it obvious. Therefore, Reexamination must be Ordered and Claim 1 rejected as unpatentable.

### c) Friesen applied to Claims that Depend from Claim 1 of the '132 Patent

In addition to anticipating Claim 1, the third party Requestor respectfully submits that Friesen also anticipates the claims that depend from Claim 1 specifically Claims 2, 20-23, 25, 27-28, and 53 as shown below.

#### (i) Dependent Claim 2 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen

Claim 2 reads:

[12] Now U.S. Patent No. 6,993,504.

> A method of placing a trade order according to claim 1, wherein said trade order is a buy order if the position of the pointer at the time of said single action is within a bid order entry region and wherein said trade order is a sell order if the position of the pointer at the time of said single action is within an ask order entry region.

Claim 2 specifies a bid order entry region that falls within, and is a subset of, the order entry region of Claim 1. Requestor respectfully submits that such a construction of Claim 2 is fully anticipated by Friesen.

More particularly, Friesen describes the subject mater of Claim 2. Friesen states that "[i]n a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device." '550 application ¶ 0038. In the system described by Friesen, all of the bids are found on one side of a line(s) between the best bid and the best ask – *i.e.,* below the line – and all of the asks are on the other side of such a line – *i.e.,* above the line. *See* Figure 3b, reproduced below. Consequently, Friesen discloses two regions, namely, a bid order entry region below the line and an ask order entry region above the line. Furthermore, Friesen teaches using the bid and the ask order entry regions to place orders. *E.g., id.*

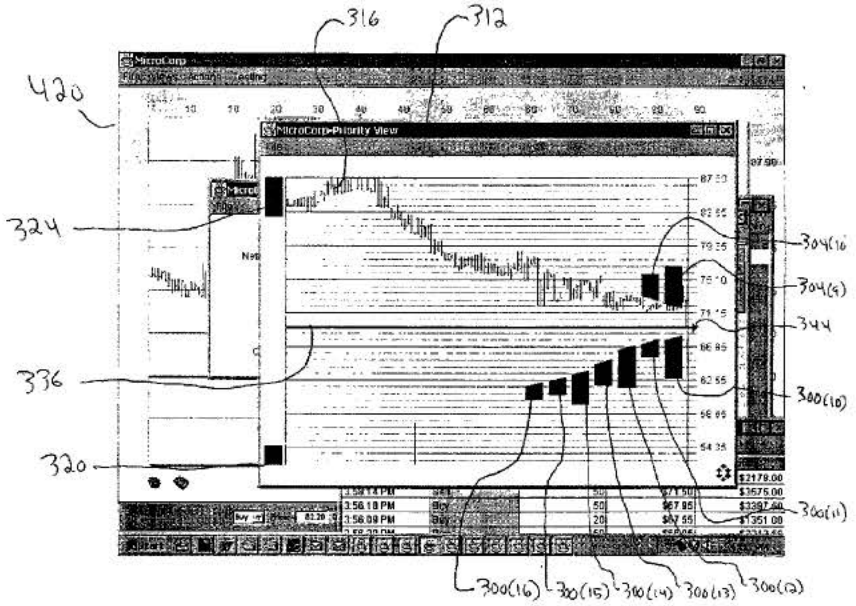


Figure 3b

In sum, Friesen anticipates Claim 2. Consequently, reexamination must be Ordered and Claim 2 rejected.

**(ii) Dependent Claim 20 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

Dependent Claim 20 adds the limitation that the market depth is displayed in a vertical orientation. While this subject matter is an obvious variant of the claims 1 and 2, and thereby not patentable, the subject matter is expressly anticipated by Friesen as discussed below.

| Claim 20 of the '132 patent | Friesen |
|---|---|
| A method according to claim 1, wherein | As stated above, Friesen anticipates Claim 1. |
| said displaying the market depth of a commodity traded in a market further comprises displaying said bids and asks in a vertical orientation. | *See e.g.*, Figures 3b and 3c which display the value or price of the bids and asks in a vertical orientation. |

Consequently, reexamination must be Ordered and Claim 20 rejected as anticipated by Friesen.

**(iii) Dependent Claim 22 is rejected under 35 U.S.C. § 102(e) as being unpatentable over Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 22 is expressly disclosed by Friesen, as discussed below.

| Claim 22 of the '132 patent | Friesen |
|---|---|
| A method according to claim 1, wherein | As stated above, Friesen anticipates Claim 1. |
| a plurality of said displayed bids and asks in the market include bid and ask quantities of the commodity. | *E.g.*, Figures 3b and 3c. *See also* '550 application ¶ 0032 ("the quantity and value maybe displayed in the icon itself.") (emphasis added). |

Consequently, reexamination must be Ordered and Claim 22 rejected as anticipated by Friesen.

**(iv) Dependent Claim 23 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 23 is expressly disclosed by Friesen, as discussed below.

| Claim 23 of the '132 patent | Friesen |
|---|---|
| A method according to claim 1, wherein | As stated above, Friesen anticipates Claim 1. |
| said displaying the market depth of a commodity traded in a market further comprises displaying said bids and asks in different colors. | Friesen discloses that "the offers 304 and the bids 300 are displayed in different colors . . . to allow the trader to quickly ascertain the current state of the market for this item. '550 application ¶ 0037 (Emphasis added). |

Consequently, reexamination must be Ordered and Claim 22 rejected as anticipated by Friesen.

### (v) Dependent Claim 25 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 25 is expressly disclosed by Friesen, as discussed below.

| Claim 25 of the '132 patent | Friesen |
|---|---|
| A method according to claim 1, further comprising | As stated above, Friesen anticipates Claim 1. |
| dynamically displaying working orders[13] in alignment with the prices corresponding thereto. | Friesen discloses this limitation in two parts:<br>First, Friesen discloses identifying the trader's own orders (working orders in the terms of the '132 patent). *E.g.,* '550 application ¶ 0008 ("the trader's own bids and offers are displayed in a first color or other visual characteristic . . . .") (emphasis added).<br>Secondly, Friesen discloses aligning orders with their corresponding prices (or other value indicia). *E.g.,* '550 application ¶ 0032 ("For example, offer 304(1) has a value of $28.45, and the lowest point of the bottom edge 308 of the icon 304(1) is aligned with the value 28.45 on the value axis 332.") (emphasis added). |

Consequently, reexamination must be Ordered and Claim 25 rejected as anticipated by Friesen.

### (vi) Dependent Claim 27 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 27 is expressly disclosed by Friesen, as discussed below.

[13] The '132 patent describes a trader's own orders as "working orders."

| Claim 27 of the '132 patent | Friesen |
|---|---|
| A method according to claim 1, wherein | As stated above, Friesen anticipates Claim 1. |
| said displaying the market depth of a commodity traded in a market further comprises displaying said statically displayed prices in at least one direction in numerical order. | Friesen discloses displaying prices (or other value indicia) in a numerical order. *See e.g.*, Right hand axis in Figures 3b and 3c. |

Consequently, reexamination must be Ordered and Claim 27 rejected as anticipated by Friesen.

**(vii) Dependent Claim 28 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 28 is expressly disclosed by Friesen, as discussed below.

| Claim 28 of the '132 patent | Friesen |
|---|---|
| A method according to claim 1, wherein said displaying the market depth of a commodity traded in a market further comprises | As stated above, Friesen anticipates Claim 1. |
| displaying said statically displayed prices along a single line in numerical order. | *See e.g.*, Right hand axis in which displays prices (or other value indicia) in a single line in numerical order, Figures 3b and 3c. |

Consequently, reexamination must be Ordered and Claim 28 rejected as anticipated by Friesen.

**(viii) Dependent Claim 53 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Specifically, Friesen as discussed below, discloses the subject matter of Claim 53.

| Claim 53 of the '132 patent | Friesen |
|---|---|
| The method of claim 1 wherein | As stated above, Friesen anticipates Claim 1. |
| the market depth is based on an exchange order book and wherein the static display of prices does not move in response to the addition of a price to the exchange order book, the additional price comprising a displayed price. | Friesen discloses this limitation. Fig. 6 is a flow chart that is explained in paragraph 0047 of the '550 application. In this disclosure, Friesen speaks of slots for new orders, but this discussion is limited to slots along his horizontal axis, not his vertical axis. Indeed, as Figures 3b and 3c show value (price) indicia for which there is no current order, Friesen implicitly suggests that "the addition of a price to the exchange order book" does not change the static display of values (prices). (emphasis added). |

Consequently, reexamination must be Ordered and Claim 53 rejected as anticipated by Friesen.

**d) Claim 8 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

Again, Claim 8 is directed to an article of manufacture, namely a computer readable medium. Moreover, Claim 8 is merely an obvious variant of Claim 1 of the '132 patent in that it explicitly requires a program code to execute the features of the method of Claim 1 of the '132 patent. However, Claim 1 necessarily implies that the method is carried out on a computer readable medium having program code because Claim 1 states that the method occurs on an "electronic exchange" using a "graphical user interface," *i.e.* computers. Thus, as with Claim 1, each of the limitations in Claim 8 are described in Friesen as demonstrated below.

| Claim 8 of the '132 Patent | Friesen |
|---|---|
| A computer readable medium having program code recorded thereon, for execution on a computer | In a claim TT added to Friesen, TT characterized Friesen as disclosing:<br><br>"[a] computer readable medium having program code recorded thereto for execution on a computer . . . ." Claim 35 of the '999 patent. (emphasis added). |
| having a graphical user interface and | The invention of Friesen "relates generally to the field of graphical user interfaces . . . ." '550 application ¶ 0001 (emphasis added). |
| a user input device, | "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 *using a pointing device*." '550 application ¶ 0038 (emphasis added). |
| to place a trade order for a commodity | TT characterized Friesen as disclosing "[A]n order is generated for a quantity of an item at a specific value . . . ." Claim 35 of the '999 patent. (emphasis added). |
| on an electronic exchange | The Abstract of the '999 patent describes the claimed subject matter as "[a] user interface for an electronic trading exchange . . . ." (emphasis added). |
| having an inside market with a highest bid price and a lowest ask price, comprising: | "[I]n accordance with the present invention, each client terminal displays all of the outstanding bids and offers for an item, [not just] the highest bid and lowest offer . . . ." '550 application ¶ 0006 |

| Claim 8 of the '132 Patent | Friesen |
|---|---|
| | (emphasis added). |
| a first program code[14] for setting a preset parameter for the trade order; | Implied by the language "program code for displaying an order icon associated with an order by the user for a particular quantity of the item . . ." of Claim 35 of the '999 patent. (emphasis added).<br><br>Additionally, Friesen expressly describes a procedure wherein the user (trader) presets the size of the order before entering the order in the following text: "After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order. . . . Next, the token is dragged to a location on the screen which corresponds to the desired value of the order." '550 application ¶ 0038. (emphasis added).<br><br>Moreover, because Friesen is a screen-based electronic system for trading, this function is necessarily carried out by program code. |
| a second program code displaying market depth of a commodity, through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, | Claim 35 of the '999 patent recites, in part, "a first program code for displaying a plurality of bid indicators, each corresponding to at least one bid for a quantity of the item, each bid indicator at a location *along a first scaled axis of prices* corresponding to a price associated with the at least one bid; a second program code for displaying a plurality of offer indicators, each corresponding to at least one offer for a quantity of the item, each offer indicator at a location along the first scaled axis of prices corresponding to a price associated with the at least one offer . . . ." (emphasis added). |

[14] While it is not grounds for ordering a reexamination of the '132 patent, the third party Requestor questions as to whether the '132 patent has a sufficient written description of such "program code" elements and whether such claim elements are sufficiently definite.

The Requestor respectfully submits that "a . . . program code for . . ." is at best a generic structure defined by the function of the structure. Such "'purely functional claim language' is now permissible but only under the conditions of 35 U.S.C. § 112, sixth paragraph, *i.e.*, if its scope is limited to the corresponding structure, material, or act disclosed in the specification and equivalents thereof. In the absence of such limited construction, the *Halliburton* rule is still applicable to prohibit the use of 'purely functional' claim language to define a structural component." *E.g., Sanada v. Reynolds*, 67 U.S.P.Q.2d 1459 (Bd. Pat. App. & Int. 2003) (unpublished).

| Claim 8 of the '132 Patent | Friesen |
|---|---|
| | *See also* the Abstract which states: "[the] user interface . . . allows a remote trader to view *in real time* bid orders, offer orders . . . ." (emphasis added). |
| including the bid and ask quantities of the commodity, aligned with a static display of prices corresponding thereto, | As noted above, the Abstract states that: "[the] user interface ... allows a remote trader to view *in real time* bid orders, offer orders . . . ." (emphasis added). |
| wherein the static display of prices does not move in response to a change in the inside market; | Friesen states that Figures 3b and 3c are taken at different times. '550 application ¶ 0042. During this undefined time interval, the value of some quantifying metric has changed. '550 application ¶¶ 0041-42. Nonetheless, value axis 332, which can represent prices; '550 application ¶ 0032 (emphasis added); has remained unchanged despite changes in the quantifying metric. Based on this information in the '550 application, one of ordinary skill would understand that the price axis is static and would remain so if the inside market changed.<br>As noted above, Friesen displays both the bid and ask [offer] display regions in relation to the scaled axis of values. In one embodiment, the values are prices. '550 application ¶ 0036, (emphasis added) Application Claim 68 ("[T]he values on the first scaled axis of values represent price.")<br><br>Also as noted above, Friesen discloses that the scaled axis of values (the common price axis) does not move over time and is therefore static. While Friesen unambiguously, albeit implicitly, discloses that the scaled axis of values does not move over time, Friesen never suggests that the scaled axis moves at any time.<br><br>Moreover, TT, at no time, has ever suggested to the patent Examiner that the scaled axis of values in Fig. 3b or 3c changes. |
| a third program code for displaying an order entry region comprising a plurality of areas for receiving commands from the user input device to send trade orders, | Claim 35 of the '999 patent recites this limitation. |

| Claim 8 of the '132 Patent | Friesen |
|---|---|
| [orders being] aligned with the static display of prices, each area corresponding to a price of the static display of prices; and | Claim 35 of the '999 patent recites first and second program codes that locate bid and offer indicators corresponding to prices. |
| a fourth program code for receiving a command as a result of a selection of a particular area in the order entry region by a single action of the user input device with a pointer of the user input device positioned over the particular area, to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | Claim 35 of the '999 patent recites sixth and seventh program codes that select the order icon and send the order.<br><br>Because Friesen is a screen-based electronic system for trading, this function is necessarily carried out by program code. |

In sum, as shown above, Friesen anticipates Claim 8 of the '132 patent. Thus, reexamination must be Ordered and Claim 8 rejected as anticipated.

**e) Friesen applied to claims that depend from Claim 8 of the '132 patent**

In addition to anticipating Claim 8, the Requestor respectfully submits that Friesen also anticipates the claims that depend from Claim 8. To simplify this discussion, the Requestor has limited the discussion of these dependent claims to Claims 30, 32-33, and 37-38.

**(i) Dependent Claim 30 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

Dependent Claim 30 adds the limitation that the market depth is displayed in a vertical orientation. This additional limitation is expressly disclosed by Friesen as discussed below.

| Claim 30 of the '132 patent | Friesen |
|---|---|
| A computer readable medium according to claim 8, further comprising | As stated above, Friesen anticipates Claim 8. |
| Program code to ensure that said displayed bids, asks and prices are oriented vertically. | *See e.g.*, Figures 3b and 3c of Friesen, which display the value – price – of the bids and asks in a vertical orientation.<br><br>Because Friesen is a screen-based electronic system for trading, this function is necessarily carried out by program code |

Consequently, reexamination must be Ordered and Claim 30 rejected as anticipated by Friesen.

**(ii) Dependent Claims 32 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 32 is expressly disclosed by Friesen, as discussed below.

| Claim 32 of the '132 patent | Friesen |
|---|---|
| A computer readable medium according to claim 8, further comprising | As stated above, Friesen anticipates Claim 8. |
| program code to ensure that a plurality of bids and asks in the market include bids and ask quantities of the commodity. | *E.g.*, Figures 3b and 3c. *See also* '550 application ¶ 0032 ("the quantity and value may displayed in the icon itself.")<br><br>Because Friesen is a screen-based electronic system for trading, this function is necessarily carried out by program code. |

Consequently, reexamination must be Ordered and Claim 32 rejected as anticipated by Friesen.

**(iii) Dependent Claim 33 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 33 is expressly disclosed by Friesen, as discussed below.

| Claim 33 of the '132 patent | Friesen |
|---|---|
| A computer readable medium according to claim 8, further comprising | As stated above, Friesen anticipates Claim 8. |
| program code to ensure that bids and asks are displayed in different colors | Friesen discloses that "offers 304 and the bids 300 are displayed in different colors…to allow the trader to quickly ascertain the current state of the market for this item. '550 application ¶ 0037.<br>Because Friesen is a screen-based electronic system for trading, this function is necessarily carried out by program code. |

Consequently, reexamination must be Ordered and Claim 33 rejected as anticipated by Friesen.

**(iv) Dependent Claim 37 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 37 is expressly disclosed by Friesen, as discussed below.

| Claim 37 of the '132 patent | Friesen |
|---|---|
| A computer readable medium according to claim 8, further comprising | As stated above, Friesen anticipates Claim 8. |
| program code to ensure that said statically displayed prices are displayed in at least one direction in numerical order | Friesen discloses displaying prices (or other value indicia) in a numerical order in at least one direction. *See e.g.*, Right hand axis in Figures 3b and 3c.<br><br>Because Friesen is a screen-based electronic system for trading, this function is necessarily carried out by program code. |

Consequently, reexamination must be Ordered and Claim 37 rejected as anticipated by Friesen.

### (v) Dependent Claim 38 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 38 is expressly disclosed by Friesen, as discussed below.

| Claim 38 of the '132 patent | Friesen |
|---|---|
| A computer readable medium according to claim 8, further comprising | As stated above, Friesen anticipates Claim 8. |
| Program code to ensure that said statically displayed prices are displayed along a single line in numerical order. | Friesen discloses displaying prices (or other value indicia) in a numerical order along a single line. *See e.g.*, Right hand axis in Figures 3b and 3c.<br><br>Because Friesen is a screen-based electronic system for trading, this function is necessarily carried out by program code. |

Consequently, reexamination must be Ordered and Claim 38 rejected as anticipated by Friesen.

### f) Claim 14 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen

As noted above, claim 14 is directed to a trading terminal, an article of manufacture, that has (1) a parameter setting component; (2) a display device; (3) a user input device; and (4) a trade order sending component. Again, any intended use of the claimed article is normally ignored in determining the patentability of a claim to an article of manufacture. *See e.g., In re Wilder,* 429 F.2d 447, 1665 U.S.P.Q. 545 (C.C.P.A. 1970); *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). Instead of examining any intended use of the article (or its components), the patentability of an article of manufacture is determined based upon whether the structural elements of the claim satisfy the requirements for patentability. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985).

As shown below, each element of Claim 14 is disclosed in Friesen.

| Claim 14 of the '132 patent | Friesen |
|---|---|
| A client system for placing a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, the system comprising: | Friesen is direct to a "user interface for an electronic trading exchange [], which allows a remote trader to view in real time bid orders, offer orders, and trades for an item … Thus, in accordance with the present invention, each client terminal displays all of the outstanding bids and offers for an item, in contrast to the conventional systems and methods in which only the highest bid and lowest offer were known to the individual trader." '550 application ¶ 0006. |
| a parameter setting component[15] for setting a preset parameter for the trade order; | Additionally, Friesen expressly describes a procedure wherein the user (trader) presets the size of the order before entering the order in the following text: "After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order . . . . Next, the token is dragged to a location on the screen which corresponds to the desired value of the order." '550 application ¶ 0038. |
| a display device for displaying market depth of a commodity, through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, including the bid and ask quantities of the commodity, aligned with a static display of prices corresponding thereto, wherein the static display of prices does not move when the inside market changes, and for displaying an order entry region aligned with the static display of prices, comprising a plurality of areas for receiving commands to send trade orders, each area corresponding to a price of the static display of prices[16]; | Presumably the "display device" includes a conventional CRT monitor of the type implicitly described throughout Friesen.<br><br>Moreover, "in accordance with the present invention, each client terminal displays all of the outstanding bids and offers for an item, in contrast to the conventional systems and methods in which only the highest bid and lowest offer were known to the individual trader." '550 application ¶ 0006.<br><br>In a continuing application claiming priority based on Friesen, TT characterized the display of Friesen as a dynamic display. *See* claim 1 of U.S.S.N. 11/269,057.[17] *See also* the Abstract which states that: "[the] user interface . . . allows a remote trader to view *in real time* bid orders, offer orders ...." (emphasis added).<br><br>Claim 35 of the '999 patent recites first and second program codes that locate bid and offer indicators corresponding to prices.<br><br>Friesen states that Figures 3b and 3c are taken at different times. '550 application ¶ 0042. Nonetheless, value axis 332, |

[15] The Requestor submits that this term also raises issues under 35 U.S.C. § 112: what is a component and what is the written description that supports such an element in this claim?

[16] The Requestor submits that all of the language after "display device" does not affect claim scope and thus cannot be used to determine validity. *E.g., Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). The Requestor respectfully submits that the language after "display device" is either an intended use of the recited "display device", or it is a step that is preformed with the recited "display device." The *Titanium Metals* case said that the intended use did not make an otherwise old composition patentable. 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). Furthermore, the Federal Circuit held that process steps in an apparatus claim rendered the claim

| Claim 14 of the '132 patent | Friesen |
|---|---|
| | which can represent prices; '550 application ¶ 0032; has remained unchanged despite changes in the quantifying metric. Based on this information in Friesen, one of ordinary skill would understand that the price axis is static and would remain so if the inside market changed.<br><br>"Priority view 312 [the graphical interface of Figures 3a, 3b, and 3c] is designed to allow traders to intuitively place orders…" '550 application ¶ 0032. "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or a bid token 320 using a pointing device. After being selected, the trader adjusts the size of the offer or bid token 34, 320 until the size of the token matches the desired quantity of the order." '550 application ¶ 0038.<br><br>Claim 35 of the '999 patent recites sixth and seventh program codes that select the order icon and send the order. |
| a user input device for positioning a pointer thereof over an area in the order entry region; and | "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 *using a pointing device*." '550 application ¶ 0038 (emphasis added). |
| a trade order sending component for receiving a command as a result of a selection of the area in the order entry region by a single action of the user input device with a pointer of the user input device positioned over the area, to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | Friesen implicitly describes this element of Claim 14, for instance in the text "After the order is submitted to the transaction server, it will be displayed on the screens of all traders in this trading pit connected to the transaction server 200." '550 application ¶ 0038.<br><br>Claim 35 of the '999 patent recites sixth and seventh program codes that select the order icon and send the order. |

In sum, as shown above, Friesen anticipates Claim 14 of the '132 patent. Thus, reexamination must be Ordered and Claim 14 rejected as anticipated.

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invalid as indefinite. *IPXL Holdings LLC v. Amazon.com Inc.*, 430 F.3d 1377, 77 U.S.P.Q.2d 1140 (Fed. Cir. 2005); *see also MPEP §2114 (E8r8).*

Nonetheless, for completeness, the Requestor has included in this claim chart portions of Friesen that disclose this non-structural claim language, even though the disclosure of these elements is not necessary to invalidate the claims.

[17] Serial No. 11/269,057 is a continuation-in-part of the '550 application.

### g) Friesen Applied to the Claims Dependent from Claim 14 of the '132 patent

In addition to anticipating Claim 14, the third party Requestor respectfully submits that Friesen also anticipates the claims 40, 42-43 and 47-48.

#### (i) Dependent Claim 40 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen

Dependent Claim 40 adds the limitation that the market depth is displayed in a vertical orientation. While this subject matter is intuitively an obvious variant of Claim 14 and an additional limitation to a portion of Claim 14 that carries no weight, and thus not patentable, this additional limitation is expressly disclosed by Friesen as discussed below.

| Claim 40 of the '132 patent | Friesen |
|---|---|
| A client system according to Claim 14, wherein | As stated above, Claim 14 is anticipated by Friesen. |
| said displays are oriented vertically. | *See e.g.*, Figures 3b and 3c which display bids and asks in a vertical orientation. |

Consequently, reexamination must be Ordered and Claim 40 rejected as anticipated by Friesen.

#### (ii) Dependent Claim 42 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 42 is expressly disclosed by Friesen, as discussed below.

| Claim 42 of the '132 patent | Friesen |
|---|---|
| A client system according to Claim 14, wherein | As stated above, Friesen anticipates Claim 14. |
| said displays of the pluralities of bids and asks in the market include bid and ask quantities of the commodity. | *E.g.*, Figures 3b and 3c. *See also* '550 application ¶ 0032 ("the quantity and value may displayed in the icon itself."). |

Consequently, reexamination must be Ordered and Claim 42 rejected as anticipated by Friesen.

### (iii) Dependent Claim 43 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 43 is expressly disclosed by Friesen, as discussed below.

| Claim 43 of the '132 patent | Friesen |
|---|---|
| A client system according to Claim 14, wherein | As stated above, Friesen, anticipates Claim 14. |
| said displays are displayed in different colors. | Friesen discloses that "the offers 304 and the bids 300 are displayed in different colors…to allow the trader to quickly ascertain the current state of the market for this item. '550 application ¶ 0037. |

Consequently, reexamination must be Ordered and Claim 43 rejected as anticipated by Friesen.

### (iv) Dependent Claim 47 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 47 is expressly disclosed by Friesen, as discussed below.

| Claim 47 of the '132 patent | Friesen |
|---|---|
| A client system according to Claim 14, wherein | As stated above, Friesen anticipates Claim 14. |
| said static display of prices is displayed in at least one direction in numerical order. | Friesen discloses displaying prices (or other value indicia) in a numerical order in at least one direction. *See e.g.*, Right hand axis in Figures 3b and 3c. |

Consequently, reexamination must be Ordered and Claim 47 rejected as anticipated by Friesen.

### (v) Dependent Claim 48 is rejected under 35 U.S.C. § 102(e) as unpatentable over Friesen.

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Friesen publication. Indeed, the subject matter of Claim 48 is expressly disclosed by Friesen, as discussed below.

| Claim 48 of the '132 patent | Friesen |
|---|---|
| A client system according to Claim 1, wherein | As stated above, Friesen anticipates Claim 14. |
| said static display of prices is displayed along a single line in numerical order | Friesen discloses displaying prices (or other value indicia) in a numerical order along a single line. *See e.g.*, Right hand axis in Figures 3b and 3c. |

Consequently, reexamination must be Ordered and Claim 48 rejected as anticipated by Friesen.

### 2. U.S. Patent No. 5,297,031 to Gutterman et al.

U.S. Patent No. 5,297,031 to Gutterman *et al.* ("Gutterman") (Attached as Exhibit C) issued on March 22, 1994, well before the critical date. Gutterman generally describes a broker workstation for managing orders in a market trading commodities, securities, etc. and methods of using the workstation. *See*, *e.g.*, Title and Col. 5: 61. Although Gutterman is cited on the face of the '132 patent, there is no evidence in the file history of the '132 patent that the Examiner fully considered this reference or fully appreciated its materiality. Indeed, that its materiality was not appreciated is clear from the fact that the claims of the '692 application were never rejected in view of this reference. Thus, Gutterman, as applied in this Request for Reexamination, raises a new question of patentability.

In particular, Gutterman describes computer based techniques for managing orders placed in a market for trading instruments such as stocks, bonds, stock options, futures options and futures contracts on commodities. Col. 5:59-63. For that purpose, a broker workstation is provided that comprises a computer for receiving orders and controlling display means. Col. 15:

64-66. Thus, a client device is described for electronically entering and receiving orders relating to a commodity being traded on an exchange.

A workstation receiver module receives suitable communications from an electronic order entry system and price reporting system that are provided by the exchange and are electronically connected to the workstation by a suitable link. Col. 17: 45-49. Thus, a graphical user interface is provided for displaying data relating to the commodity from the exchange. *See generally* Col. 7.

As is apparent from FIG. 2b from Gutterman, reproduced below[18], the data displayed on the workstation comprises, *inter alia*, vertical display of prices, along side a vertical display of bids and asks. Col. 12: 30-41 ("As seen in FIG. 2b, . . . icons 139-1 and 139-7 represent limit buy orders for 15 at a price of 98 27/32 and 5 at 98 28/32, respectively . . . icons 139-4, 139-8 and 139-9 represent limit sell orders for 10 at 98 29/32 (the current market price as indicated by the market bar 137), 25 at 98 30/32 and 30 at 98 31/32, respectively . . .").

[18] FIG. 2b was annotated with color to identify the limit orders.

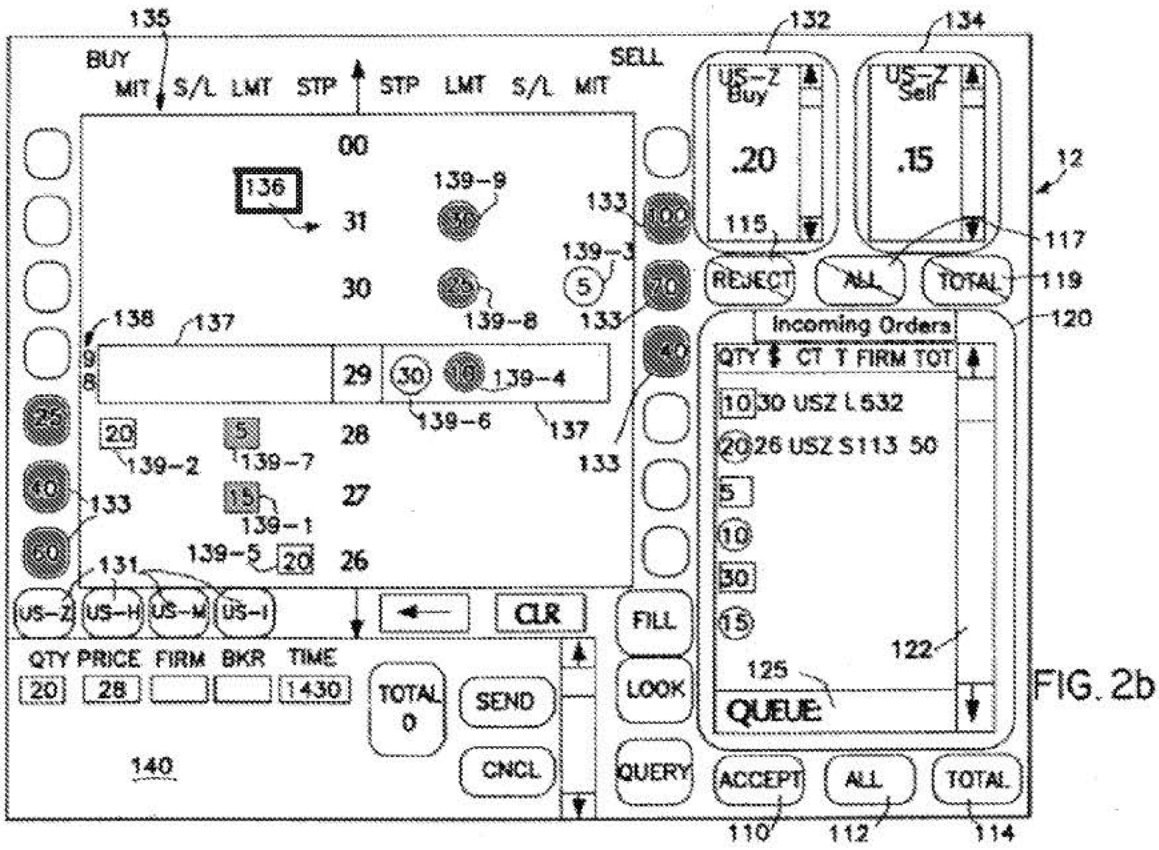



FIG. 2b

In the display, fill pane 140 is provided to allow entry of an identification code of the counterpart broker and firm by means of a keyboard or other suitable data entry device. Col. 13: 47-66. As such, Gutterman discloses the setting of a parameter (*e.g.,* a counterpart broker ID) by way of keyboard input for the trade order.

In the order screen, as previously discussed, column 136 is a vertical display of prices. This column of prices in FIG. 2b divided in 1/32 price increments displays a range from 98 26/32 to 00 (which is 99 or 98 32/32). The numbers on the left of the price display (60, 40, and 25) (identified as 133 in the drawing) are cumulative bid quantities. The numbers on the right (40, 70, and 100) (also identified as 133 in the drawing) are cumulative ask quantities. *See generally* Col. 12:29-50. The last trade occurred at the 98 29/32 price as shown by the position of the market bar (137).

Moreover, the current highest bid price is 98 28/32, and the squares identified as 139-2 and 139-7 are indicators at first areas aligned with a first price level associated with the current highest bid price. Col. 12: 31-33.

Similarly, the current lowest ask price is 98 29/32 and the circles identified as139-4 and 139-6 are second indicators at second areas aligned with a second price level associated with the current lowest ask price. Col. 12: 35-39. The market bar 137 is yet another indicator. Col. 12: 12-17.

Gutterman describes a static price display.[19] Referring to FIG. 2b, Gutterman states that "market bar 137 moves up and down along column 136 in response to changes in the market price. . . ." Col. 12: 15-16. This statement reports that the market bar (137) moves relative to the price column. To one of ordinary skill at the relevant time, that the movement of the market bar relative to the prices means the price display is itself not moving and is static. Only with a static price display can movement along price column 136 be exhibited in response to changes in the market price. If the price display was able to move and the bar remained centered, the market bar could not "move up and down" "in response" to the market as Gutterman describes. Thus, Gutterman's disclosure indicates that their vertical display of prices is static.

That Gutterman's vertical display of prices is static is further confirmed by following statement:

> The manner in which the market bar 137 moves with each change in price can be selectively determined by the broker through the operation of the CONFIGURATOR object 440 based on the nature of typical price movements in the commodity being traded. For example, the movement of the market bar 137

[19] There are only two options, static or not static. Indeed, another patent application filed by Mr. Friesen shortly after the '692 Application was filed -- Serial Application No. 09/651,301, now U.S. Patent No. 6,993,504 -- describes static price axis as an alternative embodiment. ("In an alternate embodiment, the interface 1200 *freezes the scale* at the initial values displayed when the interface 1200 is initiated or refreshed.") Col. 19: 58–61 (emphasis added).

> in response to rapid small (one or two price ticks) price changes could be confusing if the market bar 137 were arranged to follow each price tick. A preferred manner for implementing the market bar 137 is to have the bar cover the last two prices traded; a second preferred manner is to have the market bar move only after the price has changed two or three price ticks. It will be appreciated that other manners of implementing the market bar 137 to realize the bar's function of indicating the current market price are also possible.

Col. 12: 56-Col. 13: 4.

This disclosure also shows that the price axis is static. If the market bar is not moved to avoid the confusion created by small rapid price changes, the price axis must also not move under such circumstances. If the price axis were to move, it would make the market bar appear to move and thereby create the confusion Gutterman was trying to avoid. Accordingly, Gutterman discloses a static display of prices.

Moreover, even if Gutterman did not have these specific disclosures, it would have at least been obvious in view of Gutterman to one of ordinary skill in the art to try the use of static price ladder in the Gutterman electronic trading system. Indeed, for a price ladder there are only two options: static or non-static. As stated by the Supreme Court in *KSR*:

> When there is a design need or market pressure to solve a problem and there are a *finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options* within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103. *KSR*, 550 U.S. at 421 (emphasis added).

Gutterman also discloses that the display of bids and asks is dynamic. For example, Gutterman expressly describes updating the trader's computer and his display. *See, e.g.,* Col. 7: 59-Col. 8: 9. In addition, as discussed above, the market bar 137 moves as new bids and asks come into the market. Col. 12: 56-Col. 13: 4. This statement also, indicates that the display of bids and asks in the Gutterman patent are dynamic -- updated. Therefore, before the Critical

Date, it was conventional practice, as shown by Gutterman, to have a dynamic display of bids and asks.

Gutterman also describes a type of single-action order entry in column 10:

> After an incoming order is received in the incoming orders pane 120, the broker can either accept or reject it by touching the order information line, which is then highlighted in response, and then touching the ACCEPT 110 or REJECT 115 "buttons" on the touch-sensitive screen 12.

Col. 10: 60-65. (emphasis added).

Thus, Gutterman establishes that single-action order entry through a user input device (touch screen) was a conventional practice in trading software before the critical date.

As indicated above, Gutterman describes a procedure in which a broker can accept an incoming order. In this procedure, all of the parameters of the trade are set prior to the brokers action of clicking ACCEPT button 110. Thus, Gutterman also establishes that pre-setting parameters was a conventional practice in trading software before the critical date.

In sum, in view of Gutterman, Claims 1, 8, 14, 20, 22-23, 27-28, 30, 32-33, 37-38, 40, 42-43, and 47-48 the '132 patent are invalid as either anticipated; or obvious when combined with Friesen. Therefore, Reexamination must be ordered and these claims of the '132 patent rejected. More particularly, Gutterman has the following disclosures which either anticipate, or render obvious, Claims 1, 8, 14, 20, 22-23, 27-28, 30, 32-33, 37-38, 40, 42-43, and 47-48 of the '132 patent.

**a) Claim 14 is rejected under 35 U.S.C. § 102(b) as unpatentable over Gutterman**

As noted above, giving Claim 14 its broadest construction, Claim 14 is directed to an article of manufacture having: (1) a parameter setting component; (2) a display device; (3) a user input device; and (4) a trade order sending component.

As discussed above, Gutterman discloses an article of manufacture having each of these components. First, Gutterman clearly describes a display for trading commodities. For example, Gutterman states that "there is a broker workstation for managing orders in a market . . . ." Gutterman Abstract. Gutterman then goes on to state that the broker workstation "may advantageously be . . . a MACINTOSH II computer, manufactured by Apple Computer, Inc., having a high-resolution . . . color, touch-sensitive display screen." Col. 7: 19-24. Moreover, Figure 1b of Gutterman shows a typical computer screen with a keyboard and mouse attached. Gutterman states that "one embodiment of a broker workstation is illustrated in Fig. 1b which shows a high resolution display screen 12, a keyboard 14 and an auxiliary control device 16, such as a trackball or mouse." Col. 7: 26-31. Thus, Gutterman clearly discloses a display device.

Moreover, one of ordinary skill in the art would have understood that a MACINTOSH II computer with a "touch-sensitive display screen" had several input devices, *i.e.* a touch-sensitive display screen, keyboard, and a mouse or trackball. *See e.g.,* Sharon Z. Aker, *The Macintosh Bible* 7 (7th ed. 1998).

Gutterman also discloses a parameter setting component. As discussed above, in the display, fill pane 140 is provided to allow entry of an identification code of the counterpart broker and firm by means of a keyboard or other suitable data entry device Col 13: 47-66. Consequently, Gutterman discloses setting a parameter for the trade order.

Gutterman also discloses a trade order sending component. As stated above, after an incoming order is received in the incoming orders pane 120, the broker can either accept or reject it by touching the order information line, which is then highlighted in response, and then touching the ACCEPT 110 or REJECT 115 "buttons" on the touch-sensitive screen 12. Col. 10:

60-65. Thus, Gutterman discloses the four broad components of claim 14 of the '132 patent. Thus, claim 14 must be rejected as anticipated in view of Gutterman.

| **Claim 14 of the '132 patent** | ***Gutterman*** |
|---|---|
| A client system for placing a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, the system comprising: | In the context of the '132 patent, the Requestor submits that this preamble merely means a computer terminal that a trader uses to place an order on an electronic exchange. Gutterman describes such terminals. *E.g.* Col. 7, lines 19-24 and Col. 7, lines 26-31. |
| a parameter setting component for setting a preset parameter for the trade order; | One of ordinary skill in the art would understand that Gutterman directs the user to preset a parameter. Specifically, Gutterman describes a procedure in which a broker can accept an incoming order. In this procedure, all of the parameters of the trade are set prior to the brokers action of clicking ACCEPT button 110. Col. 10: 60-65. Thus, Gutterman discloses a "parameter setting component." |
| a display device for displaying market depth of a commodity, through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, including the bid and ask quantities of the commodity, aligned with a static display of prices corresponding thereto, wherein the static display of prices does not move when the inside market changes, and for displaying an order entry region aligned with the static display of prices, comprising a plurality of areas for receiving commands to send trade orders, each area corresponding to a price of the static display of prices; | The display device is merely a computer monitor of the type illustrated in the figure 1b of Gutterman. The remainder of this limitation merely recites an intended use for the specified structure and does not specify the structure. As such, this intended use language does not restrict the scope of this limitation. Accordingly, Gutterman discloses a "display device."<br><br>Furthermore, Gutterman's specification demonstrates that the display of bids and asks is dynamic. For example, Gutterman discloses "The manner in which the market bar 137 moves with each change in price can be selectively determined by the broker through the operation of the CONFIGURATOR object 440 based on the nature of typical price movements in the commodity being traded. For example, the movement of the market bar 137 in response to rapid small (one or two price ticks) price changes could be confusing if the market bar 137 were arranged to follow each price tick. A preferred manner for implementing the market bar 137 is to have the bar cover the last two prices traded; a second |

| Claim 14 of the '132 patent | *Gutterman* |
|---|---|
| | preferred manner is to have the market bar move only after the price has changed two or three price ticks. It will be appreciated that other manners of implementing the market bar 137 to realize the bar's function of indicating the current market price are also possible." Col. 12, line 56-Col. 13, line 4.<br><br>Gutterman also discloses that the dynamic display of bids and asks is aligned with a static price display. First, FIG. 2b replicated above demonstrates that the bids and asks are aligned with the prices. Gutterman further discloses that these prices are static. For example, Gutterman discloses "The manner in which the market bar 137 moves with each change in price can be selectively determined by the broker through the operation of the CONFIGURATOR object 440 based on the nature of typical price movements in the commodity being traded. For example, the movement of the market bar 137 in response to rapid small (one or two price ticks) price changes could be confusing if the market bar 137 were arranged to follow each price tick. A preferred manner for implementing the market bar 137 is to have the bar cover the last two prices traded; a second preferred manner is to have the market bar move only after the price has changed two or three price ticks. It will be appreciated that other manners of implementing the market bar 137 to realize the bar's function of indicating the current market price are also possible." Col. 12, line 56-Col. 13, line 4. Gutterman further states: "The deck pane 135 further includes touch-sensitive up and down arrows, disposed at the extremes of the price tick column 136, which are created by arrow-objects controlled by the Deck Pane object 453, for scrolling the range of prices." Col. 12: 51-56. The only reason to have to "scroll the range of prices" is if the price ladder is static.<br><br>Notably, Gutterman describes the use of a Macintosh II computer with a high-resolution |

| Claim 14 of the '132 patent | *Gutterman* |
|---|---|
| | color display screen. Col. 7: 20-27. |
| a user input device for positioning a pointer thereof over an area in the order entry region; and | As discussed above, Gutterman expressly and/or inherently discloses a keyboard, trackball, mouse and touch-screen for order entry. *E.g., c*ol. 7: 19-24. As such, Gutterman discloses a "user input device." |
| a trade order sending component for receiving a command as a result of a selection of the area in the order entry region by a single action of the user input device with a pointer of the user input device positioned over the area, to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | This limitation requires only a "trade order sending component." Presumably, this limitation is met by a conventional modem. In any event, the remainder of this limitation is merely and intended use and does not further define to structure of the claimed device. As stated above, Gutterman discloses that after an incoming order is received in the incoming orders pane 120, the broker can either accept or reject it by touching the order information line, which is then highlighted in response, and then touching the ACCEPT 110 or REJECT 115 "buttons" on the touch-sensitive screen 12. Col. 10, lines 60-65. Thus, Gutterman discloses a "trade order sending component." |

Accordingly, Claim 14 is anticipated by Gutterman, and reexamination of Claim 14 of the '132 patent must be Ordered and Claim 14 rejected.

**b) Claim 14 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen**

If Claim 14 of the '132 patent is construed more narrowly than the broadest reasonable interpretation discussed above, any distinction that might be found to differentiate Claim 14 from Gutterman would have been obvious to one of ordinary skill over Gutterman in view of Friesen.

The Requestor notes that Gutterman and Friesen, as discussed above, teach the several elements of Claim 14. Importantly, both references describe systems and software related to trading commodities, *i.e.,* they are in the same field of endeavor. Moreover, one of ordinary skill would reasonably have been expected the client systems of these two references to maintain their respective properties or functions after they have been combined. Both references describe

systems that execute code and display market information, albeit one on a Macintosh for brokers and one on a generic pc for active traders. The expectation that these related references would retain their respective properties is a hallmark of the propriety of combining these references to formulate an obviousness rejection. *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356 (Fed. Cir. 2008).

Indeed, the insignificant distinction between the references that one is for brokers and one is for active traders itself suggests a reason to combine. By adapting the broker system of Gutterman by incorporating elements of Friesen, one of ordinary skill would have reasonably anticipated that the Gutterman system would be able to send trade orders faster. Thus, faster order entry is an expected, not an unexpected, result.

Accordingly, Claim 14 is obvious over Gutterman in view of Friesen. Consequently, reexamination of Claim 14 of the '132 patent must be Ordered and Claim 14 rejected.

**c) Gutterman applied to the dependent claims of Claim 14 of the '132 patent**

In addition to anticipating Claim 14, Gutterman also provides a basis for finding Dependent Claims 40, 42-43, and 47-48 invalid. Specifically, the third party Requestor respectfully submits that the Gutterman also anticipates, or at a minimum, Gutterman in view of Friesen renders obvious these claims that depend from Claim 14.

**(i) Dependent Claim 40 is rejected under 35 U.S.C. § 102(b) as unpatentable over Gutterman**

Dependent Claim 40 adds the limitation that the market depth is displayed in a vertical orientation. The subject matter of Claim 40 is an intuitively obvious variant of Claim 14. Furthermore, because this "additional limitation" is to an intended use of the display of Claim 14, it carries no patentable weight. Moreover, this additional limitation is expressly disclosed by Gutterman as discussed below.

| Claim 40 of the '132 patent | Gutterman |
|---|---|
| A client system according to claim 14, wherein | As stated above, Claim 14 is anticipated by Gutterman. |
| said displays are oriented vertically. | *See e.g.*, Figure 2a and 2b of Gutterman which display bids and asks on a display device in a vertical orientation. |

Consequently, reexamination must be Ordered and Claim 40 rejected as anticipated by Gutterman.

**(ii) Dependent Claim 42 is rejected under 35 U.S.C. § 102(b) as unpatentable over Gutterman**

As with other dependent claims of the '132 patent, the subject matter of this Claim is an obvious variant of Claim 14. Indeed, obviousness of the subject matter of this Claim 42 is so apparent: this subject matter is expressly disclosed in Gutterman, as discussed below.

| Claim 42 of the '132 patent | Gutterman |
|---|---|
| A client system according to claim 14, wherein | As stated above, Gutterman anticipates Claim 14. |
| said displays of the pluralities of bids and asks in the market include bid and ask quantities of the commodity. | Figures 2a and 2b of Gutterman disclose that "the deck pane 135 further includes column headings for identifying the types of orders, and a plurality of order-total displays 133 disposed around the periphery of the deck pane. Each order-total display 133 corresponds to a respective price tick 136 and displays the total of orders in the deck at and better than its respective price tick." Col. 12: 44-50. |

Consequently, reexamination must be Ordered and Claim 42 rejected as anticipated by Gutterman.

**(iii) Dependent Claim 43 is rejected under 35 U.S.C. § 102(b) as unpatentable over Gutterman**

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Gutterman publication. Indeed, the subject matter of Claim 43 is expressly disclosed in Gutterman, as discussed below.

| Claim 43 of the '132 patent | Gutterman |
|---|---|
| A client system according to claim 14, wherein | As stated above, Gutterman, anticipates Claim 14. |
| said displays are displayed in | Gutterman discloses "the orders may be grouped and |

| | |
|---|---|
| different colors. | color-coded such that orders having the same makeup, *i.e.*, all buys or sells of the same commodity and price, can be quickly identified and collectively acted upon if desired. For example, it is advantageous to show buy orders in blue and sell orders in red, and to outline the incoming orders pane in a contrasting color such as green." Col. 11: 35-45. |

Consequently, reexamination must be Ordered and Claim 43 rejected as anticipated by Gutterman.

**(iv) Dependent Claim 47 is rejected under 35 U.S.C. § 102(b) as unpatentable over Gutterman**

As with other dependent claims of the '132 patent, the subject matter of this Claim is anticipated by the Gutterman publication. Indeed, the subject matter of Claim 47 is expressly disclosed in Gutterman, as discussed below.

| Claim 47 of the '132 patent | Gutterman |
|---|---|
| A client system according to claim 14, wherein | As stated above, Gutterman anticipates Claim 14. |
| said static display of prices is displayed in at least one direction in numerical order. | Gutterman discloses displaying prices (or other value indicia) in a numerical order in at least one direction. *See e.g.*, Center price column Figures 2a and 2b. |

Consequently, reexamination must be Ordered and Claim 47 rejected as anticipated by Gutterman.

**(v) Dependent Claim 48 is rejected under 35 U.S.C. § 102(b) as unpatentable over Gutterman**

As with other dependent claims of the '132 patent, the subject matter of this Claim is an obvious variant of Gutterman. Indeed, obviousness of the subject matter of this Claim 48 is so apparent: Gutterman, as discussed below, expressly disclosed this subject matter.

| Claim 48 of the '132 patent | Gutterman |
|---|---|
| A client system according to claim 1, wherein | As stated above, Gutterman anticipates Claim 14. |
| said static display of prices is displayed along a single line in numerical order | Gutterman discloses displaying prices (or other value indicia) in a numerical order along a single line. *See e.g.*, Center price column Figures 2a and 2b. |

Consequently, reexamination must be Ordered and Claim 48 rejected as anticipated by Gutterman.

### d) Claim 1 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen

As demonstrated below, Gutterman in combination with Friesen renders obvious Claim 1 of the '132 patent. As discussed above, both references are relevant to the same field of endeavor and one of ordinary skill in the art would have anticipated that the elements combined would have maintained their respective desirable properties. Moreover, because Gutterman was designed for brokers and Friesen for active traders, one of ordinary skill would have expected that by adding elements of Friesen to Gutterman, the resulting system would send trade orders faster. Accordingly, reexamination of Claim 1 of the '132 patent should be ordered and claim 1 rejected.

| **Claim 1 of the '132 patent** | ***Gutterman* combined with *Friesen*** |
|---|---|
| A method of placing a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, using a graphical user interface and a user input device, said method comprising: | Gutterman discloses "a broker workstation for managing orders in a market for trading commodities, securities, securities options, futures contracts and futures options and other times including: a device for selectively display order information; a computer for receiving the orders and for controlling the displaying device and a device for entering the orders into the computer . . ." Moreover, FIG. 2b of Gutterman discloses that the exchange has an inside market and Figure 1b discloses a graphical user interface and a user input device. |
| setting a preset parameter for the trade order | One of ordinary skill in the art would understand that Gutterman directs the user to preset a parameter. Specifically, Gutterman describes a procedure in which a broker can accept an incoming order. In this procedure, all of the parameters of the trade are set prior to the brokers action of clicking ACCEPT button 110. Col. 10, lines 60-65. |
| displaying market depth of the commodity, | FIG. 2b of Gutterman shows a display device that has a vertical display of prices that is flanked to the left by a vertical display of bids and flanked on the right by a vertical display of asks. Because Gutterman displays more than just |

| Claim 1 of the '132 patent | *Gutterman* combined with *Friesen* |
|---|---|
| | the inside market for the commodity and displays many prices and corresponding orders, *i.e.*, Gutterman displays the market depth of the commodity. |
| through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, | Furthermore, Gutterman's specification demonstrates that the display of bids and asks is dynamic. For example, Gutterman discloses "The manner in which the market bar 137 moves with each change in price can be selectively determined by the broker through the operation of the CONFIGURATOR object 440 based on the nature of typical price movements in the commodity being traded. For example, the movement of the market bar 137 in response to rapid small (one or two price ticks) price changes could be confusing if the market bar 137 were arranged to follow each price tick. A preferred manner for implementing the market bar 137 is to have the bar cover the last two prices traded; a second preferred manner is to have the market bar move only after the price has changed two or three price ticks. It will be appreciated that other manners of implementing the market bar 137 to realize the bar's function of indicating the current market price are also possible." Col. 12, line 56 – Col. 13, line 4. |
| including at least a portion of the bid and ask quantities of the commodity, | As discussed above, Figure 1b of Gutterman discloses the bid and ask quantities of the commodity. |
| the dynamic display being aligned with a static display of prices corresponding thereto, | Gutterman also discloses that the dynamic display of bids and asks is aligned with a static price display. First, FIG. 2b replicated above demonstrates that the bids and asks are aligned with the prices. Gutterman further discloses that these prices are static. For example, Gutterman discloses "The manner in which the market bar 137 moves with each change in price can be selectively determined by the broker through the operation of the CONFIGURATOR object 440 based on the nature of typical price movements in the commodity being traded. For example, the movement of the market bar 137 in response to rapid small (one or two price ticks) price changes could be confusing if the market bar 137 were arranged to follow each price tick. A preferred manner for implementing the market bar 137 is to have the bar cover the last two prices traded; a second preferred manner is to have the market bar move only after the price has changed two or three price ticks. It will be appreciated that other manners of implementing the market bar 137 to realize the bar's function of indicating the current market price are also |

| Claim 1 of the '132 patent | *Gutterman* combined with *Friesen* |
|---|---|
| | possible." Col. 12, line 56 – Col. 13, line 4.<br><br>Gutterman further states: "The deck pane 135 further includes touch-sensitive up and down arrows, disposed at the extremes of the price tick column 136, which are created by arrow-objects controlled by the Deck Pane object 453, for scrolling the range of prices." Col. 12: 51 - 56. The only reason to have to "scroll the range of prices" is if the price ladder is static. |
| wherein the static display of prices does not move in response to a change in the inside market; | As discussed above, Gutterman discloses that "the market bar 137 moves up and down along column 136 in response to changes in the market prices.." Thus, the prices themselves are not moving when the market changes, but rather, the market bar, which highlights the inside market is what changes. |
| displaying an order entry region aligned with the static display prices comprising a plurality of areas for receiving commands from the user input devices to send trade orders, each area corresponding to a price of the static display of prices; and | Gutterman further discloses that the invention has a "market orders pane 130 which is advantageously divided into a buy area 132 and a sell area 134, shown in blue and red, respectively." Col. 11, lines 58-60.<br><br>Moreover, Friesen discloses "[P]riority view 312 [the graphical interface of Figures 3a, 3b, and 3c] is designed to allow traders to intuitively place orders . . .." '550 application ¶ 0032. "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device. After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order." '550 application ¶ 0038<br><br>Friesen further discloses that "[o]rders can be placed by a trader using the user interface of the present invention in variety of ways. In one embodiment, as shown in FIG. 3a, the trader can directly submit an order by using the order task bar 328. The options to specify value and quantity of either a bid or offer, and the expiration period are provided. After the information is entered, the trader selects Place Order, and the order is submitted to the transaction server 200 for the pit 220, and an offer or bid icon 304, 300 is generated and displayed at the desired location at the desired size. The order information is communicated to the transaction server 200 and from there to the other client terminals, so that the new bid/offer appears in the displays of all other traders in this same pit. In a preferred embodiment, the trader submits an order by simply selecting either an |

| Claim 1 of the '132 patent | *Gutterman* combined with *Friesen* |
|---|---|
| | offer token 324 or bid token 320 using a pointing device." '550 application ¶ 0038. |
| selecting a particular area in the order entry region through single action of the user input device with a pointer of the user input device positioned over the particular area to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | As stated above, Gutterman discloses that after an incoming order is received in the incoming orders pane 120, the broker can either accept or reject it by touching the order information line, which is then highlighted in response, and then touching the ACCEPT 110 or REJECT 115 "buttons" on the touch-sensitive screen 12. Col. 10, lines 60-65. Thus, Gutterman discloses order entry through a single action of a user input device. |

In sum, Gutterman, in combination with Friesen, teaches or suggests the subject matter of Claim 1 of the '132 patent. Accordingly, reexamination of Claim 1 of the '132 patent should be Ordered and Claim 1 rejected as obvious in view of Gutterman combined with Friesen.

### e) Gutterman, in View of Friesen, Applied to Claims that Depend from Claim 1 of the '132 Patent

In addition to rendering obvious Claim 1, the third party Requestor respectfully submits that the Gutterman, in view of Friesen, also renders obvious Claims 20, 22-23 and 27-28.

#### (i) Dependent Claim 20 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen

Dependent Claim 20 adds the limitation that the market depth is displayed in a vertical orientation. While this subject matter is an obvious variant of Claim 1, and thus not patentable, this additional limitation is expressly disclosed by Gutterman as discussed below.

| Claim 20 of the '132 patent | Gutterman |
|---|---|
| A method according to Claim 1, wherein | As stated above, Claim 1 obvious in view of Gutterman combined with Friesen. |
| said displaying the market depth of a commodity traded in a market further comprises displaying said bids and asks in a vertical orientation. | *See e.g.*, Figures 2a and 2b of Gutterman which display bids and asks in a vertical orientation. |

Consequently, Reexamination must be Ordered and Claim 20 rejected as obvious over Gutterman in view of Friesen.

**(ii) Dependent Claim 22 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is an obvious variant of Claim 1. Indeed, obviousness of the subject matter of this Claim 22 is apparent: Gutterman, as discussed below, expressly disclosed this subject matter.

| Claim 22 of the '132 patent | Gutterman |
|---|---|
| A method according to Claim 1, wherein | As stated above, Gutterman, in combination with Friesen renders obvious Claim 1. |
| a plurality of said displayed bids and asks in the market include bid and ask quantities of the commodity. | Gutterman discloses that Figures 2a and 2b disclose that "the deck pane 135 further includes column headings for identifying the types of orders, and a plurality of order-total displays 133 disposed around the periphery of the deck pane. Each order-total display 133 corresponds to a respective price tick 136 and displays the total of orders in the deck at and better than its respective price tick. Col. 12: 44-50. |

Consequently, Reexamination must be Ordered and Claim 22 rejected as obvious over Gutterman in view of Friesen.

**(iii) Dependent Claim 23 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is an obvious variant of Claim 1. Indeed, obviousness of the subject matter of this Claim 23 is so apparent: Gutterman, as discussed below, expressly disclosed this subject matter.

| Claim 23 of the '132 patent | Gutterman |
|---|---|
| A method according to Claim 1, wherein | As stated above, Gutterman, in combination with Friesen renders obvious Claim 1. |
| said displaying the market depth of a commodity traded in a market further comprises displaying said bids and asks in | Gutterman discloses "the orders may be grouped and color-coded such that orders having the same makeup, *i.e.*, all buys or sells of the same commodity and price, can be quickly identified and collectively acted upon if |

| | |
|---|---|
| different colors. | desired. For example, it is advantageous to show buy orders in blue and sell orders in red, and to outline the incoming orders pane in a contrasting color such as green." Col. 11: 35-45. |

Consequently, Reexamination must be Ordered and Claim 23 rejected as obvious over Gutterman in view of Friesen.

**(iv) Dependent Claim 27 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen**

As with the other claims of the '132 patent, the subject matter of this Claim is an obvious variant of Gutterman. Indeed, obviousness of the subject matter of this Claim 27 is apparent: Gutterman, as discussed below, expressly disclosed this subject matter.

| Claim 27 of the '132 patent | Gutterman |
|---|---|
| A method according to Claim 1, wherein | As stated above, Gutterman in combination with Friesen renders obvious Claim 1. |
| said displaying the market depth of a commodity traded in a market further comprises displaying said statically displayed prices in at least one direction in numerical order. | Gutterman discloses displaying prices (or other value indicia) in a numerical order, in at least one direction. *See e.g.*, Center price column Figures 2a and 2b. |

Consequently, reexamination must be Ordered and Claim 27 rejected as obvious over Gutterman in view of Friesen.

**(v) Dependent Claim 28 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is an obvious variant of Claim 1. Indeed, obviousness of the subject matter of this Claim 28 is apparent: Gutterman, as discussed below, expressly disclosed this subject matter.

| Claim 28 of the '132 patent | Gutterman |
|---|---|
| A method according to Claim 1, wherein said displaying the market depth of a commodity traded in a market further comprises | As stated above, Gutterman in combination with Friesen renders obvious Claim 1. |
| displaying said statically displayed prices along a single line in numerical order. | Gutterman discloses displaying prices (or other value indicia) in a numerical order along a single line. *See e.g.*, Center price column Figures 2a and 2b. |

Consequently, reexamination must be Ordered and Claim 28 rejected as obvious over Gutterman in view of Friesen.

**f) Claim 8 is rejected under 35 U.S.C. § 103 as being unpatentable over Gutterman in view of Friesen**

Again, Claim 8 is directed to an article of manufacture, namely a computer readable medium. Moreover, claim 8 is merely an obvious variant of Claim 1 of the '132 patent in that the only difference between Claim 1 and Claim 8 is that claim 8 recites a program code to execute the method steps of Claim 1 of the '132 patent. Indeed, Claim 1 necessarily implies that the method is carried out on a computer readable medium having program code because Claim 1 states that the method occurs on an "electronic exchange" using a "graphical user interface," *i.e.* computers.

Again, as discussed above, both references are relevant to the same field of endeavor and one of ordinary skill in the art would have anticipated that the elements combined would have maintained their respective desirable properties. Moreover, because Gutterman was designed for brokers and Friesen for active traders, one of ordinary skill would have expected that by adding elements of Friesen to Gutterman, the resulting system would send trade orders faster. Thus, as with Claim 1 and as demonstrated below, Gutterman combined with Friesen renders obvious Claim 8 of the '132 patent. Accordingly, reexamination of Claim 8 of the '132 patent should be Ordered and Claim 8 rejected.

| Claim 8 of the '132 Patent | *Gutterman* combined with *Friesen* |
|---|---|
| A computer readable medium having program code recorded thereon, for execution on a computer having a graphical user interface and a user input device, to place a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, comprising: | Gutterman discloses "a broker workstation for managing orders in a market for trading commodities . . . ." Abstract. Gutterman further discloses that the workstation "carries out a plurality of instruction modules that can be written in any suitable computer language such as LISP, PASCAL, and C . . . ." Moreover, Figure 1b discloses that the broker workstation uses a user input device in placing the trade orders. Figure 2b further discloses the work station displaying the inside market of the commodity.<br><br>Because Gutterman is a screen-based electronic system for trading, the computer readable medium necessarily has program code. |
| a first program code for setting a preset parameter for the trade order; | One of ordinary skill in the art would understand that Gutterman directs the user to preset a parameter. Specifically, Gutterman describes a procedure in which a broker can accept an incoming order. In this procedure, all of the parameters of the trade are set prior to the brokers action of clicking ACCEPT button 110. Col. 10, lines 60-65. Gutterman, further discloses that "workstation 10 carries out a plurality of instruction modules that can be written in any suitable computer language, such as LISP, PASCAL and C. . . ." Col. 7, lines 37-39.<br><br>Because Gutterman is a screen-based electronic system for trading, this function is necessarily carried out by program code. |
| a second program code displaying market depth of a commodity, through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, | Furthermore, Gutterman's specification discloses a dynamic display of market depth. For example, Gutterman discloses "The manner in which the market bar 137 moves with each change in price can be selectively determined by the broker through the operation of the CONFIGURATOR object 440 based on the nature of typical price movements in the commodity being traded. For example, the movement of the market bar 137 in response to rapid small (one or two price ticks) price changes could be confusing if the market bar |

| Claim 8 of the '132 Patent | *Gutterman* combined with *Friesen* |
|---|---|
| | 137 were arranged to follow each price tick. A preferred manner for implementing the market bar 137 is to have the bar cover the last two prices traded; a second preferred manner is to have the market bar move only after the price has changed two or three price ticks. It will be appreciated that other manners of implementing the market bar 137 to realize the bar's function of indicating the current market price are also possible." Col. 12: 56-Col. 13: 4. Gutterman, further discloses that "workstation 10 carries out a plurality of instruction modules that can be written in any suitable computer language, such as LISP, PASCAL and C. . . ." Col. 7: 37-39.<br><br>Because Gutterman is a screen-based electronic system for trading, this function is necessarily carried out by program code. |
| including the bid and ask quantities of the commodity, aligned with a static display of prices corresponding thereto, | Gutterman also discloses that the dynamic display of bids and asks is aligned with a static price display. First, Figure 2b replicated above demonstrates that the bids and asks are aligned with the prices. Gutterman further discloses that these prices are static. For example, Gutterman discloses "The manner in which the market bar 137 moves with each change in price can be selectively determined by the broker through the operation of the CONFIGURATOR object 440 based on the nature of typical price movements in the commodity being traded. For example, the movement of the market bar 137 in response to rapid small (one or two price ticks) price changes could be confusing if the market bar 137 were arranged to follow each price tick. A preferred manner for implementing the market bar 137 is to have the bar cover the last two prices traded; a second preferred manner is to have the market bar move only after the price has changed two or three price ticks. It will be appreciated that other manners of implementing the market bar 137 to realize the bar's function of indicating the current market price are also possible." Col. 12, line 56 – Col. 13, line 4. |

| Claim 8 of the '132 Patent | *Gutterman* combined with *Friesen* |
|---|---|
| | Gutterman further states: "The deck pane 135 further includes touch-sensitive up and down arrows, disposed at the extremes of the price tick column 136, which are created by arrow-objects controlled by the Deck Pane object 453, for scrolling the range of prices." Col. 12: 51 – 56 (emphasis added). The only reason to have to "scroll the range of prices" is if the price ladder is static.<br><br>Because Gutterman is a screen-based electronic system for trading, this function is necessarily carried out by program code. |
| wherein the static display of prices does not move in response to a change in the inside market; | As discussed above, Gutterman discloses that "the market bar 137 moves up and down along column 136 in response to changes in the market prices. . . ." Thus, the prices themselves are not moving when the market changes, but rather, the market bar, which highlights the inside market is what changes. |
| a third program code for displaying an order entry region comprising a plurality of areas for receiving commands from the user input device to send trade orders, | Gutterman further discloses that the invention has a "market orders pane 130 which is advantageously divided into a buy area 132 and a sell area 134, shown in blue and red, respectively." Col. 11, lines 58-60. Gutterman, further discloses that "workstation 10 carries out a plurality of instruction modules that can be written in any suitable computer language, such as LISP, PASCAL and C…." Col. 7: 37-39.<br><br>Because Gutterman is a screen-based electronic system for trading, this function is necessarily carried out by program code. |
| [orders being] aligned with the static display of prices, each area corresponding to a price of the static display of prices; and | Gutterman further discloses that the invention has a "market orders pane 130 which is advantageously divided into a buy area 132 and a sell area 134, shown in blue and red, respectively." Col. 11: 58-60.<br><br>Moreover, Friesen discloses "[P]riority view 312 [the graphical interface of Figures 3a, 3b, |

| Claim 8 of the '132 Patent | *Gutterman* combined with *Friesen* |
|---|---|
| | and 3c] is designed to allow traders to intuitively place orders . . . ." ¶ 0032. "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device. After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order." '550 application ¶ 0038<br><br>Application Claim 90 of Friesen also disclosed ". . . displaying an order token associated with at least one preset order parameter; and in response to a user initiated command, moving the order token to a location associated with a desired value along the first scaled axis of values."<br><br>Friesen further discloses that "Orders can be placed by a trader using the user interface of the present invention in variety of ways. In one embodiment, as shown in FIG. 3a, the trader can directly submit an order by using the order task bar 328. The options to specify value and quantity of either a bid or offer, and the expiration period are provided. After the information is entered, the trader selects Place Order, and the order is submitted to the transaction server 200 for the pit 220, and an offer or bid icon 304, 300 is generated and displayed at the desired location at the desired size. The order information is communicated to the transaction server 200 and from there to the other client terminals, so that the new bid/offer appears in the displays of all other traders in this same pit. In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device." '550 application ¶ 0038.<br><br>Because Friesen and Gutterman are screen-based electronic systems for trading, this function is necessarily carried out by program code. |

| Claim 8 of the '132 Patent | *Gutterman* combined with *Friesen* |
|---|---|
| a fourth program code for receiving a command as a result of a selection of a particular area in the order entry region by a single action of the user input device with a pointer of the user input device positioned over the particular area, to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | As stated above, After an incoming order is received in the incoming orders pane 120, the broker can either accept or reject it by touching the order information line, which is then highlighted in response, and then touching the ACCEPT 110 or REJECT 115 "buttons" on the touch-sensitive screen 12. Col. 10, lines 60-65. Thus, Gutterman discloses order entry through a single action of a user input device. Gutterman, further discloses that "workstation 10 carries out a plurality of instruction modules that can be written in any suitable computer language, such as LISP, PASCAL and C. . . ." Col. 7: 37-39.<br><br>Because Gutterman is a screen-based electronic system for trading, this function is necessarily carried out by program code. |

### g) Gutterman, in View of Friesen, Applied to Claims that Depend from Claim 8 of the '132 Patent

In addition to rendering obvious Claim 8, the third party Requestor respectfully submits that Gutterman, in view of Friesen, also renders obvious the claims that depend from Claim 1. To simplify this discussion, the Requestor has limited the discussion of these dependent claims to Claims 30-33 and 37-38.

#### (i) Dependent Claim 30 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen

Dependent Claim 30 adds the limitation that the market depth is displayed in a vertical orientation. While this subject matter is intuitively an obvious variant of Claim 8, and thus not patentable, this additional limitation is expressly disclosed by Gutterman as discussed below.

| Claim 30 of the '132 patent | Gutterman |
|---|---|
| A computer readable medium according to Claim 8, further comprising | As stated above, Gutterman in view of Friesen renders Claim 8 obvious. |
| Program code to ensure that said displayed bids, asks and prices are oriented vertically. | *See e.g.*, Figure 2a and 2b of Gutterman which display bids and asks in a vertical orientation.<br><br>Because both Gutterman and Friesen are screen-based electronic systems for trading, this function is necessarily carried out by program code. |

Consequently, Reexamination must be Ordered and Claim 30 rejected as obvious over Gutterman in view of Friesen.

**(ii) Dependent Claims 32 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is an obvious variant of Claim 1. Indeed, obviousness of the subject matter of this Claim 32 is so apparent: Gutterman, as discussed below, expressly disclosed this subject matter.

| Claim 32 of the '132 patent | Gutterman |
|---|---|
| A computer readable medium according to Claim 8, further comprising | As stated above, Gutterman in view of Friesen renders Claim 8 obvious. |
| Program code to ensure that a plurality of bids and asks in the market include bids and ask quantities of the commodity. | Gutterman discloses that Figures 2a and 2b disclose that "the deck pane 135 further includes column headings for identifying the types of orders, and a plurality of order-total displays 133 disposed around the periphery of the deck pane. Each order-total display 133 corresponds to a respective price tick 136 and displays the total of orders in the deck at and better than its respective price tick." Col. 12: 44-50.<br><br>Because both Gutterman and Friesen are screen-based electronic system for trading, this function is necessarily carried out by program code. |

Consequently, Reexamination must be Ordered and Claim 32 rejected as obvious over Gutterman in view of Friesen.

### (iii) Dependent Claim 33 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen

As with other dependent claims of the '132 patent, the subject matter of this Claim is an obvious variant of Claim 1. Indeed, obviousness of the subject matter of this Claim 33 is so apparent: Gutterman, as discussed below, expressly disclosed this subject matter.

| Claim 33 of the '132 patent | Gutterman |
|---|---|
| A computer readable medium according to Claim 8, further comprising | As stated above, Gutterman in view of Friesen renders Claim 8 obvious. |
| Program code to ensure that bids and asks are displayed in different colors | Gutterman discloses "the orders may be grouped and color-coded such that orders having the same makeup, *i.e.*, all buys or sells of the same commodity and price, can be quickly identified and collectively acted upon if desired. For example, it is advantageous to show buy orders in blue and sell orders in red, and to outline the incoming orders pane in a contrasting color such as green." Col. 11: 35-45.<br><br>Because both Gutterman and Friesen are screen-based electronic system for trading, this function is necessarily carried out by program code. |

Consequently, reexamination must be Ordered and Claim 33 rejected as obvious over Gutterman in view of Friesen.

### (iv) Dependent Claim 37 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen

As with the other claims of the '132 patent, the subject matter of this Claim is an obvious variant of Gutterman. Indeed, obviousness of the subject matter of this Claim 37 is so apparent: Gutterman, as discussed below, expressly disclosed this subject matter.

| Claim 37 of the '132 patent | Gutterman |
|---|---|
| A computer readable medium according to Claim 8, further comprising | As stated above, Gutterman in view of Friesen renders Claim 8 obvious. |
| program code to ensure that said statically displayed prices are displayed in at least one direction in numerical order. | Gutterman discloses displaying prices (or other value indicia) in a numerical order, in at least one direction. *See e.g.*, Center price column Figures 2a and 2b.<br><br>Because both Gutterman and Friesen are screen-based electronic system for trading, this function is necessarily carried out by program code. |

Consequently, reexamination must be Ordered and Claim 37 rejected as obvious over Gutterman in view of Friesen.

**(v) Dependent Claim 38 is rejected under 35 U.S.C. § 103 as unpatentable over Gutterman in view of Friesen**

As with other dependent claims of the '132 patent, the subject matter of this Claim is an obvious variant of Gutterman. Indeed, obviousness of the subject matter of this Claim 38 is so apparent: Gutterman, as discussed below, expressly disclosed this subject matter.

| Claim 38 of the '132 patent | Gutterman |
|---|---|
| A computer readable medium according to Claim 8, further comprising | As stated above, Gutterman in view of Friesen renders obvious Claim 8. |
| Program code to ensure that said statically displayed prices are displayed along a single line in numerical order. | Gutterman discloses displaying prices (or other value indicia) in a numerical order along a single line. *See e.g.*, Center price column Figures 2a and 2b.<br><br>Because both Gutterman and Friesen are screen-based electronic system for trading, this function is necessarily carried out by program code. |

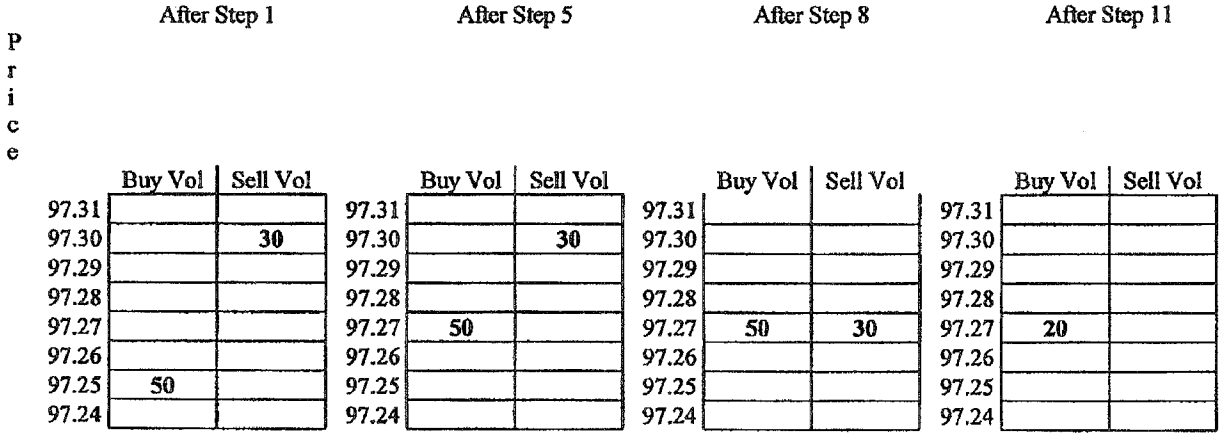
Consequently, reexamination must be Ordered and Claim 38 rejected as obvious over Gutterman in view of Friesen.

**3. LIFFE CONNECT**

In September 1998, The London International Financial Futures and Options Exchange ("LIFFE") published "The Application Program Interface (API) Reference Manual for LIFFE

CONNECT™". The manual states that the LIFFE CONNECT API is "the software interface between the LIFFE CONNECT Trading system (Trading Host) and a member's trading software application (Client Application). Page 6. "LIFFE CONNECT is a screen-based electronic system for trading a variety of LIFFE's futures and options contracts."[20] *Id.* Furthermore, "[t]he Trading Host makes market information available to interested market participants throughout the Trading Day. Aggregate volumes at best buy and sell, for all outright futures and options series and explicit strategy markets, are distributed whenever a change occurs.[21] Full market depth, given by the aggregate volumes at every quote price is also made available." Page 7. In other words, the bid and ask orders in the market are continually and dynamically updated in response to new market information.

LIFFE CONNECT also clearly illustrates a price axis that is static when the inside market moves. Specifically, the last page of this publication, F-65, shows the following diagram.




See, e.g. F-65.

[20] The Requestor respectfully submits that in 1998, one of ordinary skill in the art of creating trading software would understand that a "screen-based electronic system for trading" to be a graphical user interface.

[21] The Requestor respectfully submits that in 1998, one of ordinary skill in the art of creating trading software would understand that "distributed whenever a change occurs" is a dynamic update.

As can be seen above, each diagram has a price column listing the numbers (decimal prices) from 97.24 to 97.31 that is aligned with a buy column and a sell column. Additionally, LIFFE CONNECT discloses that these price axes do not move when the inside market moves. Specifically, the figure under the label "After Step 1" shows a best buy of 97.25 and a best sell at 97.30. In the figure under the label "After Step 5," the best buy is now 97.27, but the best offer is unchanged. This change in the best bid is a change in the inside market. However, the price axis under the label "After Step 1" is identical to the price axis under the label "After Step 5." As a result, one of ordinary skill reading this 1998 publication would understand that the price axis is static when the inside market moves.

The static price axis is also evident from the adjoining illustrations "After Step 8" and "After Step 11:" the price axis is unchanged despite changes in the bids (buy) and asks (sell) in the market.

Moreover, while these figures may demonstrate the electronic order book in operation, these figures show that those of ordinary skill in the art knew how to display what was occurring in the market through use of a static price axis.

LIFFE CONNECT also describes a situation in which parameters are set before the trade order is sent. For example, the transactions depicted in the illustrations reproduced above are described as follows on page F-64:

> The following description of each step provides more detail :
>
> 1. A second trader submits an order to 'Sell 30 Bund June 98 futures at 97.30'. The Trading Host puts the order into the central order book . . .
>
> 2. The Trading Host sends an acknowledgement of the order to the second trader using a OnTradeSubmit Response Handler Function.

> 3. Subscribed traders are notified of the Order Book Update using an OnMarketOrder Response Handler Function, and an OnMarketUpdate because a best buy/sell price has changed.
>
> 4. The orders do not match, and both orders are kept in the central order book pending further trader action.
>
> 5. The first trader revises the order, to buy for 97.27, using a LiffeTradeReviseOrder call.
>
> 6. The first trader then gets an acknowledgement using an OnTradeRevise Response Handler Function.

F-64 – F-65.

In other words, when the first trader revises the order, all of the necessary parameters, except the price which is being revised, were previously set. Thus, at least in the case of a revised trade order, LIFFE CONNECT describes a process for pre-setting parameters that was conventional prior to the critical date.

The Requestor anticipates that the patent owner will assert that the illustration on page F-65 of LIFFE CONNECT illustrates an electronic order book and not a series of screen displays. Even if that is true, the Requestor respectfully submits that these illustrations demonstrate that those of ordinary skill in the art of designing trading software at the relevant time knew of this manner of depicting the market. Adapting a well know method of depicting a market as a graphical user interface for trading software was clearly within the skill of the ordinary artisan at the relevant time. In other words, if LIFFE CONNECT does not anticipate the claims of the'132 patent, it renders these claims unpatentable as obvious.

**a) Claim 1 is rejected under 35 U.S.C. § 103 as unpatentable over LIFFE CONNECT in view of Friesen**

As demonstrated below, LIFFE CONNECT in view of Friesen renders Claim 1 of the '132 patent obvious.

Among reasons for combining these two references is the fact that LIFFE CONNECT describes *an interface* to which an individual trader's system must connect whereas Friesen describes an individual *trader's system*. One of ordinary skill in the relevant art would have anticipated adapting a system such as Friesen's to comport with the specifications of the LIFFE CONNECT publication. Accordingly, reexamination of Claim 1 of the '132 patent should be Ordered and Claim 1 rejected.

| **Claim 1 of the '132 patent** | ***LIFE Connect* combined with *Friesen*** |
|---|---|
| A method of placing a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, using a graphical user interface and a user input device, said method comprising: | "LIFFE CONNECT™ is a screen-based electronic system for trading a variety of LIFFE's futures and options contracts." Page 6. |
| setting a preset parameter for the trade order | In LIFFE CONNECT, when the first trader revises the order, all of the necessary parameters, except the price which is being revised, are previously set. Thus, at least in the case of a revised trade order, LIFFE CONNECT describes a process for pre-setting parameters for the trade order. |
| displaying market depth of the commodity,<br>through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, including at least a portion of the bid and ask quantities of the commodity, | LIFFE CONNECT discloses that "[t]he Trading Host makes market information available to interested market participants throughout the Trading Day. Aggregate volumes at best buy and sell, for all outright futures and options series and explicit strategy markets, are distributed whenever a change occurs. Full market depth, given by the aggregate volumes at every quote price is also made available." Page 7. Thus, LIFFE CONNECT discloses a dynamic display of bids and asks. |
| the dynamic display being aligned with a static display of prices corresponding thereto, | LIFFE CONNECT, at page F-65, discloses a series of order book illustrations that demonstrate a column of prices that is aligned with columns of bid and ask values, which as discussed above are constantly updated with market information. |

| Claim 1 of the '132 patent | *LIFE Connect* combined with *Friesen* |
|---|---|
| wherein the static display of prices does not move in response to a change in the inside market; | As can be seen above, LIFFE CONNECT discloses that each diagram has a price column listing the numbers from 97.24 to 97.31 that is aligned with a buy column and a sell column. Additionally, LIFFE CONNECT discloses that these price axes do not move when the inside market moves. Specifically, the figure under the label "After Step 1" shows a best buy of 97.25 and a best sell at 97.30. In the figure under the label "After Step 5", the best buy is now 97.27, but the best offer is unchanged. This change in the best bid is a change in the inside market. However, the price axis under the label "After Step 1" is identical to the price axis under the label "After Step 5." As a result, one of ordinary skill reading this 1998 publication would understand that the price axis is static when the inside market moves. This is also evident from the adjoining illustrations "After Step 8" and "After Step 11"; the price axis remains unchanged despite changes in the bid (buy) and ask (sell). |
| displaying an order entry region aligned with the static display prices comprising a plurality of areas for receiving commands from the user input devices to send trade orders, each area corresponding to a price of the static display of prices; and | In LIFFE CONNECT, the location of order entry region in the graphical user interface is determined locally. This step likely requires no function calls to the API.<br><br>Moreover, Friesen discloses "[P]riority view 312 [the graphical interface of Figures 3a, 3b, and 3c] is designed to allow traders to intuitively place orders . . . ." '550 application¶ 0032. "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device. After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order." '550 application ¶ 0038<br><br>Claim 90 of the '550 Friesen application[22] further discloses ". . . displaying an order token associated with at least one preset order |

[22] This claim was cancelled before the application matured into the '999 patent.

| Claim 1 of the '132 patent | *LIFE Connect* combined with *Friesen* |
|---|---|
| | parameter; and in response to a user initiated command, moving the order token to a location associated with a desired value along the first scaled axis of values."<br><br>Friesen also states that "Orders can be placed by a trader using the user interface of the present invention in variety of ways. In one embodiment, as shown in FIG. 3a, the trader can directly submit an order by using the order task bar 328. The options to specify value and quantity of either a bid or offer, and the expiration period are provided. After the information is entered, the trader selects Place Order, and the order is submitted to the transaction server 200 for the pit 220, and an offer or bid icon 304, 300 is generated and displayed at the desired location at the desired size. The order information is communicated to the transaction server 200 and from there to the other client terminals, so that the new bid/offer appears in the displays of all other traders in this same pit. In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device." '550 application ¶ 0038.<br>Accordingly, Friesen discloses an order entry region as described in claim 1 of the '132 patent. |
| selecting a particular area in the order entry region through single action of the user input device with a pointer of the user input device positioned over the particular area to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | LiffeTradeSubmitOrder is used to submit an order to any market, whether subscribed to or not (37).<br><br>See also the above discussion regarding order entry in Friesen. |

Consequently reexamination of Claim 1 must be Ordered and Claim 1 rejected as obvious over LIFFE CONNECT in view of Friesen.

### b) Claim 8 is rejected under 35 U.S.C. § 103 as unpatentable over LIFFE CONNECT in view of Friesen

Again, Claim 8 is directed to an article of manufacture, namely a computer readable media. Moreover, Claim 8 is merely an obvious variant of Claim 1 of the '132 patent in that the only difference between Claim 1 and Claim 8 is that Claim 8 recites a program code to execute the method steps of Claim 1 of the '132 patent. However, Claim 1 necessarily implies that the method is carried out on a computer readable medium having program code because Claim 1 states that the method occurs on an "electronic exchange" using a "graphical user interface," *i.e.* computers. Thus, as with Claim 1 and as demonstrated below, LIFFE CONNECT combined with Friesen renders obvious Claim 8 of the '132 patent. Accordingly, reexamination of Claim 8 of the '132 patent should be Ordered and Claim 8 rejected.

| **Claim 8 of the '132 Patent** | ***LIFFE CONNECT* combined with *Friesen*** |
|---|---|
| A computer readable medium having program code recorded thereon, for execution on a computer having a graphical user interface and a user input device, to place a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, comprising: | "LIFFE CONNECT™ is a screen-based electronic system for trading a variety of LIFFE's futures and options contracts." Page 6. |
| a first program code for setting a preset parameter for the trade order; | In LIFFE CONNECT, when the first trader revises the order, all of the necessary parameters, except the price which is being revised, are previously set. Thus, at least in the case of a revised trade order, LIFFE CONNECT describes a process for pre-setting parameters for the trade order.<br><br>Because LIFFE CONNECT is a screen-based electronic system for trading, this function is necessarily carried out by program code. |

| Claim 8 of the '132 Patent | *LIFFE CONNECT* combined with *Friesen* |
|---|---|
| a second program code displaying market depth of a commodity, through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, | LIFFE CONNECT discloses that "[t]he Trading Host makes market information available to interested market participants throughout the Trading Day. Aggregate volumes at best buy and sell, for all outright futures and options series and explicit strategy markets, are distributed whenever a change occurs. Full market depth, given by the aggregate volumes at every quote price is also made available." Page 7. Thus, LIFFE CONNECT discloses a dynamic display of bids and asks..<br><br>Because LIFFE CONNECT is a screen-based electronic system for trading, this function is necessarily carried out by program code. |
| including the bid and ask quantities of the commodity, aligned with a static display of prices corresponding thereto, | LIFFE CONNECT, at page F-65, discloses a series of order books that demonstrate a column of prices that is aligned with columns of bid and ask values, which as discussed above are constantly updated with market information.<br><br>Because LIFFE CONNECT is a screen-based electronic system for trading, this function is necessarily carried out by program code. |

| Claim 8 of the '132 Patent | *LIFFE CONNECT* combined with *Friesen* |
|---|---|
| wherein the static display of prices does not move in response to a change in the inside market; | As can be seen above, LIFFE CONNECT discloses that each diagram has a price column listing the numbers from 97.24 to 97.31 that is aligned with a buy column and a sell column. Additionally, LIFFE CONNECT discloses that these price axes do not move when the inside market moves. Specifically, the figure under the label "After Step 1" shows a best buy of 97.25 and a best sell at 97.30. In the figure under the label "After Step 5", the best buy is now 97.27, but the best offer is unchanged. This change in the best bid is a change in the inside market. However, the price axis under the label "After Step 1" is identical to the price axis under the label "After Step 5." As a result, one of ordinary skill reading this 1998 publication would understand that the price axis is static when the inside market moves. This is also evident from the adjoining illustrations "After Step 8" and "After Step 11"; the price axis remains unchanged despite changes in the bid (buy) and ask (sell).<br><br>Because LIFFE CONNECT is a screen-based electronic system for trading, this function is necessarily carried out by program code. |
| a third program code for displaying an order entry region comprising a plurality of areas for receiving commands from the user input device to send trade orders, | In LIFFE CONNECT, the location of order entry region in the graphical user interface is determined locally. This step likely requires no function calls to the API.<br><br>Moreover, Friesen discloses "[P]riority view 312 [the graphical interface of Figures 3a, 3b, and 3c] is designed to allow traders to intuitively place orders . . .." '550 application ¶ 0032. "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device. After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order." '550 application ¶ 0038 |

| Claim 8 of the '132 Patent | *LIFFE CONNECT* combined with *Friesen* |
|---|---|
| | Friesen application Claim 90 also discloses ". . . displaying an order token associated with at least one preset order parameter; and in response to a user initiated command, moving the order token to a location associated with a desired value along the first scaled axis of values."<br><br>Friesen further discloses that "Orders can be placed by a trader using the user interface of the present invention in variety of ways. In one embodiment, as shown in FIG. 3a, the trader can directly submit an order by using the order task bar 328. The options to specify value and quantity of either a bid or offer, and the expiration period are provided. After the information is entered, the trader selects Place Order, and the order is submitted to the transaction server 200 for the pit 220, and an offer or bid icon 304, 300 is generated and displayed at the desired location at the desired size. The order information is communicated to the transaction server 200 and from there to the other client terminals, so that the new bid/offer appears in the displays of all other traders in this same pit. In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device." '550 application ¶ 0038.<br><br>Because LIFFE CONNECT is a screen-based electronic system for trading, this function is necessarily carried out by program code. |
| [orders being] aligned with the static display of prices, each area corresponding to a price of the static display of prices; and | TT also characterized Friesen as disclosing: "program code for displaying an order icon associated with an order by the user . . .." Application Claim 86, cancelled before the '999 patent issued.<br><br>Furthermore, Friesen discloses "[P]riority view 312 [the graphical interface of Figures 3a, 3b, and 3c] is designed to allow traders to intuitively place orders . . .." '550 application |

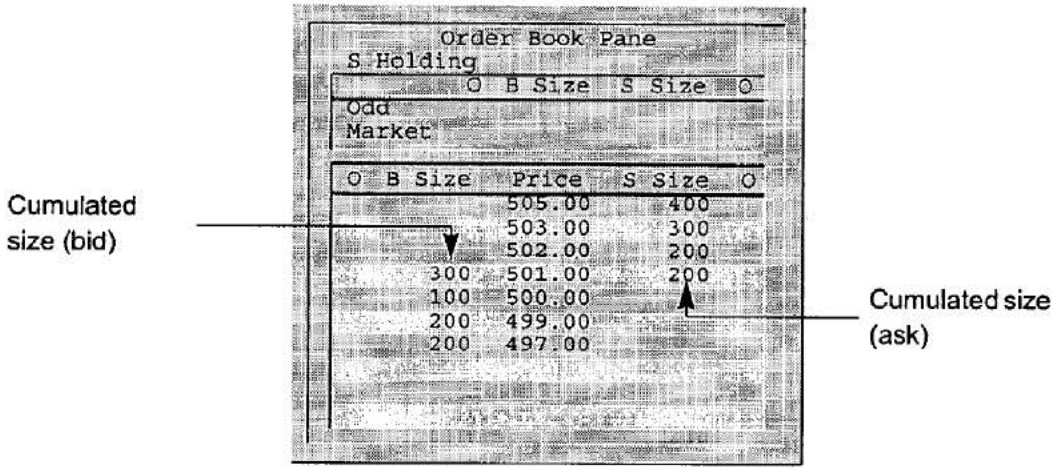
| Claim 8 of the '132 Patent | *LIFFE CONNECT* combined with *Friesen* |
|---|---|
| | ¶ 0032. "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device. After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order." '550 application ¶ 0038.<br><br>Claim 90 of the '550 Friesen application further discloses ". . . displaying an order token associated with at least one preset order parameter; and in response to a user initiated command, moving the order token to a location associated with a desired value along the first scaled axis of values."<br><br>Friesen also discloses that "Orders can be placed by a trader using the user interface of the present invention in variety of ways. In one embodiment, as shown in FIG. 3a, the trader can directly submit an order by using the order task bar 328. The options to specify value and quantity of either a bid or offer, and the expiration period are provided. After the information is entered, the trader selects Place Order, and the order is submitted to the transaction server 200 for the pit 220, and an offer or bid icon 304, 300 is generated and displayed at the desired location at the desired size. The order information is communicated to the transaction server 200 and from there to the other client terminals, so that the new bid/offer appears in the displays of all other traders in this same pit. In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device." '550 application ¶ 0038. |
| a fourth program code for receiving a command as a result of a selection of a particular area in the order entry region by a single action of the user input device with a pointer of the user input device positioned over the particular area, to set a | LiffeTradeSubmitOrder is used to submit an order to any market, whether subscribed to or not (37).<br><br>Because LIFFE CONNECT is a screen-based electronic system for trading, this function is |

| Claim 8 of the '132 Patent | *LIFFE CONNECT* combined with *Friesen* |
|---|---|
| plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | necessarily carried out by program code. |

Consequently, reexamination of Claim 8 must be ordered and Claim 8 rejected as obvious over LIFFE CONNECT in view of Friesen.

**4. SWX**

The Swiss Exchange ("SWX") TS User Manual ("SWX Manual") was published in December 1998.[23] The SWX states that the "TS/TS(X) User Manual is an introductory description of the Trading System (TS) user interface. [A]ll trading at SWX is conducted on screens. . . ." Page 1-1. Indeed, a trader's workstation in this system is configured so that "it automatically loads the computer's graphic user interface (Motif) as part of his personal configuration." Page 3-1. SWX describes that the trader can manage his trading systems through a variety of different panes. One such pane is the Order Book Pane, shown below.




*See* Page 4-5.

[23] Prior to 1998, there were published versions of the SWX Manual, albeit not in English.

This figure from the SWX Manual shows the bids and asks outstanding in the market before the market opens. As can be seen, there is a central column of prices, flanked to the right by the cumulative asks in the market at each displayed price and flanked to the left by the cumulative bids at each displayed price. In the above image, the inside market currently resides at the price of 501.00. Each of the other orders in the illustrated order book represents market depth.

The SWX Manual also discloses that:

> The data displayed on the user's screen (e.g. on the *Order Book Pane, Market Overview Pane* etc.) has been compiled and displayed based on broadcast messages from the Exchange system. Owing to the automatic storage and continuous updating of data received from the Exchange system, the TS is always in a position to inform the user immediately. When the user decides, for instance, to refresh the *Detailed Order Book Pane*, the Trading System does not need to retrieve the related data from the Exchange System before displaying it.

Page 2-4.

Another window with the "Detailed Order Book Pane" is shown below.

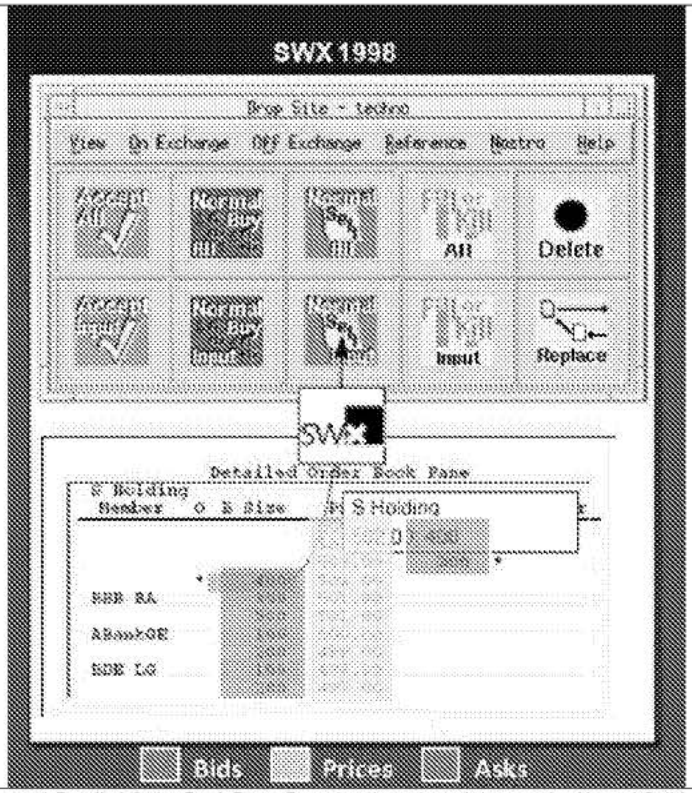



Fig. 56: *Drop Site Pane* and *Detailed Order Book Pane*. Dragging the selected data on the *Normal Sell Input* Opens an *Order Entry Window* for a sell order, irrespective of whether the data was selected on the buy or the sell side. *Security and* prices are automatically set to the selected data; only the order size need be entered manually.

*See* 6-14.

In this view, one way to enter an order is for the user to select a price in the Detailed Order Book window. By holding down the middle mouse button, a trader can drag the SWX Icon that pops up into the "normal Buy All" drop site. The selected data is displayed in a separate window as long as the middle mouse button is hold down. The order will then be transmitted to the exchange without further confirmation from the trader. Page 6-14 – 6-16.

**a) Claim 1 is rejected under 35 U.S.C. § 103 as unpatentable over the SWX Manual in view of Friesen**

As demonstrated below, the SWX Manual, in combination with Friesen, renders Claim 1 of the '132 patent obvious.

Both the SWX Manual and Friesen describe systems that individual traders can use to enter their trade orders. Prior to the Critical Date, those of ordinary skill appreciated that the

time needed to enter a trade order could determine whether or not the order was successful. *See e.g.,* U.S. Patent No. 6,278,982 to Korhammer, *et al.* at col. 12: 8-30. The need to reduce the time to enter a trade order would have led one of ordinary skill to combine elements of these two references to produce a faster system. Accordingly, faster entry of a trade order was an expected, and not an unexpected, result. Thus, reexamination of Claim 1 of the '132 patent should be Ordered and Claim 1 rejected.

| **Claim 1 of the '132 patent** | ***SWX*** **Manual in view of** ***Friesen*** |
|---|---|
| A method of placing a trade order for a commodity on an electronic exchange having an inside market with a highest bid price and a lowest ask price, using a graphical user interface and a user input device, said method comprising: | The SWX Manual discloses that the "TS/TX(X) User Manual is an introductory description of the Trading System (TS) user interface." Page 1-1.<br><br>The SWX Manual further discloses that "all trading at SWX is conducted on screens." *Id.* In describing the use of the system, The SWX Manual discloses that the RS "screen now displays the trading system's graphic user interface…" Page 3-1. Page 4-5 of The SWX Manual further provides a view a trader's "Order Book Pane." This order book shows a display of the inside market with a highest bid price and a lowest ask price, and further market depth. |
| setting a preset parameter for the trade order | The SWX Manual discloses that "since the portfolio manager has already entered almost all the information required for this order and stored it into the trading system, Bianchi can enter the order quickly into the system without having to type it again." Page 4-5. |

| Claim 1 of the '132 patent | *SWX* Manual in view of *Friesen* |
|---|---|
| displaying market depth of the commodity,<br>through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, including at least a portion of the bid and ask quantities of the commodity, | As discussed, above, the Order Book Pane of SWX displays the market depth of a commodity. Page 4-2. The SWX Manual also discloses that "The data displayed on the user's screen (e.g. on the *Order Book Pane, Market Overview Pane* etc.) has been compiled and displayed based on broadcast messages from the Exchange system. Owing to the automatic storage and continuous updating of data received from the Exchange system, the TS is always in a position to inform the user immediately. When the user decides, for instance, to refresh the *Detailed Order Book Pane*, the Trading System does not need to retrieve the related data from the Exchange System before displaying it." Page 2-4. |
| the dynamic display being aligned with a static display of prices corresponding thereto, | As seen above, the SWX Order Book Pane (*see, e.g.*, Page 4-2) has a central column of prices and aligned along either side are the bids and asks, which The SWX Manual discloses are updated continuously from the Exchange system (Page 2-4). |

| Claim 1 of the '132 patent | *SWX* Manual in view of *Friesen* |
|---|---|
| wherein the static display of prices does not move in response to a change in the inside market; | Friesen states that Figures 3b and 3c are taken at different times. '550 application ¶ 0042. During this undefined time interval, the value of some quantifying metric has changed. '550 application ¶¶ 0041 – 42. Nonetheless, value axis 332, which can represent prices, has remained unchanged despite changes in the quantifying metric. '550 application ¶ 0032 Based on this information in the '550 application, one of ordinary skill would understand that the price axis is static and would remain so if the inside market changed.<br><br>As noted above, Friesen displays both the bid and ask [offer] display regions in relation to the scaled axis of values. In one embodiment, the values are prices. '550 application ¶ 0036. See also, Claim 68 of the '550 Friesen application ("[T]he values on the first scaled axis of values represent price.")<br><br>Also as noted above, Friesen discloses that the scaled axis of values (the common price axis) does not move over time and is therefore static. While Friesen unambiguously, albeit implicitly, discloses that the scaled axis of values does not move over time, Friesen never suggests that the scaled axis moves at any time.<br>Moreover, TT, at no time, has ever suggested to the patent Examiner that the scaled axis of values in Fig. 3b or 3c changes. |

| Claim 1 of the '132 patent | *SWX* Manual in view of *Friesen* |
|---|---|
| displaying an order entry region aligned with the static display prices comprising a plurality of areas for receiving commands from the user input devices to send trade orders, each area corresponding to a price of the static display of prices; and | Friesen discloses "[P]riority view 312 [the graphical interface of Figures 3a, 3b, and 3c] is designed to allow traders to intuitively place orders . . . ." '550 application ¶ 0032. "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device. After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order." '550 application ¶ 0038<br><br>Claim 90 of the '550 Friesen application further states ". . . displaying an order token associated with at least one preset order parameter; and in response to a user initiated command, moving the order token to a location associated with a desired value along the first scaled axis of values."<br><br>Friesen also discloses that "Orders can be placed by a trader using the user interface of the present invention in variety of ways. In one embodiment, as shown in FIG. 3a, the trader can directly submit an order by using the order task bar 328. The options to specify value and quantity of either a bid or offer, and the expiration period are provided. After the information is entered, the trader selects Place Order, and the order is submitted to the transaction server 200 for the pit 220, and an offer or bid icon 304, 300 is generated and displayed at the desired location at the desired size. The order information is communicated to the transaction server 200 and from there to the other client terminals, so that the new bid/offer appears in the displays of all other traders in this same pit. In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device." '550 application ¶ 0038. |

| Claim 1 of the '132 patent | *SWX* Manual in view of *Friesen* |
|---|---|
| selecting a particular area in the order entry region through single action of the user input device with a pointer of the user input device positioned over the particular area to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | The SWX Manual also discloses that "To enter the order into the trading system, Bianchi selects the corresponding *Unreleased Order* in the *Unreleased Orders Ticker Pane* with the left mouse button. Then he clicks on the middle mouse button, displaying the SWX icon and opening a window which displays the selected data. Keeping the mouse button down, he drags the SWX icon onto the "Normal Buy Input" field for the *Drop Site Pane* and releases the button." Page 6-16. |

Consequently, reexamination of Claim 1 must be Ordered and Claim 1 rejected as obvious in view of the SWX Manual combined with Friesen.

**b) Claim 8 is rejected under 35 U.S.C. § 103 as unpatentable over the SWX Manual in view of Friesen**

Again, Claim 8 is directed to an article of manufacture, namely a computer readable media. Moreover, Claim 8 is merely an obvious variant of Claim 1 of the '132 patent in that the only difference between Claim 1 and Claim 8 is that Claim 8 recites a program code to execute the method steps of Claim 1 of the '132 patent. However, Claim 1 necessarily implies that the method is carried out on a computer readable medium having program code because Claim 1 states that the method occurs on an "electronic exchange" using a "graphical user interface," *i.e.* computers. Thus, as with Claim 1 and as demonstrated below, The SWX Manual combined with Friesen renders obvious Claim 8 of the '132 patent. Accordingly, reexamination of Claim 8 of the '132 patent should be Ordered and Claim 8 rejected.

| Claim 8 of the '132 Patent | The SWX Manual **in view of *Friesen*** |
|---|---|
| A computer readable medium having program code recorded thereon, for execution on a computer<br>having a graphical user interface and<br>a user input device,<br>to place a trade order for a commodity<br>on an electronic exchange<br>having an inside market with a highest bid price and a lowest ask price, comprising: | SWX is a screen-based trading system that uses a graphical user interface (*see* Page 1-1) and a keyboard or mouse (*see* Page 3-7 ("using the mouse") to place orders on an electronic exchange (*see* Page 1-1) with an inside market (*see* Page 4-5). Because SWX is a computer system, it necessarily has program code for the execution of various functions. |
| a first program code for setting a preset parameter for the trade order; | The SWX Manual discloses that to enter Market-Making orders, "the user presses a single button and the TS GUI may transmit a series of orders or order deletions to the Exchange system. Page 2-3.<br><br>The SWX Manual also discloses that "To enter the order into the trading system, Bianchi selects the corresponding *Unreleased Order* in the *Unreleased Orders Ticker Pane* with the left mouse button. Then he clicks on the middle mouse button, displaying the SWX icon and opening a window which displays the selected data. Keeping the mouse button down, he drags the SWX icon onto the "Normal Buy Input" field for the *Drop Site Pane* and releases the button."<br><br>Because SWX is a computer system, program code necessarily executes these functions described above. |

| Claim 8 of the '132 Patent | The SWX Manual **in view of *Friesen*** |
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| a second program code displaying market depth of a commodity, through a dynamic display of a plurality of bids and a plurality of asks in the market for the commodity, | As discussed, above, the Order Book Pane displays the market depth of a commodity. Page 4-2. The SWX Manual also discloses that "The data displayed on the user's screen (e.g. on the *Order Book Pane, Market Overview Pane* etc.) has been compiled and displayed based on broadcast messages from the Exchange system. Owing to the automatic storage and continuous updating of data received from the Exchange system, the TS is always in a position to inform the user immediately. When the user decides, for instance, to refresh the *Detailed Order Book Pane*, the Trading System does not need to retrieve the related data from the Exchange System before displaying it." Page 2-4. Thus, The SWX Manual discloses a dynamic display of a plurality of bids and asks.<br><br>Because SWX is a computer system, program code necessarily executes these functions described above. |
| including the bid and ask quantities of the commodity, aligned with a static display of prices corresponding thereto, | As seen from the Order Book Pane (*see, e.g.*, Page 4-2) has a central column of prices and aligned along either side are the bids and asks, which SWX discloses are updated continuously from the Exchange system (Page 2-4).<br><br>Because SWX is a computer system, program code necessarily executes these functions described above. |

| Claim 8 of the '132 Patent | The SWX Manual **in view of *Friesen*** |
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| wherein the static display of prices does not move in response to a change in the inside market; | Friesen states that Figures 3b and 3c are taken at different times. '550 application ¶ 0042. During this undefined time interval, the value of some quantifying metric has changed. '550 application ¶¶ 0041 – 42. Nonetheless, value axis 332, which can represent prices; '550 application ¶ 0032; has remained unchanged despite changes in the quantifying metric. Based on this information in the '550 application, one of ordinary skill would understand that the price axis is static and would remain so if the inside market changed.<br><br>As noted above, Friesen displays both the bid and ask [offer] display regions in relation to the scaled axis of values. In one embodiment, the values are prices. '550 application ¶ 0036, Claim 35 of the '999 patent "[A] first program code for displaying . . . bid indicator at a location along a first scaled axis of prices corresponding to a price associated with the at least one bid".<br><br>Also as noted above, Friesen discloses that the scaled axis of values (the common price axis) does not move over time and is therefore static. While Friesen unambiguously, albeit implicitly, discloses that the scaled axis of values does not move over time, Friesen never suggests that the scaled axis moves at any time.<br>Moreover, TT, at no time, has ever suggested to the patent Examiner that the scaled axis of values in Fig. 3b or 3c changes.<br><br>Because Friesen is a computer system, program code necessarily executes these functions described above. |

| Claim 8 of the '132 Patent | The SWX Manual **in view of *Friesen*** |
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| a third program code for displaying an order entry region comprising a plurality of areas for receiving commands from the user input device to send trade orders,<br>[orders being] aligned with the static display of prices, each area corresponding to a price of the static display of prices; and | TT also characterized Friesen as disclosing: "program code for displaying an order icon associated with an order by the user . . . ." Claim 35 of the '999 patent.<br><br>Friesen discloses "[P]riority view 312 [the graphical interface of Figures 3a, 3b, and 3c] is designed to allow traders to intuitively place orders . . .." '550 application ¶ 0032. "In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device. After being selected, the trader adjusts the size of the offer or bid token 324, 320 until the size of the token matches the desired quantity of the order." '550 application ¶ 0038<br><br>Claim 90 of the '550 Friesen application (". . . displaying an order token associated with at least one preset order parameter; and in response to a user initiated command, moving the order token to a location associated with a desired value along the first scaled axis of values.")<br>"Orders can be placed by a trader using the user interface of the present invention in variety of ways. In one embodiment, as shown in FIG. 3a, the trader can directly submit an order by using the order task bar 328. The options to specify value and quantity of either a bid or offer, and the expiration period are provided. After the information is entered, the trader selects Place Order, and the order is submitted to the transaction server 200 for the pit 220, and an offer or bid icon 304, 300 is generated and displayed at the desired location at the desired size. The order information is communicated to the transaction server 200 and from there to the other client terminals, so that the new bid/offer appears in the displays of all other traders in this same pit. In a preferred embodiment, the trader submits an order by simply selecting either an offer token 324 or bid token 320 using a pointing device." '550 application ¶ 0038. |

| Claim 8 of the '132 Patent | The SWX Manual **in view of *Friesen*** |
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| a fourth program code for receiving a command as a result of a selection of a particular area in the order entry region by a single action of the user input device with a pointer of the user input device positioned over the particular area, to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange. | The SWX Manual also discloses that "To enter the order into the trading system, Bianchi selects the corresponding *Unreleased Order* in the *Unreleased Orders Ticker Pane* with the left mouse button. Then he clicks on the middle mouse button, displaying the SWX icon and opening a window which displays the selected data. Keeping the mouse button down, he drags the SWX icon onto the "Normal Buy Input" field for the *Drop Site Pane* and releases the button." Page 6-16.<br><br>Because SWX is a computer system, program code necessarily executes these functions described above. |

Consequently, reexamination of Claim 8 must be ordered and Claim 8 rejected as obvious over the SWX Manual in view of Friesen.

## IV. Conclusion

Gutterman, Friesen, LIFFE CONNECT, and the SWX Manual, alone and in combination, present substantial new questions of patentability. Accordingly, reexamination must be Ordered and Claims 1-2, 8, 14, 20, 22-23, 25, 27-28, 30, 32-33, 37-38, 40, 42-43, 47-48, and 53 of the '132 patent rejected as anticipated and/or obvious in view of the cited references, alone or in combination.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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|---|---|
| In re Application of: | Kemp, II, et *al.* |
| Assigned to: | Trading Technologies International, Inc. |
| U.S. Patent No.: | 6,772,132 |
| Issued: | August 3, 2004 |
| Group Art Unit: | 3624 |
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| Examiner: | Richard C. Weisberger |
| Filed: | June 9, 2000 |

For: Click Based Trading with Intuitive Grid Display of Market Depth

## CERTIFICATE OF SERVICE

I, Walter Scott, an attorney, certify that on the 22nd day of September 2010, I caused a true and correct copy of this Request for Examination Under 37 C.F.R. § 1.510 to be deposited with the United States Postal Service and served on the attorney of record listed below via First Class Mail, postage prepaid:

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