

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Trading Technologies International, Inc.,

Plaintiff,

v.

CQG, Inc. and CQGT, LLC,

Defendants.

Civil Action No. 05-CV-4811

Judge Sharon Johnson Coleman

Magistrate Judge Sidney I. Schenkier

**CQG'S REPLY BRIEF REGARDING THE PATENT-INELIGIBILITY /
INVALIDITY OF THE TT PATENTS-IN-SUIT UNDER 35 U.S.C. § 101**

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In its Opposition Brief (Dkt. 962, “Opp.”), TT does not dispute:

- (1) that patent-eligibility under § 101 is purely an issue of law;
- (2) that the question of § 101 patent-eligibility of the ’132 and ’304 patents is ripe for determination now and does not require the Court to await a jury trial record;
- (3) that courts have routinely decided § 101 patent-eligibility as early as the pleading stage, i.e., on Rule 12 motions;
- (4) that it is appropriate for the Court to focus on representative claims (*see* Opp. at 6); or
- (5) that claim 1 of the ’132 and ’304 patents is representative for purposes of the § 101 analysis.

However, rather than focusing on the two-step analysis mandated by the Supreme Court in *Alice Corp. Pty. Ltd. v. CLS Bank Int’l.*, 134 S. Ct. 2347 (2014), TT spends much of its Opp. arguing that the claimed invention—or its purported commercial embodiment, TT’s “MD Trader” software—is different from and novel over prior art trading systems. This misses the point of a § 101 analysis. The purported novelty and unobviousness (or lack thereof) of the ’132 and ’304 patents are irrelevant to a § 101 analysis. They are germane to *different* statutory requirements for patentability; it would be error to base a § 101 decision on these considerations.

Meanwhile, TT almost completely ignores *Enfish v. Microsoft*, where claims highly analogous to the ’132 and ’304 patents were invalidated under § 101, as explained in detail in CQG’s Opening Brief.

I. CQG DOES NOT IGNORE SUBSTANTIVE CLAIM ELEMENTS

TT claims that CQG “does not address the details of any of the claims of the patents-in-suit,” “ignores all of the substantive elements of the body of the claims,” and “fails to address any of these claim elements, alone or in combination.” Opp. at 4, 6. This is demonstrably wrong: CQG’s Opening Brief (Dkt. 898, “Br.”) spends 5 pages demonstrating that substantive limitations

in the body of the claims (both independent and dependent) fail to add an “inventive concept,” as required by *Alice* step two. Br. at 8–13.

II. THE COURT CAN AND SHOULD CONSIDER THE PTAB’S DECISION TO INSTITUTE REVIEW OF THE ‘132 PATENT

TT wrongly urges that the decision of the USPTO Patent Trial and Appeal Board (PTAB) to institute a covered business method (CBM) review of the ’132 patent under § 101 “should be given no weight” because, in TT’s view, it is “only a preliminary decision” and “unreliable because it predated *DDR*.” Opp. at 19–20. The PTAB’s written, reasoned decision speaks for itself:¹

We determine that the Petition demonstrates it is more likely than not that the challenged claims are unpatentable under 35 U.S.C. § 101.

...

On this record, we are persuaded by Petitioner that claim 1 is directed to the *abstract idea of placing an order based on observed market information, as well as updating the market information*.

...

Thus, claim 1 does no more than *simply instruct the practitioner to implement the abstract idea on a GUI*. To be patent-eligible, a claim cannot simply state the abstract idea and add the words “apply it.” On this record, we agree with Petitioner that claim 1 does not recite additional elements or combinations of elements that add significantly more to the abstract idea so as to claim patent-eligible subject matter.

(Ex. 5² at 2, 14–15, CBM2014-00135 Institution Decision.) It is true the PTAB’s decision to institute review is preliminary (in that it has not yet finally invalidated the claims), but TT is wrong to otherwise criticize it. Review was instituted only after a three-judge PTAB panel³ considered TT’s 65-page Patent Owner Preliminary Response (Ex. 4, “POPR”) (accompanied by 4 videos and

¹ TT argues in its Opp. and Responses & Objections to CQG’s Statement of Undisputed Material Facts (Dkt. 966, “TT SOMF Resp.”) that the standard for instituting a CBM review is “significantly lower” than “more likely than not.” TT SOMF Resp. at 4; Opp. at 20 n.14. TT’s emphasis on the statutory language “if such information [presented in the petition for review] is not rebutted” simply underscores that TT had the opportunity to rebut in its POPR, which it took full advantage of. In any event the PTAB’s decision speaks for itself. (Ex. 5 at 2.)

² Numeral exhibit citations are to the exhibits to the Declaration of Kenneth R. Adamo (Dkt. 899), filed with CQG’s Opening Brief. Lettered exhibits are filed concurrently herewith.

³ The three Administrative Patent Judges comprising the panel have over 30 years of collective Patent Office experience. (Ex. C.)

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