

**REDACTED**

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

**REDACTED**

**TABLE OF CONTENTS**

|      |  |    |
|------|--|----|
| I.   | Statement of Facts.....  | 2  |
| II.  | Legal Standard .....   | 3  |
| III. | The Asserted Patents Recite Patent-Ineligible Subject Matter Under 35 U.S.C. § 101 .....   | 4  |
|      | A. Analysis Of Representative Claims Is Appropriate .....  | 4  |
|      | B. Claims Reciting An Abstract Idea Are Patent-Ineligible.....   | 4  |
|      | C. Alice Part One: The '132 And '304 Patents Recite An Abstract Idea.....  | 6  |
|      | D. Alice Part Two: The Asserted Claims Do Not Recite An “Inventive Concept” That<br>Transforms The Abstract Idea Into A Patent-Eligible Invention..... | 8  |
|      | 1. The Individual Claim Elements Recited In The Independent Asserted Claims<br>Do Not Transform the Abstract Idea .....                                | 8  |
|      | 2. The Independent Asserted Claims, As An Ordered Combination, Do Not<br>Transform The Abstract Idea .....   | 13 |
|      | 3. The Independent Asserted Claims Also Fail The M&T Test .....  | 14 |
|      | 4. The Dependent Asserted Claims Do Not Add “Something More” To<br>Transform The Recited Abstract Idea To A Patent-Eligible Invention .....            | 16 |
| IV.  | Conclusion .....   | 20 |

**REDACTED**

**TABLE OF AUTHORITIES**

**Cases**

*Accenture Global Serv., GmbH v. Guidewire Software, Inc.*,  
728 F.3d 1336 (Fed. Cir. 2013) ..... 4, 11, 13

*Alice Corp. Pty. Ltd. v. CLS Bank Int’l.*,  
134 S. Ct. 2347 (2014)..... passim

*Bancorp Serv. v. Sun Life Assur. Co.*,  
687 F.3d 1266 (Fed. Cir. 2012) ..... 2, 15

*Bilski v. Kappos*,  
561 U.S. 593 (2010)..... passim

*buySAFE, Inc. v. Google, Inc.*,  
765 F.3d 1350 (Fed. Cir. 2014) ..... 3, 5

*Content Extraction & Transmission LLC v. Wells Fargo Bank*,  
2013 U.S. Dist. LEXIS 107184 (D.N.J. July 31, 2013)..... 15

*Content Extraction & Transmission LLC v. Wells Fargo Bank*,  
No. 2013-1112, 2014 WL 7272219 (Fed. Cir. Dec. 23, 2014)..... passim

*Cyberfone Sys., LLC v. Cellco P’ship*,  
885 F. Supp. 2d 710 (D. Del. 2012)..... 16

*Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*,  
558 F. App’x 988 (Fed. Cir. 2014) ..... 7, 16

*CyberSource Corp. v. Retail Decisions, Inc.*,  
654 F.3d 1366 (Fed. Cir. 2011) ..... passim

*DDR Holdings, LLC v. Hotels.com, L.P.*,  
773 F.3d 1245 (Fed. Cir. 2014) ..... 7, 14

*Digitech Image Techs. v. Elect. for Imaging, Inc.*,  
758 F.3d 1344 (Fed. Cir. 2014) ..... passim

*Enfish, LLC v. Microsoft Corp.*  
2014 WL 5661456 (C.D. Cal. Nov. 3, 2014)..... 8, 9, 10

*Gottschalk v. Benson*,  
409 U.S. 63 (1972)..... 4

*Intellectual Ventures I LLC v. Mfr. & Traders Trust Co.*,  
2014 WL 7215193 (D. Del. Dec. 18, 2014) ..... 5

*Joao Bock Trans. Sys., LLC v. Jack Henry & Assoc., Inc.*,  
2014 WL 7149400 (D. Del. Dec. 15, 2014) ..... 5

*Loyalty Conversion Sys. Corp. v. Am. Airlines Inc.*,  
2014 WL 4364848 (E.D. Tex. Sept. 3, 2014)..... 5

**REDACTED**

*Microsoft Corp. v. i4i Ltd. P’ship*,  
131 S. Ct. 2238 (2011)..... 3

*Money Suite Co. v. MetLife Inc.*  
1:13-cv-1748, Dkt. 30 (D. Del. Jan. 27, 2015.) ..... 5, 7, 11, 13

*Open Text SA v. Box Inc.*,  
3:13-cv-04910 (N.D. Cal.)..... 1

*Parker v. Flook*,  
437 U.S. 584 (1978)..... 4, 13

*Tenon & Groove, LLC v. Plusgrade S.E.C.*,  
2015 WL 82531 (D. Del. Jan. 6, 2015)..... 5

*Ultramercial, Inc. v. Hulu, LLC*,  
772 F.3d 709 (Fed. Cir. 2014) ..... 3, 6, 15

**Statutes**

35 U.S.C. § 101..... passim

**REDACTED**

In *Alice Corp. Pty. Ltd. v. CLS Bank Int'l.*, the U.S. Supreme Court set out a two-part framework for analyzing patent eligibility under 35 U.S.C. § 101. 134 S. Ct. 2347, 2355 (2014). The framework requires a trial court to (1) determine whether the claims “are directed to a patent-ineligible concept[],” i.e., an abstract idea, and (2) if they are, determine whether the claims recite “additional elements [that] ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* But, the Court cautioned, adding a “generic computer” or reciting “conventional steps” cannot transform an abstract idea into a patent-eligible invention. *Id.* at 2357. As U.S. District Judge Donato (Northern District of California) aptly put it: “[T]ake a standard this and a standard that . . . and plug them all together, you’re still in the town of standard.” (Ex. 10 at 19,<sup>1</sup> Jan. 14, 2015 Hr’g Tr., *Open Text SA v. Box Inc.*, 3:13-cv-04910.)

TT alleges that CQG infringes various claims of U.S. 6,772,132 and U.S. 6,766,304 (Asserted Claims). The Asserted Claims recite the abstract idea of placing an order for a commodity on an electronic exchange, based on observed market information, as well as updating the market information. The abstract idea is nothing more than “a fundamental economic practice long prevalent in our system of commerce.” *Cf. Alice*, 134 S. Ct. at 2356.

The elements recited in the Asserted Claims perform basic functions relating to electronic commodity trading and updating market information using unidentified and generic computer components. Using a generic computer to perform “basic functions,” such as obtaining data, are “well-understood, routine, conventional activities previously known to the industry,” and do not add “something more” to transform an abstract idea into a patent-eligible invention. *Id.* at 2354, 2359. An abstract idea cannot be transformed into a patent-eligible invention merely by reciting a generic computer or adding instructions to “apply it.” *Id.* at 2357-58. This, however, is precisely what is claimed by the Asserted Claims, making them invalid as a matter of law. The

---

<sup>1</sup> Citations to Ex. \_\_\_ are to exhibits to the Declaration of Kenneth R. Adamo, filed / submitted herewith.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.