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14 June 2011

Dear Sirs,

European Patent Application No. 01920183.9  
**Opposition to EP1319211**  
**Trading Technologies International, Inc.**  
*Our ref: JFW/41797OPP1*

We attach our response to the communication pursuant to Article 101(1) and Rule 81(2) to (3) EPC dated 1 December 2010.

Yours faithfully,



**Jan Walaski**  
**Authorised Representative**

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## **Response to Communication Pursuant to Article 101(1) and Rule 81(2) to (3) EPC dated 1 December 2010 (the “Article 101(1) Communication”)**

The proprietor’s response to the Article 101(1) Communication is set out below using the same numbering as is used within that communication. We have also sought to address additional issues raised by Opponent I in its response dated 30 March 2011. However, where any point raised has not been specifically addressed, this should not be taken to mean that we agree with Opponent I on that point.

### **General**

As a general point, we note that the term “inside market” used in our application is a term of art that is understood by the skilled person as referring to the combination of the highest bid price and the lowest ask price (page 8, lines 2 to 3 of the application as filed). References by the Opposition Division to the “internal market” are therefore taken to be references to the “inside market”.

### **Article 100(c) EPC 1973 – Added subject-matter**

The arguments raised by the Opposition Division with respect to the subject matter extending beyond the content of the application as filed are addressed below. We will also address certain generalisation issues in an expert declaration to be filed later.

#### **4. Article 100(c) EPC 1973 – Independent claim 1**

##### **4.1 Display of market depth (deletion)**

We agree with the Opposition Division that claim 1 as granted does not extend beyond the content of the application as filed in relation to the fact that the feature of the display of the market depth in addition to the inside market is not recited in claim 1.

We note that Opponent I has made no further comment on this point.

## 4.2 “Field of static prices”

We agree with the Opposition Division that claim 1 as granted does not extend beyond the content of the application as filed with respect of the use of the term above.

We note that Opponent I has made no further comment on this point.

## 4.3 First and second indicators

We disagree with the conclusion of the Opposition Division that claim 1 as granted extends beyond the content of the application as filed on the basis that this is an impermissible generalisation of the embodiments illustrated in Figures 3 and 4, in which the display of the inside market is allegedly intimately tied to the display of bid and ask quantities.

The first and second indicators show the best prices, namely, the best bid price and the best ask price. They do this by placing some sort of indication at a location in alignment with the best bid price and the best ask price in the field of static prices. For instance, the paragraph bridging pages 7 and 8 of the application as filed describes that the “inside market” is the highest bid price and the lowest ask price. The paragraph bridging pages 14 and 15 of the application goes on to state that “[t]he inside market and market depth ascend and descend as prices in the market increase and decrease.” The paragraph continues: “[m]arket depth similarly ascends and descends the price column, leaving a vertical history of the market.” The same paragraph states: “Figure 4 shows a screen displaying the same market as that of Figure 3 but at a later interval where the inside market, cells 1101, has risen three ticks.” The application continues to state throughout that the market “ascends and descends” the price column. In addition, the second full paragraph at page 15 of the application states: “Just as the market ascends and descends the vertical Mercury display shown in Figures 3 and 4, the market will move left and right in the horizontal Mercury display.” (emphasis added). At least based on Figures 3 and 4 of the application as filed, a user will see the indicators associated with the inside market being moved – these are the claimed movable indicators and the application as filed, and the figures, describe this movement.

It is not the actual numbers that move between the cells of the display. Opponent I supports that in paragraph 14 of the Opponent I's response. (see, e.g., "However, the bid quantity 18 which represents the quantity of bids at price 89 does not move."). Rather, it is the indication aligned with a price that moves. An analogy can be drawn with the mercury rising and falling in a thermometer to indicate whether the temperature has gone up or down, without the need to look at the precise temperature values. Because the particular numbers are not actually moving (changing positions), it is the indicators that allow the user to see the market movement (e.g., as the best bid price indicator or the best ask price indicator moves up or down in the vertical example). Furthermore, the references in the application as filed to the market moving in the display as the inside market prices increase and decrease provide an explicit disclosure of the movable indicators rather than movable numbers.

The Opposition Division in the fifth paragraph on page 18 of the Article 101(1) Communication states (emphasis added):

In this embodiment, there is no explicit display of the internal market but the user can identify the internal market by identifying the highest price in the price column 1004 for which a bid quantity is displayed in the BidQ column 1003 and the lowest price in the price column for which an ask quantity is displayed in the AskQ column 1005.... The internal market is thus conveyed to the user in an implicit manner on the basis of the display of the bid and ask quantities in the BidQ and the AskQ columns and their relative positions with respect to the prices in the price column.

While the Opposition Division is using the term "convey" in the paragraph quoted above, it could equally well have used the term "indicate". Additionally, displaying the quantities is not even necessary to convey the inside market.

While a number (here quantity) itself gives some information, the presence or absence of the number in a cell also provides information that is separate from the value of the number and is capable of indicating the highest or lowest bid/ask price. We submit that it

is the presence or the absence that is the indicator in the application as filed, not the number itself. To illustrate, consider, if the numbers in the bid quantity column and the ask quantity column were simply replaced by blocks of the same colour, the information about the corresponding highest and lowest price levels would not be lost, since the point at which the blocks turn to blank cells still indicates the inside market 1101 in Figure 4. The originally filed dependent Claim 5 supports using blocks of different colours, because it recites bids and asks being displayed using different colours. Therefore, it is fair to say that the application discloses a first indicator at a first area aligned with a first price level and a second indicator at a second area aligned with a second price level, the price levels representing the current highest bid and lowest ask price. We submit that use of the term indicators is far more accurate to describe the market movement in the display, because bid and ask quantities do not technically move on the screen.

The originally filed independent claims did not recite the limitation of quantities. Rather, for example, independent claim 1 states “displaying a plurality of bids” and “displaying a plurality of asks”. When read in view of original dependent claim 4, which requires bid and ask quantities being displayed, the use of “bids” and “asks” in original claim 1 indicates that the actual quantities and the numbers themselves do not have to be displayed. This clearly provides support for the “first indicator” and the “second indicator” because limiting the display of the inside market to the display of bid and ask quantities would render the language of claim 4 meaningless. Thus, what is displayed along an axis does not have to be quantities, making the use of the first and second indicators to represent the inside market consistent with the originally filed claims. Independent claim 22 further supports this, as it recites “a dynamic display of a plurality of bids and a plurality of asks, including the bid and ask quantities of the commodity”, also making clear that the displayed plurality of bids and asks can include, but is not the same as, quantities.

The Opposition Division notes that “claims 1, 8 and 15 do not specify that bid and ask quantities are displayed, they do also not contain any feature directed to how the internal market is displayed and cannot therefore support the generalisation.” We disagree, as the originally filed claims (e.g., claim 1) can be read to include displaying bids and asks at the inside market and away from the inside market.

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