

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

_____)	
TRADING TECHNOLOGIES)	Case No. 10 C 715
INTERNATIONAL, INC.)	(Consolidated with:
)	10 C 716, 10 C 718,
Plaintiff,)	10 C 720, 10 C 721,
)	10 C 726, 10 C 882,
v.)	10 C 883, 10 C 884,
)	10 C 885, 10 C 929,
BCG PARTNERS, INC.)	10 C 931)
)	
Defendant.)	Judge Virginia M. Kendall
_____)	

**MEMORANDUM IN SUPPORT OF THE IBG DEFENDANTS' MOTION TO STAY
PROCEEDINGS PURSUANT TO SECTION 18(b) OF THE AMERICA INVENTS ACT**

Defendants IBG LLC and Interactive Brokers LLC (collectively, “IBG”) hereby move, pursuant to Section 18(b) of the America Invents Act (“AIA”), to stay this litigation pending the outcome of TD Ameritrade’s petition for Covered Business Method Review (“CBM Review”) of U.S. Patent Nos. 6,766,304; 6,772,132; 7,533,056; 7,676,411; and 7,685,055 (collectively, the “CBM Patents”).

A stay in this case is appropriate for all of the reasons set forth in the opening brief in support of TD Ameritrade’s Motion to Stay (Dkt. No. 546), which IBG incorporates here. In particular, each of the four factors enumerated in AIA § 18(b) weighs in favor of a stay:

- **First**, a stay will simplify—and possibly eliminate—asserted patents and issues for trial. This case is complex and needs to be simplified. Trading Technologies (“TT”) has asserted 12 patents against IBG, including all of the CBM Patents. *See* Dkt. No. 252. According to current statistics, there is very little chance that any of the five CBM Patents will survive CBM Review. Dkt. No. 546, Exhibits K, M, M-1 – M-11, N. At a minimum, if any claims survive, they will most likely be narrowed or significantly changed, and the proceedings will create an important record on issues such as claim construction, scope of disclosure, and prior art. The CBM proceedings will also likely impact the other seven patents asserted against IBG. Six of those patents are in the same patent families as the CBM Patents and share the same or similar claim terms and specifications. *See* Dkt. No. 252, Exhibits C, E, G, I, J, L, N, P, R, U, V. Thus, the PTO’s determinations on claim construction, the scope of patent disclosures, and prior art will likely be relevant to the other patents. The seventh patent asserted against IBG, while from a different patent family, is

technologically related to the others such that the same prior art is relevant. Thus, CBM Review will likely impact all asserted patents in this case.

- **Second**, this litigation is in the same early stage as the TD Ameritrade case: the parties have never exchanged initial disclosures, have not conducted any discovery, no depositions have been taken, and a trial date has not been set. Now is the most appropriate time to grant a stay – before the parties engage in extensive party and third party discovery on all 12 asserted patents, before witnesses are deposed for patents that may likely be eliminated from the case or changed, and before the Court and parties expend resources on claim construction for patents or claims that may be cancelled or changed.
- **Third**, TT will not be unduly prejudiced by a stay. The BookTrader functionality of the accused IBG software was first introduced beginning in 2004, yet TT waited until 2010 to file a lawsuit against IBG. *See* Dkt. No. 404 at pp. 66, 67. Moreover, TT has not conducted this litigation with urgency. TT never sought a preliminary injunction against IBG. TT previously urged the Court to stay this case while it appealed this Court’s summary judgment order to the Federal Circuit. *See* Dkt. No. 479 at 15–18. And this case was effectively stayed for 16 months during the pendency of TT’s appeal. TT’s conduct undermines any suggestion that it would now suffer undue prejudice as a result of a stay. Furthermore, a stay will not provide IBG with any tactical advantage. To the contrary, the Court and all parties will benefit from a stay by the likely elimination of patents and PTO review record.
- **Fourth**, a stay will reduce the burden of litigation on the parties and on the Court. The parties will benefit from avoiding the unnecessary expense of litigating claims of

the five CBM patents that may ultimately be invalidated or narrowed through CBM Review. Likewise, a stay will relieve the Court from expending judicial resources in deciding claim construction, invalidity, and non-infringement issues that may be mooted. Furthermore, CBM review will have a trickle-down effect on the other seven patents asserted against IBG. The five CBM Patents share the same or similar claim terms and patent specifications, and the same inventors with six other asserted patents. *See supra* at 1. And because TT accuses the same technology of infringing all 12 patents asserted against IBG (*see* Dkt. No. 252), the same discovery and prior art will be relevant to all asserted patents. Given the relatedness of all asserted patents, it would not be an efficient expenditure of the parties' or Court's resources to proceed piecemeal on only some patents.

For the foregoing reasons, and for the reasons set forth in support of TD Ameritrade's Motion to Stay (Dkt. No. 546), IBG respectfully requests that the Court stay this litigation pending the outcome of TD Ameritrade's petition for CBM Review.

Dated: June 2, 2014

Respectfully submitted,

/s/ Natalie J. Morgan

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2014, I electronically filed this **MEMORANDUM IN SUPPORT OF IBG DEEFNDANTS' MOTION TO STAY PROCEEDINGS PURSUANT TO SECTION 18(b) OF THE AMERICA INVENTS ACT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Natalie J. Morgan

Natalie J. Morgan