

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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IBG LLC and INTERACTIVE BROKERS LLC,  
Petitioners,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,  
Patent Owner.

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Case CBM2016-00009  
Patent No. 7,685,055 B2

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Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION

Denying Patent Owner's Request for Rehearing  
*37 C.F.R. § 42.71*

INTRODUCTION

Petitioner filed a Request for Rehearing (Paper 74, "Req. Reh'g") of our  
Final Decision (Paper 72, "Dec.") determining that Petitioner failed to show by a

preponderance of the evidence that claims 1–19 of U.S. Patent No. 7,685,055 B2 (Ex. 1001, “the ’055 patent”) are unpatentable under 35 U.S.C. § 103. The Request focuses on the issue of whether independent claim 1 of the ’055 patent is obvious over TSE<sup>1</sup>.

For the reasons that follow, the Request for Rehearing is denied.

### ANALYSIS

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *See Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004).

The party challenging the decision has the burden of showing a decision should be modified, and the request for rehearing must identify specifically all matters the party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d). In its Request for Rehearing, the dissatisfied party must (1) “specifically identify all matter that party believes the Board misapprehended or overlooked” and (2) identify the place where each matter was previously addressed. *Id.*

Petitioner argues that we misapprehended the analysis in the Petition concerning TSE’s disclosure of claim 1’s limitation of “a plurality of locations

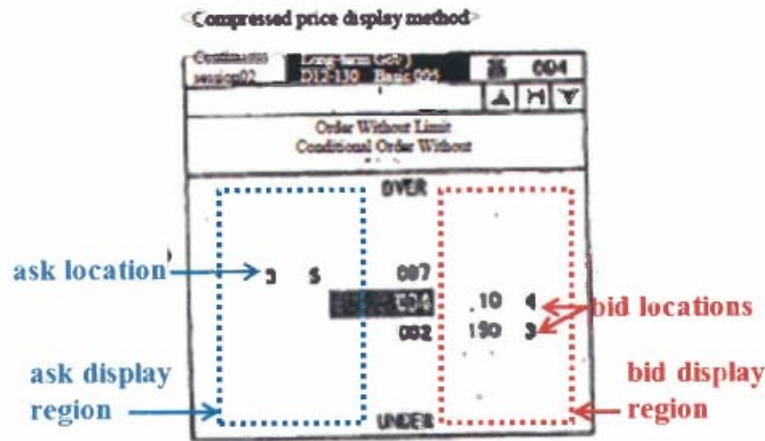
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<sup>1</sup> Tokyo Stock Exchange Operation System Division, FUTURES/OPTION PURCHASING SYSTEM TRADING TERMINAL OPERATION GUIDE (1998) (Ex. 1008).

corresponding to the first plurality of price levels displayed along the static price axis, wherein each location corresponds to one of the first plurality of price levels” (“the disputed limitation”). *Id.* at 1–2. According to Petitioner, we misapprehended the analysis in the Petition when we determined that TSE’s compressed mode did not disclose the disputed limitation. *See id.* at 2–9 (citing Dec. 40–45). Petitioner asserts that the Petition did not rely only on TSE’s compressed mode to meet the disputed limitation but also relied upon TSE’s non-compressed mode. *Id.* Petitioner argues that “the Petition in no way limited its analysis of the disputed limitation to *only* TSE’s compressed mode or Roman’s Figure C,” but relied upon the entirety of the figure on page 0068 of TSE, which show both the non-compressed and compressed modes. *Id.* at 6–7.

Petitioner’s argument that we misapprehend the analysis in the Petition is not persuasive because we could not have misapprehended an analysis not presented adequately in the Petition. Contrary to Petitioner’s argument, the analysis in the Petition relies upon TSE’s compressed mode, and not TSE’s non-compressed mode, to show how the disputed limitation is found in the prior art. In this regard, the Petition states:

Each of the bid and ask display regions of TSE comprises “a plurality of locations corresponding to the first plurality of price levels displayed along the static price axis.” FIG. C of Mr. Roman’s Declaration (reproduced below) labels three exemplary locations to highlight that each location correspond to a different price level of the first plurality of price levels displayed along the price axis (11). (Roman Decl., ¶ 103.)



Román Decl., FIG. C

When transitioning TSE’s Board Screen from a compressed display (i.e., the claimed “adjusting”), the “number of the plurality of locations changes according to adjusting the first plurality of price levels.” For example, as shown in the figure on 00068 of TSE, the number of levels changes from three to seven when the “first plurality of price levels” is adjusted to the “adjusted plurality of price levels.” (TSE, p. 0068.) Thus, TSE discloses the “displaying a bid and ask display region” step. (Roman Decl., ¶104.)

Paper 5, 51–52. Other statements made in the Petition and Petitioner’s Reply also show that the analysis in the Petition relies upon TSE’s compressed mode to meet the disputed limitation. For example, the Petition points to the compressed display to show the claimed first plurality of price levels—“the compressed display has three price levels: ‘002,’ ‘004,’ and ‘007’ (e.g., “a first plurality of price levels).” *Id.* at 47. The Petition also points to TSE’s transition from compressed mode to non-compressed mode to meet the claimed step of adjusting the first plurality of price levels to an adjusted plurality of price levels. *Id.* The Petitioner’s Reply, pointing to the compressed display, states “the blank screen locations above the 007 and below the 002 in TSE’s compressed mode aren’t price levels (Rho-Reply-

Decl., ¶¶6-10), and thus the regions to the right and left of these blank screen locations aren't locations that correspond to price levels.” Paper 42, 22–23.

Petitioner attempts in its Request for Rehearing to recast its analysis in the Petition as relying upon TSE's non-compressed mode to meet the disputed limitation. As can be seen from the reproduced portion above, the Petition points to the TSE's compressed mode and not to TSE's non-compressed mode to meet the disputed limitation. Further, in reply to Patent Owner's argument that the compressed mode did not meet the disputed limitation because the compressed mode did not have a static axis (*see* Paper 32, 59–60), Petitioner argued that the compressed mode is static, but did not point to the non-compressed mode to meet the disputed limitation. *See* Paper 42, 17–21. A request for rehearing is not an opportunity to supplement the Petition and make arguments that were not made adequately in the Petition. We, thus, are not persuaded that we misapprehend the analysis in the Petition concerning the disputed limitation.

Petitioner also requests rehearing of our determination that its “boardx4-to-boardx2” argument to be an impermissible new argument. Req. Reh'g 9–12. Petitioner disagrees that its “boardx4-to-boardx2” argument is an impermissible new argument and asserts that it is fully supported by the Petition and is responsive to a narrow claim construction Patent Owner asserted for the first time in its Patent Owner Response. *Id.* Petitioner, thus, argues that the Board should consider its “boardx4-to-boardx2” argument. *Id.*

Petitioner presents no sufficient reason for us to modify our decision, as mere disagreement is not a sufficient basis for requesting rehearing. For the reasons explained in our Decision, Petitioner's “boardx4-to-boardx2” argument raises a new argument in the Petitioner's Reply that exceeds the proper

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