Paper No.___
Filed: May 19, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC; INTERACTIVE BROKERS LLC;
TRADESTATION GROUP, INC.; and
TRADESTATION SECURITIES, INC.

Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

Case CBM2016-00032
U.S. Patent 7,212,999

PATENT OWNER'S PRELIMINARY RESPONSE

Table of Contents

I. INTRODUCTION

Trading Technologies International, Inc. ("TT") is an operating company headquartered in Chicago and owes its initial (and most substantial) capital investment to its patent portfolio. TradeStation and Interactive Brokers, both market place competitors of TT, have filed twelve (12) CBM petitions against TT's patent portfolio. Of those twelve petitions, eight (8) have been instituted and four (4) are pending institution decisions.

While many of the arguments in TT's previous preliminary responses have been similar, this paper presents new arguments and takes a different approach. In preparing this paper, TT reviewed the eight (8) previous institution decisions and has attempted to specifically respond on the merits to preliminary viewpoints and conclusions set forth in the Board's institution decisions—even if those arguments were not presented by Petitioners.

While some of the high-level arguments (e.g., a specific GUI tool is not a CBM and is eligible under §101) have been presented previously, this paper goes to the next level and provides a more detailed response to the Board's previous conclusions and reasoning. In fact, in some instances, after reviewing the previous institution decisions and TT's prior arguments, TT recognizes that its previous arguments may not have addressed the preliminary conclusions, which may have

been based on giving substantial benefit of the doubt to allegations made by Petitioners. This paper attempts to clarify TT's arguments and positions and shed new light on these arguments in light of recent developments.

For example, additional information has come to light that shows Petitioners cannot meet their burden of establishing that the TSE document (the primary reference for the obviousness grounds in the petition) qualifies as prior at. The sole support for the TSE document qualifying as prior art is the same testimony of Mr. Kawashima (a TSE representative) that Petitioners relied upon in previous petitions. This testimony by itself is insufficient to establish that the TSE document qualifies as prior art for several reasons. In addition, as the Board has previously ruled, Petitioners need to produce Mr. Kawashima for a deposition by TT. In a recent filing (request for rehearing), Petitioners stated that they will not be able to produce Mr. Kawashima for deposition. For this reason alone, Petitioners have not established that it is "more likely than not" that they will succeed on the merits. This new information was unknown when the Board rendered its previous institution decisions. Moreover, Petitioners are no longer entitled to any benefit of the doubt regarding their ability to obtain further evidence to bolster their position on the TSE document. Since the previous institution decisions, it has become clear that any such bolstering is unlikely to happen. Not only are Petitioners unable to obtain a deposition of Mr. Kawashima, it is unlikely they will be able to offer any

DOCKET ALARM

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.