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CBM2016-00031, Paper No. 46

CBM2016-00032, Paper No. 50

CBM2016-00051, Paper No. 43

May 31, 2017

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTERACTIVE BROKERS LLC, TRADESTATION GROUP,
INC., and TRADESTATION SECURITIES, INC.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM2016-00031 (Patent 7,813,996 B2)

CBM2016-00032 (Patent 7,212,999 B2)

CBM2016-00051 (Patent 7,904,374 B2)

Held: May 3, 2017

BEFORE: SALLY C. MEDLEY, MEREDITH C. PETRAVICK,
and JEREMY M. PLENZLER, Administrative Patent Judges.

The above-entitled matter came on for hearing on Wednesday,
May 3, 2017, commencing at 1:30 p.m., at the U.S. Patent and
Trademark Office, 600 Dulany Street, Alexandria, Virginia.

CBM2016-00031 (Patent 7,813,996 B2)
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P R O C E E D I N G S

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2 JUDGE PETRAVICK: Today we are here to hear three
3 covered business method cases, CBM2016-00031,
4 CBM2016-00032, CBM2016-00051. So each side has 60
5 minutes to present consolidated arguments in the 31 and 51
6 CBMs. We'll be doing those first. And then you have 30 minutes
7 per side to do the 32 CBM. Petitioner, you will start. Would you
8 like to reserve any of your 60 minutes for rebuttal?

9 MR. PHILLIPS: Sure, 15 minutes. I'm going to be
10 exceedingly brief today.

11 JUDGE PETRAVICK: Just because we give you
12 60 minutes doesn't mean you have to use all of it.

13 MR. PHILLIPS: Exactly. I'm certainly not.

14 JUDGE PETRAVICK: Also, we do have Judge
15 Medley joining us today. And I'm Judge Petravick. And we have
16 Judge Plenzler joining us via the screen from Detroit. Judge
17 Plenzler cannot see the ELMO slides. Because you didn't send us
18 any demonstratives, you are going to need to tell him where he
19 can find the information in the record and then pause briefly so
20 that he can find the information so he can see what we are talking
21 about. So please remember to do that.

22 MR. PHILLIPS: I will try to do my best.

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1 JUDGE PETRAVICK: With the demonstratives that
2 the patent owner talked about, you'll need to tell us the slide
3 number.

4 Can everybody hear me? All right. You may begin
5 when you are ready.

6 MR. PHILLIPS: Thank you, Your Honor, and good
7 afternoon. As a preliminary matter, I wanted to -- I have spoken
8 with opposing counsel about this, as you know, the ELMO is not
9 working today and I was preparing to use the ELMO to show
10 verbatim portions of the record. So because it's not available, I
11 just found out yesterday, what I have done is I have come up with
12 four slides. They weren't submitted as demonstratives and they
13 are essentially just cut and paste from the record into the slides.
14 So opposing counsel doesn't oppose that, and I hope that's okay.

15 JUDGE PETRAVICK: That's fine with us.

16 MR. PHILLIPS: Thank you. Okay. So I'm John
17 Phillips from Fish & Richardson on petitioner's behalf. I'm
18 discussing two of the three patents today, the '996 and the '374.
19 They are members of what's called the Brumfield family of
20 patents. As you know, we've already had hearings and final
21 written decisions issued on six related patents. So my assumption
22 is that Your Honors are intimately familiar with the issues here
23 and I'm not going to belabor them as a result. As I said, I will be
24 mercifully brief in large part because I just found out yesterday

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1 that I was arguing. My co-counsel, my colleague got the flu at
2 the last second. So it fell upon me.

3 In any event, I want to make three basic points today.
4 Number one, that the computer-readable medium claims, the
5 CRM claims in both patents are nonstatutory because they read
6 on transitory signals. And that applies to all claims of the '996
7 patent.

8 Secondly, with regard to patent eligibility under *Alice*,
9 the Federal Circuit's decision in *CQG* is inapplicable. It has
10 different parties, different patents, different record. And when I
11 refer to *CQG*, I assume you understand that's the *Trading*
12 *Technologies v. CQG* decision from the Federal Circuit that just
13 issued during these proceedings and post briefing -- well, that's
14 not true. We have the reply brief.

15 And thirdly, given that *CQG* is not applicable, on their
16 own merits, the Board should reach the same conclusion with
17 regard to the '996 and '374 patents, as it did in the '411 CBM,
18 namely that the claims are fatally abstract under *Alice*.

19 Moving on to point number one, all claims in the '996
20 patent and claim 36 in the '374 patent are nonstatutory because
21 they are not limited to encompassing only nontransitory media or
22 in other words, broad enough to include both transitory and
23 nontransitory.

24 The '996 claims and the '374 preambles up there on the
25 screen, these are claim number 1 from the '996 patent and claim

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