

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC and INTERACTIVE BROKERS LLC,
Petitioners,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Patent No. 6,766,304

**PETITIONER'S MOTION FOR JOINDER
UNDER 35 U.S.C. § 325(c) AND 37 C.F.R. §§ 42.22 AND 42.222(b)**

I. STATEMENT OF PRECISE RELIEF REQUESTED

Petitioners IBG LLC and Interactive Brokers LLC (collectively, “IBG” or “Petitioners”) respectfully submit this motion for joinder together with a petition for covered business method review (“the petition”) of claims 1-40 of U.S. Patent No. 6,766,304 (“the ’304 patent”), assigned to Trading Technologies International, Inc. (“TT” or “Patent Owner”). Pursuant to 35 U.S.C. § 325(c) and 37 C.F.R. § 42.222(b), IBG requests that this proceeding be joined with *TradeStation Group, Inc. and TradeStation Securities, Inc. v. Trading Technologies International, Inc.*, CBM2015-00161 (“the ’161 CBM review”).

II. INTRODUCTION

IBG is filing this petition and joinder motion to ensure that trial is completed in the event that the current petitioners in the ’161 CBM review reach settlement with Patent Owner. Given that Patent Owner has already settled with at least one other defendant accused of infringing the ’304 patent, this is a significant concern. Moreover, joinder of IBG’s petition with the ’161 CBM review would allow for consolidation of the proceedings and promote efficient resolution of the two petitions.

IBG’s request for joinder is timely because the Board issued its institution decision instituting trial in the ’161 CBM review on January 27, 2016, less than one month ago. IBG’s petition is also narrowly tailored to the identical ground of unpatentability for which trial was instituted on the ’161 petition and relies on the same analysis and evidence. Accordingly, joinder of the petition to the ’161 CBM review is appropriate. In addition, joinder is appropriate because it will efficiently

resolve the validity of the claims of the '304 patent in a single proceeding, without prejudicing the parties to the '161 CBM review.

Absent termination of TradeStation Securities, Inc. and TradeStation Group, Inc. (collectively, "TradeStation") as parties to the proceeding, IBG anticipates participating in a limited capacity. To the extent that IBG does participate, IBG will coordinate with TradeStation to consolidate any filings, manage questioning at deposition, manage presentations at the hearing, ensure that briefing and discovery occur within the time normally allotted, and avoid redundancies.

IBG has conferred with counsel for TradeStation regarding the subject of this motion. TradeStation has indicated that it does not oppose joinder.

III. BACKGROUND

Beginning in 2005, TT began asserting a number of patents, including the '304 patent, against numerous companies. In August 2005, CQGT, LLC and CQG, Inc. (collectively, "CQG") filed a complaint for declaratory judgment of non-infringement and invalidity of the '304 patent. *See CQG v. Trading Techs. Int'l*, CBM2015-00057, Paper 13 p. 2 (July 10, 2015). Later that same month, Patent Owner sued CQG for infringement of the '304 patent. *Id.* at 2-3. Patent Owner subsequently sued TD Ameritrade, Inc. and TD Ameritrade Holding Corp. (collectively "TD Ameritrade"), TradeStation, and IBG in separate actions commenced in 2010.

The '304 patent has also been the subject of a number of petitions for covered business method review. First, TD Ameritrade filed a CBM review petition on May

20, 2014. Ex. 1005. While the Board found that the '304 patent was eligible for CBM review, it denied the petition based on deficiencies in the proposed grounds of challenge. Ex. 1003.

On January 9, 2015, CQG filed a CBM review petition directed to the '304 patent. *See CQG*, CBM2015-0057, Paper 3. On July 10, 2015, the Board denied institution of the CQG petition based on CQG's filing of a declaratory judgment action challenging the validity of the '304 patent. *CQG*, CBM2015-00057, Paper 13. The merits of CQG's petition were not reached. *Id.*

On July 20, 2015, TradeStation filed a CBM petition challenging the validity of claims 1-40 of the '304 patent. *See TradeStation*, CBM2015-00161, Paper 2. In its petition, TradeStation acknowledges that portions of its petition, including the supporting expert declaration, are substantially identical to CQG's petition and exhibits. *Id.* at 4. The Board issued its institution decision in the '161 CBM review on January 27, 2016, instituting trial on all claims.

IBG's petition raises the identical ground of unpatentability as was raised in the '161 CBM review and instituted by the Board, and is essentially a copy of TradeStation's petition in the '161 CBM review with respect to the challenge under § 101, while omitting the challenge under § 112 that was denied institution. *See, generally*, Petition.

IV. ARGUMENT

A. Legal Standard

The Leahy-Smith America Invents Act permits joinder of like review proceedings, including joinder of a covered business method review to another covered business method review. 35 U.S.C. § 325(c); 37 C.F.R. 42.222. In deciding whether to exercise its discretion and allow joinder of proceedings, the Board considers several factors including: (1) the reasons why joinder is appropriate, (2) whether the party to be joined has presented any new grounds of unpatentability, (3) what impact, if any, joinder would have on the trial schedule for the existing review, and (4) how briefing and discovery may be simplified. *Dell Inc. v. Network-1 Security Solutions, Inc.*, IPR2013-00385, Paper 17 p. 4 (July 29, 2013); *see also Skimlinks, Inc. v. Linkline, Inc.*, CBM2015-00087, Paper 14 p. 24 (June 15, 2015) (citing Frequently Asked Question H5, <http://www.uspto.gov/patents-application-process/appealing-patent-decisions/trials/patent-review-processing-system-prps-0>).

B. IBG's Motion for Joinder Is Timely

Joinder may be requested no later than one month after the institution date of a covered business method review for which joinder is requested. 37 C.F.R. § 42.222(b). The Board issued its institution decision in the '161 CBM review on January 27, 2016, less than one month ago. Accordingly, IBG's request for joinder is timely.

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