

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC and INTERACTIVE BROKERS LLC,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2016-00035
Patent 6,766,304 B2

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

PETRAVICK, *Administrative Patent Judge*.

DECISION

Institution of Covered Business Method Patent Review
and Grant of Motion for Joinder

37 C.F.R. § 42.208
37 C.F.R. § 42.222(b)

I. INTRODUCTION

IBG LLC and Interactive Brokers LLC (collectively, “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting covered business method patent review of claims 1–40 (“challenged claims”) of U.S. Patent No. 6,766,304 B2 (Ex. 1001, “the ’304 patent”) pursuant to § 18 of the Leahy-Smith America Invents Act, and concurrently filed a Motion for Joinder (Paper 3, “Mot.”). The Motion for Joinder seeks to join this proceeding with *TradeStation Group, Inc. v. Trading Technologies International, Inc.*, CBM2015-00161 (the “TradeStation CBM”). Mot. 1. Patent Owner did not file a Preliminary Response or an opposition to the Motion for Joinder before March 29, 2016. *See* Paper 6 (setting the due date to March 29, 2016). During a conference call held on March 7, 2016, Patent Owner indicated that it did not oppose joinder if this proceeding is instituted. Ex. 2001, 13.

For the reasons described below, we institute a covered business method patent review of all the challenged claims and grant Petitioner’s Motion for Joinder.

II. INSTITUTION OF COVER BUSINESS METHOD REVIEW

The Petition asserts the identical ground on which we instituted review in the TradeStation CBM. Mot. 5–6. On January 27, 2016, we instituted a trial in the TradeStation CBM on the sole ground of claims 1–40 being unpatentable under 35 U.S.C. § 101. *TradeStation Group, Inc. v. Trading Technologies International, Inc.*, Case CBM2015-00161, slip. op. at 32 (PTAB Jan. 27, 2016) (Paper 29). In view of the identity of the challenge in the instant Petition and in the petition in the TradeStation CBM, we

institute a covered business method patent review in this proceeding on the same ground, for the same reasons. *See id.* at 7–27.

III. GRANT OF MOTION FOR JOINDER

A covered business method patent review may be joined with another covered business method patent review, subject to the provisions of 35 U.S.C. § 325(c), which governs joinder of covered business method patent review proceedings:

(c) JOINDER. — If more than 1 petition for a post-grant review under this chapter is properly filed against the same patent and the Director determined that more than 1 of these petitions warrants the institution of a post-grant review under section 324, the Director may consolidate such reviews into a single post-grant review.

As the moving party, Petitioner bears the burden of proving that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). A motion for joinder should: (1) set forth the reasons joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; and (3) explain what impact (if any) joinder would have on the trial schedule for the existing review. *See* Frequently Asked Question H5, *available at* <http://www.uspto.gov/patentsapplication-process/appealing-patentdecisions/trials/patent-reviewprocessing-system-prps-0>.

The Petition in this proceeding has been accorded a filing date of February 17, 2016 (Paper 4), which is within one month of the date of institution in the TradeStation CBM, which was instituted on January 27, 2016. The Petition, therefore, was filed timely. 37 C.F.R. § 42.222(b).

In its Motion for Joinder, Petitioner contends that the 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.

Mot. 3. The identity of its ground with that in the TradeStation CBM means that Patent Owner will not be prejudiced because the joinder of Petitioner to the TradeStation CBM will not require Patent Owner to perform any additional analysis because it does not raise any issues that are not already before the Board. *Id.* at 6. Patent Owner does not oppose joinder. *Id.*

Petitioner asserts that it is willing to consolidate filings with TradeStation Group, Inc. and TradeStation Securities, Inc. (collectively, "TradeStation"). *Id.* During a conference call held March 7, 2016, however, Petitioner indicated that it would be willing to take a "backseat" role to TradeStation, in which it would not be allowed to file any separate papers without prior authorization from the Board. Ex. 2001, 18–19. TradeStation indicated it agreed to such an arrangement. *Id.* at 19.

Petitioner asserts that joinder will have no impact on the trial schedule of the TradeStation CBM because the TradeStation CBM is still in its early stages. Mot. 7.

On this record, we find that joinder is appropriate and we grant Petitioner's Motion for Joinder.

IV. ORDER

In view of the foregoing, it is
ORDERED that Petitioner's Motion for Joinder is granted;
FURTHER ORDERED that CBM2016-00035 is hereby instituted and consolidated with CBM2015-00161;

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FURTHER ORDERED that the ground on which CBM2015-00161 was instituted is unchanged and no other grounds are included in the joined proceeding;

FURTHER ORDERED that the Scheduling Order entered in CBM2015-00161 (Paper 30) remains unchanged and shall govern the schedule of the joined proceedings;

FURTHER ORDERED that, throughout the joined proceeding, TradeStation will file all papers on behalf of TradeStation, IBG LLC, and Interactive Brokers LLC jointly in the joined proceeding as consolidated filings, and will identify each such paper as “Consolidated;”

FURTHER ORDERED that IBG LLC and Interactive Brokers LLC will not make any separate filings without prior authorization from the Board;

FURTHER ORDERED that, except as otherwise agreed by all parties, TradeStation will conduct any cross-examination and other discovery on behalf of TradeStation, IBG LLC, and Interactive Brokers LLC, and that Patent Owner is not required to provide separate discovery responses or additional deposition time as a result of the joinder;

FURTHER ORDERED that CBM2016-00035 is terminated under 37 C.F.R. § 42.72 and all further filings in the joined proceedings are to be made in CBM2015-00161;

FURTHER ORDERED that a copy of this Decision will be entered into the record of CBM2015-00161; and

FURTHER ORDERED that the case caption in CBM2015-00161 shall be changed to reflect joinder with this proceeding in accordance with the attached example.

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