

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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Patent No. 7,783,556

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**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 1-22 of U.S. Patent No. 7,783,556 (“the ’556 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.*, CBM2015-00172 (“the ’172 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 ’172 CBM review reach settlement with Patent Owner. Given that Patent Owner has already settled with at least one other defendant accused of infringing the ’556 patent, this is a significant concern. Moreover, joinder of IBG’s petition with the ’172 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 ’172 CBM review on February 12, 2016, less than one month ago. IBG’s petition is also narrowly tailored to the identical grounds of unpatentability for which trial was instituted on the ’172 petition and relies on the

same analysis and evidence.<sup>1</sup> Accordingly, joinder of the petition to the '172 CBM review is appropriate. In addition, joinder is appropriate because it will efficiently resolve the validity of the claims of the '556 patent in a single proceeding, without prejudicing the parties to the '172 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**

TT has asserted the '556 patent against numerous companies, including IBG and TradeStation, in litigation consolidated as *TRADING TECHNOLOGIES INTERNATIONAL, INC. v. OPEN E CRY, LLC, OPTIONSPRESS HOLDINGS, INC., ROSENTHAL COLLINS GROUP, LLC, TRADESTATION SECURITIES, INC.*,

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<sup>1</sup> IBG's exhibits are identical to the exhibits submitted with the petition in the '172 CBM review except for the use of a substitute Ex. 1006 that demonstrates that IBG, as opposed to TradeStation, has been sued for infringement of the '556 patent.

*TRADESTATION GROUP, INC., IBG, LLC, TD AMERITRADE, INC., TD AMERITRADE HOLDING CORP., THINKORSWIM GROUP, INC., INTERACTIVE BROKERS, LLC, CQG, INC., CQGT, LLC, FUTUREPATH TRADING LLC, SUNGARD DATA SYSTEMS, INC., SUNGARD INVESTMENT VENTURES LLC, GL TRADE AMERICAS, INC., STELLAR TRADING SYSTEMS, LTD., STELLAR TRADING SYSTEMS, INC., ESPEED MARKETS, LP, BGC CAPITAL MARKETS, LP, ECCOWARE LTD., CUNNINGHAM TRADING SYSTEMS, LLC, CUNNINGHAM COMMODITIES, LLC, TRADEHELM, INC.,* Case No. 10-cv-0715, in the Northern District of Illinois.

On August 12, 2015, TradeStation filed a CBM petition challenging the validity of claims 1-22 of the '556 patent. *See* CBM2015-00172, Paper 2. The Board issued its institution decision in the '172 CBM review on February 12, 2016, instituting trial on all claims. *See* CBM2015-000172, Paper 18.

IBG's petition raises the identical grounds of unpatentability as were raised in the '172 CBM review and instituted by the Board, and is essentially a copy of TradeStation's petition in the '172 CBM review. *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 '172 CBM review on February 12, 2016, less than one month ago. Accordingly, IBG's request for joinder is timely.

### **C. The Relevant Factors Weigh in Favor of Joinder**

Each of the four factors considered by the Board weighs in favor of joinder. As discussed below, granting joinder will not enlarge the scope of the '172 CBM review and will not impact the schedule in that proceeding.

#### **1. Joinder is Appropriate**

Joinder with the '172 CBM review is appropriate because the petition is not only limited to the same § 101 grounds raised in TradeStation's petition, but also relies on the same analysis submitted by TradeStation. Indeed, the petition is virtually

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