

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRADESTATION GROUP, INC. and
TRADESTATION SECURITIES, INC.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM2016-00035 (Patent No. 6,766,304 B2)
CBM2016-00040 (Patent No. 7,783,556 B1)¹

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

PETRAVICK, *Administrative Patent Judge*.

ORDER
Conduct of Proceeding
37 C.F.R. § 42.5

On March 7, 2016, a conference call was held to discuss motions to
join CBM2016-00035 and CBM2016-00040 with CBM2015-00161 and

¹ This Order addresses the same or similar issues in the proceedings listed
above. Therefore, we issue one Order to be filed in each proceeding. The
parties, however, are not authorized to use this style of filing.

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CBM2015-00172, respectively. Paper 3.² Counsel for IBG LLC and Interactive Brokers LLC (collectively, “Petitioner”), counsel for TradeStation Group, Inc. and TradeStation Securities, Inc. (collectively, “TradeStation”)³, counsel for Trading Technologies International, Inc. (“Patent Owner”)⁴, and Judges Medley, Petravick, and Plenzler participated on the call. The purpose of the call was to determine whether Patent Owner opposed the motions for joinder and whether, in light of the motions for joinder, it was willing to waive its right to file a preliminary response. Patent Owner indicated that it does not oppose joinder if the Board decides to institute covered business method reviews in CBM2016-00035 and CBM2016-00040, but that it was unwilling to waive its right to file a preliminary response. The Board indicated that it would consider shortening the time period for filing a preliminary response.

Section 323 of the Statute provides a patent owner with a right to file a preliminary response within a time period set by the Director. 35 U.S.C. § 323; 37 C.F.R § 42.207(a). Section 42.207(b) of our Rules sets the deadline for filing a preliminary response to no later than three months after the date of a notice indicating that the petition has been granted a filing date. 37

² All citations are to CBM2016-00035 unless otherwise noted. During the conference call, Patent Owner requested authorization to file a motion to stay related proceeding CBM2015-00161. We will address that issue in a separate order.

³ TradeStation is the petitioner in both CBM2015-00161 and CBM2015-00172.

⁴ Mandatory notices indicating counsel for Patent Owner have not yet been filed in CBM2016-00035 and CBM2016-00040. Counsel for Patent Owner in CBM2015-00161 and CBM2015-00172, however, indicated that they also represent Patent Owner in CBM2016-00035 and CBM2016-00040.

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C.F.R. § 42.207(b). However, “[t]imes set by rule are default and may be modified by order.” 37 C.F.R. § 42.5(b).

The Board instituted covered business method patent review in CBM2015-00161 and CBM2015-00172 on January 27, 2016 and February 12, 2016, respectively. In CBM2016-00035, the petition challenges the claims of the same patent under the sole ground under 35 U.S.C. § 101, for which we instituted covered business method patent review in CBM2015-00161. Likewise, in CBM2016-00040, the petition challenges the claims of the same patent under the sole ground under 35 U.S.C. § 101, for which we instituted covered business method patent review in CBM2015-00172. The grounds in the respective petitions appear to be substantively identical. *See* Paper 4, 5.

Petitioner indicated during the call that, should covered business method patent review be instituted and its motions for joinder be granted, it would not object to taking a “back seat” role to TradeStation. For example, separate filings from Petitioner in the joined proceedings would require prior authorization from the Board. TradeStation indicated that it did not object to joining the proceedings or to such condition.

During the call, Patent Owner indicated concern about expediting its preliminary responses due to the closeness of the deadlines for filing a patent owner’s response in CBM2015-00161, CBM2015-00172, and other instituted related covered business method patent review proceedings. We recognize that shortening the time period may impose some burden on Patent Owner. However, the advantages, should the proceedings be joined, outweigh any burden that may be imposed upon the Patent Owner. Any burden should be minimal as Patent Owner is familiar with the challenges to

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the claims of the patents on grounds under 35 U.S.C. § 101 and other pertinent issues, having filed preliminary responses in CBM2015-00161, CBM2015-00172, and other related proceedings that involve Petitioner. Under these circumstances, it is appropriate to expedite the preliminary response due date to March 29, 2016. *See* 37 C.F.R. § 42.1(b).

Should the Patent Owner decided to oppose the motions for joinder, Patent Owner must file its opposition no later than March 29, 2016.

Accordingly, it is:

ORDERED that the deadline for filing a patent owner's preliminary response and an opposition to Petitioner's motion for joinder in CBM2016-00035 or CBM2016-00040 is reset to March 29, 2016.

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