

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**TRADING TECHNOLOGIES INTERNATIONAL,
INC.,**
Plaintiff-Appellee

v.

CQG, INC., CQG, LLC, FKA CQGT, LLC,
Defendants-Appellants

2016-1616

Appeal from the United States District Court for the Northern District of Illinois in No. 1:05-cv-04811, Judge Sharon Johnson Coleman.

Decided: January 18, 2017

ERIKA ARNER, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Reston, VA, argued for plaintiff-appellee. Also represented by CORY C. BELL, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Boston, MA; LEIF R. SIGMOND, JR., MICHAEL DAVID GANNON, JENNIFER KURCZ, COLE BRADLEY RICHTER, McDonnell, Boehnen, Hulbert & Berghoff, LLP, Chicago, IL; STEVEN BORSAND, Trading Technologies International, Inc., Chicago, IL.

JOHN C. O'QUINN, Kirkland & Ellis LLP, Washington, DC, argued for defendants-appellants. Also represented by KENNETH R. ADAMO, EUGENE GORYUNOV, MEREDITH ZINANNI, Kirkland & Ellis LLP, Chicago, IL; JOHN A. COTIGUALA, ADAM GLENN KELLY, WILLIAM JOSHUA VOLLER III, Loeb & Loeb LLP, Chicago, IL.

ANDREW BALUCH, Strain PLLC, Washington, DC, for amici curiae Gregory Dolin, Richard A. Epstein, Christopher Frerking, Irina D. Manta, Adam Mossoff, Kristen J. Osenga, Michael Risch, Mark F. Schultz, Ted M. Sichelman, David O. Taylor. Also represented by STEPHEN G. NAGY, Strain PLLC, Washington, DC.

Before NEWMAN, O'MALLEY, and WALLACH, *Circuit Judges*.

NEWMAN, *Circuit Judge*.

The CQG companies appeal the decision of the United States District Court for the Northern District of Illinois, holding that the asserted claims of U.S. Patents No. 6,772,132 (“the ’132 patent”) and No. 6,766,304 (“the ’304 patent”) recite patent-eligible subject matter in terms of 35 U.S.C. § 101. This appeal relates only to eligibility under Section 101. We affirm the district court’s decision.

DISCUSSION

Patent owner Trading Technologies International, Inc. (“TTI”) charged CQG with infringement of the ’132 patent and the ’304 patent. CQG moved for judgment as a matter of law, asserting that the claims of these patents are directed to patent-ineligible subject matter. The district court denied CQG’s motion, holding that the claims are not directed to an abstract idea and also that they recite an inventive concept, such that the subject matter is patent-eligible under § 101. *Trading Techs.*

Int'l, Inc. v. CQG, Inc., No. 05-cv-4811, 2015 WL 774655 (N.D. Ill. Feb. 24, 2015) (“Dist. Ct. op.”). CQG appeals this holding.

The '132 and '304 patents describe and claim a method and system for the electronic trading of stocks, bonds, futures, options and similar products. The patents explain problems that arise when a trader attempts to enter an order at a particular price, but misses the price because the market moved before the order was entered and executed. It also sometimes occurred that trades were executed at different prices than intended, due to rapid market movement. This is the problem to which these patents are directed.

The patents are for “[a] method and system for reducing the time it takes for a trader to place a trade when electronically trading on an exchange, thus increasing the likelihood that the trader will have orders filled at desirable prices and quantities.” '132 patent, Abstract; '304 patent, Abstract. The patents describe a trading system in which a graphical user interface “display[s] the market depth of a commodity traded in a market,^[1] including a dynamic display for a plurality of bids and for a plurality of asks in the market for the commodity and a static display of prices corresponding to the plurality of bids and asks.” '132 patent col. 3, ll. 11–16; '304 patent col. 3, ll. 15–20. In the patented system bid and asked prices are displayed dynamically along the static display, and the system pairs orders with the static display of prices and prevents order entry at a changed price.

Both the '132 and the '304 patents have the same specification, and the district court treated claim 1 in each

¹ “A commodity’s market depth is the current bid and ask prices and quantities in the market.” '132 patent col. 3, ll. 69–61; '304 patent col. 3, ll. 63–65.

patent as representative, as agreed by the parties. We illustrate the analysis of § 101 with respect to method Claim 1 of the '304 patent:

1. A method for displaying market information relating to and facilitating trading of a commodity being traded in an electronic exchange having an inside market with a highest bid price and a lowest ask price on a graphical user interface, the method comprising;

dynamically displaying a first indicator in one of a plurality of locations in a bid display region, each location in the bid display region corresponding to a price level along a common static price axis, the first indicator representing quantity associated with at least one order to buy the commodity at the highest bid price currently available in the market;

dynamically displaying a second indicator in one of a plurality of locations in an ask display region, each location in the ask display region corresponding to a price level along the common static price axis, the second indicator representing quantity associated with at least one order to sell the commodity at the lowest ask price currently available in the market;

displaying the bid and ask display regions in relation to fixed price levels positioned along the common static price axis such that when the inside market changes, the price levels along the common static price axis do not move and at least one of the first and second indicators moves in the bid or ask display regions relative to the common static price axis;

displaying an order entry region comprising a plurality of locations for receiving commands to send

trade orders, each location corresponding to a price level along the common static price axis; and in response to a selection of a particular location of the order entry region by a single action of a user input device, setting a plurality of parameters for a trade order relating to the commodity and sending the trade order to the electronic exchange.

'304 patent col. 12, l. 36–col. 13, l. 3. The '132 claims are directed to similar subject matter covering a method and system.

The Court's opinion in *Alice Corporation Pty. Ltd. v. CLS Bank International*, 134 S.Ct. 2347 (2014), provides the framework for patent-eligibility of business methods. The Court explained that a patent's

claim falls outside § 101 where (1) it is “directed to” a patent-ineligible concept, *i.e.*, a law of nature, natural phenomenon, or abstract idea, and (2), if so, the particular elements of the claim, considered “both individually and ‘as an ordered combination,’” do not add enough to “‘transform the nature of the claim’ into a patent-eligible application.”

Id. at 2355 (citations omitted). Patent eligibility under § 101 is an issue of law, and receives *de novo* determination on appeal.²

² The parties dispute whether the district court erred in requiring proof of ineligibility under § 101 by clear and convincing evidence. Because our review is *de novo*, and because under either standard the legal requirements for patentability are satisfied, we need not address this dispute.

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