UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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IBG LLC,
INTERACTIVE BROKERS LLC, TRADESTATION GROUP, INC., and
TRADESTATION SECURITIES, INC.,
Petitioners,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

_____

Case CBM2016-00051
Patent No. 7,904,374

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PETITIONER'S REPLY TO
PATENT OWNER'S ADDITIONAL SUBMISSIONS

Patent Owner's (TT's) Additional Submissions (Paper 29) ("Subs.")

demonstrate why *CQG* ***should not*** extend beyond the two patents and the minimal record in that appeal. As TT acknowledges, *CQG* is nonprecedential and "does not add significantly to the body of law." (Subs., 5.) But other than quoting the opinion and making vague statements about GUIs—such as its magical incantation of "structure, make-up, and functionality"—TT cannot articulate a meaningful reason to apply *CQG* to the '374 claims. Thus, the Board should reject TT's arguments.

First, TT fails to articulate a valid reason to apply *CQG* to the '374. Although TT offers a conclusory assertion that "the level of specificity between the '374 patent and '304 patent is similar," (at 3), it provides no side-by-side comparison and instead just enumerates generic UI elements that appear in both patents. TT fails to mention that, unlike the '304, the '374 claims lack a "static" limitation—the key limitation the CAFC relied in finding the former patentable.[1]

TT's position here is essentially that claims directed to the "structure, makeup, and functionality" of a GUI are patent-eligible. (Subs., 1–2.) But the Board rejected that in finding unpatentable the related '411 patent. In fact, because

[1] To be clear, TT has never argued in related CBMR proceedings that a "static" claim element renders its claims patentable, presumably because that admission would have doomed patents such as the '374, which lack such a limitation.

the '374 claims lack a "static" limitation, they are much closer to the unpatentable '411 claims. (*See* CBM 2015-00181, Paper 138 at 18) ("The [*CQG*] decision relied upon a feature not required by claim 1 of the '411 patent— a *static* price axis").

Moreover, as Petitioners argued in Reply, the claimed structure and make-up is nothing more than displaying market data in a predictable manner using well-known UI techniques such as "point-and-click." (Reply, 22.) Arranging data on a screen combined with conventional GUI operation does not confer eligibility.

TT further argues that the "improvement for the '374 patent is speed, visualization and usability." (Subs., 4.) This argument incorrectly suggests that the *CQG* court found the claim elements here necessarily improve over prior user interfaces. The court found no such thing—that decision was based on the record in that case, which lacked any evidence of prior user interfaces. By contrary, here there is ample evidence of prior user interfaces sufficient to show that the '374 claims don't improve on anything. (*See, e.g.,* Petition, 13–15.) And, again, to the extent the CAFC did find a claimed feature to represent an improvement—on the threadbare record presented to it—it was the "static" limitation not present here. *CQG* at *3 ("The court identified the ***static price index*** as an inventive concept that allows traders to more efficiently and accurately place trades using this electronic trading system.") (emphasis added).

Second, TT's Submissions fail to address the compelling evidence in this

record and Petitioners' arguments in the Reply (Paper 23)—specifically, evidence demonstrating that the problem the patent claims to solve and the purported solution were well-known in the pre-computer trading world (*id.* at 20–21).

Finally, the rapidity of the CAFC's decision in *CQG* and the fact that it is nonprecedential cut ***against*** extending *CQG*'s holding to the '374. TT's attempt to generalize *CQG* and apply it to other GUIs is belied by its concession that *CQG* "does not add significantly to the body of law." (Subs., 5.) *CQG* should not be applied beyond its specific facts. And, *CQG* is currently being considered for *en banc* hearing. One reason *CQG* may have been designated non-precedential was the Court was cognizant of the very limited record in that case, which did not lend itself to drafting an opinion that added significantly to the 101 jurisprudence.

Nevertheless, *CQG* does provide useful guidance that the "threshold level of eligibility is often usefully explored by way of the substantive statutory criteria of patentability, for an invention that is new, useful and unobvious is more readily distinguished from the generalized knowledge that characterizes ineligible subject matter." *CQG* at *8. This is in accord with cases like *Ultramercial* and *Internet Patents.* The substantial prior art record herein—not present in *CQG*—supports a finding that the '374 claims are unpatentable.

In short, with different parties, a different patent, and a different record, the Board can and should reach a different result than *CQG* for the '374 Patent.

Dated: March 24, 2017

Respectfully submitted,

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