

Paper No. ____
Filed: July 5, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRADESTATION GROUP, INC.; TRADESTATION SECURITIES, INC.;
TRADESTATION TECHNOLOGIES, INC.; IBFX, INC.; IBG LLC; AND
INTERACTIVE BROKERS LLC;

Petitioners

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

Case CBM2016-00051
U.S. Patent 7,904,374

PATENT OWNER'S PRELIMINARY RESPONSE

Contents

I.	Introduction.....	1
II.	The Claimed Invention is a GUI Improvement.....	3
	A. Conventional Order Entry Screens around the Time of the Invention.....	3
	B. Technical Problems with Conventional Order Entry Screens	8
	C. Technical Solution to the Problems Caused By the Pre-Existing Technology.....	11
III.	Petitioners’ Subject Matter Eligibility Grounds are Fatally Flawed.....	18
	A. <i>Alice</i> Prong I: The Claims are not directed to “trading based on displayed market information and user input”	19
	1. Petitioners Overgeneralize the Claim Elements	19
	2. The Claimed Invention is Eligible under <i>Alice</i> Prong I Because It Improves the Functioning of the Computer.....	22
	3. The Claimed Invention is Eligible under <i>Alice</i> Prong I Because the Claimed Invention is Undoubtedly Not Abstract	24
	4. The Claimed Invention is Deeply “Rooted in Technology” Because GUIs are Technology and the Claimed Invention Improves the Pre-Existing GUIs.....	25
	5. The Claimed Invention is Eligible under <i>Alice</i> Prong I Because It Is Are Not Directed to a Fundamental Economic or Longstanding Commercial Practice, A Business Method, Or a Generic GUI.....	27
	B. <i>Alice</i> Prong II: Being “known” and “routine and conventional” are different concepts, and § 101 is a different test than anticipation or obviousness	30
	1. TT’s Claims Are Even More Technological Than Those in <i>DDR</i> And Would Exceed a Technological Arts Test.....	33

2.	The Claimed Invention Is New Technology.....	35
IV.	The Petition Fails to Establish That the Claims Cover Signals.....	36
V.	The '374 Patent Is Not a CBM Patent	38
A.	The '374 Patent Does Not Claim “Data Processing” or “Other Operation” (e.g., a Business Method)	40
1.	The Petition Is Completely Silent as to Whether the '374 Patent Is Directed to “Data Processing” or “Other Operations”	40
2.	The '374 Patent Does Not Claim “Data Processing”	42
3.	The '374 Patent Does Not Claim “Other Operations”	47
4.	The '374 Patent Falls Under the Technological Exception.....	48
B.	Legislative History Confirms that the Claimed Invention is Not a CBM	52
VI.	Conclusion	55

I. INTRODUCTION

Trading Technologies International, Inc. (“TT”)—an operating company headquartered in Chicago—owes its initial (and most substantial) capital investment to its patent portfolio. TradeStation and Interactive Brokers, both market place competitors of TT, have filed fifteen CBM petitions against TT’s patent portfolio. Of those fifteen petitions, eight have been instituted and seven are pending institution decision.

In preparing this paper, TT reviewed the prior institution decisions and has attempted to specifically respond on the merits to preliminary viewpoints and conclusions set forth in the PTAB’s institution decisions and rehearing denials to the extent relevant here—even if those arguments were not addressed by the Petitioners.

While some of the high-level arguments (e.g., a specific graphical user interface (“GUI”) tool is not a CBM and is eligible under §101) have been presented previously, this paper provides a more detailed response to the Board’s previous conclusions and reasoning. In fact, in some instances, after reviewing the previous institution decisions and TT’s prior arguments, TT recognizes that its previous arguments may not have addressed the preliminary conclusions which were based on giving substantial benefit of the doubt to Petitioners’ allegations.

This paper attempts to crystalize TT's arguments and positions and shed new light on these arguments. This paper also addresses new developments in the case law.

With respect to Petitioners' CBM and § 101 allegations,¹ TT addresses Petitioners' mistaken focus on the claimed invention's ability to be performed on a general purpose or conventional computer. The Federal Circuit, in *Enfish, LLC v. Microsoft Corp.*, recently made clear that this is the wrong focus for determining what claims are "directed to." 2016 WL 2756255 (Fed. Cir. 2016). Instead, the Federal Circuit instructs that the proper focus is on what the specification purports the invention or improvement to be. The Federal Circuit also made clear that "an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces." *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 2016 WL 3514158, at *6 (Fed. Cir. 2016).

¹ Petitioners provide several proposed claim constructions, none of which are pertinent to the allegations in the Petition. Accordingly, while TT does not necessarily agree with the proposed constructions, it does not address claim construction in this paper.

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