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

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Case CBM2016-00087
Patent 7,412,416 B2

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PETITIONERS' REQUEST FOR REHEARING

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I.   Statement of Relief Requested

Petitioners respectfully request rehearing of the Institution Decision (Paper 11) because the Board misapprehended or overlooked well-settled principles of obviousness law in finding that the Petition (Paper 3) failed to demonstrate that claims 1-24 of U.S. Patent No. 7,412,416 (Exhibit 1001; "'416 patent") are more likely than not obvious over TSE (Exhibits 1015, 1016), Bay (Exhibit 1042), and Subler (Exhibit 1020).

II.   Standard of Review

A request for rehearing "must specifically identify all matters the party believes the Board misapprehended or overlooked." *See* 37 C.F.R. § 42.71(d). Section 42.71(d) further provides that the request must identify where each matter was previously addressed.

III.   Arguments

The Board misapprehended or overlooked two well-settled principles of obviousness law in the Institution Decision: (1) that obviousness cannot be defeated by attacking references individually where the invalidity grounds are based on combinations of references; and (2) that a determination of obviousness based on teachings from multiple references does not require an actual, physical substitution of elements or that the inventions in the references be physically combinable.

A. The Board misapprehended or overlooked the principle that obviousness cannot be defeated by attacking references individually where the invalidity grounds are based on combinations of references.

Obviousness cannot be defeated by attacking references individually where the invalidity grounds are based on combinations of references. *See In re Keller,* 642 F.2d 413 (C.C.P.A. 1981); *In re Merck & Co., Inc.,* 800 F.2d 1091 (Fed. Cir. 1986); M.P.E.P. § 2145. The Institution Decision misapprehended or overlooked this principle in rejecting the Petition's proposed combination of TSE and Bay to teach or suggest the "displaying a chart . . ." limitation of independent claims 1 and 14. (Institution Decision, 20-23.)

The Petition proposes combing TSE and Bay to teach or suggest "displaying a chart on a graphical user interface comprising a vertical axis of price values and a horizontal axis of time." (Petition, 48-53.) It relies on **TSE** to teach a chart on a graphical user interface, explaining that "TSE discloses a GUI that includes a Board Screen" (*id.*, 42) and that "TSE's Board Screen is a chart that displays current bid and offer prices and quantities in the market" (*id.*, 48). The Petition further explains that TSE's chart comprises a vertical axis of price values, but TSE fails to explicitly teach a horizontal axis of time. (*Id.*)

The Board agreed that TSE teaches displaying a chart on a graphical user interface. It found that TSE's "trading terminal displays a GUI for depicting market information on a Board/Quotation Screen." (Institution Decision, 15.) It

also found that "[t]he Board/Quotation Screen includes a central order price at column 11—a price axis." (*Id.*, 16.) Indeed, the Board recognized that "**Petitioner relies on TSE for its description of displaying a chart on a graphical user interface** comprising a vertical axis of price values." (*Id.*, 20 (emphasis added).)

Yet the Board rejected the proposed combination of TSE and Bay because "Petitioner has not demonstrated . . . that Bay describes or teaches displaying a chart on a *graphical user interface*." (*Id.*, 20-21.) In so doing, the Board improperly rejected the Petition's proposed combination by focusing solely on Bay even though the Petition relies on the combination of TSE and Bay to teach or suggest the "displaying a chart . . ." limitation of claims 1 and 14. The Board also overlooked the fact that TSE teaches the very feature that it found wanting in Bay.[1]

In sum, it is undisputed that TSE teaches displaying a chart on a graphical user interface and that the Petition relies on this teaching. It is also undisputed that Bay teaches a horizontal axis of time. (*Id.*, 18-19.) It is also undisputed that the Petition proposes combining TSE and Bay to teach the "displaying a chart . . ." limitation of claims 1 and 14. Petitioners are not required to demonstrate that Bay

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[1] The Board also overlooked the fact that Subler also teaches a graphical user interface. (Institution Decision, 19.) Thus, at least two of the three references in the proposed combination teach a graphical user interface (i.e., TSE and Subler), and at least two of the three references teach displaying a chart (i.e., TSE and Bay).

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