

NOTE: This disposition is nonprecedential.

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

IBG LLC, INTERACTIVE BROKERS, LLC,
Appellants

v.

**TRADING TECHNOLOGIES INTERNATIONAL,
INC.,**
Cross-Appellant

UNITED STATES,
Intervenor

2017-1732, 2017-1766, 2017-1769

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. CBM2015-
00161, CBM2016-00035.

IBG LLC, INTERACTIVE BROKERS LLC,
Appellants

v.

**TRADING TECHNOLOGIES INTERNATIONAL,
INC.,**
Cross-Appellant

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IBG LLC v. TRADING TECHNOLOGIES INT'L

UNITED STATES,
Intervenor

2017-2052, 2017-2053

Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. CBM2015-00182.

**TRADING TECHNOLOGIES INTERNATIONAL,
INC.,**
Appellant

v.

IBG LLC, INTERACTIVE BROKERS LLC,
Appellees

UNITED STATES,
Intervenor

2017-2054

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. CBM2015-00181.

**TRADING TECHNOLOGIES INTERNATIONAL,
INC.,**

IBG LLC v. TRADING TECHNOLOGIES INT'L

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Appellant

v.

IBG LLC, INTERACTIVE BROKERS LLC,
Appellees

UNITED STATES,
Intervenor

2017-2565

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. CBM2016-00031.

Decided: February 13, 2019

BYRON LEROY PICKARD, Sterne Kessler Goldstein & Fox, PLLC, Washington, DC, argued for appellants in 2017-1732, 2017-2052 and for appellees in 2017-2054, 2017-2565. Also represented by RICHARD M. BEMBEN, ROBERT EVAN SOKOHL, JON WRIGHT; MICHAEL T. ROSATO, Wilson, Sonsini, Goodrich & Rosati, PC, Seattle, WA.

MICHAEL DAVID GANNON, Baker & Hostetler LLP, Chicago, IL, argued for cross-appellant in 2017-1732, 2017-2052 and appellant in 2017-2054, 2017-2565. Also represented by LEIF R. SIGMOND, JR., JENNIFER KURCZ; ALAINA J. LAKAWICZ, Philadelphia, PA; COLE BRADLEY RICHTER, McDonnell, Boehnen, Hulbert & Berghoff, LLP, Chicago, IL; STEVEN BORSAND, JAY QUENTIN KNOBLOCH, Trading Technologies International, Inc., Chicago, IL.

KATHERINE TWOMEY ALLEN, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, argued for intervenor. Also represented by MARK R. FREEMAN, SCOTT R. MCINTOSH, JOSEPH H. HUNT; THOMAS W. KRAUSE, JOSEPH MATAL, FARHEENA YASMEEN RASHEED, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA.

Before LOURIE, MOORE, and REYNA, *Circuit Judges*.

PER CURIAM.

Trading Technologies International, Inc., (“TT”) is the owner of U.S. Patent Nos. 6,766,304, 6,772,132, 7,676,411, and 7,813,996. All four patents share a specification and describe a graphical user interface (“GUI”) for a trading system that “display[s] the market depth of a commodity traded in a market, 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 at 3:11–16.¹ IBG LLC and Interactive Brokers LLC (collectively, “Petitioners”) petitioned for covered business method (“CBM”) review of each patent.²

The Board instituted CBM review of each patent and issued separate final written decisions. In the proceedings involving the ’304 and ’132 patents, the Board upheld the patent eligibility of the claims based on our reasoning in *Trading Technologies International, Inc. v. CQG, Inc.*, 675

¹ Because all four patents share a specification, we cite only to the ’132 patent throughout.

² CBM2015-00161 involved the ’304 patent; CBM2015-00182 involved the ’132 patent; CBM2015-00181 involved the ’411 patent; and CBM2016-00031 involved the ’996 patent.

F. App'x 1001 (Fed. Cir. 2017). In the proceedings involving the '411 and '996 patents, the Board held that the claims were ineligible. In the proceedings involving the '132 and '411 patents, the Board also held that all claims except claims 29, 39, and 49 of the '132 patent would have been obvious.

TT appeals, among other issues, the Board's determinations regarding whether the patents are directed to a technological invention. Petitioners appeal the Board's determinations that the claims of the '304 and '132 patents are patent eligible and that claims 29, 39, and 49 of the '132 patent would not have been obvious. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(A). We vacate the decision of the Board in each case because the patents at issue are for technological inventions and thus were not properly subject to CBM review.

DISCUSSION

The proceedings on appeal stem from the Transitional Program for Covered Business Method Patents ("CBM review"), which expires next year. Leahy-Smith Am. Invents Act, Pub. L. 112-29, § 18(a) ("AIA"). Pursuant to the statute, the Board may only institute CBM review for a patent that is a CBM patent. *Id.* § 18(a)(1)(E). A CBM patent is "a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, *except that the term does not include patents for technological inventions.*" *Id.* § 18(d)(1) (emphasis added). Neither party disputes here that the patents at issue meet the first part of the test. The only issue is whether the patents are for technological inventions. Pursuant to its authority under § 18(d)(2), the Patent and Trademark Office ("PTO") promulgated 37 C.F.R. § 42.301(b), which requires the Board to consider the following on a case-by-case basis in determining whether a

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