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CBM2016-00046 , Paper No. 43

CBM2016-00047 , Paper No. 42

CBM2016-00048 , Paper No. 42

July 20, 2017

571-272-7822

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CQG, INC., CQG, LLC (f/k/a CQGT, LLC),
INTERACTIVE BROKERS LLC, TRADESTATION GROUP,
INC., TRADESTATION SECURITIES, INC., and
TRADESTATION TECHNOLOGIES, INC.,
Petitioner,

v.

CHART TRADING DEVELOPMENT, LLC,
Patent Owner.

Case CBM2016-00046 (Patent No. 7,890,416 B2)

Case CBM2016-00047 (Patent No. 8,041,626 B2)

Case CBM2016-00048 (Patent No. 8,060,435 B2)

Held: June 8, 2017

BEFORE: Jameson Lee, Kevin Turner, and Kevin Cherry,
Administrative Patent Judges.

The above-entitled matter came on for hearing on Thursday, June 8, 2017, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Case CBM2016-00046 (Patent No. 7,890,416 B2)

Case CBM2016-00047 (Patent No. 8,041,626 B2)

Case CBM2016-00048 (Patent No. 8,060,435 B2)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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--and--

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1 P R O C E E D I N G S

2 - - - - -

3 JUDGE CHERRY: I'm Judge Cherry. This is Judge
4 Lee. Judge Turner is remote from our Palo Alto office. This is
5 the hearing in CBM2016-46, 47 and 48. CQG versus Chart
6 Trading Development.

7 Will the parties, please, identify themselves.

8 MR. LIEB: Good afternoon, Benjamin Lieb, lead
9 counsel for the Petitioners. With me is Matthew Argenti from
10 Wilson Sonsini, backup counsel.

11 MR. MCANULTY: Thank you, Your Honor. Tim
12 McAnulty for Patent Owner. With me are Kassandra Officer and
13 James Barney.

14 JUDGE CHERRY: Welcome. We'll begin the hearing
15 with the Petitioner, as they have the burden of proof. Mr. Lieb,
16 whenever you're ready.

17 MR. LIEB: Thank you. Your Honor, I have copies of
18 my demonstratives if you'd like copies.

19 JUDGE CHERRY: Yes, please.

20 MR. LIEB: May I approach?

21 JUDGE CHERRY: Yes.

22 MR. LIEB: Okay. Thank you, Your Honors. Again,
23 Benjamin Lieb for Petitioners. I would like to reserve 45 minutes
24 for any rebuttal. I understand in the proceeding we have a
25 Motion to Exclude and we also have a Contingent Motion to

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1 Amend. I'm going to respond on the Contingent Motion to
2 Amend on my rebuttal time. With respect to the Motion to
3 Exclude, I'm just going to submit that on the papers. I don't have
4 any statements to make on that, unless there are questions.

5 JUDGE CHERRY: Great. So you'll have 15 minutes
6 as your opening and then 45 minutes as your rebuttal?

7 MR. LIEB: Correct.

8 JUDGE CHERRY: Great.

9 MR. LIEB: So these CBM proceedings were instituted
10 on three related patents that are -- share a single specification on
11 the grounds of patent ineligibility. It's our position that
12 Petitioners have proven -- met their burden of proof that each of
13 the claims of the three patents are patent ineligible under the
14 two-part test in Alice.

15 The three specifications do not describe a solution to a
16 technical problem. What they describe is a problem that was a
17 financial or trader-related problem and did not arise in the realm
18 of computer functionality or graphical interface functionality.
19 The specification does not describe any specific computer
20 program or processing beyond what was already known when the
21 applications were filed. It merely describes using well-known
22 graphical user interface elements in known ways, conventional
23 ways, to perform an abstract idea.

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1 Essentially the patents are directed to an improvement,
2 not to computers as tools, but just uses the computer as a tool. So
3 the --

4 JUDGE CHERRY: Mr. Lieb, I wondered if you could
5 clarify in the record, the patent describes that there were, you
6 know, mouse-based trading and command line trading, but it
7 doesn't really tell us what was involved with that versus the new
8 system that they have. Do you have some -- where in the record
9 is there evidence about what that mouse-based trading would
10 have looked like?

11 MR. LIEB: Oh, I see. Yeah, the patent specification
12 actually describes that both mouse-based and keyboard-based
13 systems exist and that there was a -- that the solution that the
14 patent is addressing is to address a user preference for just using a
15 mouse, although I'll talk about this later, that doesn't end up being
16 in the claims. But both the Patterson and Belden references that
17 were submitted in the Petition show both the keyboard and
18 mouse-based systems in the prior art. So I think that those would
19 be two places to look for examples of what the state of the art was
20 at the time that the applications were filed.

21 JUDGE CHERRY: Okay. Thank you.

22 MR. LIEB: So the first step of Alice asks us to
23 determine whether there's an abstract idea and whether the claim
24 is directed to the abstract idea or not. I'm sure the panel is well
25 aware of that test.

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