Paper No. ____
Filed: March 17, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners
v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.

Patent Owner

Case CBM2016-00051

U.S. Patent 7,904,374

PATENT OWNER'S ADDITIONAL SUBMISSIONS

Pursuant to the Board's March 10, 2017 Order (Paper 28), Patent Owner respectfully submits this additional submission addressing *Trading Technologies International, Inc. v. CQG, Inc. et al*. ("*CQG*"), No. 2016-1616, 2017 WL 192716 (Fed. Cir. Jan. 18, 2017).

U.S. Patent 7,904,374 ("the '374 patent") is a continuation of U.S. Patent No. 6,772,132 ("the '132 patent") and shares the same specification as U.S. Patent No. 6,677,304 ("the '304 patent").

I. CQG Sets Forth The Proper § 101 Analysis for the '374 Patent

In *TT v. CQG*, the Federal Circuit considered and fully analyzed GUI claims set forth in U.S. Patent No. 6,772,132 ("the '132 patent") and U.S. Patent No. 6,677,304 ("the '304 patent"). *CQG*, 2017 WL 192716 at *4. The Federal Circuit found eligible, under both steps of *Alice*, patents that claimed "a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface's structure that is addressed to and resolves a specifically identified problem in the prior state of the art." *Id.* at *3.

A. The '374 Patent is Not "Directed To" an Abstract Idea

In *CQG*, the Federal Circuit focused the analysis on the claim elements that provided structure, make-up, and functionality and the improvement of these claim elements over the prior systems. *Id*. As such, it would be improper for the Board to

ignore the structure, makeup, and functionality recited in the '374 patent and/or the problem that the claimed invention solves under the first step of the *Alice* test.

1. Structure, Makeup, and Functionality

Like the patents in *CQG*, the '374 claims are directed to the structure, makeup, and functionality of a GUI tool and claim "a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface's structure." *CQG*, 2017 WL 192716 at *3. The claims of the '374 patent are "directed to" a particular structure, makeup, and functionality of a GUI. POR at 23-41. A side-by-side comparison of the claimed elements of claim 1 from the '304 patent and claim 1 of the '374 patent illustrate the similarities. The '374 patents recite a specific implementation for constructing a GUI tool. That is, the method of the '374 patent explains the mechanism for constructing or associating the various structure elements with other structural elements and the functionality associated with these various elements. For example, like the '304 patent, the '374 discusses the GUI tool in terms of displaying a plurality of graphical locations aligned along an axis, where each graphical location is configured to be selected by a single action of a user input device to send a trade order to the electronic exchange, where a price of the trade order is based on the selected graphical location. The '374 patent also recites setting a price and sending the trade order to the electronic exchange in response to receiving by the computing device

commands based on user actions consisting of: (1) placing a cursor associated with the user input device over a desired graphical location of the plurality of graphical locations and (2) selecting the desired graphical location through a single action of the user input device. The level of specificity between the '374 patent and '304 patent is similar.

At step one, the Federal Circuit is careful to articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. The above mentioned comparison shows that the level of specificity in '374 patent is nearly identical to the level of specificity in the '304 patent. Accordingly, the '374 patent includes the requisite level of specificity and the claimed elements should not be overgeneralized or ignored. The Federal Circuit has found that similar claim elements are meaningful and should be considered.

2. Solves a Problem with Prior Systems

In *CQG*, the Federal Circuit relied on the fact that the '132 and '304 patents solved an order entry problem with prior GUI systems. *Id.* at *2-4. Further, the Federal Circuit found that "the claimed subject matter is directed to a specific improvement to the way computers operate, for the claimed graphical user interface method imparts a specific functionality to a trading system directed to a specific implementation of a solution to a problem in the software arts." *Id.* at *4 (internal quotations omitted). The improvements for the '374 patent in speed,

visualization, and usability (Ex. 1001, 1:59-62, 2:39-65, 6:6-64, 7:24-26, 8:26-51, 10:9-32) are akin to the '132 and '304 patents' improvements in speed, accuracy, and usability, and are likewise technological in nature. That is, in both instances, the patents claim improved GUIs that provide for better user interaction—something the Federal Circuit has found technological in character.

3. Inventive Concept

In *CQG*, the combined claim elements provided an inventive concept: "specific structure and concordant functionality of the [GUI]," e.g., displaying bid and offer indicators relative to a price axis, setting a default quantity, and locations along the price axis, selected to set a desired price for an order. *See id.* at *3. Here, the claimed combination is unconventional and not routine. POR at 31-35. In *CQG*, the Federal Circuit found that the recitation of a "static price axis" was enough to provide an inventive concept. *Id.* The '374 patent easily surpasses this threshold with the recitation of a plurality of other claimed elements. POR at 10-22.

II. Board's Prior Analysis

In CBM2015-00179, the Board distinguished *CQG* on the basis that the "claims and specification before us are much broader" than the '132/'304 patents, and concluded that that with respect to *CQG*, "the [Federal Circuit] implied that even those narrower claims are on the line between patent eligibility and

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