

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.,  
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,  
Patent Owner.

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Case CBM2016-00054  
Patent 7,693,768 B2

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Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
Covered Business Method Patent Review  
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

## INTRODUCTION

### *A. Background*

IBG LLC, Interactive Brokers, LLC, TradeStation Group, Inc., and TradeStation Securities, Inc. (collectively, “Petitioner”), filed a Petition requesting covered business method (“CBM”) patent review of claims 1–23 (the “challenged claims”) of U.S. Patent No. 7,693,768 B2 (Ex. 1001, “the ’768 patent”). Paper 4 (“Pet.”). Petitioner challenges the patentability of claims (“the challenged claims”) of the ’768 patent under 35 U.S.C. § 101 and § 103.

On October 18, 2016, we instituted a CBM patent review on the following grounds:

References	Basis	Claims Challenged
N/A	§ 101	1–23
TSE <sup>1</sup> and Belden <sup>2</sup>	§ 103	1–13, 15, 16, 18, and 21–23
TSE, Belden, and Cooper <sup>3</sup>	§ 103	14, 17, 19, and 20

Paper 10 (“Institution Decision” or “Inst. Dec.”).

Thereafter, Trading Technologies International, Inc. (“Patent Owner”) filed a Patent Owner’s Response on January 1, 2017 (Paper 21, “PO. Resp.”) and Petitioner filed a Reply (Paper 40, “Pet. Reply”) to Patent Owner’s Response.

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<sup>1</sup> Tokyo Stock Exchange Operation System Division, Futures/Option Purchasing System Trading Terminal Operation Guide (1998) (Ex. 1016). Citations to this reference refer to its English translation (Ex. 1017).

<sup>2</sup> PCT Pub. No. WO 90/11571, pub. Oct. 4, 1990 (Ex. 1012, “Belden”).

<sup>3</sup> Alan Cooper, *About Face: The Essentials of User Interface Design* (1995) (Ex. 1022).

Patent Owner filed a Motion for Observations (Paper 52, “PO Mot. for Observations”) and Petitioner filed a Response (Paper 54) to Patent Owner’s Motion for Observations.

Petitioner filed a Motion to Exclude (Paper 44, “Pet. MTE”) and Patent Owner filed an Opposition (Paper 52) to Patent Owner’s Motion. Petitioner filed a Reply (Paper 53) in support of its Motion.

Patent Owner filed a Motion to Exclude (Paper 48, “PO MTE”) and Petitioner filed an Opposition (Paper 50, “PO MTE Opp.”) to Patent Owner’s Motion. Patent Owner filed a Reply (Paper 54, “PO MTE Reply”) in support of its Motion.

An oral hearing was held on June 23, 2017. Paper 58 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–23 of the ’768 patent are unpatentable.

### *B. Related Proceedings*

The parties indicate that the ’768 patent is the subject of numerous related U.S. district court proceedings. Pet. 2; Paper 6, 1–5.

The application that issued as the ’768 patent ultimately claims, under 35 U.S.C. § 320, the benefit of application 09/590,692, that issued as the ’132 patent. The ’132 patent was the subject of *Technologies International, Inc., v. CQG, Inc.*, 675 Fed. Appx. 1001 (Fed. Cir. 2017) (“*CQG*”). The Federal Circuit determined that the claims of the ’132 patent are patent eligible under 35 U.S.C. § 101.

U.S. Patent No. 6,772,132 (“the ’132 patent”) was also the subject of petitions for CBM patent review in *TD Ameritrade Holding Corp. v. Trading Technologies International, Inc.*, CBM2014-00135 (PTAB), *CQG, Inc. v. Trading Technologies International, Inc.*, CBM2015-00058 (PTAB), and *IBG LLC v. Trading Technologies International, Inc.*, CBM2015-00182 (PTAB). Trial was instituted, but later terminated due to settlement, for CBM2014-00135. Institution was denied for CBM2015-00058. Institution was granted for CBM2015-00182, and a final written decision issued on February 28, 2017.

Numerous other patents are related to the ’768 patent and the related patents are or were the subject of numerous petitions for CBM patent review and reexamination proceedings. Pet. 2; Paper 6, 5–7; Paper 8, 1.

### *C. The ’768 Patent*

The ’768 patent is titled “Click Based Trading with Intuitive Grid Display of Market Depth” and issued on April 6, 2010. Ex. 1001, (45), (54). The invention of the ’768 patent “is directed to the electronic trading of commodities.” *Id.* at 1:16–17. The ’768 patent discloses a graphical user interface (“GUI”), named the Mercury display, and a method of using the Mercury display to displaying market information and placing trade orders for a commodity on an electronic exchange. *Id.* at 1:17–22, 3:5.

Before turning to a discussion of the Mercury display, a discussion of a conventional method of trading using a GUI is helpful. Figure 2 of the ’768 patent is reproduced below.

**FIG. 2**

		201	202	203	204	205			
	Contract	Depth	BidQty	BidPrc	AskPrc	AskQty	LastPrc	LastQty	Total
1	CDHO	•	785	7626	7627	21	7627	489	8230
2			626	7625	7629	815			
3			500	7624	7630	600			
4			500	7623	7631	2456			
5			200	7622	7632	800			

Figure 2 of the '768 patent depicts a common GUI (“the Fig. 2 GUI”) that displays market information and is used to place trade orders for a commodity on an electronic exchange. *Id.* at 5:8–12, Fig. 2; *see also* PO Resp. 6–7 (describing the Fig. 2 GUI as “widely used”); Ex. 1018 ¶ 21 (describing the Fig. 3 GUI as a common dynamic screen); Ex. 2169 ¶¶ 61–62, 69 (describing the Fig. 2 GUI as “ubiquitous by the time of the invention” and “prevalent”). As can be seen from the above, the Fig. 2 GUI’s screen has a grid having columns and rows. Row 1 shows the inside market. Ex. 1001, 5:14–16. The inside market is the highest bid price and the lowest ask price. *Id.* at 4:56–58. Rows 2–5 show the market depth, which are other bids or asks in the market. *Id.* at 4:52–56, 5:16–20. The market information updates dynamically as the market updates. *Id.* at 5:23–25. The inside market, however, is always displayed in row 1, a fixed location. Ex. 2169 ¶ 54.

Other prior art GUIs, similar to the Fig. 2 GUI, arrange the market information in the grid differently. Patent Owner’s declarant Christopher Thomas testifies that similar dynamic GUIs “displayed the locations for the

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