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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CBM 2016-00087
Patent 7,412,416 B2

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

MEDLEY, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing
37 C.F.R. § 42.71

INTRODUCTION

IBG LLC, Interactive Brokers LLC, Tradestation Group, Inc., and Tradestation Securities, Inc., ("Petitioner") filed a Request for Rehearing of the Decision to Institute (Paper 11, "Dec.") a covered business method patent review of claims 1–24 of U.S. Patent No. 7,412,416 B2 (Ex. 1001, "the '416 patent"). Paper 14, "Req. Reh'g". For the reasons that follow, the Request for Rehearing is *denied*.

STANDARD OF REVIEW

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify specifically all matters we misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply. *Id*. When reconsidering a decision on institution, we review the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315-16 (Fed. Cir. 2000).

ANALYSIS

Petitioner requests rehearing of our determination (Dec. 23) that the Petition does not demonstrate that claims 1–24 are more likely than not

unpatentable under 35 U.S.C. § 103 over TSE[1], Bay[2], and Subler[3]. Req.
Reh'g 1. In particular, Petitioner contends that we misapprehended or
overlooked the principles of obviousness law that (1) obviousness cannot be
defeated by attacking references individually where the invalidity grounds
are based on combinations of references, and (2) 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. *Id*. at 1–7.

We are not persuaded by Petitioner's arguments. At the outset, the
arguments are premised on a disagreement of our decision and not that we
misapprehended or overlooked matters addressed in the Petition, which is
improper. *Id.* at 1–6. In any event, we disagree with Petitioner that our
decision "rejected the proposed combination of TSE and Bay" because Bay
does not teach a graphical user interface. *Id.* at 3. Rather, as we stated in the
Decision, "it is unclear what from Bay and what from TSE are proposed to
be combined." Dec. 21. As an example of how the Petition was not clear,
we noted that the *Petition* indicated Bay describes displaying a chart "on a
graphical user interface," without explaining how that was so. *Id.* at 20–21.
It was incumbent upon Petitioner to explain sufficiently what teaching from
Bay Petitioner was relying on and what teaching from TSE Petitioner was
relying to make its case, and to support such arguments with sufficient

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[1] TOKYO STOCK EXCHANGE OPERATION SYSTEM DIVISION, FUTURES/OPTION
PURCHASING SYSTEM TRADING TERMINAL OPERATION GUIDE (1998) (Ex.
1016) ("TSE").
[2] U.S. Patent No. 5,347,452 (issued Sept. 13, 1994) (Ex. 1042) ("Bay").

record evidence.

Petitioner argues that the Decision improperly attempts to force-fit Bay's chart into TSE's GUI. Req. Reh'g 4–6. Petitioner's arguments are misplaced. As explained in the Decision,

> [I]t is unclear what from Bay and what from TSE are proposed to be combined. In particular, Petitioner asserts that it would have been obvious to a person of ordinary skill in the art to combine Bay's chart having a vertical axis of price values and a horizontal axis of time with TSE's GUI. Pet. 52. Facially, this would lead one to believe that the graphs and displays of TSE are not proposed as being maintained within the combination, but rather that Bay's chart would substitute for the TSE display. We understand from other parts of the Petition, however, that Petitioner is relying on TSE for its description of having a vertical axis of price values, e.g., retaining TSE's price axis. *See, e.g.*, Pet. 51, 56, 62. Thus, the proposed combination is not clear.

Dec. 21.

Thus, as seen from above, the Petition was not clear. We did not attempt to force-fit Bay's chart into TSE's GUI. Rather, we attempted to ascertain Petitioner's position to no avail. Accordingly, we determined that the Petition did not demonstrate that claims 1–24 are more likely than not unpatentable under 35 U.S.C. § 103 over TSE, Bay, and Subler. Again, it was incumbent upon Petitioner to make its case, not for the Board to make it for Petitioner. 37 C.F.R. § 42.20(c).

For the foregoing reasons, Petitioner's Request for Rehearing is *denied*.

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[3] U.S. Patent No. 5,646,992 (issued July 8, 1997) (Ex. 1020) ("Subler").

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