

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.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2016-00090
Patent 7,725,382 B2

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. § 382(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. *Background*

IBG LLC, Interactive Brokers, LLC, TradeStation Group, Inc., and TradeStation Securities, Inc. (collectively, “Petitioner”), filed a Petition requesting covered business method patent review of claims 1–32 of U.S. Patent No. 7,725,382 B2 (Ex. 1001, “the ’382 patent”). Paper 5 (“Pet.”). Trading Technologies International, Inc. (“Patent Owner”) did not file a Preliminary Response.

On December 9, 2016, pursuant to 35 U.S.C. § 324, we instituted a covered business method patent review on the following grounds:

Ground	Prior Art	Challenged Claims
§ 101	n/a	1–32
§ 103	TSE ¹ and Belden ²	1–32

Paper 11 (“Institution Decision” or “Inst. Dec.”).

Thereafter, Trading Technologies International, Inc. (“Patent Owner”) filed a Patent Owner’s Response on February 27, 2017 (Paper 19, “PO. Resp.”) and Petitioner filed a Reply (Paper 38, “Pet. Reply”) to Patent Owner’s Response.

Petitioner filed a Motion to Exclude (Paper 43) and Patent Owner filed an Opposition (Paper 49) to Patent Owner’s Motion. Petitioner filed a Reply (Paper 51) in support of its Motion.

¹ TOKYO STOCK EXCHANGE OPERATION SYSTEM DIVISION, FUTURES/OPTION PURCHASING SYSTEM TRADING TERMINAL OPERATION GUIDE (1998) (Ex. 1004). Citations to this reference refer to its English translation (Ex. 1005).

² PCT Pub. No. WO 90/11571, pub. Oct. 4, 1990 (Ex. 1008).

Patent Owner filed a Motion to Exclude (Paper 46) and Petitioner filed an Opposition (Paper 48) to Patent Owner's Motion. Patent Owner filed a Reply (Paper 52) in support of its Motion.

We held a hearing of this case on August 10, 2017. Paper 55 ("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 1–32 are patent ineligible under 35 U.S.C. § 101 and Petitioner has not shown by a preponderance of the evidence that claims 1–32 are unpatentable under 35 U.S.C. § 103 over TSE and Belden.

B. Related Proceedings

The '382 patent is the subject of numerous related U.S. district court proceedings. Pet. 2; Paper 8, 1–5.

The application that issued as the '382 patent ultimately claims, under 35 U.S.C. § 320, the benefit of application 09/590,692, that issued as U.S. Patent No. 6,772,132 ("the '132 patent"). Ex. 1001, (63). The '132 patent was the subject of *Trading 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. The '132 patent was also the subject of petitions for covered business method 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.

Numerous other patents are related to the '382 patent and the related patents are or were the subject of numerous petitions for covered business method patent review and reexamination proceedings. *See* Pet. 2; Paper 8, 1–7.

C. The '382 Patent

The '382 patent is titled “Click Based Trading with Intuitive Grid Display of Market Depth.” Ex. 1001, (54). The '382 patent describes a display, named the “Mercury” display, and method of using the display to trade a commodity. *Id.* at Abstract, 3:12–16.

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 '382 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 '382 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 5:15–20, Fig. 2; *see also* PO Resp. 2–3 (describing the Fig. 2 GUI as “widely used”); Ex. 1025 ¶ 21 (describing the Fig. 3 GUI as a common dynamic screen); Ex. 2169 ¶¶ 61–62, 67, 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, 5:19–21. The inside market is the highest bid price and the lowest ask price. *Id.* at 4:21–23. Rows 2–5 show the market depth, which are other bids or asks in the market. *Id.* at 4:23–24. The market information updates dynamically as the market updates. *Id.* at 5:31–32. The inside market, however, is always displayed in row 1, a fixed location. Ex. 2169 ¶¶ 54, 56.

In the Fig. 2 GUI, “the user could place an order by clicking on a location (e.g., a cell) in one of the price or quantity columns.” Ex. 2169 ¶¶ 58–59. Patent Owner’s declarant Christopher Thomas testifies that “[s]ome of such dynamic screens permitted single action order entry that consisted of a trader pre-setting a default quantity and then click (e.g., using a single-click or a double-click) on a dynamic screen to cause a trade order to be sent to the exchange at the pre-set quantity.” Ex. 1024 ¶ 7; Ex. 1025 ¶ 20.

Other types of conventional trading GUIs used order entry tickets to send trade orders to an electronic exchange. Ex. 2169 ¶ 50. An order entry ticket is “in the form of a window, with areas in which the trader could fill out parameters for an order, such as the price, quantity, an identification of

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