

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GAIN CAPITAL HOLDINGS, INC.,
Petitioner,

v.

OANDA CORPORATION,
Patent Owner.

CBM2020-00023
Patent 7,496,534 B2

Record of Oral Hearing
Held: January 14, 2022

Before SALLY C. MEDLEY, JUSTIN T. ARBES, and
SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

CBM2020-00023
Patent 7,496,534 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

WESLEY DERRYBERRY, ESQ.
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ON BEHALF OF THE PATENT OWNER:

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ERIK DYKEMA, ESQ.
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The above-entitled matter came on for hearing on Friday, January 14, 2022, commencing at 10:00 a.m., EDT, by video/by telephone.

PROCEEDINGS

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JUDGE ARBES: Good morning. This is the oral hearing in Case CBM2020-00023 involving Patent 7,496,534. Can counsel please state your names for the record. Petitioner?

MR. DERRYBERRY: Yes. Thank you, Your Honor. My name is Wes Derryberry.

MR. KONING: Drew Koning for Patent Owner, OANDA Corporation.

MR. DYKEMA: And Erik Dykema, also for Patent Owner, OANDA.

JUDGE ARBES: Thank you. Per the Trial Hearing Order, each party will have 30 minutes of total time to present arguments. First, Petitioner will present its case regarding the challenged claims 1 through 12 and Patent Owner's substitute claim 13. You may reserve time for rebuttal. Patent Owner then will respond to Petitioner's presentation and may reserve time for sur-rebuttal. Petitioner then may use any remaining time to respond to Patent Owner's presentation. Finally Patent Owner may use any of its remaining time for a brief sur-rebuttal responding to Petitioner's rebuttal arguments only.

A few reminders before we begin. We have received Petitioner's demonstrative exhibits and are able to view them on our screens. To ensure that the transcript is clear and everyone can follow along, please refer to your demonstratives by slide number. Please also keep your microphone muted when you're

1 not speaking. When it is your turn to argue, please speak slowly
2 and if you hear another voice, please stop so that we don't talk
3 over each other. Also, if either party believes that the other
4 party is making an improper argument, we would ask you to
5 please raise that during your own presentation rather than
6 objecting at the time and interrupting the other side. Any
7 questions from the parties before we begin?

8 MR. KONING: No questions.

9 MR. DERRYBERRY: No questions from me, Your Honor.

10 JUDGE ARBES: Counsel for Petitioner, you may proceed,
11 and would you like to reserve time for rebuttal?

12 MR. DERRYBERRY: Yes, Your Honor. I'd like to reserve
13 ten minutes for rebuttal, please.

14 JUDGE ARBES: Thank you.

15 MR. DERRYBERRY: May it please the Board. I am Wes
16 Derryberry, counsel for Petitioner Gain Capital Holdings.

17 Listening in today on the audio line are my colleagues Mike
18 Rosato and Matt Argenti, also counsel for Petitioner.

19 Looking at slide 2 of our demonstratives this lays out the
20 grounds of challenge that I will address today. There is a single
21 ground against the original claims showing that they are directed
22 to patent ineligible subject matter under § 101. There is also a
23 Revised Motion to Amend with a single proposed substitute
24 claim and that's claim 13 and we have presented three bases for
25 denying that motion under § 101, 103 and 112.

26 Now before I get into the specifics of the claims and our

1 grounds of challenge, I first wanted to give a short summary of
2 where we stand in this case. After the Institution decision,
3 Patent Owner filed a Patent Owner response that withdrew the
4 expert testimony that had been filed with its preliminary
5 response and then it never filed a sur-reply to our reply brief
6 addressing the original claims. Patent Owner also never filed a
7 reply in support of their Revised Motion to Amend. So at
8 various stages of the proceeding here, although Patent Owner has
9 had an opportunity to try to rebut our arguments they have
10 chosen not to do so and this really leaves essentially all of our
11 arguments and evidence unrebutted here. So this is something
12 that will come up several times as I go through the issues thus
13 far.

14 So first turning to our challenge against the original claims,
15 and this is on slide 3 where we have the limitations of claim 1.
16 Claim as shown here broadly recites the standard steps of time-
17 based trade analysis. Steps (a), (b) and (c) merely recite
18 receiving and storing conventional price and position
19 information while steps (d) and (e) recite the calculation of trade
20 recommendation information and ultimately the trade
21 recommendation itself based on a plurality of defined base
22 models. Now we've highlighted the most relevant limitation here
23 which states that each sub-model is based on a different time of
24 day.

25 Now turning to slide 4. Under Alice step 1 the claims are
26 directed to the abstract idea of time-based trade analysis. Now,

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