

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

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

ARBES, *Administrative Patent Judge*.

DECISION

Granting Institution of Covered Business Method Patent Review
35 U.S.C. § 324

I. INTRODUCTION

A. Background and Summary

Petitioner GAIN Capital Holdings, Inc. filed a Petition (Paper 2, “Pet.”) requesting a covered business method (“CBM”) patent review of claims 1–12 of U.S. Patent No. 7,496,534 B2 (Ex. 1001, “the ’534 patent”) pursuant to 35 U.S.C. § 321(a). Patent Owner OANDA Corporation filed a Preliminary Response (Paper 8, “Prelim. Resp.”) pursuant to 35 U.S.C.

§ 323. Pursuant to 35 U.S.C. § 324(a), the Director may not authorize a covered business method patent review unless the information in the petition, if unrebutted, “would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” For the reasons that follow, we determine that Petitioner has made such a demonstration and institute a covered business method patent review as to claims 1–12 of the ’534 patent on the sole ground of unpatentability asserted in the Petition.

B. Related Matters

Petitioner states that the ’534 patent is related to two other patents, U.S. Patent Nos. 8,392,311 B2 and 7,146,336 B2, asserted in *OANDA Corp. v. GAIN Capital Holdings, Inc.*, No. 2:20-cv-5784 (D.N.J.), and challenged in Cases CBM2020-00021 and CBM2020-00022, respectively. Pet. 2–3. Although the ’534 patent is not asserted in the district court case, Patent Owner charged Petitioner with infringement of the ’534 patent in two letters dated October 25, 2018, and March 5, 2020. *Id.* at 17 (citing Exs. 1033, 1035).

C. The ’534 Patent

The ’534 patent discloses “methods of using real-time trading models to trade on foreign exchange markets.” Ex. 1001, col. 1, ll. 13–15. “An exchange rate is the price at which one national currency can be exchanged for another. The most common currency value notion is the bilateral exchange rate (or simply the foreign exchange (FX) rate) quoted by an FX trader or reported by a quote vendor.” *Id.* at col. 1, ll. 19–23. The ’534 patent explains that “[a]lthough the FX market operates continuously,

individual traders or institutions generally participate in this market for only part of each day. There [was] thus a need for trading models that take local business hours and holidays into account.” *Id.* at col. 1, ll. 42–45. There was also “a need for trading models that offer real-time analysis of FX-rate movements and generate explicit trading recommendations” and “a further need for models that follow the FX market and imitate it as closely as possible.” *Id.* at col. 1, ll. 46–48, 63–64. According to the ’534 patent, a trading model should go “beyond predicting a price change: it should decide whether a certain action has to be taken” based on “the specific risk profile [of the model’s user], the trading history [of the user], and institutional constraints such as business hours.” *Id.* at col. 1, ll. 50–60. The ’534 patent explains that

[a]t the most general level, a preferred trading model comprises a set of indicator computations combined with a collection of rules. . . . [I]ndicator computations provide an analysis of past price movements. The indicators are mapped into actual trading positions by applying various rules. For instance, a model may enter a long position if an indicator exceeds a certain threshold. Other rules determine whether a deal may be made at all, and the timing of a recommendation. Thus, indicator computations are based on price history, and a collection of rules determines the applicability of the indicator computations to the generation of trading recommendations.

Id. at col. 3, ll. 38–50. An indicator “provides a measure of whether a new position should be entered.” *Id.* at col. 6, ll. 4–5. “In the simplest form, an indicator crossing a predefined threshold may cause a rule to be activated that in turn causes such a change in position to occur. Thus the relative values of the indicators signify internal trading recommendations that are subsequently refined through the application of various rules.” *Id.* at col. 6, ll. 8–13. An example of a “rule” is a prohibition on new deals when “price

movements since the previous deal are too small in either direction.” *Id.* at col. 6, ll. 13–19.

Figure 1 of the ’534 patent is reproduced below.

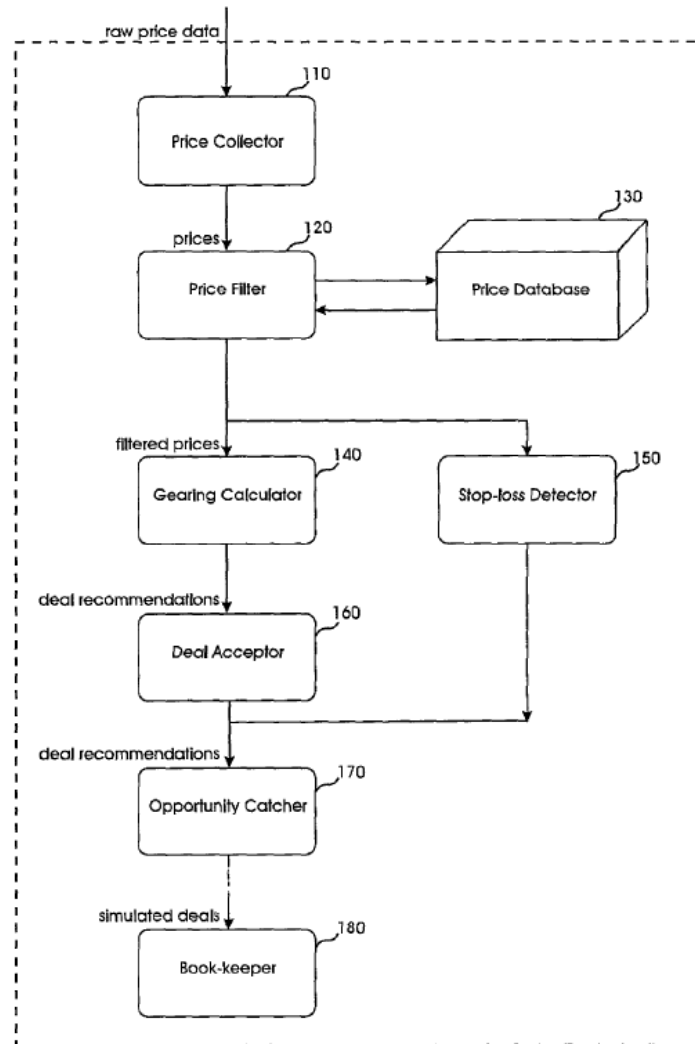


FIG. 1

Figure 1 depicts “a data flow and structure diagram of preferred trading model software.” *Id.* at col. 3, ll. 15–16. Price collector 110 “collects price quotes from data feeds received over a computer network”; price filter 120 “receives the collected price quotes and filters them in real-time, storing filtered price quotes in a price database 130”; gearing calculator 140 “specifies the recommended gearing (exposure size), based on indicator

computations that depend on the received and filtered price quote data, trading rules that depend on past dealing history, current position, and other quantities such as current unrealized return of an open position”; deal acceptor 160 “validates the recommendations of the gearing calculator 140” based on specified conditions; stop-loss detector 150 checks for whether a “stop-loss price” has been reached; opportunity catcher 170 “searches for a realistic price at which to execute the deal,” “executes a simulated deal,” and “provides signals to a human dealer”; and book-keeper 180 calculates “trading model statistics.” *Id.* at col. 3, l. 51–col. 4, 14. As shown in Figure 1, the trading model operates in a “data-flow paradigm” where reception of a new price from a commercial quote-vendor or a timer causes a defined event, which triggers the next action in sequence. *Id.* at col. 9, l. 62–col. 10, l. 16. “Software of a preferred embodiment [of the invention] is not constructed as a single huge program with all the required functionality residing in that one entity,” but rather “as a collection of separate programs” each having a primary function (i.e., “a distributed system [where] the various programs run in parallel on several computers”). *Id.* at col. 5, l. 19–26. Doing so provides “several benefits,” such as increased reliability. *Id.* at col. 5, ll. 33–49.

The gearing calculator is “the heart of a preferred trading model,” as it provides the “intelligence and the ability to capitalize on movements in the FX markets.” *Id.* at col. 5, ll. 50–53. The gearing calculator analyzes “a set of indicators that are produced from the input price data” according to “trading rules that are functions of the past dealing history, the current position, and other quantities (e.g., the current unrealized return of an open position)” to “determine whether . . . a change of position” should be made. *Id.* at col. 5, l. 65–col. 6, l. 8. “The gearing calculator re-evaluates its

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