United States Court of Appeals for the Federal Circuit

HARRIS BRUMFIELD, TRUSTEE FOR ASCENT TRUST,
Plaintiff-Appellant

v.

IBG LLC, INTERACTIVE BROKERS LLC,
Defendants-Appellees

2022-1630

Appeal from the United States District Court for the Northern District of Illinois in No. 1:10-cv-00715, Judge Virginia M. Kendall.

Decided: March 27, 2024

MICHAEL DAVID GANNON, Baker & Hostetler LLP, Chicago, IL, argued for plaintiff-appellant. Also represented by JENNIFER KURCZ, LEIF R. SIGMOND, JR.; ALAINA LAKAWICZ, Philadelphia, PA.

STEFFEN NATHANAEL JOHNSON, Wilson, Sonsini, Goodrich & Rosati, PC, Washington, DC, argued for defendants-appellees. Also represented by KELSEY CURTIS; GRANVILLE CLAYTON KAUFMAN, NATALIE J. MORGAN, San Diego, CA; MICHAEL BRETT LEVIN, Palo Alto, CA; MICHAEL S. SOMMER, New York, NY; NAOYA SON, Los Angeles, CA.

———————————

Before PROST, TARANTO, and HUGHES, *Circuit Judges.*

TARANTO, *Circuit Judge.*

Trading Technologies International, Inc. (TT)—whose successor is the plaintiff-appellant named in the caption—brought this action against IBG LLC and its subsidiary Interactive Brokers LLC (together, IBG) in 2010 in the Northern District of Illinois, alleging infringement of several TT-owned patents.[1] Four of TT's patents are at issue in this appeal: U.S. Patent Nos. 6,766,304 (issued July 20, 2004); 6,772,132 (issued August 3, 2004); 7,676,411 (issued March 9, 2010); and 7,813,996 (issued October 12, 2010). The district court held the asserted claims of the '411 and '996 patents invalid, and a jury found the asserted claims of the '304 and '132 patents infringed (and not proved invalid for obviousness) and awarded $6,610,985 in damages, resulting in the final judgment now before us.

Only TT, not IBG, appeals. TT challenges three rulings of the district court. First, on cross-motions for summary judgment, the district court held that the asserted claims of the '411 and '996 patents were invalid under 35 U.S.C. § 101, while rejecting the § 101 challenge to the asserted claims of the '304 and '132 patents (with the resulting trial limited to a subset of such claims). *Trading Technologies International, Inc. v. IBG, LLC*, No. 10 C 715, 2021 WL

———————————

[1] Plaintiff-Appellant Harris Brumfield was the primary investor in and majority shareholder of TT, which was sold in December 2021, with the rights to the patents here at issue assigned to a trust, Ascent Trust. Mr. Brumfield, as the sole trustee for Ascent Trust, was then substituted for TT as the plaintiff in this action. Like the parties and the district court, we refer throughout to plaintiff-appellant as Trading Technologies (TT).

2473809, at *5, *7 (N.D. Ill. June 17, 2021) (*101 Opinion*). Second, the district court, acting under Federal Rule of Evidence 702, excluded one of the damages theories, concerning foreign activities, proposed by TT's damages expert. *Trading Technologies International, Inc. v. IBG LLC*, No. 10 C 715, 2021 WL 5038754, at *2 (N.D. Ill. July 23, 2021) (*FRE 702 Opinion*). Third, the district court denied TT's post-verdict motion for a new trial on damages, a motion in which TT alleged that IBG had misrepresented, by statement or omission, how it was calculating the damages figures it presented to the jury. *Brumfield, Trustee for Ascent Trust v. IB LLC*, 586 F. Supp. 3d 827, 830–31 (N.D. Ill. 2022) (*Post-Trial Opinion*)

We reject TT's challenges. We therefore affirm.

I

A

The four patents before us have materially the same specification: The application that issued as the '132 patent is the ancestor of the other three patents (so we cite only the specification of the '132 patent). The specification describes assertedly improved graphical user interfaces for commodity trading and methods for placing trade orders using those interfaces. '132 patent, col. 3, lines 11–20. The specification asserts that the improved interfaces allow traders to place orders "quickly and efficiently" in volatile markets where speed is important. *Id.*, col. 3, line 10; *see id.*, col. 2, lines 1–41.

The claims of the patents differ somewhat, including in a respect that plays a role in the analysis of patent eligibility under § 101 as that issue is presented to us. The asserted claims of the two patents from 2004 involve an interface that, in the words of the '304 patent, has a "common *static* price axis" along which (changing) bids and asks are displayed. '304 patent, col. 12, lines 41–54 (emphasis added). The language of the asserted claims of the '132

patent is similar, requiring a "dynamic display of a plurality of bids and a plurality of asks" in a commodity market, "the dynamic display being aligned with a *static* display of prices corresponding thereto, wherein the static display of prices does *not* move in response to a change in the inside market," '132 patent, col. 12, lines 8–15 (emphases added), where "the 'inside market' is the highest bid price and the lowest ask price," *id.*, col. 4, lines 58–60.

The two patents from 2010 are different. The '411 patent, in its claims, requires simply a "price axis," with no requirement that it be static. '411 patent, col. 12, lines 30–39. The same is true, based on claim construction, for the '996 patent. Although that patent's claims use the phrase "static price axis," the district court, at TT's urging, construed that phrase in the '996 patent to include price axes that can be moved in response to "a re-centering or re-positioning" command, which can be issued automatically rather than by the user. *Trading Technologies International, Inc. v. IBG LLC*, No. 10 C 715, 2019 WL 6609428, at *2–4 (N.D. Ill. Dec. 5, 2019). In doing so, the district court noted, based on the '996 patent's prosecution history, that "'static' in the '996 [p]atent was to be understood in a broader sense than the '132 and '304 [p]atents." *Id.* at *3; *see* TT's Opening Br. at 5–6.

The following claims are representative for purposes of the present appeal—two claims to a method, two to a computer readable medium hosting code for execution:

> **'304 patent, claim 27.** A computer readable medium having program code recorded thereon for execution on a computer for displaying market information relating to and facilitating trading of a commodity being traded in an electronic exchange having an inside market with a highest bid price and a lowest ask price on a graphical user interface, the program code causing a machine to perform the following steps:

dynamically displaying a first indicator in one of a plurality of locations in a bid display region, each location in the bid display region corresponding to a price level along a common static price axis, the first indicator representing quantity associated with at least one order to buy the commodity at the highest bid price currently available in the market;

dynamically displaying a second indicator in one of a plurality of locations in an ask display region, each location in the ask display region corresponding to a price level along the common static price axis, the second indicator representing quantity associated with at least one order to sell the commodity at the lowest ask price currently available in the market;

displaying the bid and ask display regions in relation to fixed price levels positioned along the common static price axis such that when the inside market changes, the price levels along the common static price axis do not move and at least one of the first and second indicators moves in the bid or ask display regions relative to the common static price axis;

displaying an order entry region comprising a plurality of locations for receiving commands to send trade orders, each location corresponding to a price level along the common static price axis; and

in response to a selection of a particular location of the order entry region by a single action of a user input device, setting a plurality of parameters for a trade order

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.