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Paper 33
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

IBG LLC,
INTERACTIVE BROKERS LLC, TRADESTATION GROUP, INC.
TRADESTATION SECURITIES, INC.,
TRADESTATION TECHNOLOGIES, INC., and IBFX, INC.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2015-00181
Patent 7,676,411 B2

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

PLENZLER, *Administrative Patent Judge*.

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

I. INTRODUCTION

On March 21, 2016, IBG LLC, Interactive Brokers LLC, TradeStation Group, Inc., TradeStation Securities, Inc., TradeStation Technologies, Inc., and IBFX, INC. (collectively, "Petitioner") filed a Request for Rehearing (Paper 31, "Req. Reh'g") of our Decision (Paper 26, "Dec.") denying *inter partes* review of Petitioner's challenges to U.S. Patent No. 7,676,411 (Ex. 1001, "the '411 patent") based on Silverman[1], Gutterman[2], Belden[3], and Togher[4] (claims 1–10 and 12–28) and based on Silverman, Gutterman, Belden, Togher, and Paal[5] (claim 11) ("the Silverman challenges").[6]

Petitioner's Request alleges that

> The Board erred when it denied instituting review of claims 1–28 based on the Silverman combinations (*i.e.*, Grounds 2 and 3) because it misapprehended the Petition as relying on Gutterman **alone** to disclose these limitations, Decision at 22, and overlooked key arguments in the Petition that the combination of Silverman and Gutterman teaches the "moving" limitations, Pet. at 41–43.

Req. Reh'g 2.

II. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), "[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion." Abuse of discretion occurs when a "decision was based on an erroneous conclusion of

[1] U.S. Pat. No. 5,077,665, iss. Dec. 31, 1991 (Ex. 1003, "Silverman").
[2] U.S. Pat. No. 5,297,031, iss. Mar. 22, 1994 (Ex. 1004, "Gutterman").
[3] PCT Pub. No. WO 90/11571, pub. Oct. 4, 1990 (Ex. 1009, "Belden"). The page numbers referenced herein are those at the bottom of each page.
[4] U.S. Pat. No. 5,375,055, iss. Dec. 20, 1994 (Ex. 1005, "Togher").
[5] U.S. Pat. No. 5,263,134, iss. Nov. 16, 1993 (Ex. 1018, "Paal").
[6] Our Decision granted *inter partes* review with respect to other challenges.

law or clearly erroneous factual findings, or . . . a clear error of judgment." *PPG Indus. Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988) (citations omitted). In its request for rehearing, the dissatisfied party must identify the place in the record where it previously addressed each matter it submits for review. 37 C.F.R. § 42.71(d).

III. ANALYSIS

Petitioner acknowledges that "[t]he Decision correctly noted that footnote 3 [on page 41 of the Petition] states: 'Gutterman discloses the movement of bid/asks along a price axis,'" but contends that we misapprehended that footnote as addressing the "moving" limitation. Req. Reh'g 3 (citing Dec. 21–22; Pet. 41). Petitioner contends that footnote 3 does not address the "moving" limitation and, instead, contends that "[t]he Petition addresses the 'moving' limitations in Section VI(G)(5), which explains that the combination of Silverman and Gutterman teaches the 'moving' limitations." *Id.* (citing Pet. at 41–43).

Initially, we note that claims 1 and 26 each require "displaying . . . a first indicator representing quantity associated with at least one trade order to buy the commodity at the current highest bid price" and "displaying . . . a second indicator representing quantity associated with at least one trade order to sell the commodity at the current lowest ask price." The claims require displaying the first indicator at a first graphical location along a price axis in a bid display region and ***moving*** the first indicator relative to the price axis to a second graphical location in the bid display region "upon receipt of market information comprising a new highest bid price." The claims require displaying the second indicator at a first graphical location

along the price axis in an ask display region and ***moving*** the second indicator relative to the price axis to a second graphical location in the ask display region "upon receipt of market information comprising a new lowest ask price." The "moving" limitations referenced by Petitioner are those emphasized above.

When reaching our determination that Petitioner had failed to demonstrate that it is more likely than not that the challenged claims are unpatentable under 35 U.S.C. § 103 based on the Silverman challenges, we considered the entirety of Petitioner's arguments on pages 41–43 of the Petition, which are referenced in this Request for Rehearing. *See* Dec. 21–22. We read the Petition as asserting that "Gutterman discloses the movement of bid/asks along a price axis," which Petitioner acknowledges is the statement set forth in the Petition. *See id.* (citing Pet. 40–41 n.3); Req. Reh'g 3. As noted above, Petitioner now clarifies that it does not rely on Gutterman as teaching the "moving" limitation. Any misapprehension regarding this argument, however, is not sufficient for a modification to our Decision. Rather, we read the Petition as advancing that position because it was the only assertion of any teaching of the "moving" limitation in the Silverman challenges, and the additional discussion in the cited pages of the Petition is nothing more than conclusory statements regarding why the "moving" limitations would have been obvious.

Limiting our review to Section VI(G)(5) of the Petition, as Petitioner now requests (i.e., without the statement in footnote 3 discussed above), we note that the Petition provides only a conclusory assertion that the "moving" limitation would have been obvious. *See* Pet. 42–43. The Request for

Rehearing makes this clear, stating that the limitation would have been obvious because

> the **combination** GUI of Silverman and Gutterman would always display the best inside price along a price axis. And when it receives a new best inside price, the indicators associated with the new best inside price would be displayed at their appropriate price level(s)—i.e., move along the price axis.

Req. Reh'g 5. Noticeably lacking from the Petition (and the Request for Rehearing's characterization of the Petition) is any explanation as to why "the combination GUI of Silverman and Gutterman" would have a fixed price axis where the indicators move, rather than a moving (i.e., dynamic) price axis where the indicators move.

Accordingly, we are not persuaded that we erred in denying institution of the Silverman challenges.

IV. ORDER

For the reasons given, it is

ORDERED that Petitioner's Request is *denied*.

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