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Paper 29
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TD AMERITRADE HOLDING CORP., TD AMERITRADE, INC., and
TD AMERITRADE ONLINE HOLDINGS CORP.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2014-00135
Patent No. 6,772,132 B1

Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and
PHILIP J. HOFFMANN, *Administrative Patent Judges.*

HOFFMANN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

37 C.F.R. § 42.71

I. INTRODUCTION

TD Ameritrade Holding Corp., TD Ameritrade, Inc., and TD Ameritrade Online Holdings Corp. (collectively, "Petitioner") filed a Petition (Paper 4, "Pet.") on May 19, 2014, which requested review under the transitional program for covered business method patents of U.S. Patent No. 6,772,132 B1 (Ex. 1001, "the '132 patent"). Trading Technologies International, Inc. ("Patent Owner") filed a Preliminary Response (Paper 17, "Prelim. Resp.") on September 3, 2014. The Board instituted covered business method patent review of claims 1–56 of the '132 patent under 35 U.S.C. § 101, and denied institution of any claims under 35 U.S.C. §§ 102, 103, and 112. Paper 19 ("Decision"). Petitioner and Patent Owner each filed a Request for Rehearing asking that the Board reconsider its Decision – Petitioner requesting that we institute based on grounds 3–5 of the Petition because claims 1–28, 30–48, and 50–56 are obvious based on at least Silverman, Gutterman, and Togher (Paper 21, "Petitioner's Req. Reh'g"), and Patent Owner requesting that we deny institution because the '132 patent does not qualify for covered business method patent review (Paper 22, "Patent Owner's Req. Reh'g").

We have considered each Request for Rehearing, but decline to modify the Decision.

II. ANALYSIS

A. Petitioner's Request for Rehearing

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous

interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *See Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004). For the reasons that follow, Petitioner does not show that the Board abused its discretion.

Petitioner contends that our Decision is based upon a misapprehension that the Petition did not rely on Togher to disclose the single action limitation. Petitioner's Req. Reh'g, 2–3. According to Petitioner, had our Decision properly considered Petitioner's remarks regarding Togher's disclosure, we would have instituted review of claims 1–28, 30–48, and 50–56 as obvious based on at least Silverman, Gutterman, and Togher. *Id.*

Although Petitioner cites to various portions of the Petition characterizing Togher's disclosure, for the following reasons we find that Petitioner relied on Silverman and Gutterman to render obvious claim 1's limitation "selecting a particular area in the order entry region [corresponding to a price of a static display of prices] through single action of the user input device . . . to set a plurality of parameters for the trade order and send the trade order to the electronic exchange." Thus, Petitioner's argument that Togher discloses "selecting a particular area in the order entry region [corresponding to a price of a static display of prices] through single action of the user input device . . . to set a plurality of additional parameters for the trade order and send the trade order to the electronic exchange" is not timely raised, and will not be a basis for instituting covered business method patent review.

Section V., C. 4., e) of the Petition included Petitioner's arguments regarding the obviousness of the limitation at issue. Here, Petitioner stated:

> [I]n the *GUI of Silverman and Gutterman*, a user can *select an order "by touching the corresponding order icon."* (Gutterman, 13:27-29.) The *touching of the corresponding order icon is "a single action* of the user input device with a pointer of the user input device positioned over the particular area." Additionally, Gutterman discloses that "the touch-sensitive screen functions can also be implemented by a conventional keyboard, mouse and other standard input devices." (Gutterman, 7:33-36.) When a mouse is utilized, the pointer of the mouse (user input device) would be positioned over the order icon. (Román Decl. ¶ 110.) *The single action of the user input device in this embodiment of Gutterman would be a single or double mouse click*. (*Id.*)
>
> In Gutterman, when an order is selected, "the order's quantity, price and time stamp appear in so-designated areas of the fill pane." (Gutterman, 13:30-31.) The quantity, price and time stamp are "a plurality of additional parameters" that are set for the trade order. (Román Decl. ¶ 111.).

Pet. 43–44 (original emphases omitted and square brackets changed to parentheses, our emphases added). Based on the above, Petitioner clearly relied on Silverman and Gutterman, and not Togher, to disclose the claimed single action that sets parameters for a particular price and sends the trade order. This is consistent with other portions of the Petition which relied on Gutterman to disclose a single action that sets parameters for a particular price and sends a trade order – e.g.:

> A trader may immediately transmit this electronic message to another party by pressing another "active" button – the "SEND FILL"

> button. (*Id.* at 13:29-43.) ("In periods of heavy market activity . . . .") As described in the specification of the '132 patent, any action by a user within a short period of time, whether comprising one or more clicks of a mouse button or other input device qualifies as a "single action." Thus, Gutterman's disclosure of a user making two selections within a short period of time is a single action. (Román Decl. ¶ 77.)

Id. at 20.

Petitioner now points to other characterizations of Togher in the Petition in an attempt to establish that Petitioner relied on Togher to disclose the claimed single action that sets parameters for a particular price and sends the trade order. *See* Petitioner's Req. Reh'g, 5–10. We are not persuaded. For example, Petitioner points to the statement, "the combination of Silverman and Gutterman fails to disclose selecting an area of the GUI through a single action to both set a price for the trade order and send the trade order having a default quantity to the electronic exchange. . . . Togher describes such a system and method." *Id.* at 5, citing Petition 21–22 (internal quotes and emphases omitted). This statement is not properly interpreted, however, as meaning that Petitioner relied on Togher to disclose a single action that does each of the following: 1) sets a price for a trade order; 2) provides a default quantity for the trade order; and 3) sends the trade order having the set price and provided default quantity, as Petitioner seems to allege. Petitioner's characterization of Togher which followed this broad statement did not, for example, sufficiently explain how Togher sets a price – rather the quoted portion of Togher establishes only that a trader may "respond to . . . [an] offer price." Petition 22, citing Togher 9:1–6. Further,

Petitioner stated in one of the next sentences of the Petition that "Togher discloses setting default values for trade orders," and then quoted portions of Togher directed to setting a default trade value. *Id.* Importantly, in the Petition Petitioner did not discuss anything about what happens when a "Buy button" or a "Sell button" is activated in Togher (e.g., that the order is sent to an electronic exchange), or even how, specifically, either button is activated. Thus, we conclude that Petitioner was not concerned in describing in the Petition how Togher disclosed a single action that sets parameters for a particular price and sends a trade order because Petitioner was not relying on Togher to disclose such a limitation of claim 1.

B. Patent Owner's Request for Rehearing

As stated above, when rehearing a decision on petition, the Board will review the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *See Arnold Partnership v. Dudas*, 362 F.3d at 1340. For the reasons that follow, Patent Owner does not show that the Board abused its discretion.

Patent Owner argues that the Board abused its discretion when it failed to consider "statements by Congress confirming that a patent claiming a novel GUI (like the '132 patent) would not be eligible for Section 18 review." Patent Owner's Req. Reh'g, 2. We did not overlook Patent Owner's arguments regarding the legislative history. *See* Dec. 8–9.

In the Decision, we explained that claim 1[1] is directed to a method of displaying market information, setting trade order parameters, and sending a trade order to an electronic exchange. As further explained, the only hardware recited in claim 1 is a display and an input device, which both were known technology. Dec. 11–12. Further recitations in claim 1 are directed to use and operation of the GUI – for example, displaying market information in a certain arrangement on the GUI, as well as setting order parameters and sending the order to the exchange with the GUI. *Id.* Thus, inasmuch as claim 1 recites only known hardware, Patent Owner does not persuade us that claim 1 recites a novel GUI tool.

Patent Owner argues that the Board misapplied the technological invention test. Patent Owner's Req. Reh'g, 8. In particular, Patent Owner argues that we overlooked the novel and unobvious technological features claimed. *Id.* at 8–11. In the Decision, we noted the following:

> The following claim drafting techniques, for example, typically do not render a patent a "technological invention":
>
> > (a) Mere recitation of known technologies, such as computer hardware, communication or computer networks, software, memory, computer–readable storage medium, scanners, display devices or databases, or specialized machines, such as an ATM or point of sale device.
> >
> > (b) Reciting the use of known prior art

[1] As explained in the Decision, a patent only need have one claim directed to a covered business method to be eligible for a covered business method patent review. In the Decision, we focused on claim 1. We focus on claim 1 for purposes of the rehearing decision.

> technology to accomplish a process or method, even if that process or method is novel and non–obvious.

77 Fed. Reg. 48,756, 48,763–64 (Aug. 14, 2012).

Dec. 10. As noted in the Decision, claim 1 requires the use of known technology – a display, an input device, and a GUI (i.e., software). *Id.* at 11. As indicated above, reciting the use of known prior art technology to accomplish a process or method, even if the process or method is novel and non-obvious, does not render a patent a "technological invention." For these reasons, Patent Owner has not shown that the Board abused its discretion in determining that claim 1 does not recite a technological feature that is novel and unobvious over the prior art.

Patent Owner also argues that the Decision improperly failed to address whether claim 1 solves a technical problem using a technical solution. Patent Owner's Req. Reh'g 12. In particular, Patent Owner indicates "[t]he Decision failed to address either of the two technological problems solved by the invention claimed[;] . . . . the problem of speed and accuracy with prior graphical tools . . . . [and] the inadequate visualization of prior graphical tools." *Id.* Inasmuch as Patent Owner does not demonstrate sufficiently how the language of claim 1 recites such limitations, we do not find the arguments persuasive.

C. Conclusion

Consequently, we are not persuaded of an abuse of discretion either by Petitioner or Patent Owner.

III. ORDER

Accordingly, it is

ORDERED that each Request for Rehearing is *denied*.

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