

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRADESTATION GROUP, INC. and
TRADESTATION SECURITIES, INC.,
Petitioner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

Case CBM2015-00161
Patent No. 6,766,304 B2

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

PETRAVICK, *Administrative Patent Judge*.

DECISION

Institution of Covered Business Method Patent Review
37 C.F.R. § 42.208

I. INTRODUCTION

A. Background

TradeStation Group, Inc. and TradeStation Securities, Inc.
(collectively, “Petitioner”) filed a Petition (Paper 2, “Pet.”) on July 20, 2015,
that requests review under the transitional program for covered business

method patents of the AIA¹ of U.S. Patent No. 6,766,304 B2 (Ex. 1001, “the ’304 patent”). Petitioner challenges the patentability of claims 1–40 (“the challenged claims”) of the ’304 patent under 35 U.S.C. § 101 and 35 U.S.C. § 112, first paragraph.² Trading Technologies International, Inc. (“Patent Owner”) filed a Revised Preliminary Response on November 30, 2015. Paper 28 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 324, which provides that a post-grant review may not be instituted “unless . . . the information presented in the petition . . . would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.”

We determine that the Petition demonstrates that it is more likely than not that the challenged claims are unpatentable under 35 U.S.C. § 101, and we institute a covered business method patent review of claims 1–40 of the ’304 patent.

B. Related Matters

The ’304 patent is the subject of numerous related U.S. district court proceedings. Pet. 1–2; Paper 5, 2–6.

The ’304 patent was the subject of petitions for covered business method patent review in *TD Ameritrade Holding Corp. v. Trading Technologies International, Inc.*, CBM2014-00136 (PTAB) and *CQG, Inc. v. Trading Technologies International, Inc.*, CBM2015-00057 (PTAB).

¹ Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011) (“AIA”).

² We refer to the pre-AIA version of 35 U.S.C. § 112 due to the filing date of the ’304 patent.

Institution of covered business method patent review in both of these proceedings was denied.

Numerous patents are related to the '304 patent and the related patents are or were the subject of numerous petitions for covered business method patent review and reexamination proceedings. The table in the attached appendix indicates the related patents and corresponding proceedings.

C. The '304 Patent

The '304 patent is titled “Click Based Trading with Intuitive Grid Display of Market Depth.” Ex. 1001, [54]. The '304 patent discloses a display, named the “Mercury” display, and method of using the display to trade a commodity. *Id.* at Abstract, col. 3, ll. 9–10. The Mercury display is a graphic user interface (“GUI”) that dynamically displays the market depth of a commodity traded in a market and allows a trader to place an order efficiently. *Id.* at col. 3, ll. 15–28.

The Mercury display is depicted in Figure 3, which is reproduced below.

		SYCOM FGBL DEC99					
E/W		10:48:44		BidQ	AskQ	Prc	LTQ
1009	L	3			104	99	
1010	R	5			24	98	
1011		720			33	97	
1012	X	10			115	96	
1013		0			32	95	
1014		10	1H		27	94	
		50	3H		63	93	
1007	S 0 W 24	1K	5H		45	92	
	S 0 W 7	CLR			28	91	
1015	X	10			20	90	10
1016		17			18	89	
1008	B 0 W 15	CXL			97	88	
	B 0 W 13	+ -			30	87	
1017		NET 0			43	86	
1018	B 0 W 17	NET REAL			110	85	
1019					23	84	
					31	83	
1021					125	82	
					21	81	

Fig. 3 depicts the Mercury display of the '304 patent

The Mercury display includes a plurality of columns. Column 1005 is a static price axis, which includes a plurality of price values for the commodity. *See id.* at col. 7, ll. 56–67. Columns 1003 and 1004 are aligned with the static price axis and dynamically display bid and ask quantities, respectively, for the corresponding price values of the static price axis. *See id.* at col. 7, l. 54–col. 8, l. 18. Column 1002 contains various parameters and information used to execute trades, such as the default quantity displayed in cell 1016. *See id.* at col. 8, l. 37–col. 9, l. 3.

A trader executes trades using the Mercury display by first setting the desired commodity and default parameters, such as default quantity. *Id.* at col. 9, ll. 35–49; Fig. 6, step 1302. Then, a trader can send a buy order or

sell order to the market with a single action, such as clicking on the appropriate cell in column 1003 or 1004. *See id.* at col. 9, l. 39–col. 11, l. 34; Fig. 6, steps 1306–1315. In the example shown in Figure 3, a left click on “20” in column 1004 will send an order to the market to buy 17 lots (i.e., the default quantity set in cell 1016 of column 1002) at a price of 90. *See id.* at col. 10, ll. 39–41.

Claim 1 of the ’304 patent is illustrative of the challenged claims and is reproduced below:

1. A method 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 method comprising:

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 relating to the commodity and sending the trade order to the electronic exchange.

D. Alleged Grounds of Unpatentability

Petitioner sets forth grounds of unpatentability of the challenged claims as follows:

Ground	Challenged Claims
§ 101	1–40
§ 112, first paragraph	1–40

E. Expanded Panel Request

Patent Owner suggests that the decision on institution be made by an expanded panel of administrative patent judges. Prelim. Resp. 78–79. Discretion to expand a panel rests with the Chief Judge, who, on behalf of the Director, may act to expand a panel on a suggestion from a judge or panel. *AOL Inc. v. Coho Sicensing LLC*, Case IPR2014-00771, slip op. at 2 (PTAB Mar. 24, 2015)(Paper 12)(informative). Patent Owner’s suggestion was considered by the Acting Chief Administrative Patent Judge, who declined to expand the panel.

II. ANALYSIS

A. Requirements for Covered Business Method Patent Review

Section 18 of the AIA provides for the creation of a transitional program for reviewing covered business method patents. Section 18 limits review to persons or their privies who have been sued or charged with infringement of a “covered business method patent,” which does not include patents for “technological inventions.” AIA §§ 18(a)(1)(B), 18(d)(1); *see* 37 C.F.R. § 42.302.

Petitioner and Patent Owner indicate that Petitioner was sued for infringement of the ’304 patent. Pet. 3; Paper 7, 2.

i. Covered Business Method Patent

a. Petitioner’s Argument

Petitioner contends that the ’304 patent is a covered business method patent because it claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service. Pet. 8–13. Petitioner argues that method claim 1 and, its corresponding apparatus claim 27, are directed to displaying market information and sending trade orders to a financial market, as indicated by certain financial claim elements. *Id.* at 11–12. Those claim elements include: “displaying market information,” “trading of a commodity,” “electronic exchange,” “bid price,” “ask price,” “a bid display region . . . corresponding to a price level,” and “setting a . . . trade order relating to the commodity and sending the trade order to the electronic exchange.” *Id.* (citing Ex. 1001, claims 1 and 27).

Petitioner further argues that patents subject to covered business method patent review are typically classifiable in Class 705 of the Office's patent classification system. Pet. 10–11. The '304 patent is primarily classified in Class 705, including in 705/35, "Finance (e.g., banking, investment or credit)." *Id.* Petitioner, thus, contends that the '304 patent claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service.

Petitioner anticipates Patent Owner's argument that the legislative history of the AIA shows that user interfaces for commodities were intended to be exempt from covered business method patent review. Pet. 17–21. Petitioner disputes that GUIs for trading commodities are not covered business method patents. *Id.* Petitioner acknowledges that whether patents for user interfaces for commodities were the target of covered business method patent review is discussed in the legislative history of the AIA and that the legislative history includes certain statements by Senator Durbin that patents for such GUIs are not covered business method patents. *Id.* at 19–21. Petitioner argues, however, despite these statements and discussions, the AIA is silent as to any exemption for user interfaces for commodities and the plain language of § 18 of the AIA encompasses such user interfaces. *Id.* at 17–21.

b. Patent Owner's Argument

Patent Owner disputes that the '304 patent qualifies for covered business method patent review. Prelim. Resp. 52–54, 61–66. According to Patent Owner, "a proper reading of Section 18 disqualifies, as a threshold

matter, patents where the invention resides in the claimed features of a tool, such as a GUI tool like that claimed in the '304 patent.” *Id.* at 62. As Petitioner anticipates, Patent Owner points to the legislative history and statements made by Senator Durbin to support its argument. *Id.* at 62–64 (citing 157 Cong. Rec. S5428, 32–33 (daily ed. Sept. 8, 2011)).

Patent Owner also argues that the claims of the '304 patent are not directed to a business method or practice and, thus, are not eligible for covered business method patent review. Prelim. Resp. 59–66. “[Patent Owner’s] position is that the claims are not directed to business methods or business practices in any way.” *Id.* at 61. Although the Patent Owner acknowledges that the claims of the '304 patent include financial terms (*id.* at 52, 61), Patent Owner argues that the Petitioner fails to establish that the claims are directed to processing of data for a financial service. *Id.* at 52–53, 65–66. Specifically, Patent Owner argues that the Petitioner fails to establish that the claims recite processing data in a business context. *Id.* at 65 (citing Ex. 2044 (definition of “[b]usiness data processing” as “use of computers for processing information to support the operational, logistical, and functional activities performed by an organization”); citing Ex. 2045 (definition of operational process as “[a]ctivities involved in the day to day functions of the business conducted for the purpose of generating profits.”))

*c. Analysis*³

A covered business method patent “claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service.” AIA § 18(d)(1).

The “legislative history explains that the definition of covered business method patent was drafted to encompass patents ‘claiming activities that are financial in nature.’” Transitional Program for Covered Business Method Patents —Definitions of Covered Business Method Patent and Technological Invention, 77 Fed. Reg. 48,734, 48,735 (Aug. 14, 2012) (quoting 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer)). The legislative history indicates that “financial product or service” should be interpreted broadly to “encompass patents ‘claiming activities that are financial in nature, incidental to a financial activity or complementary to a financial activity.’” *Id.*; see *Versata Dev. Grp., Inc. v. SAP America, Inc.*, 793 F.3d 1306, 1323–26 (Fed. Cir. 2015).

A patent need have only one claim directed to a covered business method to be eligible for review. 77 Fed. Reg. at 48,736 (Response to Comment 8).

³ Both Petitioner and Patent Owner reference our prior decisions denying institution in CBM2014-00136 and CBM2015-00057 and decisions of district courts in related proceedings. We do not give much, if any, deference to our prior decisions and the decisions of the district courts in determining whether to institute a covered business method patent review in this proceeding. Those prior decisions were based on different parties, different evidence, and in the case of the district court proceedings based on different standards of proof and claim construction standards. Additionally, we give no consideration to the arguments Patent Owner presents in letters sent to the Director of the United States Patent and Trademark Office.

Claim 1 of the '304 patent recites “[a] method for displaying market information relating to and facilitating trading of a commodity being traded in an electronic exchange” Ex. 1001, col. 12, ll. 35–37. Claim 27 recites “[a] computer readable medium having program codes recorded thereon” for causing a computer to perform the method of claim 1. *See id.* at col. 14, ll. 47–53. The claim 1 method recites steps of displaying financial information (i.e., data), such as indicators representing a quantity associated with an order to buy the commodity or an order to sell the commodity. *Id.* at col. 12, ll. 41–61. The indicators are displayed in certain regions, such as bid or ask display regions, which are positioned along a static price axis. *Id.* The claimed method also recites steps of displaying an order entry region for receiving commands to send trade orders, setting trade order parameters, and sending trade orders to the electronic exchange. *Id.* at col. 12, l. 62–col.13, l. 3.

Claim 1 encompasses processing financial data, associated with a commodity, for display and processing financial data for sending a trade order for a commodity to an exchange. *See* Ex. 1001, col. 4, l. 66–col. 5, l. 3 (“[t]he present invention processes this information and maps it . . . to a screen.”); col. 11, ll. 50–52 (“[t]he process for placing trade orders using the Mercury display”). This processing of financial data is used in the practice, administration, or management of a commodity, which is a financial product, and in the practice, administration, or management of electronic trading with an exchange, which is a financial service or activity. Displaying financial market information for a commodity and placing trade orders for a commodity are activities that are financial in nature.

Although not dispositive, the '304 patent is primarily classified in Class 705, including in 705/35, Finance (e.g., banking, investment or credit). *See* 77 Fed. Reg. at 48,739; *see Versata* at 1324, n.14 (noting that while Class 705 “apparently served as the original template for the definition of a ‘covered business method,’ . . . [it] was thought to be too narrow”) (citation omitted).

We determine, based on this record, that the '304 patent is a covered business method patent because it “claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service” and claims “activities that are financial in nature, incidental to a financial activity or complementary to a financial activity.” AIA § 18(d)(1); 77 Fed. Reg. at 48,735.

We are not persuaded by the Patent Owner that the '304 patent is not a covered business method patent because it does not claim processing data in a business context. Prelim. Resp. 52–51, 65–66. As discussed above, we determine that the '304 patent is a covered business method patent because it claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, as required by the statute. Even assuming, however, that the statute required the data processing to be business data processing, as defined by Patent Owner, the '304 patent claims meet Patent Owner's narrow definition. In particular, the '304 patent claims require processing market information for display on a GUI and for placing trade orders through the use of a GUI, and, therefore, “use[s] computers for

processing information to support the operational, logistical, and functional activities performed by an organization” (*id.* at 65). .

We also are not persuaded by Patent Owner’s argument that the legislative history of the AIA establishes that novel user interfaces for commodities, as a category, were intended to be exempt from covered business method patent review. As Petitioner argues, although the legislative history includes certain statements that certain novel software tools and graphical user interfaces that are used by the electronic trading industry worker are not the target of § 18 of the AIA (*see* Prelim. Resp. 63–64 (reproducing statements by Senator Durbin and Schumer)), the language of the AIA, as passed, does not include an exemption for all user interfaces for commodities from covered business method patent review. *See* Pet. 18–21. Each claimed invention has to be evaluated individually to determine if it is eligible for a covered business method patent review. A determination of whether a patent is eligible for a covered business method patent review under the statute is made on a case-by-case basis on the facts of each case. 37 C.F.R. § 42.301(b).

ii. Technological Invention Exception

Even if a patent includes claims that would otherwise be eligible for treatment as a covered business method, review of the patent is precluded if the claims cover only “technological invention[s],” as defined by 37 C.F.R. § 42.301(b). The definition of “covered business method patent” in § 18(d)(1) of the AIA does not include patents for “technological inventions.”

To determine whether a patent is for a technological invention, we consider “whether the claimed subject matter as a whole recites a

technological feature that is novel and unobvious over the prior art; and solves a technical problem using a technical solution.” 37 C.F.R. § 42.301(b).

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 technology to accomplish a process or method, even if that process or method is novel and non-obvious.
- (c) Combining prior art structures to achieve the normal, expected, or predictable result of that combination.

77 Fed. Reg. at 48,763–64.

Both prongs must be satisfied in order for the patent to be excluded as a technological invention. *See Versata* at 1326–7. For the reasons discussed below, we determine that the ’304 patent is not for a technological invention because it does not solve a technical problem using a technical solution. We, thus, do not need to address whether the ’304 patent recites a technological feature that is novel and unobvious over the prior art.

a. Petitioner’s Argument

Petitioner contends that the ’304 patent does not solve a technical problem using a technical solution. Pet. 17. According to Petitioner, the ’304 patent solves the problem of “placing a trade order for a commodity on an electronic exchange,” which is a financial issue, not a novel technical problem. *Id.* Petitioner argues that graphically displaying trade information

and “[s]ending trade orders is well-known, as are computer user interfaces that facilitate this process.” *Id.* at 14. Petitioner points to statements about prior art systems in the ’304 patent, itself, and prior art in the prosecution history to support its argument. *Id.* at 14–16.

b. Patent Owner’s Arguments

Patent Owner argues that the ’304 patent solves a technical problem using a technical solution. Prelim. Resp. 55–58, 66–67, 69–76. According to Patent Owner, the ’304 patent solves a speed and accuracy problem found in prior trading GUIs with an improved GUI tool. *Id.* Patent Owner argues that in GUIs that use single action order entry, there is risk that a trader could miss his intended price when placing an order because of rapidly changing market information. *Id.* at 69–73.

c. Analysis

The ’304 patent discloses that exchanges are volatile and move rapidly, and that to profit, a trader must react quickly. Ex. 1001, col. 2, ll. 7–9.

To profit in these markets, traders must be able to react quickly. A skilled trader with the quickest software, the fastest communications, and the most sophisticated analytics can significantly improve his own or his firm’s bottom line. The slightest speed advantage can generate significant returns in a fast moving market. In today’s securities markets, a trader lacking a technologically advanced interface is at [a] sever competitive disadvantage.

Id. at col. 2, ll. 7–15. “The more time a trader takes entering an order, the more likely the price on which he wanted to bid or offer will change or not

be available in the market” because “[t]he market is fluid as many traders are sending orders to the market simultaneously.” *Id.* at col. 2, ll. 51–55. “If a trader intends to enter an order at a particular price, but misses the price because the market moved before he could enter the order, he may lose hundreds, thousands, even millions of dollars.” *Id.* at col. 2, ll. 61–65.

As can be seen from the above, the problem disclosed in the ’304 patent is the placing of trader orders on a market or exchange that is rapidly changing, so as to make a profit. As Petitioner points out (Pet. 17), this is a financial issue or a business problem, not a technical problem. If the market or exchange did not rapidly change, then there would be no need for a trader to enter orders rapidly or for a GUI to accomplish such.

The ’304 patent discloses a solution to this problem — a GUI that allows a trader to rapidly and to accurately place trading orders. *Id.* at col. 3, ll. 1–8. Patent Owner argues that the claimed GUI is a technical solution. *E.g., see* Prelim. Resp. 67. However, as discussed above, mere recitations of known computer technology, such as display devices or software, and combinations of prior art structures to achieve the normal, expected, or predictable result of that combination do not render an invention technological. Taking claim 1 as representative, we are not persuaded on this record, that the ’304 patent discloses a technological invention. Claim 27 corresponds to claim 1 and requires software that causes a computer to execute the method required by claim 1.

Claim 1 of the ’304 patent recites “a method for displaying market information relating to and facilitating trading of a commodity being traded in an electronic exchange” Ex. 1001, col. 12, ll. 35–37. The electronic exchange has an inside market displayed on a GUI. The ’304 patent, itself,

discloses that software for creating GUIs for trading on an exchange are known. *Id.* at col. 1, l. 63–col. 2, l. 6.

The claimed method recites steps of displaying financial information (i.e., data), such as indicators representing a quantity associated with an order to buy the commodity or an order to sell the commodity. Ex. 1001, col. 12, ll. 41–61. The indicators are displayed in certain regions, such as bid or ask display regions, which are positioned along a static price axis. *Id.* These steps require mapping market information to a market grid on display on the GUI. The '304 patent itself discloses that “[t]he physical mapping of such information to a screen grid can be done by any technique known to those skilled in the art. The present invention is not limited by the method used to map the data to the screen display.” *Id.* at col. 4, l. 66–col. 5, l. 7. Figure 2 of the '304 patent⁴ depicts a known trading GUI that includes regions for displaying indicators of bid and ask quantities and regions for displaying corresponding prices.

Claim 1 requires that locations in the bid and ask regions correspond to locations on a static price axis. The use of a static price axis, having corresponding bid and ask columns, on a trading GUI was known. Ex. 1016, 107⁵ (depicting a trading screen having a central order price column and ask and bid orders in adjacent corresponding columns); *see* Ex. 1009, 17–18 (providing additional explanation), Pet. 36–37.

⁴ Patent Owner indicates that Figure 2 of the '304 patent depicts a “conventional prior art” screen. Prelim. Resp. 7, 69, 73.

⁵ We refer to the pagination inserted into Exhibit 1016 and not to the original pagination. Exhibit 1016 is a foreign language reference, and an English translation is provided as Exhibit 1017.

Claim 1 also recites steps of displaying an order entry region for receiving commands to send trade orders, setting trade order parameters, and sending trade orders to the electronic exchange with a single action. Ex. 1001, col. 12, l. 62–col.13, l. 3. Tools that permit single action entry of an order, which has preset default parameters, by clicking on a cell in the screen (e.g., the location for the best bid or best ask prices) are known. Prelim. Resp. 71 (citing Ex. 2091 ¶¶24–28 (testimony of Christopher Thomas)); Ex. 1001, Fig. 2.

The '304 patent discloses that its system can be implemented “on any existing or future terminal or device” (Ex. 1001, col. 4, ll. 9–15), which are known to include displays, and discloses that the input device can be a mouse (*id.* at col. 4, ll. 13–19), which is a known input device.

As can be seen from the above, the '304 patent is not for a technological invention because it merely recites known computer technology, such as a display device or software, and combinations of prior art structures to achieve the normal, expected, or predictable result of that combination. On this record, we determine that the '304 patent does not solve a technical problem using a technical solution. The '304 patent, thus, is eligible for covered business method patent review.

B. Claim Construction

In a covered business method patent review, the Board interprets claim terms in an unexpired patent according to the broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.300(b); *See In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278–79 (Fed. Cir. 2015). Under that standard, and absent any special

definitions, we give claim terms their ordinary and customary meaning, as they would be understood by one of ordinary skill in the art at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definitions for claim terms must be set forth with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

i. “common static price axis”

Petitioner proposes that the broadest reasonable interpretation of the claim term “common static price axis” is “a reference line or column of price levels that is common to the bid and ask display regions where the price levels do not change positions unless a re-centering command is received.” Pet. 23. Petitioner further argues that this limitation should include “a price axis in which only *some* prices in a price column are static rather than requiring all prices in the price column to be static.” *Id.*

Similarly to Petitioner’s proposed interpretation, Patent Owner proposes that this limitation should be interpreted to be “a line comprising price levels that do not change positions unless a manual re-centering command is received and where the line of prices correspond to at least one bid value and one ask value.” Prelim. Resp. 13. Patent Owner, however, disputes that this limitation encompasses a price axis or column that has both static and non-static price levels. *Id.* at 13–14.

We determine that the broadest reasonable interpretation of “common static price axis” is, as proposed by Petitioner, “a reference line or column of price levels that is common to the bid and ask display regions where the price levels do not change positions unless a re-centering command is

received.” This is consistent with the ’304 patent, which states that “[t]he values in the price column are static; that is they do not normally change positions unless a re-centering command is received.” Ex. 1001, col. 7, ll. 65–67.

We, however, are not persuaded by Petitioner that this interpretation encompasses a price axis or column that has both static and non-static price levels. The broadest reasonable interpretation requires that the price levels do not change position unless a re-centering command is received. The price axis would not be static unless all the price levels were also static.

ii. Other Terms

We do not need to construe any other claim terms for the purposes of our decision.

C. Written Description

Based upon its assertion that the claim term “common static price axis” encompasses a price axis that has static and non-static price levels, Petitioner argues the ’304 patent is unpatentable under 35 U.S.C. § 112, first paragraph. Pet. 52–59. According to Petitioner, the ’304 patent does not provide written description support for a price axis that has non-static price levels. *Id.* Conversely, Patent Owner argues that the ’304 patent provides adequate written description support for a “common static price axis,” when given its broadest reasonable interpretation, which does not include a price axis that has non-static price levels. Prelim. Resp. 12–19.

As discussed above, we determine that the broadest reasonable interpretation of “common static price axis” does not encompass a price axis

that has some non-static price levels, and, thus, we are not persuaded by Petitioner that the '304 patent fails to provide written description support for the claimed invention. *See Amgen, Inc. v. Hoeschst Marion Roussel, Inc.*, 314 F.3d 1313, 1333 (Fed. Cir. 2003) (“the patentee need only describe the invention as claimed, and need not describe an unclaimed method of making the claimed product.”)

We determine that Petitioner fails to demonstrate that claims 1–40 are more likely than not unpatentable under 35 U.S.C. § 112, first paragraph.

D. Patent Subject Matter Eligibility

i. Petitioner’s Arguments

Petitioner contends that claims 1–40 are unpatentable under 35 U.S.C. § 101 as being directed to ineligible subject matter. Pet. 23–52. According to Petitioner, the claims are directed to the abstract idea of “placing an order based on displayed market information, as well as updating market information,” which is a “fundamental economic practice long prevalent in our system of commerce.” *Id.* at 35 (citing *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2356 (2014)). Petitioner further argues that the claimed GUI is simply a conventional mechanism for implementing the abstract idea and does not add anything to the abstract idea other than well-known or insignificant extra solution activity. Pet. 36–47.

ii. Patent Owner’s Arguments

Patent Owner disputes that claims 1–40 are directed to patent ineligible subject matter. Prelim. Resp. 19–36. According to Patent Owner, the claims of the '304 patent are not directed to an abstract idea but to the

features of a GUI tool and recite an inventive concept other than an abstract idea. Prelim. Resp. 23, 27 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)). Patent Owner points to the specific combination of GUI features, such as a static price axis as the inventive concept. *Id.* at 23, 27–32.

iii. Analysis

Patent-eligible subject matter is defined in § 101 of the Patent Act, which recites:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

There are, however, three judicially created exceptions to the broad categories of patent-eligible subject matter in § 101: laws of nature, natural phenomena, and abstract ideas. *Alice*, 134 S. Ct. at 2354; *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012). Although an abstract idea, itself, is patent-ineligible, an application of the abstract idea may be patent-eligible. *Alice*, 134 S. Ct. at 2355. Thus, we must consider “the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (citing *Mayo*, 132 S. Ct. at 1297–98). The claim must contain elements or a combination of elements that are “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [abstract idea] itself.” *Id.* (citing *Mayo*, 132 S. Ct. at 1294).

Claims 1–26 and 28–40 recite a method, which falls, nominally, into the process category of patent-eligible subject matter of § 101. Claims 27 recites a computer readable medium having program code that causes a computer to execute the method recited by claim 1 and nominally falls into the manufacture category.

a. Abstract Idea

Taking claim 1 as representative, we turn to the question of whether the claims fall into the abstract idea exception. Claim 1 of the '304 patent recites “a method for displaying market information relating to and facilitating trading of a commodity being traded in an electronic exchange” Ex. 1001, col. 12, ll. 35–37. The claim recites three steps of displaying market information in a certain arrangement, a step of displaying an order entry region in a certain arrangement, and a step of creating and a step of sending a trade order to an exchange. *Id.* at col. 12, l. 41–col. 13, l. 3.

The '304 patent discloses that “[t]he present invention is directed to the electronic trading of commodities. . . . It facilitates the display of and the rapid placement of trade orders.” *Id.* at col. 1, ll. 17–23. The '304 patent also discloses that exchanges utilizing electronic trading exist in at least 60 exchanges throughout the world. *Id.* at col. 1, ll. 26–28.

Given the above, we are persuaded by Petitioner that the claims of the '304 patent are directed to the fundamental economic practice of placing an order based on displayed market information, as well as updating market information.

b. Inventive Concept

Next we turn to “the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Mayo*, 132 S. Ct. at 1297–98.

Claim 1 of the ’304 patent recites “a method for displaying market information relating to and facilitating trading of a commodity being traded in an electronic exchange” Ex. 1001, col. 12, ll. 35–37. The electronic exchange has an inside market displayed on a GUI. The ’304 patent, itself, discloses that software for creating GUIs for trading on an exchange are known and discloses a known GUI that displays an inside market. *Id.* at col. 1, l. 63–col. 2, l. 6; Fig. 2. The use of a graphical user interface, a known way for a user to interact with the computer, does not change the generic nature of the computer. Merely reciting a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. *Alice*, 134 S. Ct. at 2358.

The claimed method recites steps of displaying indicators representing a bid or ask quantity in a plurality of locations of bid or ask regions, respectively. Ex. 1001, col. 12, ll. 41–61. The indicators are displayed in positions of the bid or ask display regions which correspond to price levels of a common static price axis. *Id.* The indicators move as the inside market changes. *Id.* These steps require gathering market information (i.e., the bid or ask quantities and prices) and displaying the information in the appropriate region.

The '304 patent discloses that gathering market information using software and displaying the market information on a market grid or GUI is conventional and well-known. *Id.* at col. 1, l. 27–col. 2, l. 6. The '304 patent discloses that “[t]he physical mapping of such information to a screen grid can be done by any technique known to those skilled in the art. The present invention is not limited by the method used to map the data to the screen display.” *Id.* at col. 4, l. 66–col. 5, l. 7. Figure 2 of the '304 patent depicts a known trading GUI that includes regions for displaying indicators of bid and ask quantities and regions for displaying corresponding prices. *Id.* at Fig. 2. Further, the use of a common static price axis, having price levels that correspond to bid and ask quantity indications in bid and ask columns, on a trading GUI was known. Ex. 1016, 107 (depicting a trading screen having a central order price column and ask and bid orders in adjacent corresponding columns); *see* Pet. 36–37. This is nothing more than routine data gathering and does not transform the abstract idea into a patent-eligible invention. *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011).

Claim 1 also recites steps of displaying an order entry region for receiving commands to send trade orders, setting trade order parameters, and sending trade orders to the electronic exchange with a single action. *Id.* at col. 12, l. 62–col.13, l. 3. Tools that permit single action entry of an order, which has preset default parameters, by clicking on a cell in the screen (e.g., the location for the best bid or best ask prices) were known. Prelim. Resp. 71 (citing Ex. 2091 ¶¶24–28 (testimony of Christopher Thomas)); Ex. 1001, Fig. 2. This is a well-understood, routine, conventional activity that does not add significantly more to the abstract idea. *Mayo*, 132 S. Ct. at 1298.

Claim 1 requires a computer, a display, and an input device. Claim 27 requires a computer readable medium. The '304 patent discloses that its system can be implemented “on any existing or future terminal or device” (Ex. 1001, col. 4, ll. 9–15), which were known to include displays, and discloses that the input device can be a mouse (*id.* at col. 4, ll. 13–19), which was a known input device. These elements do not transform the abstract idea into a patent-eligible invention.

Given the above, we determine that the individual elements of the claim do not transform the nature of the claim into a patent-eligible application. They do not add significantly more to the abstract idea or fundamental economic practice.

Considering all of the elements as an ordered combination, we determine that the combined elements also do not transform the nature of the claim into a patent-eligible application. Patent Owner contends that it is the use of a static price axis in combination with the single action order entry that makes the GUI tool patent eligible. Prelim. Resp. 23. However, as discussed above, we determine on this record that the claimed static price axis was known and that the claimed single action order entry was known. Unlike the claimed combination of elements in *DDR Holdings*, the claimed method of the '304 patent combines the claim elements according to their known functions to achieve routine and conventional results. *See DDR Holdings*, 773 F.3d at 1257–8. On this record, we are not persuaded that the combination of the claimed elements transforms the nature of the claim into a patent-eligible application.

On this record, we determine that Petitioner demonstrates that claims 1 and 27 are more likely than not patent ineligible under 35 U.S.C. § 101.

c. Dependent Claims

Petitioner contends that the additional elements recited by dependent claims 2–26 and 28–40 do not add significantly more to the abstract idea so as to render the claims patent-eligible. Pet. 47. On this record, we determine that Petitioner demonstrates that dependent claims 2–26 and 28–40 are more likely than not patent ineligible under 35 U.S.C. § 101. Patent Owner makes no arguments directed to the additional elements of the dependent claims.

E. Real-Party-In-Interest

i. Patent Owner’s Argument

Patent Owner contends that the Petition fails to name all of the real-parties-in-interest as required by 35 U.S.C. § 322(a)(2). Prelim. Resp. 36–45. According to Patent Owner, CQG, Inc. and CQGT, LLC (collectively, “CQG”) are real-parties-in-interest that are not identified in the Petition and, thus, institution should be denied. *Id.* Patent Owner further contends that if CQG is a real-party-in-interest, the Petition is barred under 35 U.S.C. § 325(a)(1). *Id.* at 41 (citing *CQG v. Trading Techs.*, CBM2015-00057, Paper 13 (PTAB July 10, 2015)).

According to Patent Owner, the Petition “is part of a larger scheme of coordination” amongst the defendants in the related litigation. *Id.* at 38 (citing Ex. 2002). Both Petitioner and CQG are defendants in the related litigation and co-petitioners of related petitions for covered business method

patent review. Patent Owner points to two statements made in a paper filed in the related litigation as evidence of the alleged coordination. *Id.* at 38–39. Those statements are: “Defendants respectfully request a short period of time to coordinate on these PTAB actions” (Ex. 2002, 3) and “For CQG’s part, it is preparing to file CBMR petitions on the ’411, ’374, ’768, and ’724 patents in the next several weeks” (Ex. 2003, 8). Prelim. Resp. 38–39.

Patent Owner also points to the fact that the Petition and exhibits, including the declaration of Dr. Mellor, are substantially identical as to the petition and exhibits CQG filed in CBM2015-00057. Prelim. Resp. 40–41.

ii. Petitioner’s Argument

Petitioner disputes that CQG is a real-party-in-interest. Pet. 4–8. Petitioner argues that it and CQG are “separate unrelated corporate entities with no common ownership and no common control,” and, although they are both accused of infringing the same patent, a non-party’s status as a co-defendant of a joint defense group is insufficient to render the non-party a real-party-in-interest. *Id.* at 5. Petitioner acknowledges that it is “largely resubmitting” argument made in the petition filed by CQG in CBM2015-00057, but asserts that “CQG did not control or influence [Petitioner’s] decision to file this petition, nor did CQG participate in the preparation of this petition other than passively having its earlier-filed petition serve as its basis.” *Id.* at 7.

iii. Analysis

Whether a non-identified party is a real party-in-interest to a proceeding is a highly fact-dependent question. 77 Fed. Reg. at 48,759

(citing *Taylor v. Sturgell*, 553 U.S. 880 (2008)). “A common consideration is whether the non-party exercised or could have exercised control over a party’s participation in a proceeding.” 77 Fed. Reg. at 48,759 (citing *Taylor*, 553 U.S. at 895). “The concept of control generally means that ‘it should be enough that the nonparty has the actual measure of control or opportunity to control that might reasonably be expected between two formal coparties.’” *Id.* (quoting Charles Wright, et al., 18A Federal Practice & Procedure §§ 4449, 4451 (2d ed. 2011)).

We are not persuaded that Patent Owner’s evidence reasonably establishes that CQG is a real-party-in-interest in this proceeding. Petitioner’s statements made in the papers filed in the related litigation, when read in context, do not sufficiently establish that CQG had control over the filing of the Petition in this proceeding. *See* Ex. 2002, 3; Ex. 2003, 8. The proffered statements were made with regards to a request, by the co-defendants, to continue a stay in the related district court litigation (Ex. 2002, 3; Ex. 2003, 8) and do not establish sufficiently Patent Owner’s alleged “larger scheme of coordination.” Status as a co-defendant of a joint defense group is insufficient to establish that CQG had control over the filing of the Petition in this proceeding. 77 Fed. Reg. at 48,760.

Further, the fact that Petitioner admits that it substantially copied CQG’s petition and exhibits from CBM2015-00057 does not establish sufficiently that CQG had control over the filing of the Petition in this proceeding. The record in CBM2015-00057 was publicly accessible and, on this record, Patent Owner has not directed us to sufficient evidence to question Petitioner’s assertion that CQG did not have any control over Petitioner’s decision to substantively resubmit the petition and exhibits from

CBM2015-00057. *See JP Morgan Chase & Co. v. Maxim Integrated Product, Inc.*, CBM2014-00179, slip op. at 6–13 (PTAB Feb. 20, 2015) (Paper 11) (determining that a substantial resubmission of a petition filed in an original proceeding, alone, was not a sufficient basis for determining that a co-petitioner in the original proceedings was a real-party-in-interest in the later proceeding).

On this record, we are not persuaded that CQG is a real-party-in-interest in this proceeding.

iv. RPX Corp. v. VirnetX Inc.

Patent Owner argues that *RPX Corp. v. VirnetX Inc.*, Case IPR2014–00171 is illustrative of why CQG is a real-party-in-interest. Prelim. Resp. 42–43. We determine that the facts of *RPX Corp.* are not sufficiently similar to the facts of this proceeding. In *RPX Corp.*, VirnetX’s motion for additional discovery included evidence: 1) that RPX filed its petitions pursuant to a program in which Apple was RPX’s client, 2) that Apple paid RPX a fee to, among other things, file the petitions, and 3) that metadata in the RPX petitions demonstrated that Apple’s counsel was involved with the RPX’s petitions. *See RPX Corp. v. VirnetX*, IPR2014-00171 (PTAB Jan. 27, 2014) (Paper 18). Patent Owner’s evidence in this proceeding is unlike VirnetX’s evidence and, for the reasons discussed above, Patent Owner’s evidence is insufficient to establish that CQG is a real-party-in-interest.

F. Abuse of Process

Patent Owner alleges that the filing of the Petition is a misuse of the covered business method process and argues that we should exercise our

discretion to deny institution. Prelim. Resp. 45–50. According to Patent Owner, we should not institute covered business method patent review because: 1) we “should not condone the defendants’ misuse of the [covered business method review] process as a vehicle for their litigation gamesmanship” and 2) “these arguments have been presented to the Board before.” *Id.* at 47.

As to Patent Owner’s first argument, we are not persuaded by Patent Owner’s argument that the Petition should be denied for an alleged abuse of process. Section 42.12 of our Rules provide that the Board *may* impose sanctions against a party for misconduct, including for abuse of process, and that sanctions may include dismissal of the petition. 37 C.F.R. § 41.12(a)(6),(b)(8). We are not persuaded that the imposition of sanctions is appropriate here. Patent Owner does not proffer sufficient evidence to establish that Petitioner is abusing these proceedings as a vehicle for alleged litigation gamesmanship.

As to Patent Owner’s second argument, we are not persuaded by the Patent Owner’s argument that the Petition should be denied. Section 325(d) of the statute states: “In determining whether to institute or order a proceeding . . . [], . . ., the Director *may* take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office” (emphasis added). Section 325 (d) provides that, if another proceeding involving the same patent is before the Office, the Board may terminate any such matter and that the Board may take into account whether the same or substantially the same prior art or arguments were previously presented to the Office.

It is not disputed that the Petition presents substantially the same arguments as previously presented in the petitions filed by CQG in CBM2015-00057. *See* Pet. 6. We, however, are not required by the statute to reject a petition based upon the fact that certain arguments were previously presented to the Office and we decline to do so here. Although the arguments were previously presented in CQG's petition, the Board did not reach the merits of those arguments because the Board determined that CQG was barred under 35 U.S.C. § 325(a)(1) and the petition was denied on that basis. *See* Pet. 4; Prelim. Resp. 41.

III. CONCLUSION

We determine that Petitioner has demonstrated that the '304 patent is a covered business method patent and that it is more likely than not that claims 1–40 of the '304 patent are unpatentable under 35 U.S.C. § 101.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that pursuant to 35 U.S.C. § 324(a), a covered business method patent review is hereby instituted as to claims 1–40 under 35 U.S.C. § 101; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 324(d) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial commencing on the entry date of this Order.

CBM2015-00161
Patent 6,766,304 B2

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APPENDIX

Pending Covered Business Method Patent Review Petitions

Proceeding	Patent
CBM2015-00161	6,766,304
CBM2015-00172	7,783,556
CBM2015-00179	7,533,056
CBM2015-00181	7,676,411
CBM2015-00182	6,772,132
CBM2016-00009	7,685,055

No-longer Pending Covered Business Method Patent Review Petitions

Proceeding	Patent
CBM2014-00131	7,533,056
CBM2014-00133	7,676,411
CBM2014-00135	6,772,132
CBM2014-00136	6,766,304
CBM2014-00137	7,685,055
CBM2015-00057	6,766,304
CBM2015-00058	6,772,132

Related Reexaminations

Reexamination Control No.	Patent	Status
90/008,576	6,771,132	no-longer pending
90/008,577	6,766,304	no-longer pending
90/011,250	6,772,132	no-longer pending
90/013,578	7,533,056	pending
90/013,624	7,685,055	pending