

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.,
Patent Owner,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC.,
Patent Owner.

CBM 2015-00179
Patent 7,533,056 B2

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

MEDLEY, *Administrative Patent Judge*.

DECISION

Denying Patent Owner's Request for Rehearing
37 C.F.R. § 42.71

Introduction

Trading Technologies International, Inc. (“Patent Owner”) filed a Request for Rehearing (Paper 144, “Req. Reh’g”) of our Final Decision (Paper 143, “Dec.”) determining that claims 1–15 of U.S. Patent No. 7,533,056 B2 (Ex. 1001, “the ’056 patent”) are unpatentable. Patent Owner requests rehearing only with respect to our decision that dependent claims 5–7 are (1) unpatentable under 35 U.S.C. § 103 over TSE, Togher, Schott, and Cooper, and (2) are not directed to patent eligible subject matter under 35 U.S.C. § 101. Req. Reh’g 1–2. For the reasons that follow, the Request for Rehearing is *denied*.

Analysis

A party requesting rehearing bears the burden of showing that the decision should be modified. 37 C.F.R. § 42.71(d). The party must identify specifically all matters we misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply. *Id.*

Patent Owner requests rehearing of our determination that dependent claims 5–7 are not patent eligible under 35 U.S.C. § 101. Req. Reh’g 2, 8–9. Patent Owner argues that we (1) overlooked that dependent claims 5–7 recite an inventive concept, (2) failed to take into account guidance from *Trading Technologies International, Inc., v. CQG, INC.*, No. 2016-1616, 2017 WL 192716 (Fed. Cir. Jan. 18, 2017), and (3) failed to consider the claimed combination as a whole. *Id.* Patent Owner’s arguments are not persuasive.

First, the rehearing request never points to any language in any of claims 5–7 as allegedly claiming an inventive concept. Rather, Patent Owner quotes language from independent claim 1. Req. Reh’g 8. In addition, Patent Owner has not directed us to a place where it previously argued that claims 5–7 recite an inventive concept.¹ Thus, we could not have overlooked something that was never presented. In any event, we considered whether all of the claims, including dependent claims 5–7, constitute an inventive concept. Dec. 26–29. Patent Owner provides no persuasive reason for us to modify our Decision.

We also disagree with Patent Owner that we “failed to take into account the Federal Circuit’s guidance in assessing that these claims [5–7] are directed to an inventive concept.” Req. Reh’g 9. We considered and discussed both Supreme Court and Federal Circuit guidance emanating from several decisions relevant to the facts of this case. Dec. 18–29. Patent Owner presents no sufficient reason for us to modify the Decision in that regard, as mere disagreement with a decision is not a sufficient basis for requesting rehearing.

Patent Owner argues that claim 1 “as a whole provide[s] an unconventional combination of ‘receiving a user input indicating a desired

¹ Patent Owner’s arguments made in the Patent Owner Response (Paper 81) regarding 35 U.S.C. § 101 eligibility of claims 5–7 were directed to whether those claims added significantly more to claim 1 rendering them less abstract. PO Resp. 20–21. We considered such arguments and determined, even under Patent Owner’s proposed narrow interpretation of claims 5–7 discussed in our Decision and here, *supra*, that claims 5–7 added nothing to render them less abstract. Dec. 25–26.

price for an order to be placed by the user, the desired price being specified by selection of one of a plurality of locations corresponding to price levels along the price axis’ along with displaying bid and offer indicators corresponding to the same price axis,” and, thus, recites an inventive concept. Req. Reh’g 8 (citing PO Resp. 26). We are not persuaded by this argument. We already considered Patent Owner’s arguments that the claims include an inventive concept, but determined that those arguments were not persuasive. Dec. 26–29. For example, we explained with respect to the quoted language from claim 1:

[T]o the extent that the claims require a GUI, a mere recitation of a GUI does not make the claim patent eligible. *See Affinity Labs*, 838 F.3d at 1257–58, *Ameranth*, 842 F.3d at 1236–1242, *Internet Patent Corp.*, 790 F.3d at 1348–1349. A recitation of a generic GUI merely limits the use of the abstract idea to a particular technological environment. “Limiting the field of use of the abstract idea to a particular existing technological environment does not render any claims less abstract.” *Affinity Labs*, 838 F.3d at 1258 (citing *Alice*, 134 St. Ct. at 2358; *Mayo*, 132 S. Ct. at 1294).

Dec. 27.

In rendering our Decision, we did not focus on individual claim elements and overlook the claimed combination as a whole as Patent Owner asserts. Req. Reh’g 8–9. Rather, we applied the Supreme Court’s guidance that to be patent eligible, a claim to an otherwise abstract idea must recite additional elements that constitute an inventive concept and that one looks to elements of each claim individually and as an ordered combination. Dec. 26 (citing *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2357 (2014))

and *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1297–98 (2012). We considered elements of each claim individually and as an ordered combination. Dec. 26–29. And with respect to considering the claimed combination as a whole, we specifically held that “considering all of the elements *as an ordered combination*, we determine that the combined elements also do not transform the nature of the claims into a patent-eligible application.” *Id.* at 29 (emphasis added). Thus, Patent Owner’s argument is not persuasive.

Patent Owner also seeks rehearing of our decision that claims 5–7 are unpatentable under 35 U.S.C. § 103 over TSE², Togher³, Schott⁴, and Cooper⁵. Req. Reh’g 2–8. Essentially, Patent Owner disagrees with our interpretation of claim 5. *Id.* Claim 5 depends directly from claim 1 and recites “displaying an order icon at a location that corresponds to the desired price level along the price axis, the order icon *indicating the user’s order* at the electronic exchange.” We did not adopt Patent Owner’s proposed interpretation such that the phrase means “an icon indicating to the user that the user has an order at a particular level along the price axis, distinct from other orders at the same level.” Dec. 16. Rather, we explained that claim 5 was broad enough to also cover that when an order is placed by a user,

²TOKYO STOCK EXCHANGE OPERATION SYSTEM DIVISION, FUTURES/OPTION PURCHASING SYSTEM TRADING TERMINAL OPERATION GUIDE (1998) (Ex. 1004) (“TSE”).

³ U.S. Patent No. 5,375,055, issued Dec. 20, 1994 (Ex. 1008) (“Togher”).

⁴ U.S. Patent No. 5,619,631, issued Apr. 8, 1997 (Ex. 1009) (“Schott”).

⁵Alan Cooper, ABOUT FACE: THE ESSENTIALS OF USER INTERFACE DESIGN, First Edition (1995) (Ex. 1015) (“Cooper”).

resulting in the total quantity of orders placed at that same price to increase, that the total number displayed would indicate an increase, and thus, indicate the user's order. In other words, we disagreed with Patent Owner that claim 5 requires indicating the *specific* user order (separating it out from all other orders) or indicating to the user that it is his order. *Id.*

In its rehearing request, Patent Owner argues that a person of ordinary skill in the art reading the claims and specification of the '056 patent would understand that an "order icon" must show the user's own individual orders. Req. Reh'g 4–6. These same arguments were presented in the Patent Owner Response and we addressed such arguments. Dec. 16–17. A rehearing request is not an opportunity to reargue points already considered by the panel. For these reasons, we are not persuaded that we need alter our original Decision.

Patent Owner argues that because independent claim 1 recites "bid indicators" and "offer indicators," and dependent claim 6 recites using three visual characteristics for the bid indicators, offer indicators, and order icon, the separately-claimed "order icon" in dependent claim 5 must represent something distinct from the bid/offer indicators. Req. Reh'g 6–7. We addressed this argument in our Decision, explaining

But even Patent Owner does not explain why an order icon cannot be one of the offer or bid indicators. Indeed, for the embodiment that Patent Owner directs attention to there is no distinction between offer and bid indicators with order icons (*an order icon is one of the indicators*). *Id.* We agree with Petitioner that a person of ordinary skill in the art would have understood the '056 patent to use "icons" and "indicators" interchangeably. *See, e.g.,* Pet. 18–20. Thus, we disagree with

Patent Owner that the “order icon” of claim 5 cannot be one of the offer or bid indicators.

Dec. 17 (emphasis added).

Notably, in its rehearing request Patent Owner does not challenge our finding that the specification of the '056 patent uses “icons” and “indicators” interchangeably and that in the embodiment Patent Owner directs attention to, in support of its proposed construction, the order icon is one of the indicators. For these reasons, we disagree with Patent Owner’s arguments that dependent claim 5 must represent something distinct from the bid/offer indicators of claim 1. Again, claim 5 is broad enough to cover distinct icons and indicators, or icons and indicators that are interchangeable. Neither the claim scope of claim 1 nor claim 6 alter our determination in that regard.

Patent Owner also argues that dependent claim 7, which depends from claim 5, is instructive for interpreting claim 5. Req. Reh’g 7. Specifically, Patent Owner argues that claim 7 requires that the order icon indicate the default quantity working at the electronic exchange and that in order for the order icon to indicate the default quantity selected by the user, the order icon must indicate the user’s own order. *Id.* This argument in connection with construing claim 5 is newly presented and improper for our consideration. We need not and do not consider this newly presented argument. In any event, we observe that Patent Owner has not explained sufficiently, with any supporting evidence, why claim 7 informs a person of ordinary skill in the art that we must read claim 5 as narrowly as Patent Owner proposes.

Lastly, Patent Owner contends that we misapprehended or overlooked that our interpretation of claim 5 is in contradiction with how we interpreted

CBM2015-00179
Patent 7,533,056 B2

claim 1 of a different patent owned by Patent Owner (U.S. Patent 7,212,999 B2 (“the ’999 patent”)) involved in a different proceeding (CBM2016-00032). *Id.* at 2–3, 7–8. Notably, these arguments are presented for the very first time in connection with Patent Owner’s Rehearing Request and Patent Owner does not contend otherwise. Again, we need not consider a point raised for the first time in a rehearing request. In any event, we observe that the ’999 patent claim 1 is not the same as claim 5 in the ’056 patent, and neither are the facts or evidence presented in the two proceedings. Based on our observations alone, we are not persuaded that the interpretation of a different phrase in a different claim in a different patent should dictate how we should interpret claim 5 in this proceeding.

For the foregoing reasons, Patent Owner’s Request for Rehearing is *denied*.

PETITIONER:

Robert Sokohl
Lori Gordon
Richard Bemben
STERN, KESSLER, GOLDSTEIN & FOX P.L.L.C.
rsokohl-ptab@skgf.com
lgordon-ptab@skgf.com
rbemben-ptab@skgf.com

John C. Phillips
FISH & RICHARDSON, P.C.
CBM41919-0007CP1@fr.com

CBM2015-00179
Patent 7,533,056 B2

PATENT OWNER:

Erika H. Arner
Joshua L. Goldberg
Kevin D. Rodkey
Rachel L. Emsley
Cory Bell
FINNEGAN, HENDERSON, FARABOW,
GARRET & DUNNER, LLP
erika.arners@finnegan.com
joshua.goldberg@finnegan.com
kevin.rodkey@finnegan.com
rache.emsley@finnegan.com
cory.bell@finnegan.com

Steven F. Borsand
Jay Knobloch
TRADING TECHNOLOGIES INTERNATIONAL, INC.
tt-patent-cbm@tradingtechnologies.com
jay.knobloch@tradingtechnologies.com

Michael D. Gannon
Leif R. Sigmond, Jr.
Jennifer Krurcz
McDONNELL BOEHNEN HULBERT & BERGHOFF LLP
gannon@mbhb.com
sigmond@mbhb.com
kurcz@mbhb.com