

Fed. Circ. Won't Revive Alice-Axed Trading Tech Patents

By **Dani Kass**

Law360 (April 18, 2019, 6:53 PM EDT) -- The Patent Trial and Appeal Board rightfully found that three full Trading Technologies patents weren't patent-eligible under the U.S. Supreme Court's Alice test following a covered business method review, the Federal Circuit said Thursday.

The three-judge panel agreed both that the CBM reviews were appropriate, given that the patents covered a business method rather than a technological fix, and that the patents didn't hold up, as they described abstract ideas.

It also refused to take up Trading Technologies International Inc.'s argument that CBM reviews are unconstitutional. The government had intervened in the case to fight this claim, saying both that Trading Technologies forfeited its right to bring it up and that the reviews are legal. The panel didn't have to go into the government's merits arguments, though, agreeing the issue wasn't fleshed out well enough to be discussed.

"In a total of four sentences in each of its opening briefs, TT raises challenges based on a right to a jury under the Seventh Amendment, separation of powers under Article III, the due process clause, and the taking clause," the opinion states. "Such a conclusory assertion with no analysis to the underlying challenge is insufficient to preserve the issue for appeal."

IBG LLC and Interactive Brokers LLC had challenged the entirety of the three patents that cover a graphical user interface used in electronic trading. The board found that all three were abstract and that one of them was also obvious.

CBM patents only cover a method or apparatus for performing data processing or inventions involving the practice, administration or management of a financial product or service, excluding technological inventions, the opinion states. The Federal Circuit said CBM review was appropriate here because the patents described a way for traders to be better at their jobs, not a technological feature.

"This invention makes the trader faster and more efficient, not the computer," the panel wrote. "This is not a technical solution to a technical problem."

It then agreed that the patents were abstract, even though they were describing a computer-based method, and that none of the patents have an inventive concept that could make them patent-eligible under the test established in *Alice v. CLS*.

“The claims of [one patent-in-suit] do not improve the functioning of the computer, make it operate more efficiently, or solve any technological problem,” the panel said, in one example. “Instead, they recite a purportedly new arrangement of generic information that assists traders in processing information more quickly.”

The panel didn’t address the claims in U.S. Patent No. 7,533,056 that the board found obvious, given the abstractness ruling.

Counsel for Trading Technologies and IBG along with a representative for the U.S. Patent and Trademark Office didn’t immediately respond to requests for comment.

The patents-in-suit are U.S. Patent Nos. 7,533,056; 7,212,999; and 7,904,374.

Trading Technologies is represented by Michael D. Gannon, Leif R. Sigmond Jr., Jennifer Kurcz and Alaina J. Lakawicz of BakerHostetler, and in-house by Steven Borsand and Jay Quentin Knobloch.

IBG and Interactive Brokers are represented by Byron L. Pickard, Robert E. Sokohl, Richard M. Bemben and Jon Wright of Sterne Kessler Goldstein & Fox PLLC and Michael T. Rosato of Wilson Sonsini Goodrich & Rosati PC.

The government is represented by Katherine Twomey Allen, Mark R. Freeman, Scott R. McIntosh and Joseph H. Hunt of the U.S. Department of Justice's Civil Division, and Thomas W. Krause, Joseph Matal and Farheena Rasheed of the U.S. Patent and Trademark Office.

The case is Trading Technologies Int'l v. IBG LLC, case number 17-2257, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Jack Karp.