

Fed. Circ. Axes 4 More Trading Tech Patents Under Alice

By **Matthew Bultman**

Law360 (May 21, 2019, 7:50 PM EDT) -- The Federal Circuit on Tuesday invalidated four Trading Technologies patents covering a graphical user interface for electronic trading, finding the patents were not distinguishable from others the court previously found had covered only an abstract idea.

The ruling is the latest in a series of appeals filed by Trading Technologies International Inc. challenging Patent Trial and Appeal Board decisions in covered business method reviews requested by brokerage firm Interactive Brokers LLC.

In a pair of precedential opinions from April, the Federal Circuit upheld PTAB decisions finding four other Trading Technologies GUI patents were invalid under the *Alice v. CLS Bank* Supreme Court ruling that abstract ideas implemented using a computer are not eligible for patent protection.

"We are not persuaded by Trading Technologies' arguments that the patents at issue here ... are distinguishable from the patents invalidated in [the April cases]," the court wrote Tuesday, concluding its previous rulings "control and affirm the board's decisions."

Interactive Brokers has been feuding with Trading Technologies since at least 2010, when the latter filed an infringement lawsuit in Illinois federal court. Other financial service companies have been sued as well, which has led to a host of challenges at the PTAB.

Trading Technologies previously said more than a dozen of its patents have been swept into CBM review.

In February, Trading Technologies convinced the Federal Circuit to throw out PTAB decisions invalidating a handful of its patents. The court said those patents were ineligible for CBM review, falling into an exemption for patents that cover a "technological invention."

More recent decisions have gone against Trading Technologies.

The Federal Circuit a couple months later ruled that four other UI patents were eligible for CBM review, and that the PTAB was not wrong to find them invalid. The difference was the court found these inventions made traders faster and more efficient, not their computers.

"This is not a technical solution to a technical problem," the court wrote in an April 18 opinion.

In court filings, Trading Technologies tried to differentiate the patents that were the subject of Tuesday's ruling. For example, it said in one case the invention improved how the UI operates rather than making the trader faster. But the Federal Circuit didn't see it that way.

"Like [the April cases], the challenged patents 'focus[] on improving the trader, not the functioning of the computer,'" it said Tuesday. "Although these patents may provide different information ... information is 'intangible' and its 'particular content ... does not change its character as information.'"

Trading Technologies has maintained in its appeals that CBM review is unconstitutional. The Federal Circuit has repeatedly found this argument was waived because Trading Technologies didn't flesh out the issue in its briefs, and it refused to address the issue again Tuesday.

Attorneys for Trading Technologies and Interactive Brokers could not immediately be reached for comment.

The patents-in-suit are U.S. Patent Nos. 7,412,416; 7,818,247; 7,685,055; and 7,693,768.

Judges Haldane Mayer, Richard Linn and Todd Hughes sat on the panel for the Federal Circuit.

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

Interactive Brokers is represented by Byron Pickard, Richard Bembem, Robert Sokohl and Jon Wright of Sterne Kessler Goldstein & Fox PLLC.

The case is Trading Technologies International Inc. v. IBG LLC, Interactive Brokers LLC, case number 2018-1105, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Adam LoBelia.