
Surviving a Challenge Under *Alice v. CLS Bank* May Preclude CBM Review

***IBG LLC v. Trading Techs. Int'l, Inc.*, 2019 WL 581580, (Fed. Cir. Feb. 13, 2019)**

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The Federal Circuit vacated decisions of the Patent Trial and Appeal Board (the “Board”) regarding four patents directed to a graphical user interface (“GUI”) on the basis that the patents are for “technological inventions” and thus not subject to covered business method (“CBM”) review.

According to the Leahy-Smith America Invents Act (“AIA”), the Board may only institute CBM review for “a patent that 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, **except that the term does not include patents for technological inventions.**” Pub. L. 112-29, § 18(d)(1) (emphasis added). Determining whether patents are for “technological inventions” requires the Board to consider on a case-by-case basis “whether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art” and whether it “**solves a technical problem using a technical solution.**” 37 C.F.R. § 42.301(b) (emphasis added).

IBG LLC and Interactive Brokers LLC petitioned for CBM review of four patents owned by Trading Technologies International, Inc., (“TT”). All four patents, which share a specification, are directed to a GUI for a trading system. The Board instituted CBM review of all four patents, and the Board issued final written decisions that two of the patents were patent eligible, while the other two were not. TT appealed, and the Federal Circuit considered whether the patents were directed to “technological inventions,” and thus excluded from CBM review.

Importantly, two of the four TT patents had previously been challenged as patent ineligible under the framework of *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208 (2014). The Federal Circuit had already found those two patents claimed patentable subject matter on the basis that the claimed GUI imparted a specific, improved functionality unique to trading systems. *Trading Techs. Int'l, Inc. v. CQG, INC.*, 675 F. App'x 1001, 1006 (Fed. Cir. 2017). In other words, the patents solved a technical problem using a technical solution.

The Federal Circuit found that the Board’s adoption of the reasoning of *CQG* in finding the claims of both patents eligible, while at the same time holding that the patents were not for technological inventions, was internally inconsistent and thus arbitrary and capricious. The Federal Circuit thus vacated the Board’s decisions.