## IN THE UNITED STATES DISTRICT COURT
## FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: _____

TRADESTATION TECHNOLOGIES, INC.,

     Plaintiff,

v.

TRADING TECHNOLOGIES
INTERNATIONAL, INC.,

     Defendant.

_____/

## COMPLAINT AND DEMAND FOR JURY TRIAL

This is an action for patent infringement. Plaintiff, TRADESTATION TECHNOLOGIES, INC., sues Defendant, TRADING TECHNOLOGIES INTERNATIONAL, INC., and states as follows:

## THE PARTIES

1.    Plaintiff TradeStation Technologies, Inc. ("Plaintiff" or "TradeStation Technologies") is a Florida corporation in good standing with its headquarters in Plantation, Florida, and is the owner of all right, title and interest in U.S. Patent 7,379,909 B1 ("'909 Patent"), validly issued May 27, 2008 by the United States Patent and Trademark Office.

2.    Defendant Trading Technologies International, Inc. ("Defendant," "Trading Technologies," or "TT") is a Delaware corporation with its headquarters in Chicago, Illinois, and may be served with process at its primary offices, 222 South Riverside Plaza, Suite 1100, Chicago, Illinois 60606 upon one of its officers: Rick Lane, CEO; Harris Brumfield, Chairman of the Board; Russ Rausch, EVP Global Support; or Brian Mehta, CMO; or any of its managing agents, including Drew Shields, CTO, Michael Mayhew, CIO, Robert McDonald, EVP Global

Sales, Michael Ryan, EVP and General Counsel, Roger Mills, EVP Finance, Kate Burgoon, EVP Human Resources, or Steve Borsand, EVP Intellectual Property.

## JURISDICTION AND VENUE

3.      This is a suit for infringement of the '909 Patent by Defendant so this Court has subject matter jurisdiction under 28 U.S.C. § 1338(a).

4.      This Court has personal jurisdiction over Defendant under Florida Statute § 48.193, because it sells, offers to sell, induces others to use, and contributorily infringes one or more claims of the '909 Patent with its past and ongoing sales, offers to sell, marketing, advertising and distribution of products in the State of Florida.  These past and ongoing activities include but are not limited to:  participation in trade shows in Naples, Florida in 2015, in Boca Raton, Florida in February 2016, and in Miami, Florida on February 16, 2016, and its Bronze and InformationXchange sponsorship of the Futures Industry Association conference being held in Boca Raton, Florida, March 15-18, 2016; campus partnerships with the University of Florida and Florida State University wherein it provides its trading platform to students and others; and its interactive website wherein Florida residents can access Defendant's software for free demonstration uses, and purchase its software, directly or through brokers or agents Defendant has so authorized.

5.      Venue is proper in this district under 28 U.S.C § 1391(c) and 28 U.S.C. § 1400(b) because the Defendant resides in this district within the meaning of 28 U.S.C § 1391(c).

## BACKGROUND

6.      Plaintiff is the wholly-owned trading technology subsidiary of TradeStation Group, Inc. ("TradeStation Group").  TradeStation Group is also the parent company of a self-directed online futures and securities brokerage firm, TradeStation Securities, Inc. ("TradeStation Securities").  TradeStation Group, through its principal operating subsidiaries,

Plaintiff and TradeStation Securities, is best known for the analysis software and electronic trading platform it provides to the active trader and certain institutional trader markets, known as *TradeStation*, which enables clients to design, test, optimize, monitor, and automate their own custom equities, options, futures and forex trading strategies.

7.      In 2001, Plaintiff converted itself from being solely a trading software provider to an organization whose principal offering to customers would be an online securities brokerage, with TradeStation Securities, a licensed securities brokerage firm, making the fully-integrated online trading platform offering to traders and investors.  This software platform's back-testing, order-generation and trade execution capabilities became fully integrated for securities markets in 2001 and futures markets in 2003, and the foreign exchange market ("forex") was added soon thereafter.  It was in 2001 that orders could first be entered through the use of *EasyLanguage*, the proprietary trading-term, English-like language developed by Plaintiff to give traders who are not computer programmers the ability to design, optimize and implement through trade order execution their own, custom trading strategies.

8.      The *TradeStation* analysis and trading platform is an electronic trading platform for active, experienced and/or professional financial market traders.  It provides extensive functionality for receiving real-time data, displaying data, entering orders, and managing outstanding orders and market positions, through a variety of formats and tools.  The *TradeStation* platform's industry-leading capability is enabling self-directed investors and traders (who are not also computer programmers) to design, test, optimize and automate through instantaneous order placement and execution their own custom investment and trading strategies.

9.      Although *TradeStation* comes with a large number of pre-defined indicators, strategy components, and analysis tools, individuals can modify and customize existing

indicators and strategies, as well as create their own indicators and strategies for order entry and execution, using TradeStation Technologies' proprietary *EasyLanguage* programming language and tools.  Traders can also access hundreds of TradeStation Technologies-compatible products created by independent third-party developers through the "TradeStation TradingApp® Store."

10.     TradeStation Technologies supports the development and design, testing, optimizing, and automation of all aspects of trading.  Trading strategies can be back-tested and refined against historical data in simulated trading before being traded "live."  *TradeStation* is used mainly as a trading platform with TradeStation Securities, TradeStation Technologies' sister company, acting as the broker.

11.     Year in and year out, leading financial publications, such as *Barron's*, *Investor's Business Daily*, *Stocks & Commodities* and *Kiplinger's Personal Finance*, have recognized TradeStation Technologies' trading software and TradeStation Securities' brokerage services, often rating them the very best in the industry.

12.     The '909 Patent is titled, "System, Method and Apparatus for Monitoring and Execution of Entry and Exit Orders."  A copy of the '909 Patent is attached hereto and incorporated by reference as Exhibit A.

13.     The '909 Patent has claims that cover improved methods and systems to create and write a security trading strategy, back-test the strategy, and automatically execute orders and monitor the strategy in an Internet-based trading environment.

14.     Defendant has released different types of functionalities in its trading platforms, including "Autospreader" and "Autospreader Rules."  These products compete with functions in Plaintiff's products and infringe Plaintiff's '909 Patent.

### COUNT I:  INFRINGEMENT OF THE '909 PATENT

15.     The allegations of paragraphs 1 through 14 are re-alleged as if fully set forth herein.

16.     The '909 Patent was duly and validly issued by the United States Patent and Trademark Office on May 27, 2008.  All maintenance fees have been timely paid and the patent is in force.  The application for the '909 Patent was assigned by its inventors to Plaintiff, and the '909 Patent issued showing the Plaintiff as its assignee.  Plaintiff has owned the '909 Patent at all times since it issued.

17.     Plaintiff has never licensed the '909 Patent for exploitation by a competitor to permit the use of its technology in a competing product.

18.     Defendant has without authority made, used, offered to sell, and sells, within the United States the patented inventions claimed in the '909 Patent, encouraged others to use them despite infringement of the '909 Patent, provides software that are not staple articles of commerce with no substantial non-infringing use other than to practice the '909 Patent, and supplies from the United States substantial components of products that infringe, as well as components that are not staple articles of commerce which have no substantial non-infringing use, and, therefore, infringes the patent under 35 U.S.C. §§ 271(a), (b), (c), and (f)(1) & (f)(2).

19.     By way of example only, claim 1 of the '909 Patent covers automated trading based on a trading strategy including at least one market trigger, where the trigger generates an entry order, and occurrence of another trigger generates an exit order, the order is queued on an order queue, and the strategy is written in a substantially English language format.  See '909 Patent, claim 1, Exhibit A, incorporated herein by reference.

20.     TT advertises its own Autospreader functionality by stating:  "When you place an order for the spread here…Autospreader automatically places orders for each leg."  According to

TT's website, its Autospreader feature runs on a "Strategy Engine (SE)" which has default rules for conventional spreading logic, or the user instead may use "Autospreader Rules" to design custom rules to "override or add to this default engine behavior." The Strategy Engine executes a trading strategy based on default or custom rules that create entry and exit orders based on one or more market trigger conditions. The rules are written in a substantially English language format, using terms such as "BidPrice," "BidQuantity," "Threshold," "ThisLeg," among others.

21.     Defendant's Autospreader and Autospreader Rules functions are listed on its webpage under "Automated Trading." Defendant's website allows visitors to open a free demonstration account and use these tools. Defendant's website also offers to sell packages, including Autospreader and Autospreader Rules, on its website. Defendant necessarily made Autospreader and Autospreader Rules for them to be sold, offered for sale, and used. Defendant further must use Autospreader and Autospreader Rules for testing, training, and maintenance of those functions. Defendant has infringed and continues to directly infringe the '909 Patent under 35 U.S.C. § 271(a).

22.     Defendant is familiar with the '909 Patent and has been aware of the application that resulted in issue of the patent since at least since 2004 because the United States Patent and Trademark Office Examiners or Defendant have cited the '909 Patent in at least eight of Defendant's own patent applications or issued patents ("*" means cited by the Examiner):

> (a)     US20140289087A1 *, 2004-06-30, System and Method for Chart Pattern Recognition and Analysis in an Electronic Trading Environment;
>
> (b)     US8744954B2 *, 2014-06-03, System and method for modifying trading strategies based on message usage;

(c)     US20140236800A1 *, 2014-08-21, System and Method for Modifying Trading Strategies Based on Message Usage;

(d)     US20110047065A1 *, 2004-12-30, System and Method for Modifying Trading Strategies Based on Message Usage;

(e)     US7848993B1, 2004-12-30, 2010-12-07, System and method for modifying trading strategies based on message usage;

(f)     US7848991B1 *, 2004-12-30, System and method for modifying trading strategies based on message usage;

(g)     US20130103568A1, 2013-04-25, System and Method for Chart Pattern Recognition and Analysis in an Electronic Trading Environment; and

(h)     US8732067B2, 2012-03-09,  Slicer order quantity reduction tool.

23.     Because Defendant has had to cope with the '909 Patent and its application, as well as the TradeStation products, in attempting to procure patents in this area, among other reasons, Defendant is familiar with the '909 Patent.  This means that Defendant either is aware its products infringe, or has been deliberately ignorant of its own infringement and that of others who use its products.  Accordingly, Defendant has induced others to infringe by promoting use of the products as free demos and by its or its licensed or authorized brokers' or agents' selling of the products, as well as by providing them to colleges and universities and other customers for their use.  Defendant actively induces infringement by training users in how to use Autospreader and Autospreader Rules.  Defendant has infringed by inducement and continues to induce infringement of the '909 Patent under 35 U.S.C. § 271(b).

24.     Defendant has also contributorily infringed and continues to do so by distributing each of its trading platforms that contain these products since they are not staple articles of

commerce and are especially adapted for use in these platforms with no substantial non-infringing uses. Defendant knows that its products are not staple articles of commerce and have no substantial non-infringing uses free of the reach of the '909 Patent. Defendant is thus liable for contributory infringement under 35 U.S.C. § 271(c).

25. Because Defendant has supplied, and continues to supply in tangible form, software from the United States, among other ways through its interactive website, to those outside of the United States, that would be substantial components of the inventions claimed in the '909 patent if any such claimed invention were assembled in the United States, Defendant infringes under 35 U.S.C. § 271(f)(1).

26. Because Defendant has supplied, and continues to supply in tangible form, software from the United States, among other ways through its interactive website, to those outside of the United States, that is not a staples article of commerce and has no substantial non-infringing use outside of the inventions claimed in the '909 patent if any such claimed invention were assembled in the United States, Defendant infringes under 35 U.S.C. § 271(f)(2).

27. Defendant's heavy promotion of its Autospreader and Autospreader Rules, as well as its knowledge of the '909 Patent, give rise to the reasonable inference that its infringement has been willful under 35 U.S.C. § 284.

28. Because of Defendant's long-time knowledge of Plaintiff's patent, its willful infringement, and/or its indifference to Plaintiff's rights, Plaintiff asks that this case be found exceptional under 35 U.S.C. § 285.

## DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for any and all issues triable of right before a jury.

## PRAYER FOR RELIEF

A.      Plaintiff asks for an entry of judgment finding that Defendant has infringed one or more claims of the '909 Patent.

B.      Plaintiff asks for a preliminary and permanent injunction against Defendant and those acting in concert with it from making, using, selling or offering to sell its Autospreader and Autospreader Rules products or products not colorably different from them in regard to the '909 Patent.

C.      Furthermore, Plaintiff asks for an accounting.

D.      Plaintiff asks for any lost profits from lost sales and/or lost market share or any other lost profits due to Defendant's infringement.

E.      Plaintiff asks for damages for convoyed sales.

F.      Plaintiff asks for not less than a reasonable royalty for each act of Defendant's direct, induced and contributory infringement as well as each act of infringement for supply of components from the United States.

F.      Plaintiff asks that damages be enhanced for willfulness within the Court's discretion up to three times those found by the jury.

G.      Plaintiff asks that this case be found exceptional and that it be awarded all attorneys' fees and expenses for this lawsuit.

H.      Plaintiff asks that it be awarded its costs of court.

I.      Plaintiff asks for any supplemental damages that may accrue in this case.

J.      Plaintiff asks for pre- and post-judgment interest.

Dated:  February 16, 2016

Respectfully submitted,


By:   */s/Jose Sepulveda*

Jose Sepulveda
Florida Bar No. 154490
Email: jsepulveda@stearnsweaver.com
Samuel O. Patmore
Florida Bar No. 0096432
Email: spatmore@stearnsweaver.com
**STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.**
150 West Flagler Street
Suite 2200 – Museum Tower
Miami, FL 33130
Telephone: (305) 789-3200

and

David J. Healey
Email: healey@fr.com
**FISH & RICHARDSON P.C.**
1221 McKinney, Suite 2800
Houston, TX 77010
Telephone: (713) 654-5300

Adam J. Kessel
Email: kessel@fr.com
**FISH & RICHARDSON P.C.**
One Marina Park Drive
Boston, MA 02210
Telephone: (617) 542-5070

*Attorney for Plaintiff, TradeStation
Technologies, Inc.*

#4790324 v1