



### **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the acts of Congress relating to patents, namely the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court thereby has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Defendant optionsXpress has a principal place of business in this district and regularly conducts business in this district. optionsXpress is therefore subject to personal jurisdiction in this district.

6. Open E Cry regularly conducts business in this district. Defendant Open E Cry's trading software provides access to exchanges in this district, including the Chicago Board of Trade ("CBOT") and the Chicago Mercantile Exchange ("CME"). Ex. B. Defendant Open E Cry has formed and continues to be a part of business partnerships with entities in this district, including licensing its software and intellectual property to persons who trade on the CBOT and the CME. Defendant Open E Cry actively markets, demonstrates, licenses and sells its trading software in this district. Therefore, this Court has jurisdiction generally over Defendant Open E Cry.

7. Defendants have committed and continue to commit acts of patent infringement in this district, through the manufacturing, sale, offer for sale and/or use of the Open E Cry Depth of Market ("DOM") software, Ex. C. Therefore, this Court has specific jurisdiction over Defendants.

8. Defendants reside in this district, because they are subject to personal jurisdiction in this district. Therefore, this District is a proper venue pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

**COUNT I:  
INFRINGEMENT OF U.S. PATENT NO. 6,766,304**

9. Plaintiff Trading Technologies incorporates paragraphs 1-8 as if set forth in full.

10. Plaintiff Trading Technologies is the owner of U.S. Patent No. 6,766,304 (“the ‘304 patent”), titled “Click Based Trading with Intuitive Grid Display of Market Depth,” which was duly and legally issued on July 20, 2004. A true and correct copy of the ‘304 patent is attached as Exhibit D.

11. Plaintiff Trading Technologies has never licensed Defendants under the ‘304 patent nor otherwise authorized Defendants to practice the ‘304 patent.

12. Defendants have infringed and continue to infringe the ‘304 patent by making, using, selling and/or offering for sale products covered by claims of the ‘304 patent, including at a minimum Open E Cry’s DOM software, without Plaintiff Trading Technologies’ authorization in violation of 35 U.S.C. § 271(a).

13. Defendants have in the past and continue to promote, advertise and instruct customers and potential customers about the Open E Cry products and uses of the products, including infringing uses. Defendants’ promotion, advertising and instruction efforts include, at a minimum, the maintenance of the website [www.openecry.com](http://www.openecry.com) and the distribution of user guides and tutorials. *See, e.g.*, Ex. C.

14. Defendants’ Open E Cry products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

15. Defendants’ actions have and continue to constitute active inducement of and contributory infringement of the ‘304 patent in violation of 35 U.S.C. § 271(b) and (c).

16. Defendants’ infringement of the ‘304 patent has caused irreparable harm to Plaintiff Trading Technologies and will continue to do so unless enjoined.

**COUNT II:  
INFRINGEMENT OF U.S. PATENT NO. 6,772,132**

17. Plaintiff Trading Technologies incorporates paragraphs 1-16 as if set forth in full.

18. Plaintiff Trading Technologies is the owner of U.S. Patent No. 6,772,132 (“the ‘132 patent”), titled “Click Based Trading with Intuitive Grid Display of Market Depth,” which was duly and legally issued on August 3, 2004. A true and correct copy of the ‘132 patent is attached as Exhibit E.

19. Plaintiff Trading Technologies has never licensed Defendants under the ‘132 patent nor otherwise authorized Defendants to practice the ‘132 patent.

20. Defendants have infringed and continue to infringe the ‘132 patent by making, using, selling and/or offering for sale products covered by claims of the ‘132 patent, including at a minimum Open E Cry’s DOM software, without Plaintiff Trading Technologies’ authorization in violation of 35 U.S.C. § 271(a).

21. Defendants have in the past and continue to promote, advertise and instruct customers and potential customers about the Open E Cry products and uses of the products, including infringing uses. Defendants’ promotion, advertising and instruction efforts include, at a minimum, the maintenance of the website [www.openecry.com](http://www.openecry.com) and the distribution of user guides and tutorials. *See, e.g.,* Ex. C.

22. Defendants’ Open E Cry products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

23. Defendants’ actions have and continue to constitute active inducement of and contributory infringement of the ‘132 patent in violation of 35 U.S.C. § 271(b) and (c).

24. Defendants' infringement of the '132 patent has caused irreparable harm to Plaintiff Trading Technologies and will continue to do so unless enjoined.

**COUNT III:  
INFRINGEMENT OF U.S. PATENT NO. 7,212,999**

25. Plaintiff Trading Technologies incorporates paragraphs 1-24 as if set forth in full.

26. Plaintiff Trading Technologies is the owner of U.S. Patent No. 7,212,999 ("the '999 patent"), titled "User Interface for an Electronic Trading System," which was duly and legally issued on May 1, 2007. A true and correct copy of the '999 patent is attached as Exhibit F.

27. Plaintiff Trading Technologies has never licensed Defendants under the '999 patent nor otherwise authorized Defendants to practice the '999 patent.

28. Defendants have infringed and continue to infringe the '999 patent by making, using, selling and/or offering for sale products covered by claims of the '999 patent, including at a minimum Open E Cry's DOM software, without Plaintiff Trading Technologies' authorization in violation of 35 U.S.C. § 271(a).

29. Defendants have in the past and continue to promote, advertise and instruct customers and potential customers about the Open E Cry products and uses of the products, including infringing uses. Defendants' promotion, advertising and instruction efforts include, at a minimum, the maintenance of the website [www.openecry.com](http://www.openecry.com) and the distribution of user guides and tutorials. *See e.g.*, Ex. C.

30. Defendants' Open E Cry products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

31. Defendants' actions have and continue to constitute active inducement of and contributory infringement of the '999 patent in violation of 35 U.S.C. §271(b) and (c).

32. Defendants' infringement of the '999 patent has caused irreparable harm to Plaintiff Trading Technologies and will continue to do so unless enjoined.

**COUNT IV:  
INFRINGEMENT OF U.S. PATENT NO. 7,533,056**

33. Plaintiff Trading Technologies incorporates paragraphs 1-32 as if set forth in full.

34. Plaintiff Trading Technologies is the owner of U.S. Patent No. 7,533,056 ("the '056 patent"), titled "User Interface for an Electronic Trading System," which was duly and legally issued on May 12, 2009. A true and correct copy of the '056 patent is attached as Exhibit G.

35. Plaintiff Trading Technologies has never licensed Defendants under the '056 patent nor otherwise authorized Defendants to practice the '056 patent.

36. Defendants have infringed and continue to infringe the '056 patent by making, using, selling and/or offering for sale products covered by claims of the '056 patent, including at a minimum Open E Cry's DOM software, without Plaintiff Trading Technologies' authorization in violation of 35 U.S.C. § 271(a).

37. Defendants have in the past and continue to promote, advertise and instruct customers and potential customers about the Open E Cry products and uses of the products, including infringing uses. Defendants' promotion, advertising and instruction efforts include, at a minimum, the maintenance of the website [www.openecry.com](http://www.openecry.com) and the distribution of user guides and tutorials. *See, e.g.,* Ex. C.

38. Defendants' Open E Cry products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

39. Defendants' actions have and continue to constitute active inducement of and contributory infringement of the '056 patent in violation of 35 U.S.C. §271(b) and (c).

40. Defendants' infringement of the '056 patent has caused irreparable harm to Plaintiff Trading Technologies and will continue to do so unless enjoined.

**COUNT V:  
INFRINGEMENT OF U.S. PATENT NO. 7,676,411**

41. Plaintiff Trading Technologies incorporates paragraphs 1-40 as if set forth in full.

42. Plaintiff Trading Technologies is the owner of U.S. Patent No. 7,676,411 ("the '411 patent"), titled "Click Based Trading with Intuitive Grid Display of Market Depth," which was duly and legally issued on March 9, 2010. A true and correct copy of the '411 patent is attached as Exhibit H.

43. Plaintiff Trading Technologies has never licensed Defendants under the '411 patent nor otherwise authorized Defendants to practice the '411 patent.

44. Defendants have infringed and continue to infringe the '411 patent by making, using, selling and/or offering for sale products covered by claims of the '411 patent, including at a minimum Open E Cry's DOM software, without Plaintiff Trading Technologies' authorization in violation of 35 U.S.C. § 271(a).

45. Defendants have in the past and continue to promote, advertise and instruct customers and potential customers about the Open E Cry products and uses of the products, including infringing uses. Defendants' promotion, advertising and instruction efforts include, at a minimum, the maintenance of the website [www.openecry.com](http://www.openecry.com) and the distribution of user guides and tutorials. *See, e.g.*, Ex. C.

46. Defendants' Open E Cry products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

47. Defendants' actions have and continue to constitute active inducement of and contributory infringement of the '411 patent in violation of 35 U.S.C. §271(b) and (c).

48. Defendants' infringement of the '411 patent has caused irreparable harm to Plaintiff Trading Technologies and will continue to do so unless enjoined.

### **RELIEF REQUESTED**

THEREFORE, Plaintiff Trading Technologies prays for judgment and relief including:

(A) Judgment that Defendants have been and are infringing one or more of the claims of the '304, '132, '999, '056, and '411 patents pursuant to 35 U.S.C. §§ 271(a), (b) and (c);

(B) A preliminary and permanent injunction enjoining Defendants and their officers, agents, servants, employees, attorneys, related business entities and those in active concert or participation with them from infringing the '304, '132, '999, '056, and '411 patents;

(C) An award of damages incurred by Plaintiff Trading Technologies as a result of Defendants' infringement of the '304, '132, '999, '056, and '411 patents;

(D) An assessment of costs, including reasonable attorney fees pursuant to 35 U.S.C. § 285, and prejudgment interest against Defendants; and

(E) Such other and further relief as this Court may deem just and proper.



## **JURY DEMAND**

Plaintiff Trading Technologies demands trial by jury on all issues so triable.

Respectfully submitted,

Date: March 9, 2010

By: s/ S. Richard Carden

Leif R. Sigmond, Jr. (ID No. 6204980)  
(sigmond@mbhb.com)

Matthew J. Sampson (ID No. 6207606)  
(sampson@mbhb.com)

Michael D. Gannon (ID No. 6206940)  
(gannon@mbhb.com)

S. Richard Carden (ID No. 6269504)  
(carden@mbhb.com)

Jennifer M. Kurcz (ID No. 6279893)  
(kurcz@mbhb.com)

Kirsten L. Thomson (ID No. 6293943)  
(thomson@mbhb.com)

**McDonnell Boehnen Hulbert & Berghoff LLP**

300 South Wacker Drive

Chicago, Illinois 60606

Tel.: (312) 913-0001

Fax: (312) 913-0002

Steven F. Borsand (ID No. 6206597)

(Steve.Borsand@tradingtechnologies.com)

**Trading Technologies International, Inc.**

222 South Riverside

Suite 1100

Chicago, IL 60606

Tel: (312) 476-1000

Fax: (312) 476-1182

**Attorneys for Plaintiff,**

**TRADING TECHNOLOGIES**

**INTERNATIONAL, INC.**