

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 05-cv-1584 REB-OES

CQGT, LLC, a Colorado limited liability company; CQG, INC., a Colorado corporation,

Plaintiffs,

v.

TRADING TECHNOLOGIES INTERNATIONAL, INC., a Delaware corporation,

Defendant.

FIRST AMENDED COMPLAINT

Plaintiffs CQGT, LLC and CQG, Inc., through their attorneys Faegre & Benson LLP, pursuant to Fed. R. Civ. P. 15(a), submit this First Amended Complaint against Defendant Trading Technologies International, Inc., and state as follows:

PARTIES

1. Plaintiff CQGT, LLC is a Colorado limited liability company, with its principal place of business in Denver, Colorado. Plaintiff CQG, Inc. is a Colorado corporation, with its principal place of business in Denver, Colorado. Plaintiffs CQGT, LLC and CQG, Inc. shall be referred to herein collectively as Plaintiffs.

2. Defendant Trading Technologies International, Inc. is a Delaware corporation, with its principal place of business in Chicago, Illinois. Defendant Trading Technologies International, Inc. shall be referred to herein as TT.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338, because this case presents a well-pleaded federal question under the Antitrust laws of the United States, 15 U.S.C. § 2; the Patent Act of 1952 (as amended), 35 U.S.C. §§ 1, et seq.; and the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202. The Court also has supplemental jurisdiction over the state law claims in this case pursuant to 28 U.S.C. § 1367(a).

4. The exercise of *in personam* jurisdiction over TT comports with the laws of the State of Colorado and the constitutional requirements of due process because, upon information and belief, TT and/or its agents transact business and/or offer to transact business within the State of Colorado.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

6. There are no current related actions in this District.

GENERAL ALLEGATIONS

7. On July 20, 2004, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 6,766,304 (“the ‘304 Patent”) claiming a method and system for “Click Based Trading With Intuitive Grid Display of Market Depth.” A true and correct copy of the ‘304 Patent is attached as **Exhibit A** and incorporated herein.

8. On August 3, 2004, the Commissioner for Patents with the United States Patent and Trademark Office issued U.S. Patent No. 6,722,132 (“the ‘132 Patent”) also claiming a method and system for “Click Based Trading With Intuitive Grid Display of

Market Depth.” A true and correct copy of the '132 Patent is attached as **Exhibit B** and incorporated herein.

9. Upon information and belief, TT is the assignee of the '304 Patent and the '132 Patent.

10. CQG, Inc. was established in 1980 to supply data and market analysis to futures traders. CQG, Inc. has, in the past, developed and sold computer programs and user interfaces which allows traders to view futures trading data and to analyze that data.

11. The computer programs developed and sold by CQG, Inc. include both (1) single click-based computer programs and (2) multiple click-based computer programs. Both of these types of computer programs sold by CQG, Inc. allow traders to place orders and otherwise trade futures.

12. CQGT, LLC is a company which owns and develops the intellectual property which forms the basis for the computer programs and user interfaces sold by CQG, Inc.

13. TT has asserted that Plaintiffs' manufacture and offering for sale and selling of Plaintiffs' products constitutes infringement and/or contributory infringement of the '304 Patent and '132 Patent and all claims thereof. By charging Plaintiffs with infringement of the '304 Patent and '132 Patent, TT's actions have created in Plaintiffs a reasonable apprehension of suit.

14. Representatives of TT have also told representatives of Plaintiffs that TT will file suit against Plaintiffs unless Plaintiffs agree to the terms of a “Settlement

Agreement.” During discussions regarding this “Settlement Agreement,” representatives of TT asserted that Plaintiffs’ single click-based computer programs infringe TT’s Patents, while admitting that TT’s Patents do not cover the multiple click-based computer programs developed by Plaintiffs. Plaintiffs ultimately determined that they could not agree to the terms of the any such “Settlement Agreement.”

15. Therefore, a substantial and continuing justiciable controversy exists between Plaintiffs and TT as to the validity and scope of the ’304 Patent and ’132 Patent, and as to whether any of Plaintiffs’ products infringe any valid claim thereof.

16. Since Plaintiffs have refused to agree to the terms of TT’s “Settlement Agreement,” TT has sued Plaintiffs for patent infringement in the United States District Court for the Northern District of Illinois. Upon information and belief, TT has also begun contacting Plaintiffs’ customers who employ CQG’s multiple click-based computer programs. TT has charged these customers with infringement of TT’s Patents, while knowing that TT’s Patents do not cover these products.

FIRST CLAIM FOR RELIEF

Declaratory Judgment of Non-Infringement and Invalidity of the ’304 and ’132 Patents
28 U.S.C. § 2201

17. Plaintiffs hereby incorporate by reference Paragraphs 1 through 16 of this Complaint, as if fully set forth herein.

18. Plaintiffs have not infringed or committed contributory infringement of any claims of the ’304 Patent or ’132 Patent by making, using, selling, offering for sale, distributing and/or importing any product, or by practicing any process.

19. Upon information and belief, Plaintiffs allege that the '304 Patent and '132 Patent, and each and every respective claim thereof, are invalid and unenforceable for failure to comply with one or more provisions of Title 35 of the United States Code, including without limitation, Sections 101, 102, 103, and/or 112.

20. TT's charges of infringement of the '304 Patent and '132 Patent with full knowledge of the invalidity of the '304 Patent and '132 Patent makes this an exceptional case warranting an award of Plaintiffs' reasonable attorney's fees and costs under 35 U.S.C. § 285.

SECOND CLAIM FOR RELIEF
Declaratory Judgment of Patent Misuse

21. Plaintiffs hereby incorporate by reference Paragraphs 1 through 20 of this Complaint, as if fully set forth herein.

22. During discussions regarding TT's "Settlement Agreement," representatives of TT admitted to representatives of Plaintiffs that Plaintiffs' products that employ multiple click-based trading software do not infringe the claims of the '304 Patent and '132 Patent.

23. Upon information and belief, TT has contacted Plaintiffs' customers and charged that their use of Plaintiffs' products that employ multiple-click based trading software does in fact infringe the claims of the '304 and '132 Patents.

24. TT's attempts to assert the claims of the '304 Patent and '132 Patent against Plaintiffs' customers using products that do not infringe the claims of the '304 Patent and '132 Patent, while knowing that the claims of the '304 Patent and '132

Patent do not cover these products, constitute an attempt to extend TT's rights beyond the claims of the Patents and constitutes patent misuse.

25. TT's wrongful acts of patent misuse impermissibly broaden the scope of the '304 Patent and '132 Patent with anticompetitive effect, and thus render the '304 Patent and '132 Patent unenforceable.

THIRD CLAIM FOR RELIEF

Violation of Sherman Act, 15 U.S.C. § 2

26. Plaintiffs hereby incorporate by reference Paragraphs 1 through 25 of this Complaint, as if fully set forth herein.

26. Plaintiffs, TT and their competitors are engaged in interstate commerce and their activities substantially affect interstate commerce. TT conducts business with purchasers and licensees of computer programs and electronic trading software which allow traders to place orders and otherwise trade futures.

27. Software for electronically trading futures contracts on major futures exchanges is a relevant product market, and subsets of this market may also be relevant markets. TT has market power in this relevant product market.

28. TT is attempting to monopolize the market for electronic trading software used on major futures exchanges, and submarkets thereof, by charging Plaintiffs' customers who employ multiple click-based trading software with infringement of TT's Patents, while knowing that these customers do not infringe TT's Patents. TT's baseless charges of infringement conceal an attempt to interfere directly with CQG's business relationships as an anticompetitive weapon.

29. These anticompetitive acts present a dangerous probability that TT will achieve an unlawful monopoly, and constitute a violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

30. TT's attempted monopolization of the electronic trading software market has damaged Plaintiffs' ability to compete in the relevant market. TT's attempted monopolization of the electronic trading software market has also damaged the competitive process and consumers by reducing competition in the market, limiting consumer choice by artificially removing potentially competitive software from the market through baseless charges of infringement.

FOURTH CLAIM FOR RELIEF

Violation of Colorado Antitrust Act, C.R.S. § 6-4-105

31. Plaintiffs hereby incorporate by reference Paragraphs 1 through 30 of this Complaint, as if fully set forth herein.

32. Plaintiffs, TT and their competitors are engaged in trade and commerce and their activities substantially affect trade and commerce. TT conducts business with purchasers and licensees of computer programs and electronic trading software which allow traders to place orders and otherwise trade futures.

33. TT has violated the Colorado Antitrust Act by attempting to monopolize the market for electronic trading software used on major futures exchanges, and submarkets thereof, by charging Plaintiffs' customers who employ multiple click-based trading software with infringement of TT's Patents, while knowing that these customers do not infringe TT's Patents. TT's baseless charges of infringement conceal an attempt to interfere directly with CQG's business relationships as an anticompetitive weapon.

34. TT's attempted monopolization of the electronic trading software market has damaged Plaintiffs' ability to compete in the relevant market. TT's attempted monopolization of the electronic trading software market has also damaged the competitive process and consumers by reducing competition in the market, limiting consumer choice by artificially removing potentially competitive software from the market through baseless charges of infringement.

FOURTH CLAIM FOR RELIEF

Violation of Colorado Consumer Protection Act, C.R.S. § 6-1-101, et seq.

35. Plaintiffs incorporate by reference Paragraphs 1 through 34 of this Complaint, as if fully set forth herein.

36. TT's attempts to assert the claims of the '304 Patent and '132 Patent against Plaintiffs' customers using multiple click-based trading products that do not infringe the claims of the '304 Patent and '132 Patent, while knowing that the claims of the '304 Patent and '132 Patent do not cover these products, constitute a violation of the Colorado Consumer Protection Act by disparaging Plaintiffs' products by false or misleading representation of fact.

37. TT's conduct has occurred in the course of TT's business, and has significantly impacted the public as actual or potential consumers of TT's property or goods.

38. Plaintiffs have suffered damages by TT's violation of the Colorado Consumer Protection Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in favor of Plaintiffs and against Defendant as follows:

A. A Declaratory Judgment be entered declaring that Defendant is without right or authority to threaten or to maintain suit against Plaintiffs or their customers for alleged infringement of U.S. Patent No. 6,766,304 or U.S. Patent No. 6,722,132 and:

1. United States Patent No. 6,766,304 is invalid, unenforceable, and not infringed by Plaintiffs; and

2. United States Patent No. 6,722,132 is invalid, unenforceable, and not infringed by Plaintiffs.

B. A Declaratory Judgment be entered declaring that Defendant's wrongful acts of patent misuse render U.S. Patent No. 6,766,304 or U.S. Patent No. 6,722,132 unenforceable until such time as the misuse has been purged.

C. An award of damages in an amount to be determined by the jury, but in no event less than an amount sufficient to compensate Plaintiffs for their damages, trebled pursuant to the antitrust laws of the United States, and the laws of Colorado.

D. A permanent injunction prohibiting TT from engaging in further anticompetitive conduct.

E. An award of reasonable attorney's fees and costs incurred by Plaintiffs in the litigation of this matter in compensation for the exceptional circumstances of this case, pursuant to 35 U.S.C. § 285.

F. Such other relief as the Court may deem just and proper to award.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: November 22, 2005.

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**ATTORNEYS FOR PLAINTIFFS
CQGT, LLC and CQG, INC.**

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on November 22, 2005, I electronically filed the foregoing **FIRST AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following persons at the given email addresses:

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