

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARKETS-ALERT PTY. LTD.,

Plaintiff,

v.

TD AMERITRADE HOLDING CORP.,
TD AMERITRADE IP COMPANY, INC.,
TD AMERITRADE, INC., and
THINKORSWIM GROUP INC.,

Defendants.

Civil Action No.: _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Markets-Alert Pty. Ltd. (“Markets-Alert” or “Plaintiff”) hereby alleges patent infringement against Defendants TD Ameritrade Holding Corp. (“TDA Holding”), TD Ameritrade IP Company, Inc. (“TDA IP”), TD Ameritrade, Inc. (“TDA Inc”), and Thinkorswim Group Inc. (“Thinkorswim”) (individually and collectively, “TD Ameritrade”), on personal knowledge and information and belief, as follows:

THE PARTIES

1. Plaintiff is an Australian corporation with a principal location at 7-9 Cross Street, Bankstown NSW 2200, Australia.
2. On information and belief, Defendant TDA Holding is a Delaware corporation with a principal place of business at 4211 S 102nd Street, Omaha, Nebraska 68127.
3. On information and belief, Defendant TDA Inc is a New York corporation with a principal place of business at 4211 S 102nd Street, Omaha, Nebraska 68127, and a subsidiary of TDA Holding.
4. On information and belief, Defendant TDA IP is a Delaware corporation with a

principal place of business at 4211 S 102nd Street, Omaha, Nebraska 68127, and is a subsidiary of TDA Holding.

5. On information and belief, Defendant Thinkorswim is a Delaware corporation with a principal place of business at 45 Rockefeller Plaza # 2012, New York, New York 10111-0100, and is a subsidiary of TDA Holding and a division of TDA Inc.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Personal jurisdiction and venue are proper in this district under 28 U.S.C. §§ 1391(b)-(c), and 1400(b). On information and belief, each Defendant has a regular and established place of business in this district or state, has transacted business in this district or state, and/or has committed, contributed to, and/or induced acts of patent infringement in this district or state.

8. On information and belief, each Defendant is subject to this Court's specific and general personal jurisdiction consistent with the principles of due process and/or the Long Arm Statute, due at least to its substantial business in this forum directly related to the allegations set forth herein, including: (i) a portion of the infringement alleged herein, including making, using, selling, offering to sell, and/or importing products, methods and/or systems that infringe the patent-in-suit; (ii) the presence of established distribution and/or marketing channels; and (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals and entities in this state and judicial district.

COUNT I INFRINGEMENT

9. Plaintiff is the exclusive owner of all rights to United States Patent No. 7,941,357,

entitled “Trading System” (“‘357 Patent”), including but not limited to the right to sue for damages. The United States Patent and Trademark Office duly issued the ‘357 Patent on May 10, 2011, which has a priority date of at least October 27, 2000. A true and correct copy of the ‘357 Patent is attached to this Complaint as Exhibit A.

10. On information and belief, Defendant TDA Holding has been and now is infringing, inducing others to infringe, and/or contributorily infringing, literally, under the doctrine of equivalents, and/or jointly, one or more claims of the ‘357 Patent in this state, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering to sell, and/or importing systems and methods that implement, utilize or otherwise embody the patented invention, including by way of example certain real-time stock trading platform products and services, such as its “thinkorswim” platform, which are described at least in part online at <https://www.tdameritrade.com/tradingtools/thinkorswim.html> and <https://www.thinkorswim.com/tos/displayPage.tos?webpage=main&layout=homeLayout>. Therefore, Defendant TDA Holding is liable for infringement of the ‘357 Patent.

11. On information and belief, Defendant TDA Inc has been and now is infringing, inducing others to infringe, and/or contributorily infringing, literally, under the doctrine of equivalents, and/or jointly, one or more claims of the ‘357 Patent in this state, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering to sell, and/or importing systems and methods that implement, utilize or otherwise embody the patented invention, including by way of example certain real-time stock trading platform products and services, such as its “thinkorswim” platform, which are described at least in part online at <https://www.tdameritrade.com/tradingtools/thinkorswim.html> and <https://www.thinkorswim.com/tos/displayPage.tos?webpage=main&layout=homeLayout>. Therefore, Defendant TDA Inc is liable for infringement of the ‘357 Patent.

12. On information and belief, Defendant TDA IP has been and now is infringing, inducing others to infringe, and/or contributorily infringing, literally, under the doctrine of equivalents, and/or jointly, one or more claims of the ‘357 Patent in this state, in this judicial

district, and elsewhere in the United States by, among other things, making, using, selling, offering to sell, and/or importing systems and methods that implement, utilize or otherwise embody the patented invention, including by way of example certain real-time stock trading platform products and services, such as its “thinkorswim” platform, which are described at least in part online at <https://www.tdameritrade.com/tradingtools/thinkorswim.html> and <https://www.thinkorswim.com/tos/displayPage.tos?webpage=main&layout=homeLayout>. Therefore, Defendant TDA IP is liable for infringement of the ‘357 Patent.

13. On information and belief, Defendant Thinkorswim has been and now is infringing, inducing others to infringe, and/or contributorily infringing, literally, under the doctrine of equivalents, and/or jointly, one or more claims of the ‘357 Patent in this state, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering to sell, and/or importing systems and methods that implement, utilize or otherwise embody the patented invention, including by way of example certain real-time stock trading platform products and services, such as its “thinkorswim” platform, which are described at least in part online at <https://www.tdameritrade.com/tradingtools/thinkorswim.html> and <https://www.thinkorswim.com/tos/displayPage.tos?webpage=main&layout=homeLayout>. Therefore, Defendant Thinkorswim is liable for infringement of the ‘357 Patent.

14. On information and belief, Defendant TDA Holding offers trading technologies, tools, and services through its brokerage subsidiaries, including Defendant TDA Inc, which provides online brokerage services at www.tdameritrade.com, which is operated by, with, or in conjunction with Defendant TDA IP.

15. On information and belief, each of Defendants TDA Holding, TDA IP, and TDA Inc use, implement or otherwise incorporate one or more real-time technical analysis tools and/or stock trading platform products and services provided by or through Defendant Thinkorswim in its respective trading platform products and services, such that Plaintiff’s right to relief against Defendants is joint, several, or in the alternative with respect to or arises out of the same transaction, occurrence, or series of transactions or occurrences, and gives rise to common

questions of law or fact.

16. Plaintiff has been and is irreparably harmed by each Defendant's infringement of the '357 Patent. Plaintiff has incurred and will continue to incur substantial damages, including monetary damages, unless each Defendant is enjoined from further acts of infringement.

17. By notice of this complaint, at least, each Defendant has been aware, since the filing date or before, that the accused instrumentalities are not staple articles or commodities of commerce suitable for substantial non-infringing use and are especially made and/or adapted for use in infringing the '357 Patent, and each Defendant's ongoing infringement is willful and deliberate.

18. To the extent that facts uncovered in discovery show that a Defendant's past infringement has been willful, Plaintiff reserves the right to seek enhanced damages and attorney fees for such past infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

(a) enter judgment in favor of Plaintiff that each Defendant has infringed, and continues to infringe, the '357 Patent;

(b) enjoin each Defendant, its officers, subsidiaries, agents, servants, employees, and all persons in active concert with any of them, from any further infringement of the '357 Patent;

(c) award Plaintiff all monetary relief available under the patent laws of the United States, including but not limited to actual damages, pre- and post- judgment interest, enhanced damages, and costs pursuant to 35 U.S.C. § 284;

(d) declare this case exceptional and award Plaintiff its reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

(e) grant Plaintiff such other relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable pursuant to Rule 38 of the Federal

Rules of Civil Procedure.

Date: June 20, 2012

Respectfully submitted,

/s/ Pilar G. Kraman

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