

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

LIQUIDNET, INC.,

Plaintiff,

v.

INVESTMENT TECHNOLOGY GROUP,
INC., ITG SOLUTIONS NETWORK, INC.,
and THE MACGREGOR GROUP, INC.,

Defendants.

Civil Action No. 06-06-703

Jury Trial Demanded

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND
FOR JURY TRIAL**

Plaintiff Liquidnet, Inc, for its cause of action for patent infringement against the Defendants, states and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement. Plaintiff Liquidnet, Inc. ("Plaintiff" or "Liquidnet") is the assignee of United States Patent No. 7,136,834 B1 ("the '834 patent"), entitled "ELECTRONIC SECURITIES MARKETPLACE HAVING INTEGRATION WITH ORDER MANAGEMENT SYSTEMS". The '834 patent was duly and lawfully issued by the United States Patent and Trademark Office on November 14, 2006 in the names of the inventors, Seth Merrin, John Halloran, Demian Kosofsky and Kevin Lupowitz. A copy of the '834 patent is attached as Exhibit 1 to this complaint.

2. The '834 patent is directed generally to accessing records of open orders from an order management system's (OMS's) database at a trading institution, generating non-binding indications from the accessed records of orders, transmitting the non-binding indications to an electronic trading marketplace (ETM), subsequently determining if an accessed record of order in the OMS's database has changed and, if such accessed record has changed, updating the non-binding indication and transmitting the updated non-binding indication to the ETM.

3. The '834 patent protects Liquidnet's commercially successful automated method for anonymously negotiating security trades, known in the industry as the "Liquidnet System".

THE PARTIES

4. Plaintiff Liquidnet is a Delaware corporation having its principal place of business at 498 7th Avenue, New York, N.Y. 10018.

5. Upon information and belief, Defendant Investment Technology Group, Inc. ("ITG") is a Delaware corporation having its principal place of business at 380 Madison Avenue, 4th Floor, New York, N.Y. 10017.

6. Upon information and belief, Defendant ITG Solutions Network, Inc. ("ITG Solutions"; collectively with ITG, the "ITG Defendants") is a Delaware corporation having its principal place of business at 380 Madison Avenue, 4th Floor, New York, N.Y. 10017.

7. Upon information and belief, Defendant The MacGregor Group, Inc. ("MacGregor") is a Delaware corporation having its principal place of business at 321 Summer Street, Boston, Massachusetts 02210-1710. Upon information and belief, MacGregor is a wholly owned subsidiary of ITG and/or ITG Solutions.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under the provisions of 28 U.S.C. §§ 1331 and 1338(a), because this is an action for patent infringement arising under the laws of the United States, including 35 U.S.C. §§ 271 and 281-285.

9. This Court also has personal jurisdiction over the Defendants under the provisions of 10 *Del. C.* § 3104, because all Defendants (a) are corporate citizens of Delaware, (b) upon information and belief, do business in this judicial district, and/or (c) have committed and continue to commit, or have induced or contributed to and continue to induce or contribute to acts of patent infringement in this judicial district as alleged in this Complaint.

10. Venue is proper in this judicial district 28 U.S.C. §§ 1391 (b), (c), and § 1400 (b).

COUNT I: THE ITG DEFENDANTS' INFRINGEMENT OF THE '834 PATENT

11. The ITG Defendants market "Channel ITG," a software product that automatically queries or "sweeps" open orders from the OMS's database, generates non-binding indications, transmits the non-binding indications to multiple ITG Defendant-operated ETMs, subsequently performs the same query of open orders from the OMS's database, updates the non-binding indications based on the subsequent query and transmits the updated non-binding indications to the ETM.

12. The ITG Defendants' software product directly, indirectly, contributorily, and/or by inducement, infringes claims of the '834 patent in this judicial district and elsewhere in the United States, literally and under the doctrine of equivalents.

13. The ITG Defendants' infringement of the '834 patent has been, and continues to be, willful, deliberate, intentional and without color of right.

14. The ITG Defendants' infringement of the '834 patent will continue unless preliminarily and permanently enjoined.

15. Plaintiff has suffered irreparable harm by reason of the ITG Defendants' infringement of the '834 patent, including, *inter alia*, the erosion of Plaintiff's statutory right to exclude others from practicing the claimed invention of the '834 patent.

16. Plaintiff is entitled to all damages adequate to fully compensate Plaintiff for the ITG Defendants' willful infringement of the '834 patent.

COUNT II: MACGREGOR'S INFRINGEMENT OF THE '834 PATENT

17. MacGregor develops, licenses to third-parties, implements and operates the MacGregor XIP OMS, an OMS that is integrated with the "Channel ITG" software product. MacGregor also develops, or assists the ITG Defendants in developing, an interface between the MacGregor XIP OMS and one or more ETMs operated by the ITG Defendants, wherein such interface automatically queries or "sweeps" open orders from the OMS's database, generates non-binding indications, transmits the non-binding indications to multiple ITG Defendant-operated ETMs, subsequently performs the same query of open orders from the OMS's database, updates the non-binding indications based on the subsequent query and transmits the updated non-binding indications to the ETM.

18. MacGregor has directly, indirectly, contributorily, and/or by inducement, infringed claims of the '834 patent in this judicial district and elsewhere in the United States, literally and under the doctrine of equivalents.

19. MacGregor's infringement of the '834 patent has been, and continues to be, willful, deliberate, intentional, and without color of right.

20. MacGregor's infringement of the '834 patent will continue unless preliminarily and permanently enjoined.

21. Plaintiff has suffered irreparable harm by reason of MacGregor's infringement of the '834 patent, including, *inter alia*, the erosion of Plaintiff's statutory right to exclude others from practicing the claimed invention of the '834 patent.

22. Plaintiff is entitled to all damages adequate to fully compensate Plaintiff for MacGregor's willful infringement of the '834 patent.

DEMAND FOR JURY TRIAL

23. Plaintiff requests a jury trial under Fed. R. Civ. P. 38 on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment as follows:

A. That Defendants have infringed claims of the '834 patent literally and/or under the doctrine of equivalents;

B. That the Defendants and their respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, be preliminarily and permanently enjoined from infringing, inducing others to infringe, or contributing to the infringement of the '834 patent;

C. That the Defendants be ordered to account for and pay to Plaintiff the damages to which Plaintiff is entitled as a consequence of the infringement of the '834 patent in an amount no less than a reasonable royalty for the use made of the invention by Defendants;

D. That such damages be trebled for the willful, deliberate and intentional infringement by Defendants as alleged in this Complaint in accordance with 35 U.S.C. § 284;

E. That this be found an “exceptional” case and that the Plaintiff be awarded prejudgment interest, costs, disbursements and attorneys’ fees in accordance with the provisions of 35 U.S.C. § 285; and

F. That Plaintiff be awarded such other and further relief as this Court may deem just, proper and equitable.

By. 

Donald J. Detweiler (# 3087)
Titania R. Mack (# 4120)
GREENBERG TRAUIG, LLP
The Nemours Building
1007 North Orange Street
Suite 1200
Wilmington, Delaware 19801
Tel.: (302) 661-7000
Fax: (302) 661-7360

Attorneys for Plaintiff Liquidnet, Inc.

OF COUNSEL:

Michael A. Nicodema (*pro hac vice*)
Barry J. Schindler (*pro hac vice*)
GREENBERG TRAUIG, LLP
200 Park Avenue
New York, N.Y. 10166
Tel.: (212) 801-9200
Fax: (212) 801-6400

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