

No. 2016-0120

In the
United States Court of Appeals
for the Federal Circuit

In re: TRADING TECHNOLOGIES INTERNATIONAL, INC.,

Petitioner.

On Petition for a Writ of Mandamus to the United States Patent and Trademark
Office, Patent Trial and Appeal Board.
Case No. CBM2015-00161.

**BRIEF OF *AMICUS CURIAE* BALLY GAMING, INC. IN SUPPORT OF
PETITIONER**

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CERTIFICATE OF INTEREST

Pursuant to Fed. Cir. R. 47.4 and Fed. R. App. P. 26.1, counsel for the *Amicus Curiae* Bally Gaming Inc. certifies the following:

1. The full name of every party or amicus represented by me is:
Bally Gaming, Inc.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: N/A.
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the amicus curiae represented by me are: Bally Gaming, Inc. is a wholly owned subsidiary of Scientific Games Corporation, which is a publicly held corporation.
4. The names of all law firms and the partners or associates that appeared for the amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Timothy C. Meece of Banner & Witcoff, Ltd.

Dated: March 11, 2016

Respectfully submitted,

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTi

TABLE OF AUTHORITIES iii

STATEMENT OF THE IDENTITY OF THE AMICUS CURIAE, ITS
INTEREST IN THE CASE, AND THE SOURCE OF ITS
AUTHORITY TO FILE 1

SUMMARY OF THE ARGUMENT2

ARGUMENT3

CONCLUSION.....7

TABLE OF AUTHORITIES

Cases

<i>Diamond v Chakrabarty</i> , 447 U.S. 303 (1980)	4
---	---

Statutes

35 USC §101	1, 2, 3, 4, 5, 6
-------------------	------------------

Other Authorities

Boeing Aeromagazine, <i>Innovative 787 Flight Deck Designed for Efficiency, Comfort, and Commonality</i> , available at http://www.boeing.com/commercial/aeromagazine/articles/2012_q1/3/ (last visited March 10, 2016).....	4
--	---

U.S. Patent & Trademark Office, Example 23 (GUI for Relocating Obscured Textual Information) of <i>July 2015 Update Appendix 1: Examples</i> , available at http://www.uspto.gov/sites/default/files/documents/ieg-july-2015-app1.pdf (last visited March 10, 2016)	6, 7
---	------

<i>IBM Invests \$100 Million To Expand Design Business</i> , http://www.fastcodesign.com/3028271/ibm-invests-100-million-to-expand-design-business (last visited March 10, 2016).....	4
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**STATEMENT OF THE IDENTITY OF THE AMICUS CURIAE, ITS
INTEREST IN THE CASE, AND THE SOURCE OF ITS
AUTHORITY TO FILE**

Bally Gaming, Inc. (“Bally Gaming”) is a leading developer of technology-based products and services and associated content for worldwide gaming markets. Bally Gaming’s portfolio includes game content and electronic gaming machines, which often utilize new and useful graphical user interfaces (“GUIs”).

The technological field related to the creation, generation and use of GUIs is becoming ever more important, whether it be in our company’s field of gaming (*e.g.*, slot machines, video poker machines, and video lottery terminals) or such other fields as consumer electronics, medical devices, automobiles, aviation, etc.

The institution decision of the particular PTAB panel in CBM2015-00161 has created unacceptable confusion and uncertainty on the important question of what patent claims are eligible for review under Section 18 of the America Invents Act (“AIA”).

The panel’s faulty reasoning on CBM jurisdiction also reveals an erroneous approach to 101 issues for GUI related patents. Mandamus is

appropriate here because this institution decision will impact many other patents.

Pursuant to Fed. R. App. P. 29, all parties have consented to the filing of this amicus brief. No counsel for a party, other than *Amicus Curiae* Bally Gaming, authored this brief in whole or in part, or made a monetary contribution intended to fund preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The claimed methods and computer readable medium for generating dynamic user interfaces, for purposes of CBM jurisdiction and 35 U.S.C. 101, are no different than a machine that has been modified to produce different results or a biological thing that is altered by new DNA. Claims to a machine, device or tool are directed to technology and are not directed to an abstract idea or a business practice. The panel ignored that the claimed methods and medium create an interactive GUI that addresses problems of efficiency, speed, accuracy and usability. All of these are technical problems. That the claimed GUI may also address a “business problem” is not relevant. Problems with efficiency, speed, accuracy and usability are all technical problems regardless of the particular field of use for a GUI. Our company develops GUIs in the field of gaming. Although the GUIs may

accomplish the objective of increasing the entertainment experience for players playing games on gaming terminals, the GUIs solve such technical problems as making a gaming application easy, practical, and efficient to use.

ARGUMENT

The relief sought in Trading Technologies' mandamus petition should be granted because this case presents an issue of great importance affecting many patents in an important area of technology – the generation of new and useful GUI's. The institution decision of the particular PTAB panel in CBM2015-00161 has created unacceptable confusion and uncertainty on the important question of what patent claims are eligible for review under Section 18 of the AIA. This case is a clear example of the PTAB overstepping its jurisdictional bounds. The panel's faulty reasoning on CBM jurisdiction also reveals an erroneous approach to 35 U.S.C. 101 issues for GUI related patents. Mandamus is appropriate here because this institution decision will impact many other patents.

The technological field related to the creation, generation and use of GUIs is becoming ever more important, whether it be in our company's field of gaming (e.g., slot machines, video poker machines, and video lottery

terminals) or such other fields as consumer electronics, medical devices, automobiles, aviation, etc.¹ The number of devices employing new GUI designs has exploded over the last few years.²

The PTAB's institution decision reveals a fundamental misunderstanding surrounding GUI technology. The patent-at-issue is claiming a technological invention – a versatile and efficient GUI tool. The claimed methods and computer readable medium for generating dynamic user interfaces, for purposes of CBM jurisdiction and 35 U.S.C. 101, are no different than a machine which has been modified to produce different results or a biological thing that is altered by new DNA. In *Diamond v Chakrabarty*, 447 U.S. 303 (1980), the Court held that genetically engineered bacterium constitute a manufacture and are patent eligible. Indeed is not software simply DNA to transform a computer into a new machine? Despite the failure to meet the burden, the panel concluded that is the claims are directed to a covered business method patent, is not directed to technology, and is more likely than not patent ineligible under Section

¹ Boeing Aeromagazine, *Innovative 787 Flight Deck Designed for Efficiency, Comfort, and Commonality*, http://www.boeing.com/commercial/aeromagazine/articles/2012_q1/3/ (last visited March 10, 2016).

² *IBM Invests \$100 Million To Expand Design Business*, <http://www.fastcodesign.com/3028271/ibm-invests-100-million-to-expand-design-business> (last visited March 10, 2016).

101. This is wrong on its face. Claims to a machine, device or tool are directed to technology and are not directed to an abstract idea or a business practice. The panel ignored that the claimed methods and medium create an interactive GUI which addresses problems of efficiency, speed, accuracy and usability. All of these are technical problems. That the claimed GUI may also address a “business problem” is not relevant. Problems with efficiency, speed, accuracy and usability are all technical problems regardless of the particular field of use for a GUI. Our company develops GUIs in the field of gaming. Although the GUIs may accomplish the objective of increasing the entertainment experience for players playing games on gaming terminals, the GUIs solve such technical problems as making a gaming application easy, practical, and efficient to use. The GUIs should not be rendered non-technical merely because they also serve to entertain players.

Importantly, the ‘304 patent claims the specific process and computer medium which provide a new and non-obvious GUI tool. That is the heart of the invention. 35 U.S.C §101 provides “whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” It seems clear that a process that creates a new and non-obvious GUI is a patent eligible “process” and that the computer medium claims result in a new, patent eligible machine or

manufacture of the interactive GUI. This patent is not one that is merely adding a claim element reciting a generic GUI to a common economic practice or otherwise abstract idea. The PTAB panel seemed to confuse those types of claims that would have a 101 problem and qualify as CBMs with the '304 patent claims. If not remedied, this confusion will negatively impact thousands of legitimate technology patents.

The panel's logic would render almost all GUI patents ineligible under Section 101 because they are operating under the misconception that it is being implemented on a conventional computer and that the applicant did not invent a new piece of hardware. However, by programming a computer to render new, non-obvious, real world, tangible results of a particular GUI, a new process, manufacture or machine is created. Adopting the logic of this panel would brush aside an entire important field of technology and innovation. The decision is inconsistent with longstanding tradition at the USPTO – which has an entire art unit dedicated to the field of GUIs. Indeed, recent examination guidelines from the USPTO identify examples of GUI related claims as eligible under 101. *See, e.g.*, U.S. Patent & Trademark Office, Example 23 (GUI for Relocating Obscured Textual Information) of *July 2015 Update Appendix 1: Examples*, available at

<http://www.uspto.gov/sites/default/files/documents/ieg-july-2015-app1.pdf>

(last visited March 10, 2016).

CONCLUSION

On its face, this patent is not a CBM within the jurisdictional bounds of Section 18 and, therefore, Bally Gaming, Inc. requests that the Federal Circuit grant the relief requested in Trading Technologies' mandamus petition.

Dated: March 11, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the page limitation of Fed. R. App. P. 21 (d) and 29(d), and contains 7 pages.

The brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 in 14-point Times New Roman type.

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CERTIFICATE OF SERVICE

I, Gary Y. Chyi, being duly sworn according to law and being over the age of 18, upon my oath deposes and states that:

Counsel Press was retained by Timothy C. Meece, Banner & Witcoff, Ltd., Counsel for *Amicus Curiae* Bally Gaming, Inc., to print this document. I am an employee of Counsel Press.

On March 11, 2016, Mr. Meece authorized me to electronically file the foregoing Brief of *Amicus Curiae* Bally Gaming, Inc. In Support of Petitioner with the Clerk of the Federal Circuit using the CM/ECF System, which will serve e-mail notice of such filing on the following:

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Six paper copies will be filed with the Court within the time provided in the Court's rules.

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March 11, 2016