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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

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## Fed. Circ. Says Trading Software Doesn't Infringe Larger IP

By Braden Campbell

Law360, New York (April 4, 2016, 7:42 PM ET) -- A Federal Circuit panel on Monday ruled that trading software offered by two companies does not infringe a patent held by rival Trading Technologies International Inc., saying the software is fundamentally automatic and therefore distinct from the patented, manually operated product.

The decision affirms a November 2014 ruling that largely dismissed Trading Technologies' claims that software sold by SunGard Data Systems Inc. and FuturePath infringed on a patent previously construed by the Federal Circuit to cover a graphic trading interface that displays a static commodity price until manually updated by a user.

The panel said Monday that while the software makers' product displays a single price for periods set by the user, it ultimately refreshes independent of their control and is therefore fluid rather than static.

"There is no genuine dispute that the accused products operate in a single mode that does not infringe under the construction of 'static' affirmed in *eSpeed*," U.S. Circuit Judge Alan D. Lourie wrote in the opinion Monday. "The instant that recentering occurs is not a separate 'mode' of operation; it is part of a single mode of operation practiced by the accused products."

The Federal Circuit decision caps off more than a decade of litigation over SunGard's alleged infringement, which has boiled down to interpretations of how the programs handle price updates.

At **oral arguments last month**, Trading Technologies argued SunGard and FuturePath co-opted its manual price update function, which is meant to prevent unexpected price updates from changing orders the moment they are made.

Trading Technologies, which owns a patent for a graphic trading interface that solves this issue by displaying a "static" price for the desired commodity, contends that the products offered by SunGard and FuturePath effectively consist of both a static mode and one in which prices automatically reset, therefore infringing its patent.

But the panel saw otherwise, ruling that these claimed separate modes are two facets of a single mode of operation in which prices are periodically reset without input from the user, in contrast with the manual refresh they found the Trading Technologies patent described in their earlier *eSpeed* decision.

Trading Technologies also argued the programs should be found to infringe on the grounds they accomplish the same goal of preventing purchases at unwanted prices and are

therefore covered by the doctrine of equivalents. The company claims its competitors' programs provide the same service, and therefore the doctrine of equivalents supersedes its earlier construction of the patent in the eSpeed suit.

However, the panel again sided with SunGard and FuturePath on this facet of the case, ruling that their software does not provide the described benefit because it is still possible to purchase commodities at the same product prices change, even if users can extend the refresh interval "to be so long that it will likely never occur."

"The accused products here recenter automatically, and the products provide no way for the user to know whether recentering will occur," Lourie said. "Accordingly, the accused products fall squarely within the eSpeed holding."

In its 2014 ruling, the Northern District of Illinois denied SunGard's motion to dismiss claims that later versions of its program violated Trading Technologies' patent, finding they included a feature that arguably makes them similar under the doctrine of equivalents. The parties later settled their dispute over these claims.

An attorney for SunGard and FuturePath declined to comment Monday. Attorneys for Trading Technologies did not immediately respond to a request for comment.

The patents-in-suit are U.S. Patent Numbers 6,722,132 and 6,766,304.

U.S. Circuit Judges Alan D. Lourie, William C. Bryson and Jimmie V. Reyna sat on the panel for the Federal Circuit.

Trading Technologies is represented by Leif R. Sigmond Jr., Michael David Gannon, Jennifer Kurcz and Cole Bradley Richter of McDonnell Boehnen Hulbert & Berghoff LLP and in-house counsel Steven Borsand.

SunGard and the other defendants are represented by Mark Leslie Levine, Christopher Lind, Asha L.I. Spencer and Brian Swanson of Bartlit Beck Herman Palenchar & Scott LLP and in-house counsel Andrew Bourke Donnellan Jr. and Katherine Pauley Barecchia.

The case is Trading Technologies International v. SunGard Data, case number 15-1767, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Michael Macagnone. Editing by Philip Shea.

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