

The opinion in support of the decision being entered today  
was **not** written for publication in and  
is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** CHARLES C. FREENY JR.

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Appeal No. 2006-1126  
Application No. 10/455,701

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ON BRIEF

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Before: OWENS, CRAWFORD, and NAPPI, **Administrative Patent Judges**.

NAPPI, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 7 through 13, 15, 16, 18, 20, 22, 23 and 25. For the reasons stated *infra*, we affirm the examiner's rejection of these claims.

### **Invention**

The invention relates to a system for automatically trading investment items based upon predetermined conditions. The investments can include stocks, options, or other investment items. See page 2 of appellant's specification. A user can then enter a stop loss order (an order to sell if the investment item's price falls below a set value), either as a price of the investment item or as a percentage of the item's value. The system monitors the values of investment items and will automatically execute the stop order. See page 15 of appellant's specification.

Claim 7 is representative of the invention and reproduced below:

7. A trading system, comprising:  
a computer receiving a stop value for an investment item, the computer automatically setting an initial execution price based upon the stop value and monitoring the price of the investment item, the computer automatically changing the execution price in a first direction as the price of the investment item changes in the first direction and fixing the execution price as the price of the investment item changes in a second direction opposite from the first direction, the computer automatically outputting a trade request signal thereby automatically causing the stock to be traded in response to the price of the investment item changing in the second direction to reach the execution price.

### **Reference**

The reference relied upon by the examiner is:

Lupien et al. (Lupien)      EPA 0401203A2      Dec. 5, 1990

Bondy, "Stop-Order Path A Good Way Out Of Stock Market" Arizona Republic, page C1, August 21, 1993.

### **Rejection at Issue**

Claims 7, 8, 11, 12, 13, 15, 16, 18, 20, 22, 23 and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bondy in view of Lupien. Claims 9 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bondy in view of Lupien and official notice. Throughout the opinion, we make reference to the briefs and the answer for the respective details thereof.

### **Opinion**

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellant and the examiner, and for the reasons stated *infra*, we sustain the examiner's rejection of claims 7 through 13, 15, 16, 18, 20, 22, 23 and 25 under 35 U.S.C. § 103.

#### **Claims 7, 8 11 and 12.**

On pages 8 through 14 of the brief, appellant groups claim 7, 8, 11 and 12, and presents arguments why the rejection of this group of claims is improper. Appellant argues, on page 9 of the brief, that while Bondy teaches a stop loss order as a computerized order to sell a particular stock after its trigger price has

been reached, Bondy does not teach that the computer automatically sets an initial execution price based upon the stop vale. Appellant asserts that in Bondy the broker enters the execution price into the computer after consulting the investor. On page 10 of the brief, appellant acknowledges that Lupien teaches an analysis of securities data with algorithms or criteria to automatically generated orders. However, on page 11 of the brief, appellant argues that Lupien “does not teach the automated submission of the generated orders to the exchange.” Appellant points to several passages of Lupien to show that a person must execute the order, such as the “F5(submit order)” function shown in figure 6. Thus, appellant concludes that the combination of Bondy and Lupien does not teach the invention of claim 7.

In response, the examiner asserts on page 8 of the answer, that Bondy discloses setting an initial execution price based on the stop value, monitoring the price of the investment item, changing the execution price if the investment item increases in value and fixing the execution price if the investment decreases in value. However, the examiner acknowledges that Bondy does not teach that a computer automatically monitors the stocks and adjusts the execution price; rather the investor monitors the stock price and makes the changes the trigger price. The examiner asserts that it would be obvious to use a computerized investment system such as taught by Lupien to perform Bondy’s method of adjusting the stop order for a stock. In response to appellant’s argument, that Lupien does not teach automatic submission of orders, the examiner argues that

the appellant is focusing on select features and embodiments of Lupien. The examiner asserts there are other features and embodiments of Lupien which are clearly directed to issuing buy and sell orders automatically. On pages 9 through 11 of the answer, the examiner addresses the features argued by appellant as teaching non-automatic trading and argues other features of Lupien, which the examiner considers to disclose automatic trading of securities.

We concur with the examiner's assessment of the reference. Initially, we note that appellant has not argued that Bondy's algorithm of adjusting stop orders differs from appellant's or that Bondy and Lupien are not properly combined. Appellant's arguments center around whether Lupien discloses automatic submission of a generated order to an exchange. We find that Lupien does disclose such a feature.

Lupien teaches a system to manage one or more investor portfolios, the system uses data processing equipment to place buy and sell orders on securities markets and with automated brokers to execute trades between users of the system and external markets. See abstract. The system monitors security trade information and enters buy and sell orders through its own network or through other networks. See column 3, lines 48 through 55. The system uses information concerning limits and algorithms set by the client to analyze the security trade information and based upon the analysis issues buy or sell orders. See column 4, lines 7 through 18, and column 8, lines 17 through 25. The system executes trades based upon an analysis of transactions and controls

imposed by the system users. The system also permits investment managers to directly execute trades or manually make changes to orders. See column 6, lines 2 through 15, column 12, lines 42 through 49, and column 14, lines 11 through 39. Thus, we find that Lupien discloses a security trading system, which allows for both automatic and manual submission of orders.

We are not persuaded by appellant's arguments that Lupien does not teach an automatic submission of a generated order to an exchange. The passages of Lupien and the depiction of a display screen (figure 6) with a caption "F5(submit order)" do not definitively show that the system does not automatically execute trades. Rather, as stated *supra*, we find that Lupien discloses that the system operates to automatically execute trades and includes the ability for a manual operation. Thus, appellant's arguments have not convinced us of an error in the examiner's rejection of claims 7, 8, 11 and 12 and we accordingly sustain the examiner's rejection of claims 7, 8, 11 and 12.

#### Claims 9-10

Appellant argues, on page 14 of the brief, that the rejection of claims 9 and 10 is improper for the reasons asserted with respect to claim 7. Also, appellant argues: "Appellant's attorney agrees that people maintain investments in different accounts with different brokers. However, it would not have been obvious to output trade request signals to the different brokers from a computer."

On pages 5 and 6 of the answer, the examiner states:

Lupien teaches that the computer outputs trade request signals to more than one individual selected market trader (column 4, lines 23-31), and an

investment portfolio is stored on the computer (column 3, line 32, through column 4, line 7). Lupien does not expressly disclose that the investment item portfolio includes a first investment item maintained in an account with one market trader, and a second investment item maintained in an account with another market trader. However, official notice is taken that it [is] well known for investment item portfolios to include investment items traded on different exchanges and maintained in different accounts (Lupien, column 8, lines 41- 51, and column 14, lines 21-34, is suggestive of this). E.g., a portfolio may include both shares of stock, traded on a stock exchange and maintained in an account with a stockbroker, and pork belly futures, traded on a commodities exchange, and maintained in an account with a commodity broker.

Further, the examiner responds to appellant's arguments on page 12 of the answer stating: “[A]lthough Lupien does not quite expressly disclose the limitations of claim 9 (concerning which unchallenged official notice was taken), Lupien’s words in column 13, lines 8-15 are highly suggestive.”

We concur with the examiner. Claim 9 recites:

9. The trading system of claim 7, wherein an investment portfolio is stored on the computer, the investment item portfolio including a first investment item maintained in an account with one market trader, and a second investment item maintained in an account with another market trader and wherein the computer outputs trade request signals to more than one market trader.

Thus, the scope of claim 9 includes the requirement that the portfolio includes investments maintained in accounts with different market traders. The examiner’s statement of the rejection and response to the arguments cite to numerous sections of Lupien which discloses the system issuing trade orders through external brokers, dealers, or exchanges. We consider the examiner to have presented ample evidence to establish a *prima facie* case of obviousness. Appellant’s arguments directed to claim 9 have not presented sufficient facts to

persuade of us that the examiner's rejection is in error. Accordingly, we sustain the examiner's rejection of claims 9 and 10.

Claims 13, 15, 16 and 18.

On pages 14 and 15 of the brief, appellant recites a limitation of claim 13 and argues that claim 13 is patentable for the reasons set forth with respect to claims 7 through 12.

We are not persuaded by appellant's argument directed to claim 13. We note that 37 CFR § 41.37 (c)(1)(vii) states: "A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim." Thus, we do not consider appellant's arguments directed to claim 13 on pages 14 and 15 of the brief to be sufficient to group claim 13 separately from claim 7. Nonetheless, as stated *supra*, we are not persuaded by appellant's arguments directed to claim 7 and we sustain the examiner's rejection of claim 13 for the reasons stated *supra* with respect to claim 7.

On page 15 of the brief, appellant argues that the combination of Bondy and Lupien does not teach the stop value being a predetermined amount or percentage of the investment item's value as recited in claims 15, 16 and 18.

We are not persuaded by appellant's argument. As noted *supra* with respect to claim 7, Lupien discloses that the system operates to automatically execute trades based upon user-defined algorithms. Bondy teaches an algorithm for making trades using stop orders, Bondy also states: "You can set the **stop-order** trigger at any price you choose – for example, 10 to 20 percent

below the current market price.” Thus, we find that the combination of Bondy and Lupien teaches the stop value being a predetermined amount or percentage of value in the investment. Accordingly, we sustain the examiner’s rejection of claims 15, 16 and 18.

Claims 20, 22, 23 and 25.

On page 16 of the brief, appellant argues that the rejection of claim 20 is improper, as Lupien does not teach an algorithm for automatically outputting a trade request. As stated *supra* with respect to claim 7, we find that Lupien does teach automatically outputting a trade request. Accordingly, we sustain the examiner’s rejection of claim 20.

With respect to claims 22, 23 and 25, the appellant argues, on page 16 of the brief, that the combination of Lupien and Bondy does not teach a system which receives a stop value and sets an execution price for the moving stop based upon the stop value or that the received stop value is a predetermined percentage of the value of the investment as recited in claim 23 or 25.

As discussed *supra* with respect to claims 16 and 18, we find that the combination of Bondy and Lupien teaches the stop value being a predetermined amount or percentage of value in the investment. Accordingly, we sustain the examiner’s rejection of claims 22, 23 and 25.

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In summary, we sustain the examiner's rejection of claims 7 through 13, 15, 16, 18, 20, 22, 23 and 25. The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

**AFFIRMED**

TERRY J. OWENS Administrative Patent Judge	) ) ) )	BOARD OF PATENT APPEALS AND INTERFERENCES
MURRIEL E. CRAWFORD Administrative Patent Judge	) ) )	
ROBERT E. NAPPI Administrative Patent Judge	) )	

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