UNITED STATES PATENT AND TRADEMARK OFFICE

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INNOVATION DIVISION
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK, NY 10022

EXAMINER
AMELUNXEN, BARBARA J

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phowe@cantor.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte MICHAEL BREITENBACH

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Appeal 2013-005344
Application 12/197,734
Technology Center 3600

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Before ANTON W. FETTING, NINA L. MEDLOCK, and
TARA L. HUTCHINGS, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

Michael Breitenbach (Appellant) seeks review under 35 U.S.C. § 134 of a final rejection of claims 1–18,[2] the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

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[1] Our decision will make reference to the Appellant's Appeal Brief ("App. Br." filed November 23, 2012) and Reply Brief ("Reply Br." filed March 7, 2013), and the Examiner's Answer ("Ans." mailed January 7, 2013), and Final Action ("Final Act." mailed November 23, 2011).
[2] Claim 19 was cancelled in an amendment filed November 23, 2012, after the Final Action.

The Appellant invented a way of displaying trading and trading related information. Specification 1:7–8.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

> 1. A system comprising at least one computing device coupled to a plurality of other computing devices, the at least one computing device operable at least to:
>
> [1] retrieve market data for a plurality of risk reversals[3] for a currency pair at a first time, at least one of the risk reversals having a first maturity and at least a second risk reversal having a second maturity different than the first;
>
> [2] determine a currency in which to quote skew[4] for each of the risk reversals;
>
> [3] communicate to and therewith causing an interface screen to be displayed at at least one of the other computing devices a listing comprising the first and second risk reversals, the market

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[3] Risk Reversal — In foreign-exchange trading, risk reversal is the difference in volatility (delta) between similar call and put options, which conveys market information used to make trading decisions. Investopedia http://www.investopedia.com/terms/r/riskreversal.asp. The Specification describes that "[a] risk reversal may be seen as a value spread between two currencies, reflecting the volatility of the value relationship between those currencies." Spec. 10.

[4] Skew (aka volatility smile) — The asymmetrical distribution of implied volatility. Out-of-the-money puts have higher implied volatilities than calls and vice versa. Think Forex Glossary http://www.thinkforex.com/education/fx-university/glossary. The Specification describes that "[t]he skew of a risk reversal indicates which of the currencies in the pair is favored, or expected to appreciate relative to the other currency in the pair." *Id.*

data, and an indication of the determined skew for each of the risk reversals;

[4] retrieve market data for at least one of the first and second risk reversals at a later time;

[5] determine that there has been a change in skew, based on the later retrieved market data, of the at least one of the first and second risk reversals;

and

[6] communicate to and therewith refresh the interface screen displayed at the at least one other computing device the later retrieved market data and an indication of the change in skew of the at least one of the first and second risk reversals.

The Examiner relies upon the following prior art:

Thompson   US 2004/0128225 A1   July 1, 2004
Rodgers   US 2010/0114756 A1   May 6, 2010

Claims 1–18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Rodgers and Thompson.

ISSUES

The issue of obviousness turns primarily on whether the references describe determining a currency in which to quote skew for each of the risk reversals.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Rodgers

>   01. Rodgers is directed to trading option contracts, such as currency options. Rodgers para. 1.
>
>   02. Rodgers describes displaying prices for currency pair risk reversals. Rodgers para. 108.
>
>   03. Rodgers does not describe using skew.

Thompson

>   04. Thompson is directed to providing a visual display of a two-line cross-over method signaling buying and selling opportunities of foreign currency pairs in the foreign exchange. Thompson para. 2.
>
>   05. Thompson lists skew as one of many market trend indicators for analysis. Thompson para. 67.
>
>   06. Thompson does not describe risk reversals.

ANALYSIS

We are persuaded by the Appellant's argument that the references fail to describe determining a currency in which to quote skew for each of the risk reversals. App. Br. 11–12. The Examiner finds that Thompson describes this at paragraphs 67 and 117. Final Act. 9. Each of these paragraphs lists a

variety of market trend indicators, among which is included skew. Neither paragraph describes how a skew is used nor describes determining a currency in which to quote skew for risk reversals. Rodgers describes risk reversals, but does not discuss using skew at all. Apparently, the Examiner finds that using market trend indicators, such as skew, is predictable with currency swap market transactions, including risk reversals. This is hard to quarrel with as such, but does not find why one of ordinary skill would determine a currency in which to quote skew for each of the risk reversals.

CONCLUSIONS OF LAW

The rejection of claims 1–18 under 35 U.S.C. § 103(a) as unpatentable over Rodgers and Thompson is improper.[5]

DECISION

The rejection of claims 1–18 is reversed.

REVERSED

rvb

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[5] Should there be further prosecution of this application (including any review for allowance), the Examiner may wish to review the claims for compliance under 35 U.S.C. § 101 in light of the recently issued preliminary examination instructions on patent eligible subject matter. *See* "Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*," Memorandum to the Examining Corps, June 25, 2014 and the July 2015 updates.