

## Rothwell Figg Client ITG Wins Grand Slam Patent Victory Over Liquidnet in the Southern District of New York

Southern District of New York Judge Schira Scheindlin handed Rothwell Figg client, Investment Technology Group, Inc. (ITG), a leading agency research broker and financial technology firm, a grand slam patent victory over Liquidnet Holdings Inc. In a 65-page decision, Judge Scheindlin granted in its entirety ITG's motion for summary judgment that ITG did not infringe Liquidnet's U.S. Patent No. 7,136,834, and did not willfully infringe the '834 patent. Judge Scheindlin also denied Liquidnet's cross-motion for partial summary judgment that ITG literally infringed the '834 patent and that the '834 patent was not unenforceable for inequitable conduct.

The case began when Liquidnet sued ITG for willful infringement of the '834 patent in the District of Delaware. Liquidnet sued under the wrong name, however, making subject matter jurisdiction improper in that court. ITG filed the present declaratory judgment action in the Southern District of New York to seek relief and vindication of ITG's rights vis-à-vis the '834.

The '834 patent relates to a specific method for integrating asset management firms' order management systems (OMSs) with an electronic securities marketplace for the purpose of sending non-binding indications to that marketplace. ITG develops and offers a variety of electronic securities trading products and services, including Channel® and POSIT Alert®, to buy-side asset management firms. ITG's subsidiary, The MacGregor Group, is the vendor of a buy-side OMS called MacGregor XIP.

Liquidnet, a rival brokerage and technology firm, had asserted that the '834 patent was infringed by ITG's Channel® and POSIT Alert® products. In her ruling, Judge Scheindlin agreed with ITG and rejected all of Liquidnet's infringement arguments, holding that ITG's products do not infringe the '834 patent as a matter of law, and thereby granting ITG's motion for summary judgment of no infringement and Liquidnet's cross-motion for partial summary judgment of no literal infringement. Liquidnet conceded at oral argument that it was not claiming infringement under the doctrine of equivalents. The effect of this ruling is that ITG has no liability at all to Liquidnet vis-à-vis the '834 patent and there will be no trial on Liquidnet's infringement claim.

### Key Contacts

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### Related Areas of Practice

Patent Litigation

### Technologies

Financial Services

Judge Scheindlin also granted ITG's motion for summary judgment of no willful infringement, finding as a matter of law that, even if ITG had infringed, it did not do so willfully. "This ruling knocked out any claim for enhanced damages Liquidnet might have recovered from ITG had ITG been found to infringe the '834 patent, and saved ITG from having to go to trial on this issue as well," Mr. Lieberman noted.

Not only did Judge Scheindlin vindicate ITG's rights vis-à-vis the '834 patent, she also denied Liquidnet's motion for summary judgment seeking to dismiss a portion of ITG's inequitable conduct claim against Liquidnet. ITG's Complaint alleges that the '834 patent is invalid and was obtained by inequitable conduct due to, among other reasons, Liquidnet's failure to disclose a prior art system called @Harborside, and a related patent application, to the U.S. Patent and Trademark Office. Liquidnet sought partial summary judgment that there could be no inequitable conduct based on the patent application. Judge Scheindlin soundly rejected Liquidnet's motion, writing, "Liquidnet is patently wrong" that there is no evidence that Liquidnet knew about the Harborside patent application during the prosecution of its patent application. This ruling vindicates ITG's inequitable conduct allegation and permits ITG to proceed to trial on all of its invalidity and inequitable conduct claims against Liquidnet.

ITG was represented in this case by Rothwell Figg attorneys Steven Lieberman and Jenny Colgate, as well as by Eric Seiler of Friedman Kaplan Seiler & Adelman.