UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EBAY ENTERPRISE, INC.
Petitioner

v.

LAWRENCE B. LOCKWOOD
Patent Owner

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Case CBM2014-00025
Patent 7,010,508 B1

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Before SALLY C. MEDLEY, MICHAEL W. KIM, and
BENJAMIN D. M. WOOD, *Administrative Patent Judges.*

WOOD, *Administrative Patent Judge*.

DECISION
Institution of Covered Business Method Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

eBay Enterprise, Inc. ("EEI")[1] filed a petition (Paper 1, "Pet.") to institute a review under the transitional program for covered-business-method patents of U.S. Patent No. 7,010,508 B1(Ex. C to Ex. 1010, "the '508 patent").[2] Patent Owner Lawrence B. Lockwood ("Lockwood")[3] filed a Preliminary Response (Paper 12, "Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting a covered-business-method patent review is set forth in 35 U.S.C. § 324(a), which provides as follows:

> THRESHOLD—The Director may not authorize a post-grant review to be instituted unless the Director determines that the information presented in the petition filed under section 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

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[1] The petition names GSI Commerce Solutions, Inc. ("GSI") as Petitioner. *See* Paper 1, cover page. In a paper filed April 11, 2014, Petitioner gave notice that GSI had changed its name to EEI. Paper 16 at 1.

[2] EEI mistakenly identifies the '508 patent as Ex. 1007. Pet. at 1. Instead, Ex. 1007 is U.S. Pat. No. 5,576,951. *See* Ex. 1007. The '508 patent is in the record as Ex. C to Ex. 1010 (hereinafter "Ex. 1010/C").

[3] The petition names Landmark Technologies, LLC ("Landmark") as the Patent Owner. Paper 1, cover page. In a paper filed February 21, 2014, Mr. Lockwood gave notice that he owns the '508 patent and that Landmark is the licensee of the patent. Paper 14 at 2.

EEI challenges the patentability of claims 1-17 of the '508 patent under 35 U.S.C. §§ 112 ¶ 2,[4] and 103. Taking into account Lockwood's preliminary response, we determine that the information presented in the petition demonstrates that it is more likely than not that the challenged claims are unpatentable under 35 U.S.C. § 112 ¶ 2. As a result, we are unable to reach the alleged grounds of unpatentability based on 35 U.S.C. § 103. Accordingly, pursuant to 35 U.S.C. § 324, we authorize a covered business method patent review to be instituted as to claims 1-17 of the '508 patent.

B. Related Proceedings

EEI discloses that the '508 patent is involved in *Landmark v. iRobot*, Case No. 6:13-cv-411, E.D. Tex. 2013, and is the subject of *Ex Parte* Reexamination No. 90/012,671 ("the '671 Reexam"). Pet. 7. EEI further discloses that it has petitioned for covered-business-method patent review of a related patent, 5,576,951. *Id.*; *see eBay Enterprise, Inc. and eBay, Inc. v. Lockwood*, CBM2014-00026 (Papers 1, 20). Lockwood discloses that the '508 patent is involved in 16 additional suits that are pending in the Eastern District of Texas. *See* Paper 18 at 2-3 and n.2.[5]

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[4] Section 4(c) of the America Invents Act. Pub. L. 112-29, 125 Stat. 284, 329 (2011) ("AIA") re-designated 35 U.S.C. § 112 ¶¶ 1-6 as 35 U.S.C. § 112(a)-(f). Because the '508 patent has a filing date prior to September 16, 2012, the effective date of the AIA, we refer to the pre-AIA version of 35 U.S.C. § 112.

[5] Lockwood suggests that we should not institute CBM review because EEI failed to inform the Board of all related proceedings as it was required to do under 37 C.F.R. § 42.42.8(b)(2). Prelim. Resp. 3-4. Rule 42.8 requires each party to identify "any other judicial or administrative matter that would affect, or be affected by, a decision in the proceeding."

C.   The Claimed Subject Matter

The '508 patent is directed to "terminals used by banking and other financial institutions to make their services available at all hours of the day from various remote locations." Ex. 1010/C, 1:22-25. As shown in figure 1, the preferred embodiment comprises financial institution 101 linked to a plurality of remote self-service terminals 105 and a credit rating service 103. *Id.*, 2:27-30; fig. 1. Central processor 104 of financial institution 101 "periodically sends to the terminals 105 at the various remote sites 102 loan rate information and other data pertinent to the loans available from that institution." *Id.*, 3:11-14. Each terminal 105, depicted in figure 2, comprises videodisc 114, video screen 118, and data processor 113 that controls operation of the terminal. *Id.*, 3:34-36, 39-43, 54-55. A recording of an image and sound of a fictitious loan officer is read from videodisc 114 and appears on video screen 118. *Id.*, 4:7-10. The fictitious bank loan officer guides a loan applicant through the application process. *Id.*, 3:55-58; fig. 3. The applicant answers questions posed by the fictitious loan officer via touch pad 119. *Id.*, 4:14-17; fig. 2. Based on the applicant's answers, the terminal communicates with financial institution 101 (to get a previous quote provided to the applicant, if one exists) and credit rating service 103 (to receive the applicant's credit rating) to process the loan. *Id.*, 4:22-25, 37-48; 5:22-25; figs. 1, 4, 5. The terminal analyzes the applicant's financial

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37 C.F.R. § 42.8(a)(1)-(2), (b)(2). While a failure to comply with an applicable rule may be sanctioned (37 C.F.R. § 42.12(a)(1)), we do not believe that a sanction, much less dismissal of the petition, is appropriate here. Lockwood has not shown that EEI failed to identify a related proceeding of which Petitioner was aware. Moreover, we presume that Patent Owner has identified all related proceedings that EEI did not identify in the petition.

profile and computes the applicant's credit worthiness based on the financial institution's criteria, and decides whether or not to grant the loan. *Id.*, 5:28-31, 35-41.

The Specification states that the system depicted in figure 1 "could be applied to other forms of transactions in which information has to be acquired from a customer then processed to a decision or into the performance of a particular task." *Id.*, 5:59-62. For example, the system could be used to prepare and file income tax returns, in which case the fictitious person who appears on the video can instruct the applicant how to fill out the tax form. *Id.*, 5:63-67. The system could also be used "as a trading network between buyers and sellers of securities." *Id.*, 6:7-8.

D. Exemplary Claims

Independent claims 1, 8, and 16, reproduced below, are illustrative of the claimed subject matter:

1. An automated multimedia system for data processing which comprises:

a computerized installation including a database, means for entering data into said database, and a program means for storing, processing, updating, and retrieving data items in response to coded requests from stations in communication with said installation;

at least one station including a general purpose computer and a program applicable to said computer for sending said requests to said installation;

means for communicating data back and forth between said installation and said station;

said station further including:

a mass memory and means associated therewith for storing and retrieving textual and graphical data;

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