IN THE UNITED STATES PATENT & TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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salesforce.com, inc.,
Petitioner,
v.
Applications In Internet Time LLC,
Patent Owner.

Case CBM: 2014-00168
Patent U.S. 7,356,482

PETITIONER'S REQUEST FOR REHEARING

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.71(d), salesforce.com, inc. ("Salesforce") requests rehearing of the panel's February 2, 2015 decision (Paper 10, "Decision") declining institution of covered business method review of U.S. Patent No. 7,356,482 ("the '482 patent"). Salesforce respectfully submits the panel erred in concluding Salesforce had not established the '482 patent is a "covered business method patent" pursuant to Section 18(d)(1) of the America Invents Act ("AIA"), and in particular, erred by applying an incorrect legal standard regarding the basis for CBM subject matter jurisdiction under Section 18(d)(1). In view of the exceptional importance of this issue both to this Petition (Paper 2), and to the CBM process generally, Salesforce respectfully suggests that an expanded panel of the PTAB consider this request for rehearing. Salesforce further requests the PTAB grant this Petition, and institute CBM review of claims 1-59 of the '482 patent.

II. SUMMARY

First, the panel's Decision misapprehended Section 18(d)(1) of the AIA in requiring that challenged claims must "expressly claim[]" a "particular relation" to financial products or services. *See* Decision, at 7.[1] More particularly, the panel erred in interpreting Section 18(d)(1) to support a finding that AIT's claims are ineligible for covered business method review because the "claims on their face are

[1] All emphases herein added, unless otherwise noted.

directed to technology 'common in business environments across sectors' with 'no particular relation to the financial services sector.'" *Id.* Neither Section 18(d)(1), nor the relevant legislative history, nor previous decisions of the PTAB, suggest that CBM review is premised upon an analysis that the patent in question must "expressly claim[]" a "particular relation to the financial services sector."

The interpretation of Section 18(d)(1) is of exceptional importance to the present proceeding, other CBM review proceedings, and the CBM review process generally. This statute defines the very scope of the subject matter jurisdiction of the PTAB with respect to covered business method review, which Congress expressly intended be interpreted broadly. This broad view was confirmed by the Patent Office's own stated interpretation of 37 C.F.R. § 42.301(a). *See infra*, at pp. 5-9. Interpretations of this statute that are at odds with the express statutory language, Congressional intent, and numerous prior PTAB decisions would result in a significant lack of certainty for the public regarding the PTAB's role in connection with such post grant review procedures. As such, Salesforce suggests that an expanded panel rehear and address the foundational interpretation issues raised in this Request for Rehearing. *See Target Corp. v. Destination Maternity Corp.*, IPR2014-00508, Paper 28, at 3-6 (Feb. 12, 2015).

Second, the Decision overlooked Salesforce's analysis in its Petition of the claims and specification of the '482 patent, which established that the scope of the

claims, and in particular, claim 1 and 21's limitation of "a change management layer for automatically detecting changes that affect an application" and "dynamically generating an application" explicitly cover a method or apparatus "for performing data processing or other operations used in the practice, administration, or management of a financial product or service."

III. LEGAL STANDARD

A party may request rehearing of a decision by the PTAB declining institution of a trial where "the party believes the PTAB misapprehended or overlooked" matters in its decision. 37 C.F.R. § 42.71(d). When rehearing a decision on a petition to institute CBM review, the PTAB "will review the decision for an abuse of discretion." 37 C.F.R. § 42.71(c). An abuse of discretion may be determined "if a decision is based on an erroneous interpretation of law . . . or if the decision represents an unreasonable judgment in weighing relevant factors." *Arnold Partnership v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004).

IV. ARGUMENT

A. The Panel Applied an Erroneous Interpretation of Section 18(d)(1) of the AIA

Contrary to the panel's Decision, neither Section 18(d)(1) nor 37 C.F.R. § 42.301(a) require a petitioner to demonstrate that a patent "expressly claims" a "particular relation to the financial services sector." Rather, Section 18(d)(1) states generally that a "covered business method patent" is "a patent that claims a method

or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service." *See also* 37 C.F.R. § 42.301(a). That is, a patent is eligible for CBM review so long as it claims "a method or corresponding apparatus for performing data processing or other operations," where that method or apparatus can be "used in the practice, administration, or management of a financial product or service." Thus, there is no requirement of an "express" claiming of financial products or services or a relation to the financial services industry.

The Decision's interpretation of Section 18(d)(1) diverged from both this plain statutory language and from the Patent Office's own interpretation of 37 C.F.R. § 42.301(a). *See* Petition, at 8. In pertinent part, the Office indicated in its comments to this regulation that Section 18(d)(1) should be "interpreted broadly," such that it would be sufficient to establish that a patent claims technology "***incidental*** to a financial activity or ***complementary*** to a financial activity":

> *Comment 1*: Several comments suggested that the Office interpret "financial product or service" broadly.
>
> *Response*: . . . ***[T]he legislative history explains that the definition of covered business method patent was drafted to encompass patents*** "claiming activities that are financial in nature, ***incidental to a financial activity or complementary to a financial activity***." 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer). This remark tends to support the notion that "financial product or service" should be interpreted broadly.

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