UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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INTERTHINX, INC.
Petitioner[1]

v.

CORELOGIC SOLUTIONS, LLC
Patent Owner

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Case CBM2012-00007
Patent 5,361,201

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Before, MICHAEL P. TIERNEY, JONI Y. CHANG,
and BRIAN J. McNAMARA, *Administrative Patent Judges*.

McNAMARA, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

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[1] On November 12, 2013, the Board terminated Petitioner's involvement without
terminating the proceeding under 37 C.F.R. § 327(a).

BACKGROUND

In its Petition for covered business method patent review of US 5,361,201 (the '201 Patent), Interthinx, Inc. ("Petitioner") asserted that claims 1, 5, 6, 9, and 10 were unpatentable under 35 U.S.C. §§ 102 and 103, and recited unpatentable subject matter under 35 U.S.C. § 101. Pet. 13-80. CoreLogic Information Solutions, LLC ("Patent Owner") later disclaimed claim 5. Prelim. Resp. 11, 13. The Board instituted a trial on January 31, 2013. Decision to Institute, Paper 16. Petitioner's involvement terminated late in this proceeding, pursuant to a settlement with the Patent Owner. Termination of Petitioner Pursuant To Settlement, Paper 47. The Board retained jurisdiction to issue this Final Written Decision. 35. U.S.C. § 317(a).

The '201 Patent, which is expired, is the subject of a jury verdict rendered on September 28, 2012, and a judgment entered in *CoreLogic Information Solutions, Inc. v. Fiserv, Inc.,* No. 2:10-CV-132-RSP (E.D. Tex. Oct. 2, 2012). Among other things, the District Court entered judgment of non-infringement in favor of Petitioner and in favor of Patent Owner, rejecting Petitioner's assertion that patent claims 1 and 10 of the '201 Patent are invalid as anticipated or obvious. Ex. 2006. Several days earlier, on September 23, 2012, the District Court denied Defendant's Motion for Summary Judgment that the Patent-In-Suit [the '201 Patent] is Invalid under 35 U.S.C. § 101. Ex. 2003. Post-trial motions filed in the District Court included Patent Owner's Motion for Judgment as a Matter of Law that Petitioner infringed the '201 Patent, Petitioner's Motion for Judgment as a Matter of Law that claims 1 and 10 of the '201 Patent are invalid under 35 U.S.C. § 102 and/or § 103, and Petitioner's Motion for Judgment as a Matter of Law that the '201 Patent is invalid under 35 U.S.C. § 101. The District Court denied all post-trial motions on September 30, 2013. Ex. 2039; Ex. 2040. On October 25,

2013, the parties moved to terminate this covered business method patent review. Paper 44. On November 12, 2013, the Board terminated Petitioner's involvement without terminating the proceeding. 37 C.F.R. § 327(a). Patent Owner presented arguments at an oral hearing conducted on December 2, 2013.

THE '201 PATENT (EXHIBIT 1001)

All of the challenged claims are drawn to "[a] computer implemented method for appraising a real estate property." Noting that traditional statistical techniques, such as multiple linear regression and logistical regression, have been tried in the past, the '201 Patent identifies uncertainty as to the optimal temporal and geographical sample size among the difficulties of applying a regression model to the appraisal problem. Ex. 1001, co1. 1, l. 56 - col. 2, l. 16. The '201 Patent addresses these problems with a model development component and a property valuation component. Ex. 1001, col. 6, ll. 4-6. Using predictive modeling techniques, such as neural networks and regression modeling, the model development component uses training data describing a number of real estate properties, characteristics, and prices to build models containing information representing learned relationships among a number of variables and to develop error models, which are typically regression models, to estimate error in predicted sales prices. Ex. 1001, col. 6, ll. 3-22. The property valuation component feeds input data describing the subject property and its geographic area to the neural network models and error models to generate price estimates, error ranges, and other codes to be output to a display device, printer, or database for future access. Ex. 1001, col. 6, ll. 23-30.

In our Decision to Institute, we adopted the constructions applied by the District Court. Paper 16 at 15-16. With the construction of the construed terms indicated by italics, claim 1 recites:

A computer implemented method (*which does not require a general purpose computer and does not exclude human interaction or input*) for appraising a real estate property, comprising the steps of:

collecting training data (*data which is available regarding real estate properties*);

developing a predictive model (*which is not limited to a neural network and does not exclude a regression model*) from the training data (*data which is available regarding real estate properties*);

storing the predictive model (*which is not limited to a neural network and does not exclude a regression model*);

obtaining individual property data for the real estate property;

developing an error model (*a model that estimates error in the predicted sales price of the subject property generated by the predictive model*) from the training data (*data which is available regarding real estate properties*);

storing the error model (*a model that estimates error in the predicted sales price of the subject property generated by the predictive model*) ; and

generating a signal indicative of an error range for the appraised value responsive to the application of the individual property data to the stored error model (*a model that estimates error in the predicted sales price of the subject property generated by the predictive model*).

Claim 6, which depends from disclaimed independent claim 5 and incorporates all the limitations of claim 5, differs from claim 1 in several ways. Claim 6 limits the training data to individual property training data describing past real estate sales which is aggregated into area training data sets describing a plurality of sales within a geographic area. The aggregating step is repeated using successively larger geographic areas until the number of sales within the geographic area over a predetermined time period exceeds a predetermined number. Another important difference between claims 1 and 6 is that claim 6 does not recite an error model.

Claim 9 differs from claim 1 by reciting the selection of a geographic area surrounding the real estate property and obtaining area data for the geographic area. Claim 9 also does not recite an error model.

Claim 10 depends from claim 9 and recites the same steps of developing an error model and generating a signal indicative of an error range that are recited in claim 1.

RES JUDICATA AND COLLATERAL ESTOPPEL

As noted above, in the co-pending litigation, the District Court denied all post-trial motions for judgment as a matter of law, and the parties subsequently settled. There has been no appeal of the District Court judgment.

Citing The Restatement of the Law Judgments 2d, Patent Owner argues that *res judicata* bars Petitioner's §101 case because the District Court entered a final summary judgment on the merits of that claim. PO Resp. 70-71. Citing the Supreme Court's decision in *Microsoft Corp. v. i4i*, 131 S.Ct. 2238, (2011) , and *Cybersource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1369 (Fed. Cir. 2011), Patent Owner argues that collateral estoppel also applies to Petitioner's challenge under 35 U.S.C. § 101 because the question is purely one of law, rather than fact, to which the clear and convincing standard is not applicable. PO Resp. 73-74. Thus, Patent Owner argues that in this case, the patent is expired and cannot be amended, the Board adopted the Court's claim construction, and that for questions of law, district courts and the Board apply the same standard. *Id.* at 74-75.

Patent Owner's underlying assumption that subject matter eligibility determinations are pure questions of law, not subject to the clear and convincing evidence standard, is not supported by the Federal Circuit. "[T]he analysis under [35 U.S.C.] § 101, while ultimately a legal determination, is rife with underlying factual issues." *Ultramercial, Inc. v. Hulu, LLC,* 722 F.3d 1335, 1339 (Fed. Cir. 2013) (*citing, e.g., CLS Bank Int'l v. Alice Corp.*, 717 F.3d 1269, 1304–05 (Fed. Cir. 2013) (en banc)) (Chief Judge Rader, and Judges Linn, Moore, and O'Malley, concluding that "any attack on an issued patent based on a challenge to the

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