UNITED STATES PATENT AND TRADEMARK OFF
BEFORE THE PATENT TRIAL AND APPEAL BOA

GOOGLE INC. and APPLE INC.,
Petitioners,

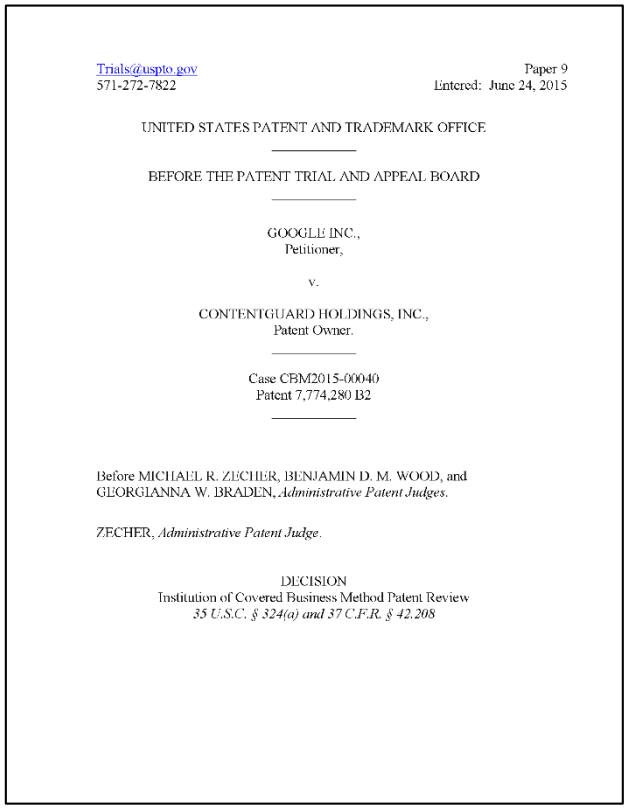
v.

CONTENTGUARD HOLDINGS, INC.,
Patent Owner

CBM2015-00040
CBM2015-00160
U.S. Patent No 7,774,280

Patent Owner ContentGuard's Demonstrative
Hearing Date: February 24, 2016

CBM Jurisdiction



Trials@uspto.gov
571-272-7822

Paper 9
Entered: June 24, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
Petitioner,

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Case CBM2015-00040
Patent 7,774,280 B2

Before MICHAEL R. ZECHER, BENJAMIN D. M. WOOD, and GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

ZECHER, *Administrative Patent Judge*.

DECISION
Institution of Covered Business Method Patent Review
35 U.S.C. § 324(a) and 37 C.F.R. § 42.208

A "covered business method patent" is a patent that "claims a corresponding apparatus for performing data processing or ot used in the practice, administration, or management of a finar service, except that the term does not include patents for techn inventions." AIA § 18(d)(1); *see* 37 C.F.R. § 42.301(a). For determining whether a patent is eligible for a covered busines patent review, the focus is on the claims. *See* Transitional Pr Covered Business Method Patents—Definitions of Covered B Method Patent and Technological Invention; Final Rule, 77 F 48,734, 48,736 (Aug. 14, 2012).

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1. Financial Product or Service

In promulgating rules for covered business method rev
United States Patent and Trademark Office ("Office") consic
legislative intent and history behind the AIA's definition of a
business method patent." 77 Fed. Reg. at 48,735–36. The "
history explains that the definition of covered business metho
drafted to encompass patents 'claiming activities that are fina
incidental to a financial activity or complementary to a finan
Id. at 48,735 (citing 157 CONG. REC. S5432 (daily ed. Sept.
(statement of Sen. Schumer)). The legislative history indicat
"'financial product or service' should be interpreted broadly.

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America. This transformation is not without enormous dangers and challenges, but consider how much worse it would have been if a pro-bin LaDen movement were fueling this transformation.

It is plain we need more of what we had post-9/11 now. I am not naive. I know it cannot be conjured up or wished into existence. But if we are optimistic, if we are inspired by the Americans who died here, if we truly understand our shared history and the sacred place compromise and rationality hold at the very center of the formation of our Nation and the structure of our Constitution, then we can again take up the mantle of shared sacrifice and common purpose that we wore after 9/11 and apply some of those behaviors to the problems we now confront.

The reality of our current political climate is that both sides are off in their corners; the common enemy is faded. Some see Wall Street as the enemy many others see Washington, DC, as the enemy and to still others any and all government is the enemy.

I believe the greatest problem we face is the belief that we can no longer confront and solve the problems and challenges that confront us; the fear that our best days may be behind us; that, for the first time in history, we fear things will not be as good for our kids as they are for us. It is a creeping pessimism that cuts against the can-do and will-do American spirit. And, along with the divisiveness in our politics, it is harming our ability to create the great works our forbears accomplished: building the Empire State building in the teeth of the Great Depression, constructing the Interstate Highway System and the Hoover Dam, the Erie Canal, and so much more.

While governmental action is not the whole answer to all that faces us, it is equally true that we cannot confront the multiple and complex challenges we now face with no government or a defanged government or a dysfunctional government.

As we approach the 10th anniversary of 9/11, the focus on what happened that day intensifies what we lost, who we lost, and how we reacted—it becomes acutely clear that we need to confront our current challenges imbued with the spirit of 9/11 and determine to make our government and our politics worthy of the sacrifice and loss we suffered that day.

To return to de Tocqueville, he also remarked that:

The greatness of America lies not in being more enlightened than any other nation, but rather in her ability to repair her faults.

So, like the ironworkers and operating engineers and trade workers who miraculously appeared at the pile hours after the towers came down with blowtorches and hard hats in hand, let's put on our gloves, pick up our hammers and get to work fixing what ails the body politic. It is the least we can do to honor those we lost.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BROWN of Ohio). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

LEAHY-SMITH AMERICA INVENTS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1249, which the clerk will report by title.

The assistant legislative clerk read as follows:

An Act (H.R. 1249) to amend title 35, United States Code, to provide for patent reform.

AMENDMENT NO. 600

Mr. SESSIONS. Mr. President, I ask unanimous consent to call up my amendment No. 600, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS], for himself, Mr. MANCHIN, Mr. COBURN, and Mr. LEE, proposes an amendment numbered 600.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT NO. 600

(Purpose: To strike the provision relating to the calculation of the 60-day period for application of patent term extension)

On page 149, line 20, strike all through page 150, line 16.

Mr. SESSIONS. Mr. President, the amendment that I have offered is a very important amendment. It is one that I believe is important to the integrity of the U.S. legal system and to the integrity of the Senate. It is a matter that I have been wrestling with and objecting to for over a decade. I thought the matter had been settled, frankly, but it has not because it has been driven by one of the most ferocious lobbying efforts the Congress maybe has seen.

The House patent bill as originally passed out of committee and taken to the floor of the House did not include a bailout for Medco. The WilmerHale law firm, or the insurance carrier for that firm, all of whom were in financial jeopardy as a result of a failure to file a patent appeal timely.

I have practiced law hard in my life. I have been in court many times. I spent 12 years as a U.S. Attorney and tried cases. I am well aware of how the system works. The way the system works in America, you file lawsuits and you are entitled to your day in court. But if you do not file your lawsuit in time, within the statute of limitations, you are out.

When a defendant raises a legal point of order—a motion to dismiss—based on the failure of the complaining party to file their lawsuit timely, they are out. That happens every day to poor people, widow ladies. And it does not make any difference what your excuse is, why you think you have a good lawsuit, why you had this idea or that idea. Everyone is required to meet the same deadlines.

In Alabama they had a situation in which a lady asked a probate judge when she had to file her appeal by, and the judge said: You can file it on Monday. As it turned out, Monday was too late. They went to the Alabama Supreme Court, and who ruled: The probate judge—who does not have to be a lawyer—does not have the power to amend the statute of limitations. Sorry, lady. You are out.

Nobody filed a bill in the Congress to give her relief, or the thousands of others like her every day. So Medco and WilmerHale seeking this kind of relief is a big deal. To whom much has been given, much is required. This is a big-time law firm, one of the biggest law firms in America. Medco is one of the biggest pharmaceutical companies in the country. And presumably the law firm has insurance that they pay to insure them if they make an error. So it appears that they are not willing to accept the court's ruling.

One time an individual was asking me: Oh, JEFF, you let this go. Give in and let this go. I sort of as a joke said to the individual: Well, if WilmerHale will agree not to raise the statute of limitations against anybody who sues their clients if they file a lawsuit late, maybe I will reconsider. He thought I was serious. Of course WilmerHale is not going to do that. If some poor person files a lawsuit against someone they are representing, and they file it one hour late, WilmerHale will file a motion to dismiss it. And they will not ask why they filed it late. This is law. It has to be objective. It has to be fair.

You are not entitled to waltz into the U.S. Congress—well connected—and start lobbying for special relief.

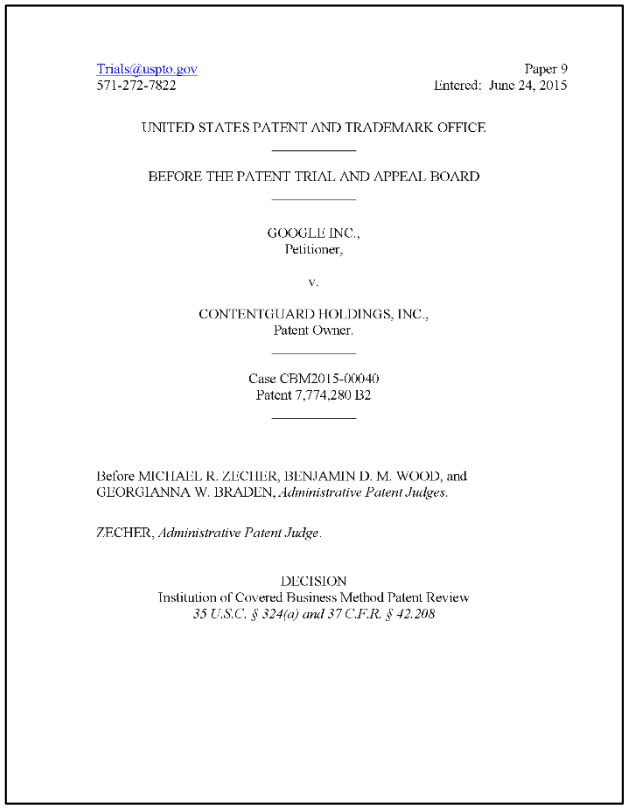
There is nothing more complicated about that than this. So a couple of things have been raised. Well, they suggest, we should not amend the House patent bill, and that if we do, it somehow will kill the legislation. That is not so. Chairman LEAHY has said he supports the amendment, but he doesn't want to vote for it because it would keep the bill from being passed somehow.

It would not keep it from being passed. Indeed, the bill that was

There has been some question
the scope of patents that may b
ject to the transitional progra
covered business method p
which is section 18 of the Leahy
America Invents Act. This provi
intended to cover only those b
method patents intended to be
the practice, administration, o
agement of financial services o
ucts, and not to technologies c
in business environments acro
tors and that have no particula
tion to the financial services
such as computers, communic
networks, and business software.

157 Cong. Rec. S5441 (daily ed. Sept. 8, 2011) (S
Patent Owner Response (Pape

CBM Jurisdiction



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Independent claim 1 of the '280 patent recites "[a] co
implemented method for *transferring rights adapted to be a*
items from a rights supplier to a rights consumer." Ex. 100
(emphasis added). In our view, the transfer of rights associa
from a supplier to a consumer is an activity that, at the very
incidental or complementary to a financial activity.

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