Paper No. 44

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC. AND APPLE INC.,
Petitioners,

v.

CONTENTGUARD HOLDINGS, INC,
Patent Owner.

Case No. CBM2015-00040[1]
U.S. Patent No. 7,774,280

Petitioners' Joint Brief on CBM Eligibility

[1] Case No. CBM2015-00160

I. Applicable Law

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, except that the term does not include patents for technological inventions." Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329–31 (2011) ("AIA") § 18(d)(1). This definition "covers a wide range of finance-related activities," and is "not limited to products and services of only the financial industry, or to patents owned by or directly affecting the activities of financial institutions." *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1325 (Fed. Cir. 2015).

Patent claims that are "financial in nature" are subject to CBM review. *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1340 (Fed. Cir. 2016). *See Unwired Planet, LLC v. Google, Inc.*, 841 F.3d 1376, 1380 n.5 (Fed. Cir. 2016) ("[W]e endorsed the 'financial in nature' portion of the standard as consistent with the statutory definition of 'covered business method patent[.]'").[2]

[2] In its remand decision, the Federal Circuit observed that *Secure Axcess, LLC v. PNC Bank National Ass'n*, 848 F.3d 1370, 1381 (Fed. Cir. 2017), which stated "the statutory definition of a CBM patent requires that the patent have a claim that contains, however phrased, a financial activity element," was vacated as moot by the Supreme Court. *See PNC Bank Nat. Ass'n v. Secure Axcess, LLC*, 138 S. Ct. 1982 (2018).

Whether a patent is for a "technological invention" requires considering "whether the claimed subject matter as a whole [(1)] recites a technological feature that is novel and unobvious over the prior art; and [(2)] solves a technical problem using a technical solution." 37 C.F.R. § 42.301(b). Recitation of known technology to accomplish a method (even if the method itself may be novel) does not render a patent a "technological invention." Office Patent Trial Practice Guide ("Practice Guide"), 77 Fed. Reg. 48,756, 48,763-64 (Aug. 14, 2012).

II. The '280 Patent Is Eligible for CBM Review

A. The '280 Patent Claims Are "Financial in Nature"

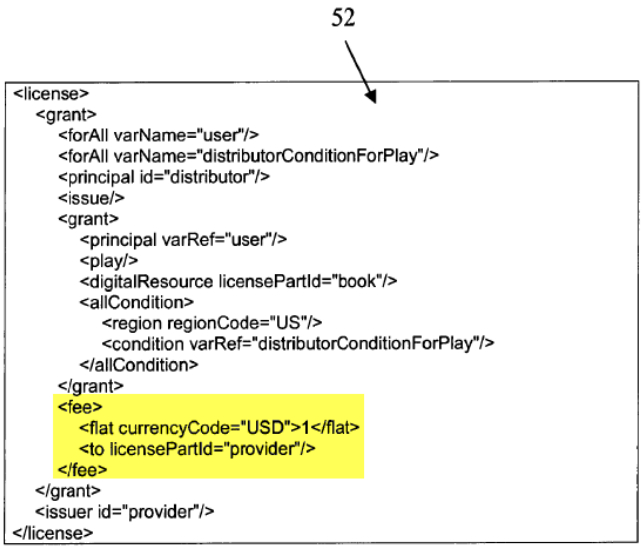
Digital rights management (DRM) systems specify, verify, and enforce usage rights for digital content, and also address "accounting, payment and financial clearing." Ex. 1001 ('280 patent) at 1:36-39. The '280 patent purports to provide a solution for a particular DRM "business model", involving "multi-tier" or "multi-party" distribution models. *Id.* at 2:24-48. The '280 patent describes the use of "meta-rights"—the allegedly novel part of the invention—as "particularly useful to companies in the digital content business." *Id*. at 6:1-4. Meta-rights also support "entities that are not creators or owners of digital content, but are *in the business of manipulating the rights associated with the content*." *Id.* at 6:1-4 (emphasis added). Accordingly, claim 1 of the '280 patent describes the purported invention in economic terms, reciting the use of meta-rights to facilitate the

transfer of rights between a rights "supplier" and a rights "consumer." Ex. 1001 at 15:7-8 ("[a] computer-implemented method for transferring rights adapted to be associated with items from a rights supplier to a rights consumer"). By requiring a rights "supplier" and rights "consumer", rather than a "provider" and "user" more generally, claim 1 makes clear that it is directed to "typical *business models* of distributing digital content includ[ing] plural parties, such as owners, publishers, distributors and users. Each of these parties can act as a *supplier* granting rights to a *consumer* downstream in the distribution channel." *Id.*at 5:39-43 (emphasis added); *see also* 6:1-13 (explaining that meta-rights are useful for entities who "are *in the business* of manipulating rights associated with the content" (emphasis added), and then defining such entities as "supplier" and "consumer").

Consistent with the claim language, the specification is replete with references to the financial nature of this claimed exchange between suppliers and consumers.[3] For example, it describes the use of licenses providing rights for a recipient to view content in exchange for paying a fee. Ex. 1001 at 4:3-14. *See also id.* at 2:18-19 ("Usage rights can be contingent on payment"), 4:39-43 (exercising a specified right may require payment of a fee), 5:3-11 (steps may include "a fee transaction (as in the sale of content)"), 5:35-37 (use of a

[3] A member of the Federal Circuit panel made similar observations at the oral argument. *See* http://oralarguments.cafc.uscourts.gov/default.aspx?fl=2016-2548.mp3 at 23:00-:25, 24:41-25:01.

clearinghouse to process payment transactions and verify payment prior to issuing a license), 8:17-24 ("[T]he distributor pays $1 to the provider each time the distributor issues a license for an end user."), 14:5-10 (use of variables to track whether "an appropriate fee has been paid"). The specification describes the use of the XrML language to encode licenses, and Figure 4 illustrates the structure of the license, which contains a dedicated "fee" substructure:



Id. at Fig. 4 (highlighting added). Claims 11 and 22 explicitly require such licenses. *See id.* at 15:48-50, 16:27-29.

The specification also repeatedly describes the intermediate entities in the "multi-tier" business model as "resellers" and "retailers" who "sell content." *E.g.*, Ex. 1001 at 6:8-10 ("reseller"), 6:21 ("retailers"), 6:50-53 ("retailer"). Figure 2 "schematically illustrates an example of a multi-tier business model" involving a publisher, distributor, and retailer who "sells content to users":

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