IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC and APPLE INC.,

Petitioners,

v.

CONTENTGUARD HOLDINGS, INC.,

Patent Owner.

Case CBM2015-00040[1]
Patent No. 7,774,280 B2

PATENT OWNER'S RESPONSE REMAND BRIEF

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[1] Case CBM2015-00160 has been joined with this proceeding.

The Petition alleged CBM jurisdiction by pointing to portions of the '280 specification disclosing embodiments involving distributing digital content for a fee. (Paper 1 at 9-14.) That argument is now foreclosed by the holding in *Unwired Planet* that a patent does not become a CBM patent merely because it discloses that practicing the invention could involve a potential sale of a good or service. *Unwired Planet, LLC v. Google Inc*., 841 F.3d 1376, 1382 (Fed. Cir. 2016).

Petitioners' remand brief emphasizes many of the same passages from the '280 specification and the '012 specification disclosing that meta-rights and usage rights may be deployed in systems where digital content is sold. Those disclosures are insufficient as a matter of law because "the mere possibility that a patent can be used in financial transactions is not enough to make it a CBM patent." *Apple Inc. v. ContentGuard Holdings, Inc.*, 2018 U.S. App. LEXIS 19258, *8 (Fed. Cir. July 11, 2018) (nonprecedential) (citing *Unwired Planet*, 841 F.3d at 1382).

Petitioners must demonstrate that the '280 patent claims are "directed to" a method or apparatus "used in the practice, administration, or management of a financial product or service." *Id.* Their arguments on remand fail to do so. The claim language is not directed to a "business model" or to an "exchange between suppliers and consumers" of a "financial nature." (Paper 44 at 4, 7.) The claims recite creating and transferring rights and not the commercial distribution of digital content. (*Id*. at 4-5.) There is no mention of a business model, a sale, a fee transaction or any other

financial activity. The descriptions in the specification providing background information regarding business models for commercial distribution of content do not limit the claims.[2] The specification passages mentioning fees make clear that fees are not a required aspect of the invention.

The Federal Circuit did not endorse the argument that the '280 claims describe an exchange that is financial in nature. The portions of the oral argument cited by Petitioners concern one panel member's observations regarding the specification, not the claims. The Federal Circuit ultimately found that the '280 patent "explains how the claimed invention can be used in ways that do not involve financial transactions." *ContentGuard Holdings*, 2018 U.S. App. LEXIS 19258, *7. Petitioners' portrayal of the '280 patent specification as disclosing only a "business model," and their related assertion that the specification discloses that financial transactions are necessary to enable the business model, is contrary to that finding and the evidence. (Paper 44 at 7.)

The claims recite "rights supplier" and "rights consumer" not "seller" and "purchaser."[3] The assertion that the specification defines "supplier" and "consumer"

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[2] Petitioners misquote the specification as indicating that meta-rights are "particularly useful to companies in the digital content business." (Paper 44 at 3, citing GOOG 1001 at 6:1-4.) No such statement appears. The cited passage emphasizes the benefit of meta-rights in distribution models that include entities that are not creators or owners of digital content.

[3] The Federal Circuit panel was skeptical of Petitioners' position that "consumer" and "supplier" are parties to a financial transaction. *See*

as parties to a business transaction is not correct. (*Id.* at 4.) The specification expressly defines "supplier" and "consumer" in generic, non-economic terms. (GOOG 1001 at 6:10-13 ("For the sake of clarity, the party granting usage rights or meta-rights is referred to as 'supplier' and the party receiving and/or exercising such rights is referred to as 'consumer' herein.").)

The description of "license" creation in claims 11 and 22 is also insufficient to qualify the '280 patent for CBM review. The specification discloses one example license that contains a fee requirement. Claims 11 and 22, however, do not recite any such fee condition. The Board gave "license" the non-financial meaning: "data embodying a grant of rights." (Paper 34 at 21.)

The argument that the claims are financial in nature even if "certain transactions" do not require payment is also misguided. (Paper 44 at 7-8.) The claims do not refer to "transactions," and the methods and systems claimed *never* require fee payment or any other financial activity. The focus must be on the claim language, not Petitioners' generalized abstractions of the claims.

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http://oralarguments.cafc.uscourts.gov/default.aspx?fl=2016-2548.mp3 at 5:23 – 5:48 ("Because there's nothing in the claims themselves that identify financial activity. I mean, the word consumer and supplier appears, but that's in the context of consumer rights and supplier rights which is a reference as I understand it to the respective rights of the parties, not with respect to the activities of a consumer in the financial sense.")(Bryson, J.) and 15:11 – 15:26 ("But you want us to read 'consumer' as a 'purchaser,' whereas a consumer can just simply mean somebody who uses or possesses and makes use of some of these rights.")(Reyna, J.).

The *Blue Calypso* decision is of no help to Petitioners. The patent in that case was eligible for CBM review because the claims recited "an express financial component in the form of a subsidy" that was "central to the operation of the claimed invention." *Blue Calypso, LLC v. Groupon, Inc*., 815 F.3d 1331, 1340 (Fed. Cir. 2016). Petitioners' representation that the claims alternatively covered the use of coupons or reward codes "instead of a financial subsidy" is misleading. (Paper 44 at 8.) The coupons and reward codes were also found to be financial subsidies. *Id*. at 1339-40 and n.3. Thus, the claims in *Blue Calypso* always require a financial element, whereas the '280 claims never do.

The specification does not support Petitioners' attempts to characterize disclosed embodiments such as sharing digital content within an enterprise, transferring medical records, and loaning digital content at a library, as involving financial transactions. The tangential financial activity that Petitioners imagine might occur is not even remotely suggested by the specification (nor is it recited in the claims). The specification directly contradicts Petitioners. For example, Petitioners represent that the specification discloses internal "sales transactions" within an enterprise. However, the passage cited does not describe distributing rights within an enterprise through "sales transactions." (Paper 44 at 9, citing GOOG 1001 at 6:63-65.) To the contrary, the specification teaches: "[t]he preferred embodiments are not limited to situations where resellers, distributors or other 'middlemen' are

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