Paper No. 46

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 Reply Brief on CBM Eligibility

[1] Case No. CBM2015-00160

The purported purpose of the '280 patent is to enable a "business model" for DRM involving "multi-tier" distribution. Paper 44 at 3, citing Ex. 1001 at 2:24-48. In this model, entities "in the business of manipulating the rights associated" with digital content include "supplier[s] granting rights to [ ] consumer[s] downstream in the distribution channel." Ex. 1001 at 5:39-43, 6:1-13. Claim 1 uses these same economic terms—"supplier" and "consumer"—to describe transfers of rights between these business model participants. *See id*. at 15:7-8. Consistent with that claim language, the specification is replete with references to the financial nature of this claimed exchange between suppliers and consumers. *See* Paper 44 at 4-7.

ContentGuard's brief ignores the overwhelming evidence that the claimed invention is "financial in nature," and disregards the invention's purported purpose —to enable a particular DRM business model. Instead, ContentGuard clings to the few suggestions in the specification that the system described might be deployed without explicitly requiring financial transactions, and argues that the claims could be read to cover such transactions. Even if ContentGuard's reading of the claims were correct (and as Petitioners explained, it is not, *see* Paper 44 at 7-8), that would only mean that the claimed scheme for enabling a multi-tier DRM business model can, at the margins, be used to support "fee free" transactions. That possibility cannot save the '280 patent from CBM review. *See Blue Calypso LLC v. Groupon, Inc.*, 815 F.3d 1331, 1340 & n.3 (Fed. Cir. 2016).

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

ContentGuard asserts that the term "consumer" is "used consistently throughout the specification to refer to parties engaged in rights transfers occurring in non-financial contexts." Paper 45 at 5. Not so. The hospital example ContentGuard provides is the *only* example in which "consumer" is used in a non-financial context. Elsewhere, "consumer" is explicitly used in the financial context, to refer to participants in the "business model" that the '280 patent purportedly enables. *See* Ex. 1001 at 5:39-43 ("consumer" participates in "typical business models for distributing digital content"); 6:1-17 ("consumer" is a "party in the distribution chain" who may be "in the business of manipulating the rights associated with the content").

ContentGuard also points to "transfer of rights among employees of an enterprise," and "controlling content usage within an enterprise," as supposedly "non-financial" implementations of the invention. Paper No. 45 at 5, 6. But the '280 specification *explicitly* describes usage of the claimed invention within an enterprise as financial in nature: "For example, an enterprise might create, distribute, *and sell* content and carry out those activities using different personnel or different business units within the enterprise." Ex. 1001 at 6:63-65 (emphasis added). ContentGuard also contends that the specification's university library scenario is non-financial (*see* Paper No. 45 at 6-7), but ignores that the

specification describes a "site license" under which the university is required to track students' usage of digital content. As Petitioners explained, both the "enterprise" and "university" examples only confirm that the claimed invention is financial in nature. *See* Paper 44 at 6, 9.

ContentGuard's attempts to rely on the few non-financial examples further fail because the '280 specification repeatedly identifies "the preferred embodiment" of the invention as financial in nature. Figure 1, "a schematic illustration of a rights management system in accordance with the preferred embodiment," includes "rights label 40," which "may include usage rights permitting a recipient to view content for a fee of five dollars and view and print content for a fee of ten dollars." *Id.* at 3:15-16, 4:8-10. "License 52" in the preferred embodiment "can be issued for the view right when the five dollar fee has been paid." *Id.* at 4:11-12. Similarly, the Figure 4 provides "an example of a license expressed with an XML based rights language in accordance with the preferred embodiment," *id.* at 3:21-23, which explicitly includes a license fee, *see id.* at Fig. 4. The preferred embodiment shown in Figure 1 also includes "clearinghouse 90," which the specification states "can be used to process payment transactions and verify payment prior to issuing a license." *Id.* 5:36-38.

Ignoring the context of the business model the '280 patent purportedly enables, ContentGuard cites to figures and examples in the specification

concerning exercise of meta-rights that do not explicitly mention fees. (Paper 45 at 7.) But these exercises of meta-rights take place within a multi-level distribution scheme for DRM-protected digital content, which—as the specification establishes—includes financial transactions. Indeed, the restrictions on distribution in ContentGuard's examples (for example, generating the right to play content on an additional device) only make sense where content publishers and distributors "are in the business of manipulating the rights associated with the content," as the '280 specification describes. Ex. 1001 at 6:14. The '280 patent does not, as ContentGuard suggests, merely claim subject matter that "*could* be used in a financial context." Paper 45 at 7. The stated purpose of the '280 patent is to enable a DRM business model that the specification confirms is explicitly financial in nature.

In contrast, the "finance-related actions" in *Google, Inc. v. Unwired Planet, LLC*, CBM2014-00006 at 7-8 (P.T.A.B. Aug. 13, 2018) (cited at Paper 45 at 9-10) were only "exemplar applications" that may or may not be used in the claims for controlling access to location information. The other CBM decisions ContentGuard cites (Paper 45 at 8-9) are also inapplicable, as the Board noted that the specifications asserted the inventions were useful to "a variety of . . . industries," *Cloud9 Techs. LLC v. IPC Sys., Inc.*, CBM2017-00037 at 4-8 (P.T.A.B. July 21, 2017) (telephony system) or "a wide range of industries and

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