

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTERMIX MEDIA LLC
Petitioner

v.

BALLY GAMING, INC.
Patent Owner

Case CBM2015-00154
Patent 5,816,918

Attorney Docket No. 024004-0000019

**PETITIONER'S REQUEST FOR REHEARING
PURSUANT TO 37 C.F.R. §42.71(d)**

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Statutes and Codes

35 U.S.C. §101	2, 5, 11, 12
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I. INTRODUCTION

Pursuant to 37 C.F.R. §42.71(d), Petitioner Intermix Media LLC (“Intermix”) hereby requests rehearing of the Board’s Decision (paper 10, Jan. 20, 2016) denying institution of covered business method review of U.S. Patent No. 5,186,918 (“the ’918 Patent”).

Intermix’s Petition was directed to claims 1-34, 38-39, and 45-77 of the ’918 Patent (“the Challenged Claims”) and demonstrated that it is more likely than not that at least one claim (and in fact all the Challenged Claims) of the ’918 Patent is directed to patent-ineligible subject matter. The Petition analyzed both steps set forth in *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014), and established that at least one claim (and in fact all the Challenged Claims) was both (1) directed to an abstract idea and (2) failed to recite anything more than the abstract idea itself. Respectfully, the Board misapprehended the nature of Intermix’s argument at least with regard to the second step of the *Alice* analysis. Intermix therefore respectfully requests that the Board grant rehearing of Intermix’s Petition and institute review of the ’918 Patent.¹

¹ Intermix had intended to submit a Motion for Joinder with the granted Petition in *GSN Games, Inc. v. Bally Gaming, Inc.*, Case CBM2015-00155. When Intermix requested authorization to file this request, the Board denied authorization to file the request at this point, with leave to make a second request for authorization if

II. LEGAL STANDARD

A party requesting rehearing must show that a decision should be modified by identifying “all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. §42.71(d). The Board reviews requests for rehearing of a decision on institution under an abuse of discretion standard. 37 C.F.R. §42.71(c). “An abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant factors.” *Star Fruits S.N.C. v. United States*, 393 F.3d 1277, 1281 (Fed. Cir. 2005).

III. THE PETITION DEMONSTRATED THAT THE CLAIMS ARE DIRECTED TO PATENT-INELIGIBLE ABSTRACT IDEAS

“The first step in the [*Alice*] analysis is to ‘determine whether the claims at issue are directed to one of those patent-ineligible concepts.’” Decision at 5 (quoting *Alice*, 134 S. Ct. at 2355); *see also* Petition at 23 (“The first step in a 35

this Request for Rehearing is granted. *See* Paper No. 11. To the extent the Board is inclined to grant this Request for Rehearing only for those claims at issue in CBM2015-00155, Intermix will stipulate to such limited review and would promptly file a motion for joinder to simplify the issues for the parties and the Board.

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