

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HULU, LLC,
Petitioner,

v.

INTERTAINER, INC.,
Patent Owner.

Case CBM2014-00053
Patent 8,468,099

Before MICHAEL W. KIM, SUSAN L. C. MITCHELL,
and JENNIFER M. MEYER, *Administrative Patent Judges*.

MEYER, *Administrative Patent Judge*.

DECISION

Denying Institution of Covered Business Method Patent Review
37 C.F.R. § 42.208

I. INTRODUCTION

On December 20, 2013, Hulu, LLC (“Petitioner”) filed a Petition for a covered business method patent review of claims 13-15 and 18 of U.S. Patent No. 8,468,099 (Ex. 1001, “the ’099 patent”). Paper 1. A corrected Petition was filed on January 14, 2014. Paper 8 (“Pet.”). Patent Owner, Intertainer, Inc. (“Patent Owner”) did not file a Preliminary Response.

We have jurisdiction under 35 U.S.C. § 324. The standard for instituting a covered business method patent review is set forth in 35 U.S.C. § 324(a), which provides as follows:

THRESHOLD.—The Director may not authorize a post-grant review to be instituted unless the Director determines that the information presented in the petition filed under section 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

Petitioner challenges claims 13-15 and 18 of the ’099 patent as unpatentable under 35 U.S.C. §§ 103 and 112. Upon consideration of the information presented in the Petition, we conclude that the Petition does not demonstrate that it is more likely than not that the challenged claims are unpatentable. Pursuant to 35 U.S.C. § 324 and § 18(a) of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), we do not authorize a covered business method patent review to be instituted as to claims 13-15 and 18 for the grounds of unpatentability asserted in the Petition.

Accordingly, the Petition is DENIED.

CBM2014-00053

Patent 8,468,099

A. *Related Proceedings*

Petitioner has been sued for infringement of the '099 patent in a district court case titled, *Intertainer, Inc. v. Hulu, LLC*, No. 2:13-cv-05499 (C.D. Cal.). Pet. 4. In addition to this proceeding, Petitioner has also petitioned for covered business method patent review of certain claims of Patent Owner's U.S. Patent No. 8,479,246 B2 (CBM2014-00052). *Id.* at 5.

B. *The '099 Patent*

The '099 patent, titled "Digital Entertainment Service Platform," issued on June 18, 2013, based on application 12/587,667 ("the '667 application"), filed October 10, 2009. The '667 application is a continuation of application 11/189,608, filed July 26, 2005 (abandoned), which is a continuation of application 09/947,592, filed September 5, 2001, which issued as U.S. Patent No. 6,925,469, which claims the benefit of provisional application 60/280,653, filed March 30, 2001.

The '099 patent relates to methods managing, distributing, and/or retailing digital media assets from various content suppliers. Ex. 1001, 2:20-23. Content suppliers may provide media assets (e.g., streaming video) to a digital services platform and receive payments based on use of the media assets by consumers. *Id.* at 2:28-37, 2:65-3:2. The digital services platform allows consumers to access content from multiple suppliers at a single location, and allows content suppliers to define parameters regarding distribution of the media asset. *Id.* at 2:37-43, 3:2-11. Additional purchasing opportunities are embedded within the media assets, allowing consumers, for example, to purchase a related product simply by clicking on an embedded advertisement within a streaming video. *Id.* at 3:26-32, 6:39-54.

C. Illustrative Claim

Of the challenged claims, only claim 13 is independent. Claim 13 of the '099 patent, reproduced below, is illustrative of the challenged claims:

13. A method for managing and marketing digital media content supplied by media content suppliers to consumers, the method comprising:

providing a digital media content service platform operable to manage and distribute video content to a plurality of the consumers in accordance with business rules supplied by the media content suppliers, wherein distribution to geographic locations is one of the business rules supplied by the media content suppliers;

providing the media content suppliers access to the digital media content service platform for permitting the media content suppliers to directly supply the video content to the digital media content service platform by electronic transmission;

storing the video content supplied by the media content suppliers on the digital media content service platform;

including coded information with the video content, the coded information being advertising information associating at least one advertisement with the video content;

specifying at least one of the business rules for distributing the video content to a specified geographic location;

grouping the consumers by a geographic location associated with the consumers;

embedding purchasing opportunities for merchandise with the video content, the merchandise being other than the video content supplied to the digital media content service platform and purchasable by the consumer interacting with the embedded purchasing opportunities;

distributing the video content to the grouping of consumers if the geographic location of the consumers corresponds to the specified geographic location in the at least

one of the business rules, wherein the video content being distributed corresponds to a localized market for the grouping of consumers; and

offering the merchandise to the consumers for purchase via the embedded purchasing opportunities.

Ex. 1001, 15:1-16:10.

D. The Applied References

Petitioner relies upon the following references. Pet. 5.

Patent No.	Date of Issuance	Exhibit No.
U.S. Patent No. 6,201,536 ("Hendricks '536")	Mar. 13, 2001	Ex. 1004
U.S. Patent No. 6,463,585 ("Hendricks '585")	Oct. 8, 2002	Ex. 1005
U.S. Patent No. 5,774,664 ("Hidary")	Jun. 30, 1998	Ex. 1006
U.S. Patent No. 6,950,804 ("Strietzel")	Sept. 27, 2005	Ex. 1007
U.S. Patent No. 6,820,277 ("Eldering")	Nov. 16, 2004	Ex. 1008

Petitioner further relies on the Declaration of V. Michael Bove, Jr. ("Bove Declaration," Ex. 1012).

E. The Asserted Grounds

Petitioner challenges claims 13-15 and 18 on the following grounds.

Pet. 5.

Claims Challenged	Basis	Reference(s)
13-15, 18	§ 103	Hendricks '536, Hendricks '585, and Hidary
13-15, 18	§ 103	Strietzel, Eldering, and Hidary
13	§ 112, indefiniteness	Not applicable

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