

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE INC.,
Petitioner,

v.

PATRICK ZUILI,
Patent Owner.

Case CBM2016-00022
Patent 8,326,763 B2

Before JAMESON LEE, GLENN J. PERRY, and MIRIAM L. QUINN,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
Covered Business Method Patent Review
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

On December 18, 2015, Petitioner filed a Petition (Paper 1, “Pet.”) requesting covered business method patent review of claims 1–3, 5, 6, 10, 11, 14, 15, and 17 of U.S. Patent No. 8,326,763 B2 (Ex. 1001, “the ’763 patent”), under Section 18 of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011) (“AIA”). On June 1, 2016, we instituted a covered business method patent review (Paper 11, “Inst. Dec.”) on the sole ground that claims 1–3, 5, 6, 10, 11, 14, 15, and 17 are directed to patent ineligible subject matter under 35 U.S.C. § 101. We did not institute review of any claim on any other alleged ground of unpatentability, including alleged grounds of obviousness over prior art. Inst. Dec. 45. Subsequent to institution of review, Patent Owner filed a Patent Owner Response (Paper 19, “PO Resp.”) and Petitioner filed a Reply (Paper 28, “Reply”) to Patent Owner’s Response.

After filing of Petitioner’s Reply to Patent Owner’s Response, the U.S. Court of Appeals for the Federal Circuit issued a decision in *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 1376 (Fed. Cir. 2016), which provided new guidance on how to determine a patent’s eligibility for covered business method patent review. Given this new binding authority, we authorized Patent Owner to submit additional briefing “to discuss the issue of whether the subject matter of at least one claim of the ’763 patent is directed to 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, in light of the Federal Circuit’s decision in *Unwired Planet, supra.*” Paper 30, 2. We also authorized Petitioner to file a response

to Patent Owner's submission. *Id.* Each party filed its submission. Paper 31 (Patent Owner submission); Paper 32 (Petitioner submission).

No oral hearing was held for this proceeding. Paper 39.

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73. For the reasons discussed below, we determine that Petitioner has shown by a preponderance of the evidence that claims of the '763 patent are directed to patent ineligible subject matter under 35 U.S.C. § 101.¹

B. Related Proceedings

Petitioner indicates that the '763 patent was the subject of *Brite Smart Corp. v. Google Inc.*, No. 2:14-cv-760-JRG (E.D. Tex.) (closed). Pet. 4. Petitioner also identifies *Brite Smart Corp. v. Google Inc.*, No. 5:15-cv-03962-BLF (N.D. Ca.) as a related matter. *Id.* Petitioner also has filed petitions seeking covered business method patent review of two related patents, U.S. Patent No. 8,671,057 B1 (CBM2016-00008) and U.S. Patent No. 7,953,667 B1 (CBM2016-00021).

¹ In its Reply, Petitioner notes numerous instances of non-compliance of the Patent Owner Response with the pertinent rules involving certification, font, and spacing requirements. Reply 2–3. Given Patent Owner's *pro se* status, these violations are not sufficient to preclude us from considering the Patent Owner Response. Petitioner also asserts that Patent Owner did not serve the Patent Owner Response on Petitioner's counsel of record. *Id.* at 2. However, the Patent Owner Response is accompanied by such a certificate of service. PO Resp. 173. The content of the Reply also indicates that Petitioner has received a copy of the Patent Owner Response. No action is required.

C. Asserted Ground of Unpatentability

Trial was instituted based on the following ground of unpatentability:

References	Basis of Unpatentability	Claims Challenged
Not Applicable	lack of patent eligibility under 35 U.S.C. § 101	1–3, 5, 6, 10, 11, 14, 15, and 17

Petitioner relies on the Declaration of Stephen Gray, filed in support of the Petition. Ex. 1006. Patent Owner submitted an Affidavit of Mr. Patrick Zuili, relied on, not in Patent Owner’s Response, but in Patent Owner’s Renewed Motion to Exclude Evidence (Paper 33). Ex. 2010.

D. The ’763 Patent

The ’763 patent issued on December 4, 2012, and is titled: “Method and System to Detect Invalid and Fraudulent Impressions and Clicks in Web-Based Advertisement Systems.” Ex. 1001, (45), (54). The ’763 patent relates specifically to a method for protecting the providers of “pay-per-click” services from illegitimate usages. *Id.* at 1:19–22. A “pay-per-click” system is described as follows:

In accordance with such [pay-per-click] capability, a user goes to a website, and inputs the name of goods or services that they would like the pay-per-click company to find. Various providers of goods and services register their websites with the company, and these are provided to the user in a list which is prioritized by the level of compensation which the merchant will give the pay-per-click company if the user is routed to their site. For example, using such a system, if a user types in “binoculars,” the pay-per-click system might return five potential links, with the most prominent one being associated with that supplier of binoculars which will compensate for a penny or a few cents more than the links presented below.

Id. at 1:35–47.

The '763 patent describes that “a user may cause an undesirable level of expenditure on the part of the merchant by overclicking on a particular link.” *Id.* at 1:49–51. The '763 patent states that “it has been known that some users have done [overclicking] simply for the purpose of undermining a particular provider or competitor.” *Id.* at 1:48–50.

Figure 1 of the '763 patent is reproduced below:

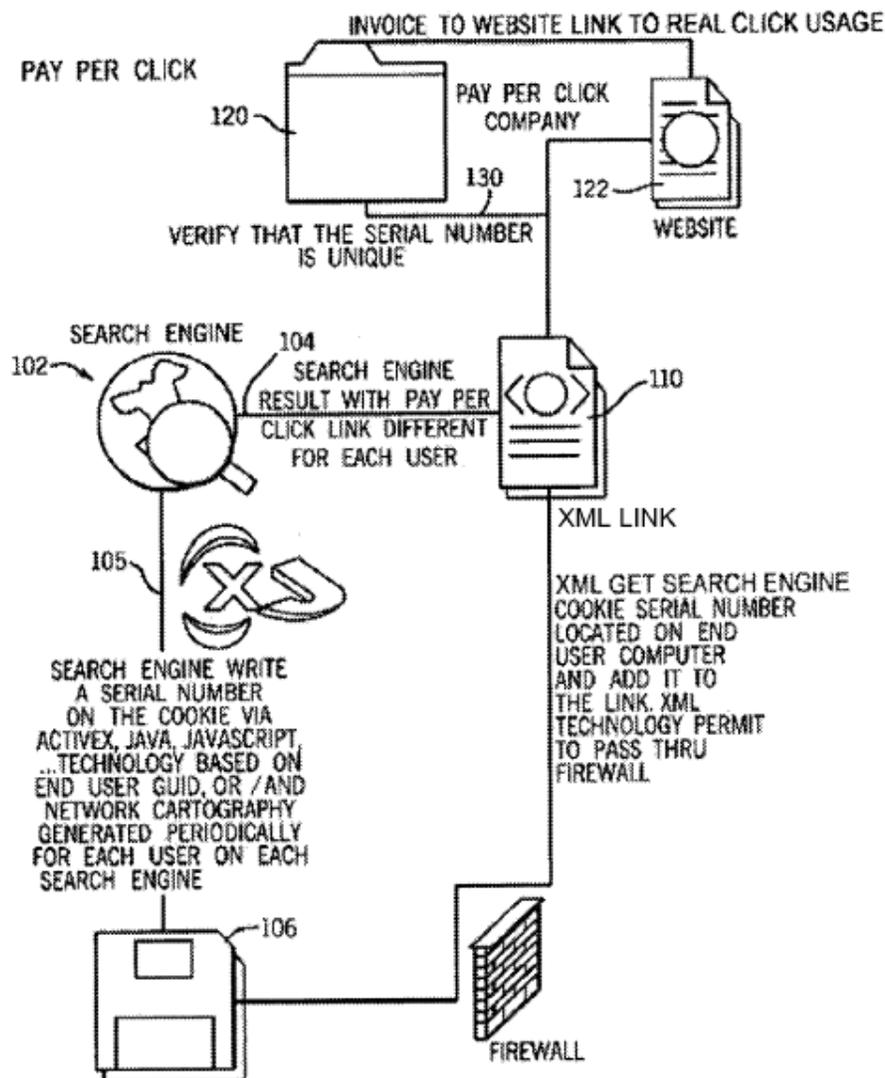


Figure 1 illustrates a preferred embodiment of the '763 patent. *Id.* at 2:7–9. Search engine 102 provides search results to a user along path 104. *Id.* at

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