

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE INC.,  
Petitioner,

v.

ALFONSO CIOFFI, MEGAN ELIZABETH ROZMAN,  
MELANIE ANN ROZMAN, AND MORGAN LEE ROZMAN,  
Patent Owners.

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Case CBM2017-00010  
Patent RE43,528

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PATENT OWNER BRIEF ON FEDERAL CIRCUIT DECISIONS

Alfonso Cioffi, Megan Rozman, Melanie Rozman, and Morgan Rozman

(collectively, “Patent Owner”) hereby provide this brief in response to an invitation to address the impact of *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 1376 (Fed. Cir. 2016) (“*Unwired Planet*”) and *Secure Access, LLC v. PNC Bank National Assoc.*, 848 F.3d 1370 (Fed. Cir. 2017) (“*Secure Access*”) on this proceeding. Firstly, inasmuch as the Petitioner Google Inc. (“Petitioner”) bears the burden to support the Petition for Covered Business Method Review of U.S. Patent No. RE43,528 (“Petition”), the Patent Owner continues to believe that the Petitioner’s conclusory support for the Petition has failed to meet the burden to support the same. This is simply not a covered business method (“CBM”)-eligible patent and the Petitioner continues to pursue the same, even in view of *Unwired Planet* and *Secure Access*.

The Patent Owner addressed *Unwired Planet* in the Patent Owner Preliminary Response. The Federal Circuit rejected a definition of CBM patents that relies on activities that are “incidental to” or “complementary to” a financial activity, and stressed that CBM patents must be “financial in nature.” *Unwired Planet*, 841 F.3d at 1382 (holding that “CBM patents are limited to those with claims that are directed to methods and apparatuses of particular types and with particular uses ‘in the practice, administration, or management of a financial product or service.’”).

The operative inquiry is not what the claims cover, but what the claims are directed to. *See id.* (“[T]he claims of the ditch-digging method or apparatus are not *directed to* ‘performing data processing or other operations’ or ‘used in the practice, administration, or management of a financial product or service,’ as required by the statute.” (emphasis added)).

In *Secure Access*, the Federal Circuit affirmed the holding of *Unwired Planet* finding that the Patent Trial and Appeal Board (the “Board”) definition of the CBM scope was contrary to the statute. In the underlying proceeding, the Board had concluded that “[t]he method and apparatus claimed by the ’191 patent perform operations used in the practice, administration, or management of a financial product or service *and are incidental to a financial activity.*” *Secure Access*, 848 F.3d at 1381. (emphasis added). This expansive definition of a CBM patent, however, was found to be beyond the scope of the plain statutory language and therefore rejected. *See id.*

Even more recently in *Google Inc. v. Klaustech*. (CBM2016-00096), the Board followed the Federal Circuit’s new guidance in *Unwired Planet* to deny the CBM review because the challenged claims were not “directed to the practice, administration, or management of a financial product or service.” *Google Inc., v. Klaustech*, CBM2016-00096, at 11 (Feb. 27, 2017) (“*Klaustech*”).

In this proceeding, none of the challenged claims are “directed to the practice, administration, or management of a financial product or service.” The Petition challenges Claims 1, 5, 8, 21-24, 30, 44, 64, and 67 of U.S. Patent No. RE43,528 (“Challenged Claims”). The Challenged Claims of U.S. Patent No. RE43,528 (“528 Reissue”) are not financial in nature, but are claims of general utility with no finance-related terminology or limitations. Generally, independent Claims 1, 21, 44, and 64 recite, among other things, a multi-process browser architecture such that data or a system file is protected from malware. Claims 1, 21, 44, and 64 recite a “first web browser process” and “second web browser process.” The “first web browser process” (i) is executed or opened “in a first logical process” that is “capable of accessing” or “configured to access” “data contained in [a/the] first memory space,” as recited in Claims 1, 21, and 64, or (ii) is “capable of accessing data contained in the first memory space,” as recited in Claim 44. The “second web browser process” (i) is executed or opened “in a second logical process” that is “capable of accessing” or “configured to access” “data contained in the second memory space,” as recited in Claims 1, 21, and 64, or (ii) is “capable of accessing data contained in the second memory space,” as recited in Claim 44. The “data residing on the first memory space is protected from corruption by a malware process . . . executing as part of the second web browser process,” as recited in Claim 1, or “the at least one system file residing on

the first memory space is protected from corruption by a malware process . . . executing” within or as part of “the second web browser process,” as recited in Claims 21, 44, and 64.” *See also* Ex. 2001 (Dunsmore Decl.) at ¶¶ 54-55. The remaining Challenged Claims depending from Claims 1, 21, 44, and 64 generally recite further details of the multi-process browser architecture.

Nothing in the Challenged Claims is financial in nature. Nothing in these claims explicitly or inherently requires anything that is financial. Nothing in these claims contemplates an exchange or movement of money. The Petitioner argues that the claims cover and imply using a secure web browser in the specification’s internet banking embodiment, which is indisputably a financial activity, and that all of the Challenged Claims are tied to a specific financial activity described in the ’528 Reissue. The Petitioner is referring to the internet banking embodiment for the specific financial activity. The Patent Owner concedes that the Challenged Claims “cover” the internet banking embodiment, but this is wholly irrelevant. For the reasons as set forth in the Preliminary Response, the Challenged Claims are not directed to, and hence, are not “tied to” and do not “imply”, the internet banking embodiment. As the Federal Circuit has indicated in *Unwired Planet*, such claims that could “cover” but are not “directed to” a banking application would not be sufficient to convey CBM eligibility.

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