

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

INTERNATIONAL BUSINESS MACHINES CORP.,  
Petitioner,

v.

ENVISIONIT, LLC,  
Patent Owner.

---

Case IPR2017-01247  
Patent 8,438,221 B2

---

Before LYNNE E. PETTIGREW, DAVID C. McKONE, and  
TERRENCE W. McMILLIN, *Administrative Patent Judges*.

PETTIGREW, *Administrative Patent Judge*.

DECISION  
Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.108*

I. INTRODUCTION

Petitioner, International Business Machines Corp., filed a Petition for  
*inter partes* review of claim 19 of U.S. Patent No. 8,438,221 B2 (Ex. 1001,

“the ’221 patent”). Paper 1 (“Pet.”). Patent Owner, EnvisionIT, LLC, filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Institution of an *inter partes* review is authorized by statute when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108. Having considered the Petition and Preliminary Response, we conclude the information presented does not show there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of claim 19 of the ’221 patent.

#### A. Related Matters

The parties indicate that the ’221 patent has been asserted in *CellCast Technologies, LLC v. United States*, Case No. 1:15-cv-01307 (Fed. Cl.). Pet. 4; Paper 4, 2. The ’221 patent also was the subject of *Department of Justice v. EnvisionIT, LLC*, Case IPR2017-00160 (PTAB) (“the ’160 IPR”), in which we denied institution of *inter partes* review.

#### B. The ’221 Patent

The ’221 patent describes “[a] message processing system and method providing a broadcast message to a plurality of user devices located within a geographically defined broadcast target area.” Ex. 1001, at [57]. Figure 1, reproduced below, illustrates an example:

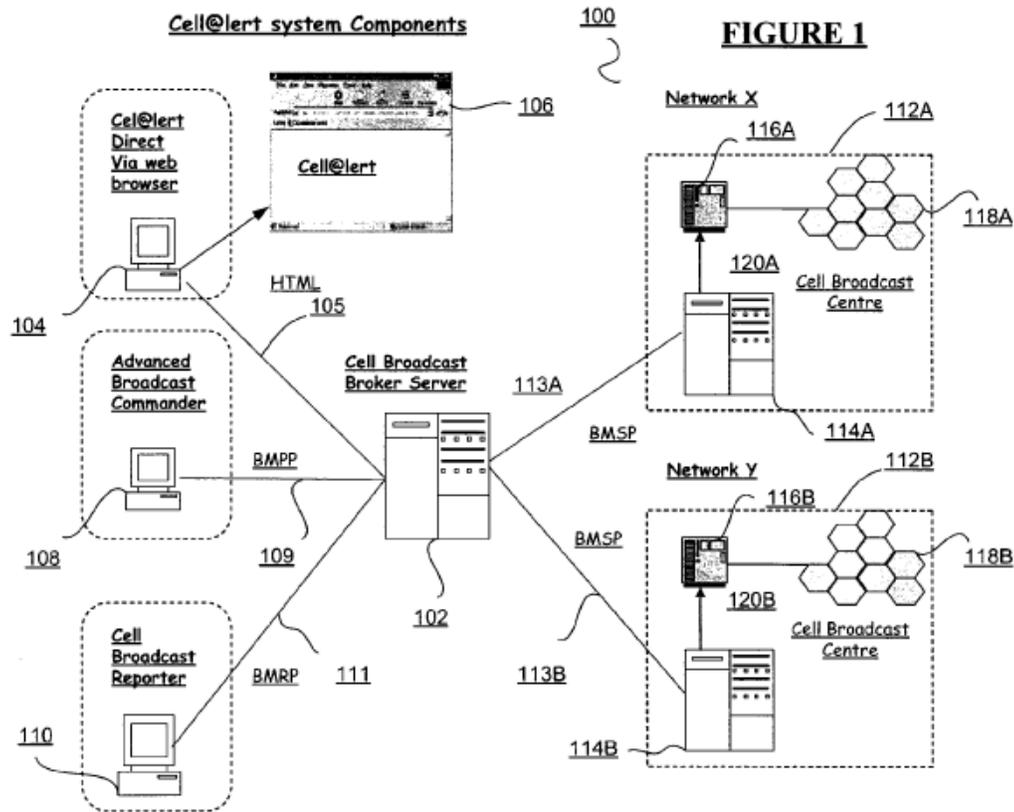


Figure 1 is a block diagram of a public service message location broadcast system. *Id.* at 4:57–59.

The location broadcast system includes a broadcast service bureau (e.g., cell broadcast broker server 102) that receives a broadcast request from an originating broadcast agent associated with one of a plurality of broadcast agent message origination systems (e.g., 104). *Id.* at [57]. Each broadcast request includes a broadcast agent identification, a geographically defined broadcast target area, and a broadcast message. *Id.* The broadcast service bureau verifies the broadcast request based on the broadcast agent identification including an authority of the originating broadcast agent to send the broadcast message to the broadcast target area. *Id.* The broadcast service bureau processes the verified broadcast request for transmission to

one or more broadcast message network systems (e.g., cell broadcast centres 112A, 112B) providing broadcast message alerting service to at least a portion of the broadcast target area.

*C. Challenged Claim*

Independent claim 19, reproduced below, is the only challenged claim:

19. A method of public service broadcast messaging to a broadcast target area, the method comprising:

receiving over an input interface a broadcast request including a broadcast agent identification, a geographically defined broadcast target area, and a broadcast message from one of a plurality of coupled broadcast agent message origination systems;

storing a geographically defined broadcast message jurisdiction for a broadcast agent;

verifying an authority of the broadcast agent identification including an authority of the originating broadcast agent to send the broadcast message to the broadcast target area by comparing the stored geographically defined broadcast message jurisdiction for the originating broadcast agent with the broadcast target area associated with the broadcast message in the broadcast request; and

transmitting the broadcast message over an output interface to one or more coupled broadcast message networks providing broadcast message alerting service to at least a portion of the broadcast target area.

*Id.* at 28:22–41.

*D. Asserted Grounds of Unpatentability*

Petitioner asserts the following grounds of unpatentability (Pet. 30–37):

Reference(s)	Basis	Challenged Claim
FCC 1994, <sup>1</sup> NSTC, <sup>2</sup> and CAP 0.5 <sup>3</sup>	§ 103(a)	19
Rieger <sup>4</sup>	§ 102(b)	19
Rieger and NSTC	§ 103(a)	19

II. DISCUSSION

*A. Claim Construction*

In an *inter partes* review, we construe claim terms in an unexpired patent according to their broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). Consistent with the broadest reasonable construction, claim terms are

---

<sup>1</sup> *In re Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, Report and Order and Further Notice of Proposed Rule Making, FCC Report No. 94-288 (Dec. 9, 1994) (Ex. 1010, “FCC 1994”).

<sup>2</sup> National Science and Technology Council Committee on Environment and Natural Resources, *Effective Disaster Warnings, Report by the Working Group on Natural Disaster Information Systems Subcommittee on Natural Disaster Reduction* (Nov. 2000) (Ex. 1013, “NSTC”).

<sup>3</sup> Common Alerting Protocol Technical Working Group, *Common Alerting Protocol (v 0.5a) – Alert Message Data Dictionary* (draft, June 20, 2002) (Ex. 1007, “CAP 0.5”).

<sup>4</sup> U.S. Publication No. US 2002/0103892 A1, published Aug. 1, 2002 (Ex. 1009, “Rieger”).

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.