UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PLAID TECHNOLOGIES, INC.,
Petitioner,

v.

YODLEE, INC.,
Patent Owner.

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Case CBM2016-00045
Patent 6,317,783 B1

_____

Before KEVIN F. TURNER, MICHAEL W. KIM, and MICHAEL R.
ZECHER, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

DECISION
Denying Covered Business Method Patent Review
35 U.S.C. § 324(a) and 37 C.F.R. § 42.208

I.   INTRODUCTION

A.   Background

Plaid Technologies, Inc. ("Petitioner") filed a Petition to institute a covered business method patent review of claims 1–36 of U.S. Patent No. 6,317,783 B1 (Ex. 1001, "the '783 patent"). Paper 2 ("Pet."). Yodlee, Inc. ("Patent Owner") filed a Preliminary Response. Paper 6 ("Prelim. Resp."). For the reasons given below, we determine that Petitioner, on this record, has not shown that it is more likely than not that claims 1–36 do not constitute statutory subject matter under 35 U.S.C. § 101, the only ground of unpatentability set forth in the Petition. Accordingly, we do not institute a covered business method patent review of the '783 patent.

B.   Related Proceedings

Petitioner and Patent Owner identify the following district court proceedings concerning the '783 patent: *Yodlee, Inc. v. Plaid Technologies, Inc.*, Civ. No. 14-cv-01445 (D. Del.). Pet. 75; Paper 5, 1. Petitioner and Patent Owner identify also the following request for *inter partes* review of the '783 patent involving the same parties: Case IPR2016-00273. Pet. 75; Paper 5, 1.

C.   Standing

Section 18 of the American Invents Act ("AIA") governs the transitional program for covered business method patent reviews. Section 18(a)(1)(B) of the AIA limits such reviews to persons, or their privies, that have been sued or charged with infringement of a covered business method patent. Petitioner asserts that, because it has been sued for infringement of the '783 patent, it has standing to file its Petition. Pet. 42–43. Based on the record before us, we agree.

D. The '783 Patent

The '783 patent discloses the following under the heading "Field of Invention":

> The invention relates to an apparatus and process for automated aggregation and delivery of electronic personal information or data (PI). The invention further relates to the automation of transactions involving electronic PI.

Ex. 1001, 1:23–26. Figure 2 of the '783 patent is reproduced below.
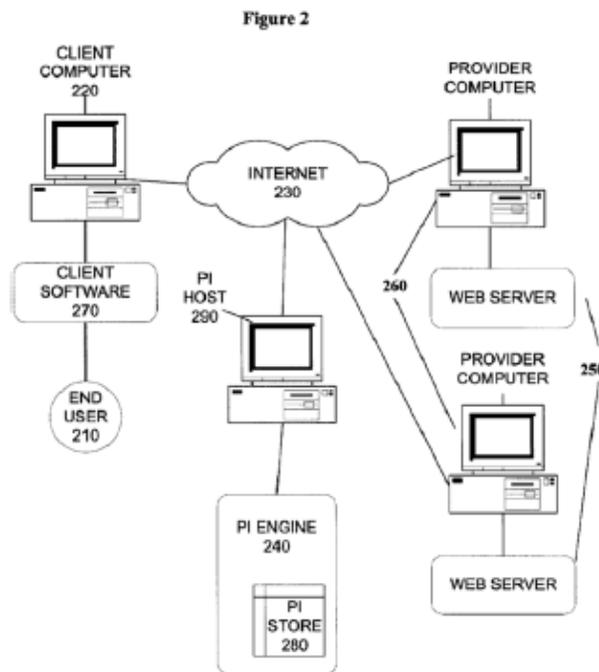

Figure 2

Figure 2 depicts end user 210, who accesses client computer 220 running client software 270 such as a web browser. Ex. 1001, 4:27–32. Client computer 220 accesses PI engine 240 running on PI host 290 via Internet 230, and client computer 220 can display PI accessed from PI engine 240 to end user 210 using client software 270. Ex. 1001, 4:33–34, 4:39–43. PI engine 240 includes PI store 280, which is examined for "freshness" and can be "refreshed by directly reacquiring the PI from the particular information

provider's Web site **250** running on the provider's computer system **260**
accessed across the Internet **230**." Ex. 1001, 4:34–47.

Figure 3 of the '783 patent is reproduced below.
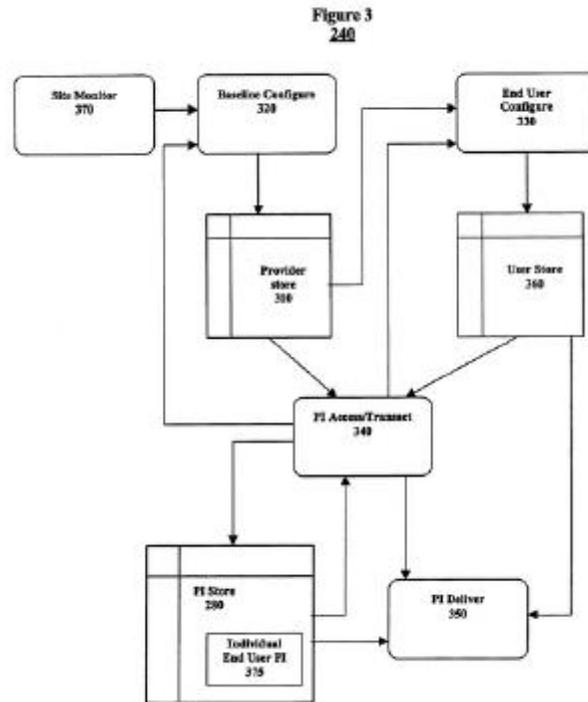

Figure 3
240

Figure 3 depicts a block diagram of the components of PI engine 240.
Ex. 1001, 4:52–53. PI engine 240 can include PI access/transact component
340, which supports the update, acquisition, and transaction functionality of
PI engine 240. Ex. 1001, 9:30–32. Access/transact component 340 utilizes
"the access procedure and information needed for the particular PI" from
provider store 310 along with "verification and access data" found in user
store 360 for processing PI transactions. Ex. 1001, 9:38–48.

E.   Illustrative Claim

Petitioner challenges claims 1–36 of the '783 patent. Claims 1, 18,
and 20 are the only independent claims. Independent claim 1 is illustrative
of the challenged claims and is reproduced below:

1.   A method for delivering non-public personal information relating to an end user via a wide-area computer network to an end user from at least one of a plurality of information providers securely storing the personal information under control of a processor located remotely from the information providers and the end user, the method comprising the steps of:

(a) the processor connecting with at least one information provider;

(b) for a selected end user, the processor retrieving personal information for the selected end user from the connected at least one information provider based on end user data associated with the selected end user and information provider data associated with the connected one or more information providers, the end user data including information identifying the plurality of information providers securely storing the personal information relating to the end user, the provider data including a protocol for instructing the processor how to access the securely stored personal information via the network, the information accessible to the processor using the protocol also being accessible by the end user via the network independently of the system for delivering personal information; and

(c) the processor storing the retrieved personal information in a personal information store for access by the selected end user.

Ex. 1001, 16:46–17:6.

F.   Covered Business Method Patent

Under § 18(a)(1)(E) of the AIA, we may institute a transitional review proceeding only for a covered business method patent. A "covered business method patent" is a patent that "claims 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, except that the term does not include patents for technological inventions." AIA

§ 18(d)(1); *see also* 37 C.F.R. § 42.301 (defining "[c]overed business method patent" and "[t]echnological invention"). For purposes of determining whether a patent is eligible for a covered business method patent review, the focus is on the claims. *See Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1340 (Fed. Cir. 2016) (stating that "§ 18(d)(1) directs us to examine *the claims* when deciding whether a patent is a [covered business method] patent").

1. *Financial Product or Service*

The U.S. Court of Appeals for the Federal Circuit has recognized that "'financial product or service' should be interpreted broadly." *See Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1323–26 (Fed. Cir. 2015) (discussing the scope of the term "covered business method patent" and, in particular, what may fall within the purview of a financial product or service). Indeed, the Federal Circuit held that, "as a matter of statutory construction, the definition of 'covered business method patent' is not limited to products and services of only the financial industry, or to patents owned by or directly affecting activities of financial institutions." *Id.* at 1325, *quoted with approval in Sightsound Techs., LLC, v. Apple Inc.*, 809 F.3d 1307, 1315 (Fed. Cir. 2015).

Petitioner asserts that all the claims of the '783 patent are, at a minimum, "incidental . . . or complementary to a financial activity." Pet. 26–34 (citing Ex. 1001). More specifically, Petitioner asserts, among other reasons, that dependent claims 4, 23, and 24 "require executing 'transactions,' which the ['783] patent states are primarily electronic financial transactions." Pet. 31–34 (citing Ex. 1001, 3:5–9, 3:15–19, 14:3–24, 16:8–38, Fig. 11). We agree that dependent claims 4, 23, and 24 recite

executing transactions that are, at a minimum, "incidental . . . or complementary to a financial activity." The '783 patent discloses expressly that "[t]he present invention further facilitates a variety of electronic transactions involving PI such as stock trading, retail purchases, bill payment, bank account fund transfers or other transactions" (Ex. 1001, 3:15–19), all of which are transactions executed as a part of a financial activity. Indeed, Patent Owner has not identified, and we are unable to ascertain independently, any transaction in the '783 patent that is not an electronic financial transaction.

On this record, we are persuaded by Petitioner's explanation that at least the transactions recited as executed in dependent claims 4, 23, and 24 satisfy the "financial product or service" component of the definition for a covered business method patent set forth in § 18(d)(1) of the AIA.

2. *Technological Invention*

The definition of a "covered business method patent" in §18(d)(1) of the AIA does not include patents for "technological inventions." When determining whether a patent is for a technological invention, we consider the following: "whether the claimed subject matter as a whole [(1)] recites a technological feature that is novel and unobvious over the prior art; and [(2)] solves a technical problem using a technical solution." 37 C.F.R. § 42.301(b). The following claim-drafting techniques typically do not render a patent a "technological invention":

> (a) Mere recitation of known technologies, such as computer hardware, communication or computer networks, software, memory, computer-readable storage medium, scanners, display devices or databases, or specialized machines, such as an ATM or point of sale device.

(b) Reciting the use of known prior art technology to accomplish a process or method, even if that process or method is novel and non-obvious.

(c) Combining prior art structures to achieve the normal, expected, or predictable result of that combination.

Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,763–64 (Aug. 14, 2012).

Concerning the first factor of the "technological invention" analysis, Petitioner contends that the claims of the '783 patent are not directed to a technological invention because the subject matter, as a whole, does not recite a technological feature that is novel and non-obvious. *See* Pet. 34–40 (citing Exs. 1001, (Declaration of Todd C. Mowry) 1002). Petitioner argues that the claims only recite known, prior art technology, such as a "network," "processor," "store," "web sites," and "delivery platforms." Pet. 35, 37. Petitioner asserts that the lack of detailed, enabling description of these technologies in the '783 patent suggests these technologies are conventional. As one example, Petitioner alleges that there is nothing in the '783 patent that suggests that the claimed "processor" is anything more than a generic well-known computer component. Pet. 35–36 (citing Ex. 1001, 6:13–18; Ex. 1002 ¶ 78). Petitioner provides a similar analysis for "store." Pet. 36–37 (citing Ex. 1001, 5:9–25, 5:57–6:4; Ex. 1002 ¶ 78). Petitioner alleges additionally that, even when considered as a whole, the claims are directed to methods of "[t]he use of a generic processor for retrieving and storing specific data from information providers and executing a transaction[, which] were . . . exceedingly well known in the art, and do not transform the claims into a technological invention." Pet. 38–40 (citing Ex. 1001, 2:3–4, 2:42–63, 3:5–9, 3:15–19; Ex. 1002 ¶¶ 28, 29, 31, 74, 85, 87; Ex. 1004, 2:10–

17, 4:36–53; Ex. 1005, 23:6–10, 25:51–59; Ex. 1007, 3:60–64, 5:32–34;
Ex. 1008, 2:36–51). Patent Owner does not assert explicitly that the claims
of the '783 patent, as a whole, do not recite a technological feature that is
novel and non-obvious. *See generally* Prelim. Resp. 9–17. On this record,
we are persuaded by Petitioner's explanation that the claims of the '783
patent, as a whole, do not recite a technological feature that is novel and
non-obvious.

 We recognize that Patent Owner presents arguments directed to
whether certain claims of the '783 patent solve a technical problem using a
technical solution, which is the second factor involved in determining
whether a patent is for a "technological invention." Prelim. Resp. 10–17.
We, however, need only assess whether one of the factors set forth in
37 C.F.R. § 42.301(b) is deficient to determine that the claims of the '783
patent are not for a "technological invention."[1] *See Blue Calypso*, 815 F.3d
at 1341 (holding that the Board's determination that the patents at issue do
not claim a technological invention was not arbitrary or capricious and was
supported by substantial evidence based solely on the second factor—
namely, whether the claimed subject matter as a whole solves a technical
problem using a technical solution.) On this record, we are persuaded by
Petitioner's explanation as to why the subject matter of the claims, as a

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[1] The legislative history of the AIA supports this interpretation of the
"technological invention" exception. *See, e.g.*, 157 Cong. Rec. S1364 (daily
ed. Mar. 8, 2011) (Sen. Schumer stated the "'technological invention[]'
exception *only* excludes those patents whose novelty turns on a
technological innovation over the prior art *and* are concerned with a
technical problem which is solved with a technical solution . . . ." (emphases
added)).

whole, does not recite a technological feature that is novel and non-obvious over the prior art and, therefore, we are satisfied that Petitioner has met its burden of demonstrating that the '783 patent is not for a "technological invention."

3.   *Summary*

Because we have determined that at least dependent claims 4, 23, and 24 of the '783 patent satisfy the "financial product or service" component of the definition for a covered business method patent, and the '783 patent is not for a "technological invention," this patent is a covered business method patent eligible for review.

F.   *Asserted Ground of Unpatentability*

Petitioner challenges claims 1–36 as not constituting statutory subject matter under 35 U.S.C. § 101.

II.   ANALYSIS

A.   *Claims 1–36 as Failing to Recite Statutory Subject Matter*

Petitioner contends that claims 1–36 fail to recite statutory subject matter under 35 U.S.C. § 101. Pet. 43–75 (citing Exs. 1001, 1002, 1005–1010, 1013, 1014). Patent Owner disagrees. Prelim. Resp. 18–27 (citing Exs. 1001, 2001). Claims 1, 18, and 20 are independent.

1.   *Relevant Law*

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a "new and useful process, machine, manufacture, or composition of matter." 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include implicit exceptions: "[l]aws of nature, natural phenomena, and abstract ideas" are not patentable. *See, e.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014).

In determining whether a claim falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court's two-step framework, described in *Mayo* and *Alice*. *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is "directed to" a patent-ineligible abstract idea. *See Alice*, 134 S. Ct. at 2356 ("On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk"); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010) ("Claims 1 and 4 in petitioners' application explain the basic concept of hedging, or protecting against risk"); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) ("Analyzing respondents' claims according to the above statements from our cases, we think that a physical and chemical process for molding precision synthetic rubber products falls within the § 101 categories of possibly patentable subject matter"); *Parker v. Flook*, 437 U.S. 584, 594–595 (1978) ("Respondent's application simply provides a new and presumably better method for calculating alarm limit values"); *Gottschalk v. Benson*, 409 U.S. 63, 64 (1972) ("They claimed a method for converting binary-coded decimal (BCD) numerals into pure binary numerals").

In articulating what the claims are directed to, however, our reviewing court has cautioned as follows:

> The district court concluded that the claims were directed to the abstract idea of "storing, organizing, and retrieving memory in a logical table" or, more simply, "the concept of organizing information using tabular formats." J.A. 321 (emphasis omitted). Likewise, Microsoft urges the court to view the claims as being directed to "the concepts of organizing data into a logical table with identified columns and rows where one or more

rows are used to store an index or information defining columns." Appellee's Br. 17. However, describing the claims at such a high level of abstraction and untethered from the language of the claims all but ensures that the exceptions to § 101 swallow the rule. *See Alice*, 134 S.Ct. at 2354 (noting that "we tread carefully in construing this exclusionary principle [of laws of nature, natural phenomena, and abstract ideas] lest it swallow all of patent law"); *cf. Diamond v. Diehr*, 450 U.S. 175, 189 n. 12, 101 S.Ct. 1048, 67 L.Ed.2d 155 (1981) (cautioning that overgeneralizing claims, "if carried to its extreme, make[s] all inventions unpatentable because all inventions can be reduced to underlying principles of nature which, once known, make their implementation obvious").

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1337 (Fed. Cir. 2016). The Federal Circuit in *Enfish* subsequently analyzed the claim language and specification in determining that the claims in that proceeding were directed to "a *self-referential* table for a computer database." *Id.* at 1337–1339 (emphasis added).

If the claim is "directed to" a patent-ineligible abstract idea, we then consider the elements of the claim—both individually and as an ordered combination—to assess whether the additional elements transform the nature of the claim into a patent-eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2355. This is a search for an "inventive concept"—an element or combination of elements sufficient to ensure that the claim amounts to "significantly more" than the abstract idea itself. *Id.*

> 2. *Whether Claims 1–36 Recite an Abstract Idea*

Petitioner asserts that the claims of the '783 patent are directed to "retrieving and storing personal information," which Petitioner asserts has been "long-performed" and held repeatedly by our reviewing court as a patent-ineligible abstract idea. Pet. 43–46 (Exs. 1001, 1002, 1013, 1014,

2001). More specifically concerning what the claims of the '783 patent are directed to, Petitioner asserts the following:

> The '783 Patent's independent method claim, claim 1, is representative and recites a processor "retrieving personal information" and then "storing" it. The claim then enunciates some commonplace features of this process, such as that the user must be able to access the data from either the original website or the location where the gathered data is ultimately stored. Ex. 1002, Mowry Decl., ¶ 80.

Pet. 43. Petitioner later asserts the following:

> The '783 Patent's claims do not even require a specific environment for this retrieving and storing of information, instead reciting "a wide-area computer network" (claims 1, 18) or a "network" (claim 20). *See* Ex. 1002, Mowry Decl., ¶ 71. The patent contains two *Beauregard* media claims (claims 18–19) covering a "digital storage device" with "executable instructions" to perform the method, which are likewise ineligible for the same reasons as the method claims. *See Alice*, 134 S. Ct. at 2360; *see* Ex. 1002, Mowry Decl., ¶ 71. The '783 Patent's system claims (claims 20–36) rewrite the ineligible method claims by reiterating the standard computer terms found in the method claim, like "store" and "processor." *See* Ex. 1002, Mowry Decl., ¶ 71. The dependent claims also add certain routine computing functions, such as outputting information to conventional outlets like the World Wide Web (claims 6–12, 14–17, 25–31, 33–36), communicating with servers (claims 13, 19, 32), and data-monitoring and updating (claims 2–3, 21–22). *See* Ex. 1002, Mowry Decl., ¶ 72. Other dependent claims simply require that a "transaction" based on the data occur (claims 4–5, 23–24). *See* Ex. 1002, Mowry Decl., ¶ 72.

Pet. 46. The above constitutes the entirety of Petitioner's analysis as to why claims 1–36 are purportedly directed to retrieving and storing personal information.

Patent Owner counters that Petitioner has overly generalized the claimed invention, as our reviewing court cautioned against doing in *Enfish*, and instead asserts the following:

> As the Magistrate Judge [in the related district court case] recognized, the key concept of the '783 Patent is embodied in claim 1: "This key concept is addressed in claim 1, where the claim states that the provider data to be retrieved by the method includes 'a protocol for instructing the processor how to access the *securely stored personal information* via the network[.]'" *Id.* at 28 (emphasis in original). This key concept (which also appears in the other two independent claims 18 and 20) is not addressed at all by Petitioner's proposed abstract idea.

Prelim. Resp. 21. We agree with Patent Owner.

Specifically, we agree with Patent Owner that Petitioner's proffered assertion that the claims of the '783 patent are directed to retrieving and storing personal information is an impermissible over-generalizing of the claims.[2] Starting with Petitioner's assertions on page 43 of the Petition, we agree that independent claim 1 does recite a processor "retrieving personal information" and then "storing" it. The Petitioner then asserts, however, that "[t]he claim then enunciates some commonplace features of this process, such as that the user must be able to access the data from either the original website or the location where the gathered data is ultimately stored." Pet. 43. This assertion, however, conflates the second step of *Alice* with the first, as we are unclear as to why any assertions concerning whether certain technology is "commonplace" informs appreciably the identification of what the claimed invention is "directed to." Indeed, when the terms concerning

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[2] As Petitioner begins its analysis using independent claim 1 as representative, we also do the same.

"commonplace" are removed from the above assertion, we are left with

"[t]he claim then enunciates . . . the user must be able to access the data from

either the original website or the location where the gathered data is

ultimately stored." It is telling that this enunciation is similar to that which

Patent Owner asserts is improperly omitted from Petitioner's assertions as to

what the claimed invention is "directed to."

To that end, we are persuaded that independent claim 1 is directed to

more than "retrieving and storing personal information" for several reasons.

Starting with the claim language itself, the preamble of independent claim 1

recites "[a] method for delivering non-public personal information relating

to an end user via a wide-area computer network to an end user from at least

one of a plurality of information providers securely storing the personal

information under control of a processor located remotely from the

information providers and the end user." Ex. 1001, 16:47–52. From

analyzing the text of the preamble, it is apparent that independent claim 1 is

directed to retrieving and storing personal information *securely stored under*

the control of a processor at a remote location. This determination is

supported further by limitations recited in the body of independent claim 1,

such as "the provider data including a *protocol* for instructing the *processor*

how to access the *securely stored personal information* via the network."

Ex. 1001, 16:67–67 (emphases added). Indeed, we note that independent

claim 1 recites repeatedly references to computer technology, such as "wide-

area computer network," "processor," "information provider," "data," and

"end user," which supports our determination that independent claim 1 is

directed to computer technologies, such as retrieving and storing personal

information securely stored under the control of a processor at a remote

location. To be sure, technology is usually analyzed under the second step of *Alice*, however, that is not to say that it cannot also be a factor to support a determination concerning the first step of *Alice*.

The specification of the '783 patent supports further this determination that independent claim 1 is directed to retrieving and storing personal information securely stored under the control of a processor at a remote location. For example, the section with the heading "Description of Related Art" begins with four paragraphs describing, almost exclusively, accessing content using Internet technologies (Ex. 1001, 1:29–2:41), and then describes several problems encountered in those technologies, most notably the following:

> In step **130**, the end users logs into the selected information provider's Web site utilizing the site's specific logon protocol. This protocol usually involves verifying the identity of the end user using a user name and password or other means of verification, acquiring the verification data from cookies residing on the end user's system or a combination of requested data and cookie data.

Ex. 1001, 2:12–18.

> The end user **210** utilizes the client computer **220** to access each PI Web site **250** across the Internet **230**. This current model suffers from several significant deficiencies. The end user must login to each site separately. Each separate site has its own graphical user interface. Each site wants the end user to stay and return; each visited site wants to retain end user focus for as long as possible. No true aggregation of PI exists; multiple accesses simply allow sequential access to particular pieces of PI.

Ex. 1001, 2:33–41. The substance of the above disclosures, that certain websites have specific logon protocols and there is a related deficiency in that current practice requires an end user to logon to each site separately, supports squarely the above determination that independent claim 1 is

directed to retrieving and storing personal information securely stored under the control of a processor at a remote location.

The '783 patent then goes on to describe several solutions that have been attempted using current technologies, but notes, in the end, that those solutions are not acceptable, as follows:

> Under current technology, aggregating PI available over the Internet requires a significant burden in terms of time, effort and learning curve. An end user wishing to access his PI needs to individually visit a variety of information provider sites each with its own requirements, graphical user interface and login protocol.

Ex. 1001, 2:64–3:2. Again, this supports squarely the above determination that independent claim 1 is directed to retrieving and storing personal information securely stored under the control of a processor at a remote location.

Additionally, we note that the Magistrate Judge's analysis concerning "Alice's step one" of the '783 patent in a related proceeding, reproduced in part above, is consistent with our determination. Ex. 2001, 27–28. To be sure, we acknowledge that the Magistrate Judge's analysis was in the context of evaluating a "Motion to Dismiss for Failure to State a Claim" under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and is only a Report and Recommendation. Nevertheless, even with those caveats, we are persuaded that the Magistrate Judge's analysis is a factor weighing in favor of Patent Owner.

Furthermore, Petitioner cites to paragraph 80 of the Declaration of Dr. Mowry in support of its position that independent claim 1 is directed to "retrieving and storing personal information." Pet. 43. A closer examination of paragraph 80, however, shows that it actually undercuts

Petitioner's position. Specifically, although ostensibly analyzed within the rubric of step two of *Alice*, i.e., inventive concept, Dr. Mowry admits that "[t]he *claims* then *enunciate* a *common feature* of the automatic retrieval process that a user must be able to *access the data from either the original website or the location where the gathered data is ultimately stored*." Ex. 1002 ¶ 80 (emphases added); *see also* Ex. 1002 ¶ 80 ("The processor, in other words, retrieves, accesses, and stores personal information just as a human would—*simulating an end user entering his or her login credentials into the site and then retrieving content*" (emphasis added).) These portions of Dr. Mowry's Declaration support also the above determination that independent claim 1 is directed to retrieving and storing personal information securely stored under the control of a processor at a remote location.

Given our above determination, Petitioner's analyses as to whether "retrieving and storing personal information" is an abstract idea are misplaced, as Petitioner has not identified any evidence or analysis concerning "information securely stored at a remote location." Specifically, Petitioner does cite to some facts in Dr. Mowry's Declaration and identifies several Federal Circuits cases, but only in relation to "retrieving and storing information," and Petitioner's analysis of the other independent claims and dependent claims also do not mention anything concerning "information securely stored at a remote location." Pet. 43–46 (citing Exs. 1002 ¶¶ 67–73, 1013, 1014). Absent such relevant evidence or analysis, Petitioner has insufficient basis on which it can rely for meeting its burden of showing that "retrieving and storing personal information securely stored under the

control of a processor at a remote location" is a patent ineligible abstract idea.

Of course, the panel could perform its own evaluation as to whether or not "retrieving and storing personal information securely stored under the control of a processor at a remote location" is a patent ineligible abstract idea. The burden of persuasion is on Petitioner, however, and any such *sua sponte* evaluation made by the Board would, on these specific facts, be completely divorced from any evidence and analysis offered by Petitioner as, again, Petitioner does not identify any evidence or analysis concerning "information securely stored at a remote location." We, thus, on these specific facts, decline to unilaterally engage in such a speculative endeavor. Accordingly, given that Petitioner has not met its burden with respect to step one of *Alice*, there is no need to evaluate step two of *Alice*. Our analysis of independent claim 1 applies equally to claims 2–36.

3.   Conclusion

We determine that Petitioner has not met its burden of showing that it is more likely than not that claims 1–36 do not constitute statutory subject matter under 35 U.S.C. § 101.

C.   Final Conclusion

For the reasons given above, based on the present record and particular facts of these cases, we determine that Petitioner has not shown that it is more likely than not that claims 1–36 do not constitute statutory subject matter under 35 U.S.C. § 101, the only ground of unpatentability set forth in the Petition. Accordingly, we do not institute a covered business method patent review of the '783 patent.

III.   ORDER

For the reasons given, it is

ORDERED that no trial is instituted.

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