UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BLOOMBERG L.P. and
CHARLES SCHWAB & CO., INC.,
Petitioner,

v.

QUEST LICENSING CORPORATION,
Patent Owner.

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Case CBM2014-00205
Patent 7,194,468 B1

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Before JAMES P. CALVE, THOMAS L. GIANNETTI, and TINA E. HULSE,
Administrative Patent Judges.

GIANNETTI, *Administrative Patent Judge*.

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

I. BACKGROUND

Bloomberg L.P. and Charles Schwab & Co., Inc., (collectively, "Petitioner") filed a Petition (Paper 4; "Pet.") requesting institution of a covered business method patent review of claims 1–32 of U.S. Patent No. 7,194,468 B1 (Ex. 1001, "the '468 patent") pursuant to 35 U.S.C. §§ 321–329. Quest Licensing Corporation ("Patent Owner") filed a Preliminary Response. Paper 14 ("Prelim. Resp."). With the Board's authorization, Petitioner filed a Reply to the Preliminary Response.[1] Paper 15 ("Reply). 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):

> 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 1–32 as unpatentable under 35 U.S.C. §§ 101 and 112, second paragraph. For the reasons that follow, the Petition is *denied*.

A. The '468 Patent (Ex. 1001)

The '468 Patent is entitled "Apparatus and a Method for Supplying Information." The patent issued on March 20, 2007.

The '468 patent relates to an apparatus and a method for supplying to a subscriber, via a mobile telecommunications network, different types of information that are updated in real time, for example, information relating to

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[1] The Board's email of February 6, 2015, authorizing the Reply stated: "Petitioner is authorized to file a reply *strictly limited* to addressing cases cited by Patent Owner's preliminary response that were decided after the date of the petition."

financial markets. Ex. 1001, 1:8–12. Figure 1 from the patent is reproduced here:
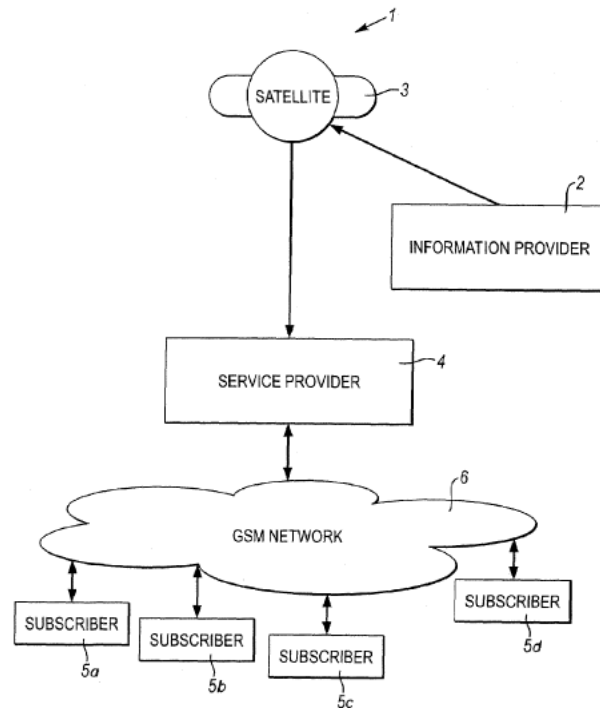

Fig. 1

Figure 1 of the '468 patent shows a diagrammatic representation of a system for supplying to a subscriber, via a mobile telecommunications network, different sets of changing or continually updating data. Ex. 1001, 2:47–50. The system includes information provider 2, satellite 3, service provider 4, GSM network 6, and subscribers 5a, 5b, 5c, and 5d. In this system, information provider 2 provides continually updating information regarding a plurality of sets of data to service provider 4 via a satellite 3 communications link. *Id.* at 3:46–49. Service provider 4 provides continually updating information for specific ones of the sets of data of interest to a subscriber to each of a plurality of subscribers 5a, 5b, 5c,

and 5*d* via GSM mobile telecommunications network 6. *Id.* at 3:49–52. In the embodiments described, information provider 2 provides continually updating data relating to financial trading markets, in particular commodities (futures and options), stocks, indices, and foreign exchanges and news. *Id.* at 3:53–57.

More details of the invention are provided in subsequent figures and the related text. For example, Figure 2 of the patent, showing the service provider, is reproduced here:
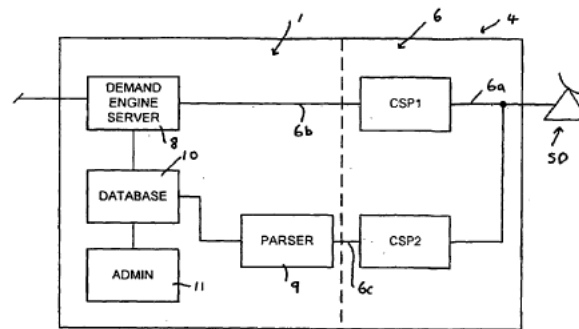

FIG. 2

Figure 2 shows a functional block diagram of service provider 4 in Figure 1. Ex. 1001, 2:51–52. The service provider consists of information receiving apparatus 6 that receives information via satellite link 3 from information provider 2 and information supplying apparatus 7, and is configured to supply continually updating information to subscribers over GSM network 6 in Figure 1. *Id.* at 4:2–7. The apparatus includes two client-site processors, CSP1 and CSP2. The processors are each coupled via communications link 6*a* to satellite dish SD to enable them both to receive an encrypted data stream over satellite network 3 from information provider 2. *Id.* at 4:8–14.

Each of the client-site processors is arranged to decrypt and demodulate the

received encrypted data stream and to maintain local database 10 of the financial

data provided via satellite network 3 by information provider 2. *Id.* at 4:15–19.

Each client-site processor provides a single client connection 6*b* or 6*c* using the

TCP/IP protocol so that a client connected to the client-site processor can receive

via the TCP/IP connection real time updating financial data provided by

information provider 2 via satellite link 3. *Id.* at 4:20–25.

Details of other elements comprising service provider 4 are shown in

Figures 3 (demand engine server), 4 (administration section), and 5 (client

interface). Ex. 1001, 2:53–61. Other figures of the '468 patent provide details of

the system.

B. Related Matters

According to Patent Owner, the '468 patent has been asserted against

Petitioner and other parties in several district court proceedings that have been

consolidated into the following case: *Quest Licensing Corp. v. Bloomberg LP*,

1:14-cv-00561-GMS (D. Del., filed April 29, 2014). Paper 13.

C. Illustrative Claim

The '468 patent has 32 claims. Claim 1 is illustrative of the claims at issue:

> 1. Apparatus for supplying interested subscribers via a mobile
> telecommunications network changing information for each of a
> plurality of different sets of data, the apparatus comprising:
>> first receiving means for receiving said changing information;
>> second receiving means for receiving said changing information
> in synchronism with said first receiving means;
>> a data base for storing information received by the first
> receiving means relating to said different sets of data;

communication means for establishing communication with
each interested subscriber via the mobile telecommunications
network;

a subscriber profile store for storing, for each interested
subscriber, information associating that interested subscriber with a
corresponding group of said different sets of data;

means for supplying to each interested subscriber via the
mobile telecommunications network information from the data base
for the corresponding group of data sets associated in the subscriber
profile store with that interested subscriber when communication with
that interested subscriber is established; and

means for supplying from said second receiving means to each
interested subscriber via the mobile telecommunications network
changing information relating to the corresponding group of data sets
associated with that interested subscriber once said information has
been supplied to that interested subscriber from the data base.

D. Asserted Grounds of Unpatentability

Petitioner challenges the patentability of claims 1–32 of the '468 patent

based on the following asserted grounds:

Description/Reference(s)	Basis	Claims challenged
Ineligible subject matter	35 U.S.C. § 101	1–32
Indefiniteness	35 U.S.C. § 112 ¶ 2	1–32

II. ANALYSIS

A. Standing In General

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*."
Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011)

("AIA") § 18(d)(1)(emphasis added); *see* 37 C.F.R. § 42.301(a).

A petition for covered business method review must set forth the petitioner's grounds for standing. 37 C.F.R. § 42.304(a). The burden of proving standing falls on the Petitioner. "The petitioner must demonstrate that the patent for which review is sought is a covered business method patent, and that the petitioner meets the eligibility requirements of § 42.302." *Id.*

As Petitioner points out, the '468 patent specification and several claims of the '468 patent "expressly reflect the financial aspect of the invention." Pet. 6–7. Patent Owner does not dispute that Petitioner meets this element of standing. Thus, we conclude that the '468 patent meets the "financial product or service" requirement under § 18(d)(1) of the AIA.

We, therefore, concentrate our analysis of standing under 37 C.F.R. § 42.304(a) on whether Petitioner has demonstrated that the '468 patent is not a patent for a technological invention. *See Motorola Mobility, LLC v. Intellectual Ventures I, LLC*, Case CBM2014-00084, slip op. at 4 (PTAB Aug. 6, 2014) (Paper 18).

B. Technological Invention

To determine whether a patent is for a technological invention, we consider "whether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art; and solves a technical problem using a technical solution." 37 C.F.R. § 42.301(b).

Petitioner argues that the '468 patent is not directed to a "technological invention." Pet. 7–8. Petitioner asserts that the patent claims do not recite any novel and unobvious technological feature, nor do they solve a technical problem using a technical solution. *Id.* at 8–10. Petitioner argues that the patent "discloses

then-conventional technology implementing an information-updating service."
Pet. 8 (citing Ex. 1002 (Declaration of Bernard S. Donefer ("Donefer
Declaration")) ¶¶ 35–36, 150–51).

Patent Owner responds that Petitioner has failed to carry its burden of
showing that the '468 patent is not a patent for a technological invention. Prelim.
Resp. 5 ("The petition must assess the claims as a whole and not merely specific
claim elements.") (citing *Experian Mktg. Solutions, Inc. v. RPost
Commc'ns Ltd.*, Case CBM2014-00010, slip op. at 8–9 (PTAB Apr. 22, 2014)
(Paper 20). Patent Owner contends that the Petition fails to show that the solution
claimed in the '468 patent, as a whole, is not "novel and unobvious over the prior
art." Prelim. Resp. 6 (quoting 37 C.F.R. § 42.301(b)). Patent Owner asserts, for
example, that the Petition does not "analyze *any* claim of the '468 patent." *Id.*.
Patent Owner argues also that Petitioner performs "*no* comparison between the
prior art and any claim of the '468 patent." *Id*. at 6–7.

As noted, Petitioner argues that the '468 patent is not a novel and
nonobvious technical solution because the disclosure identifies "conventional
commercially-available hardware components." Pet. 8. Patent Owner responds
by asserting that addressing this question requires analysis of the combination of
hardware and software, and that Petitioner made no effort to address that question.
Prelim. Resp. 8. Patent Owner asserts also that Petitioner mischaracterizes the
invention and, using claim 1 as an example, demonstrates that Petitioner does not
address the combination of hardware and software. *Id.* at 9.

Patent Owner further asserts, affirmatively, that the '468 patent addresses a
technical problem: "Before the '468 patent, mobile users had a limited ability to
access data in real time. Existing hardware and software prevented the
transmission of real-time data, or did not allow users who lost wireless

connectivity to learn what they had missed when data was not coming through."
Prelim. Resp.11. Patent Owner further explains that the '468 patent claims
technical solutions to existing problems of mobile connectivity: low bandwidth,
transient connectivity, and server processing volume. *Id.* at 12–13.

Patent Owner explains how the elements of the claims (including the two
receiving means that receive data synchronously) address the existing problems
and combine software and hardware to change the fundamental operation of data
delivery systems. *Id.* at 11–13. "By creating a specific structure to route data —
i.e. using one pathway to send changing data to a mobile user and one to send data
to a database — the ['468] patent enables real-time transmission of changing data
over mobile networks, without falling prey to the transient connectivity problem
and without causing significant lag. The '468 patent thus claims a technical
solution to technical problems." *Id.* at 13.

We have considered the arguments for standing presented by the Petition in
light of Patent Owner's responses, and find them insufficient to discharge
Petitioner's burden of proof on that issue. We agree with Patent Owner that
Petitioner has failed to assess the claims as a whole as required by 37 C.F.R.
§ 42.301(b), and has instead focused on certain individual elements. We also find
convincing Patent Owner's explanation of the technical problems addressed by
the '468 patent and its technical solution to those problems.

We have also reviewed Petitioner's other arguments, as well as the
supporting portions of the Donefer Declaration (Ex. 1002), and find them likewise
insufficient. For example, Petitioner asserts that the claims of the '468 patent do
not recite "expressly" the use of two identical CSPs. Pet. 9. We are not
persuaded by this argument. As Petitioner recognizes, most of the claims include
means-plus-function elements and other limitations that would include the CSPs.

See, e.g., the "means for supplying" recitations in claim 1, *supra*.[2] Nor are we

persuaded that there is standing by Petitioner's discussion of the state of the art

(including the art discussed there and in the Donefer Declaration). Pet. 1–4. We

agree with Patent Owner that this approach is conclusory and is contrary to the

requirement that the claim as a whole must be considered, not individual

elements. Prelim. Resp. 8 (citing *Experian*, slip op. at 8–9).

Finally, we have also considered the arguments presented in Petitioner's

Reply. In authorizing the Reply, the Board directed Petitioner to limit its response

to "addressing cases cited by Patent Owner's preliminary response that were

decided after the date of the petition." *See supra* n.1 . We have considered,

therefore, Petitioner's arguments regarding the panel decision in *E*TRADE Fin.*

Corp. v. Droplets, Inc., Case CBM2014-00123 (PTAB Oct. 30, 2014) (Paper 15).

See Prelim. Resp. 7. Although we agree with Petitioner that the panel decision

does not require a "full showing of prior art invalidity" (Reply 2), we do,

nevertheless, read the decision as calling for more than a "conclusory" showing of

standing, one that does address the claimed subject matter "as a whole."

E*TRADE, slip op. at 9.

We are persuaded that, contrary to Petitioner's assertions, the Petition here

provides only conclusory arguments that do not address the claims as a whole.

Thus, we find Petitioner's arguments for standing unconvincing.

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[2] Patent Owner explains that a few of these claims are directed to the subscriber's
mobile device. Prelim. Resp. 8. We agree with Patent Owner that the discussion
of standing in the Petition does not focus on this aspect of the patent and, therefore,
fails to convince us that there is standing based on these claims. *Id.*

III. SUMMARY

We are persuaded that Petitioner has failed to carry its burden to establish standing by showing that the '468 patent is not directed to a technological invention. In view of the foregoing, we are not persuaded that the claims of the '468 patent are directed to a covered business method patent under AIA § 18(d)(1).

IV. ORDER

Accordingly, it is

ORDERED that the Petition is *denied* as to all challenged claims.

FURTHER ORDERED that no covered business method patent review is instituted.

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