

Travelocity.com L.P., Priceline.com Inc., and Expedia, Inc. v. Cronos Technologies, LLC, CBM2014-00082 Denying Institution of Covered Business Method Patent Review

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Takeaway: If a patent is unexpired at the time of the decision on institution, but will likely expire prior to issuance of a final written decision, the Board still applies the broadest reasonable interpretation standard for claim construction in the decision on institution. Further, in support of an obviousness argument, the petitioner must show a reason for combination beyond citation to the MPEP and conclusory statements by an expert.

In its [Decision](#), the Board found that Petitioner had not met its burden of showing a reasonable likelihood that the challenged claims (1-3, 8-19, 22-28, 31-36, and 41-44) of the '110 Patent are unpatentable. Therefore, the Board denied review. The '110 Patent generally relates to a remote ordering terminal that provides a user the ability to create or edit, or both, one or more lists that are resident in memory within a user device and the further ability to review a user-interpretable display of the contents of such lists.

The Board began by analyzing whether the '110 Patent meets the requirements of a “covered business method patent,” which 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.” The focus of such an inquiry is on the claims, and only one claim must be directed to a covered business method to be eligible for review. The legislative history indicates that “financial product or service” should be broadly interpreted. Petitioner contended that claim 22 recites a business method that enables customers to order goods and services from merchants. Despite Patent Owner’s arguments to the contrary, the Board was persuaded that the '110 Patent describes a “financial product or service,” as required by the statute, because claimed embodiments are directed to e-commerce transactions.

The Board then reviewed whether the '110 Patent is a “technological invention.” The Board considered “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 argued that the method of claim 22 is not directed to a technological invention, citing to the fact that during prosecution, Patent Owner distinguished its claims over the cited art based only on the features of the business process, instead of any “technological feature”

recited in the claim. The Board was persuaded that Petitioner had demonstrated that at least claim 22 was not distinguished over the applied art based on novel and non-obvious technological features. Petitioner also argued that claim 22 “recites only known technologies, such as a central computer, databases, a communications link, a network, and a user device;” therefore, the Board found that claim 22 does not solve a technical problem using a technical solution. The Board held that at least claim 22 is directed to a covered business method, and the ’110 Patent is eligible for covered business method review.

Turning to the asserted grounds of unpatentability, the Board began with claim construction, stating that the terms of an unexpired patent are given their broadest reasonable interpretation in light of the specification of the patent. The Board noted that the ’110 Patent is set to expire on December 8, 2014, which will likely be prior to a final decision, but that because the decision on institution is due before the patent will expire, the Board will review the claims under the broadest reasonable interpretation standard. Petitioner argued for constructions of various claim terms, including the preambles of claims 1 and 22. Patent Owner did not specifically contest any of these constructions. The Board was not persuaded by Petitioner’s arguments regarding the preambles of claims 1 and 22, finding that because the limitations of the body of the claim rely upon and derive antecedent basis from the preambles, the preambles are a necessary component of the claimed invention. The Board adopted the remainder of Petitioner’s proposed constructions.

The Board then analyzed Petitioner’s obviousness arguments. Petitioner asserted three grounds of unpatentability: (i) claims 1-3, 8-15, 17-19, 22, 24, 26-28, 31-36, 41, and 43-44 as obvious over the combination of Viescas, Filepp, and Peapod; (ii) claims 1-3, 8-19, 22-28, 31-36, and 41-44 as obvious over the combination of Viescas, Filepp, Peapod, and DeAngelis; and (iii) claims 1-3, 8-19, 22-28, 31-16, and 41-44 as obvious over the combination of Viescas, Peapod, and the admitted prior art of DeAngelis. Petitioner contended that each of Viescas, Filepp, and Peapod teaches or suggests all of the limitations of each of independent claims 1 and 22. Petitioner contended that a person of ordinary skill in the art would have reason to combine these references because (1) MPEP 2143 teaches numerous reasons consistent with KSR for combining references; and (2) its expert opined that a person of ordinary skill in the art would find it obvious to combine the references. However, the Board found that the citation to the MPEP is insufficient rationale to combine references in an adjudicatory proceeding and that Petitioner’s expert provided no evidence to support his opinion. The Board therefore determined that Petitioner failed to show where each of the limitations of challenged claims 1 and 22 is taught because it failed to show what reason or reasons a person of ordinary skill in the art would have to combine the teachings of the references to achieve the recitations of claims 1 and 22.

Travelocity.com L.P., Priceline.com Inc., and Expedia, Inc. v. Cronos Technologies, LLC, CBM2014-00082 Paper 10: Decision Denying Covered Business Method Patent Review Dated: September 15, 2014 Patent: 5,664,110 Before: Jennifer S. Bisk, James B. Arpin, and Lynne E. Pettigrew Written by: Arpin Related Proceedings: Cronos Technologies LLC v. Travelocity.com L.P., No. 1:13-cv-01544-LPS (D. Del.); Cronos Technologies LLC v. Priceline.com, No. 1:13-cv-01541-LPS (D. Del.); Cronos Technologies LLC v. Expedia Inc., No. 1:13-cv-01538-LPS (D. Del.)

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