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Paper 30
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LINKEDIN CORP.,
Petitioner,

v.

AVMARKETS INC.,
Patent Owner.

Case CBM2013-00025
U.S. Patent 7,856,430 B1

Before MICHAEL P. TIERNEY, JONI Y. CHANG, and WILLIAM V. SAINDON, *Administrative Patent Judges*.

TIERNEY, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
Covered Business Method Patent Review
35 U.S.C. §328(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Petitioner LinkedIn Corporation ("LinkedIn") filed a Petition (Paper 2, "Pet.") requesting review under the transitional program for covered business method patents of claims 1–17 of U.S. Patent 7,856,430 B1 ("the '430 patent") (Ex. 1001). On November 12, 2013, pursuant to 35 U.S.C. § 324, we instituted this trial as to claims 1–3, 5–7, 9–11, and 13–15 on one ground of unpatentability, 35 U.S.C. § 101 (Paper 13, "Dec. to Inst."). Patent Owner AvMarkets filed a Patent Owner Response (Paper 19, "PO Resp."), and LinkedIn filed a Reply (Paper 20, "Reply").

AvMarkets filed a Motion to Exclude (Paper 22, "PO Mot. to Exclude") testimony from Petitioner's Declarant, Dr. Michael Freedman. LinkedIn filed an Opposition (Paper 25, "Pet. Exclude Opp.") and AvMarkets filed a Reply (Paper 26, "PO Exclude Reply").

An oral hearing in this proceeding was held on June 3, 2014. A transcript of the hearing is included in the record (Paper 29, "Tr.").

We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73.

For the reasons that follow, we determine that LinkedIn has shown by a preponderance of the evidence that claims 1–3, 5–7, 9–11, and 13–15 of the '430 patent are unpatentable.

A. The '430 Patent

The '430 patent is titled "Method for Generating Increased Numbers of Leads Via the Internet." The patent generally describes generating sales leads on the Internet through the creation of Web pages to display information. Ex. 1001, col. 1:1–13. The patent explains that Web pages containing items indexed by search engines generate greater sales leads

because potential customers can find those items using a search engine. *Id*. at col. 3:46–56. In order to generate the Web pages for display on the Internet, the method involves receiving a list of data items and listing the data items as hyperlinks on a Web page. *Id*. at col. 6:10–16 (receive list), 37–47 (list data). The patent specifies that when a hyperlink is activated, the invention generates a Web page showing the data item in a title, URL (Uniform Resource Locator), meta-tag, or text of the generated Web page. *Id*. at col. 6:48–58. In additional embodiments, the invention can: provide access credentials specifying authorized users of the Web site; generate an index of non-duplicative data items after receiving the data items; and include a prompt on the generated Web page. *Id*. at col. 6:7–10 (credentials), 20–36 (index); col. 7:10–14 (prompt).

B. Illustrative Claim

Of the challenged claims, claims 1, 5, 9 and 13 are independent claims. Independent claim 1 is illustrative of the '430 patent and is reproduced below:

> 1. A method for generating increased numbers of sales leads for each of a plurality of sellers of parts via a network implemented by a computer executing computer readable instructions to perform the steps of:
>
> receiving one or more part numbers for said parts from each of the plurality of sellers;
>
> listing each of said part numbers as a part number hyperlink on a Web page; and
>
> generating a part number Web page for any activated part number hyperlink wherein the part number Web page includes two or more components each of which incorporates the part number from said activated part number hyperlink, wherein

each such component is selected from the group consisting of a title, a URL, a meta-tag and a text entry.

Ex. 1001, 8:45–60.

C. Related Proceeding

Both parties indicate that the '430 patent was asserted in *AvMarkets, Inc. v. LinkedIn Corporation*, No. 13-cv-00230-LPS (D. Del), pending in the U.S. District Court for the District of Delaware. Pet. 11, Prelim. Resp. 5.

D. Alleged Grounds of Unpatentability Instituted in Trial

Petitioner alleges that claims 1–3, 5–7, 9–11, and 13–15 are unpatentable under 35 U.S.C. § 101.

II. ANALYSIS

There is a single patentability challenge raised against claims 1–3, 5–7, 9–11, and 13–15 of the '430 patent. Specifically, LinkedIn contends that 1–3, 5–7, 9–11, and 13–15 of the '430 patent are unpatentable under 35 U.S.C. § 101. AvMarkets opposes LinkedIn's challenge and moves to exclude certain evidence from the proceeding. Paper 22. Prior to analyzing LinkedIn's patentability challenge, we first analyze AvMarkets' Motion to Exclude so that we may define the scope of the evidentiary record.

A. AvMarkets' Motion to Exclude

AvMarkets' Motion to Exclude seeks to exclude the Declaration of Michael J. Freedman, Ex. 1012, on the theory that it represents belated new evidence as opposed to rebuttal evidence. Paper 22, 3. According to AvMarkets, Dr. Freedman's testimony raises two issues that could have been raised in the Petition but were not: 1) Dr. Freedman's testimony that the claims at issue require only a general purpose computer; and

2) Dr. Freedman's testimony regarding the state of the art at the time of the invention in 2007. *Id*. at 4–8. LinkedIn disagrees with AvMarkets' characterization of Dr. Freedman's testimony and contends that the testimony responds directly to two issues that were raised for the first time in the Declaration of Paul Pollastro, the founder and CEO of the Patent Owner AvMarkets.

While a Motion to Exclude may raise issues related to admissibility of evidence, it is not an opportunity to file a Sur-Reply, and also is not a mechanism to argue that a Reply contains new arguments or relies on evidence that should have been included in the prima facie case. Here, AvMarkets' Motion to Exclude contains such improper arguments, and is in the nature of a Sur-Reply. Moreover, as discussed below, AvMarkets' arguments also are without merit.

According to AvMarkets, LinkedIn has failed to provide sufficient supporting evidence to demonstrate that the challenged claims are directed to a general purpose computer. AvMarkets states that Dr. Freedman's Declaration is not responsive to AvMarkets' Patent Owner Response but was submitted with LinkedIn's Reply Brief to remedy an evidentiary deficiency in the LinkedIn's Petition. The Petition, however, specifically contends that AvMarkets' claimed recitation of a general-purpose computer cannot save its challenged claims from abstractness. Pet. 23. LinkedIn's Petition further contends that AvMarkets' claims do not satisfy the machine-or-transformation test as the claims are directed to a general purpose computer, and cites the '430 patent as emphasizing that the software implementation on such a computer is boundless and, thus, not specifically programmed. *Id.* at 26. The '430 patent states explicitly that the invention

may be described in the general context of computer-executable instructions executed by one or more computers or other devices. Ex. 1001, 8:19–21. Dr. Freedman's Declaration confirms that the '430 patent describes the use of a general purpose computer but does so in the context of rebutting AvMarkets' Pollastro Declaration. For example, Dr. Freedman testifies that "Mr. Pollastro is incorrect in opining that the claims of the '430 patent could not be practiced on a general-purpose computer" and goes on to elaborate as to why Mr. Pollastro is "mistaken." Ex. 1012 ¶ 36. We hold that Dr. Freedman's testimony concerning the '430 patent's claimed use of a general purpose computer is appropriate rebuttal evidence.

AvMarkets contends that Dr. Freedman's testimony concerning the state of the art in 2007 is not rebuttal evidence but submitted to remedy LinkedIn's evidentiary deficiency concerning what was conventional in the art as of 2007. Paper 22, 8–11. LinkedIn's Petition, however, cites to the '430 patent and its prosecution history to demonstrate that the claimed invention merely involves creating a product catalog and placing the catalog on the internet in a searchable format so that existing search engines will index the catalog. Paper 2, 20–27. AvMarkets submitted Mr. Pollastro's Declaration to support their contention that the '430 patent does not claim every possible way of creating a product catalog and that the claims contain meaningful limitations such that a general purpose computer would not be able to perform the claimed steps. Paper 19, 7–8 and 14. Dr. Freedman's testimony on behalf of LinkedIn is submitted to rebut Mr. Pollastro's opinion, as Dr. Freedman testifies as to the important aspects of a computer, which were well known to a person of ordinary skill in the art at the time of the invention. Ex 1012 ¶¶ 19–36. We hold that Dr. Freedman's testimony

concerning the state of computer art at the time of the invention is appropriate rebuttal evidence.

AvMarkets' Motion to Exclude the testimony of Dr. Freedman, Ex. 1012, is ***denied***.

We also hold that both Mr. Pollastro and Dr. Freedman are qualified to testify as to the level and knowledge of one of ordinary skill in the art as of 2007, the time of the invention. Specifically, one of ordinary skill in the art would have at least a bachelor's degree in computer science or equivalent experience in the art of software and hardware development, including the development of Web applications. Ex. 1012 ¶ 3; Ex. 2001 ¶ 4. Mr. Pollastro is qualified to testify as, at the time of the invention, he was a Microsoft Certified Professional who had years of experience building and managing servers for an in-house network. Ex 2001 ¶¶ 2–3. Dr. Freedman is qualified to testify as, at the time of the invention, he possessed a Bachelor's degree and Master's degree from the Massachusetts Institute of Technology in Computer Science and Engineering, and a Ph.D. in Computer Science from New York University. Ex. 1012 ¶ 3.

B. Claim Construction

The Board interprets claims of unexpired patents using the "broadest reasonable construction in light of the specification of the patent in which [they] appear[]." 37 C.F.R. § 42.300(b); *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012) ("Trial Practice Guide"); *In re Translogic Tech., Inc*., 504 F.3d 1249, 1257 (Fed. Cir. 2007) and *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Claim terms are given their plain and ordinary meaning as would be understood by a person of ordinary skill in the art at the time of the invention and in the context of

the entire patent disclosure. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). "There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution." *Thorner v. Sony Computer Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

1. Previously Interpreted Terms

In the Decision on Institution, we interpreted various claim terms of the '403 patent as follows:

Claim Term (Claims)	Interpretation
"parts" (1–4, 9–7)	"Products marketed by sellers"
"part number" (1–4, 7, 9–17)	"Any number that could represent a product, part of a product, or a person"
"Web page" (all)	"A document available on the World Wide Web"
"hyperlink" (all)	"A link on one document to retrieve another piece of that document or another document"
"meta-tag" (all)	"An HTML tag that provides information about a Web page without affecting how the page is displayed. . . ."
"BLOB field" (2, 6, 10, 14)	"A user input field for accepting Binary Large Objects, which comprises not only the traditional character, numeric, and memo fields but also pictures or other data that consumes a large amount of space"

See Dec. on Inst. 4–6. The parties do not dispute these interpretations in their Patent Owner Response and Reply. We adopt the above claim

constructions based on our previous analysis, and see no reason to deviate from those constructions for purposes of this decision.

C. Covered Business Method Patent

We determined, in the Decision on Institution, that the '430 patent is a covered business method patent as defined in § 18(a)(1)(E) of the America Invents Act and 37 C.F.R. § 42.301, because at least one claim of the '430 patent is directed to a covered business method. Paper 22, 7–13.

D. Claims 1–3, 5–7, 9–11, and 13–15 of the '430 Patent are Unpatentable as Directed to Non-Statutory Subject Matter

LinkedIn challenges claims 1–3, 5–7, 9–11, and 13–15 of the '430 patent under 35 U.S.C. § 101, as directed to patent-ineligible subject matter. Pet. 18–27. AvMarkets disagrees and maintains that its claims are directed to patent-eligible processes because the claims contain significant meaningful limitations and do not preempt the abstract idea of creating a product catalog. PO Resp. 3–16.

1. Section 101 Subject Matter Eligibility

For claimed subject matter to be patent eligible, it must fall into one of four statutory classes set forth in 35 U.S.C. § 101: a process, a machine, a manufacture, or a composition of matter. The Supreme Court recognizes three categories of subject matter that are ineligible for patent protection: "laws of nature, physical phenomena, and abstract ideas." *Bilski v. Kappos*, 130 S. Ct. 3218, 3225 (2010) (internal quotations and citation omitted). A law of nature or an abstract idea by itself is not patentable; however, a practical application of the law of nature or abstract idea may be deserving of patent protection. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293–94 (2012). To be patentable, however, a claim must

do more than simply state the law of nature or abstract idea and add the words "apply it." *Id*.

In *Alice Corp. Pty, Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), the Supreme Court recently clarified the process for analyzing claims to determine whether claims are directed to patent-ineligible subject matter. In *Alice*, the Supreme Court applied the framework set forth previously in *Mayo*, "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of these concepts." *Alice*, 134 S. Ct. at 2355. The first step in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Id*. If they are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims "individually and 'as an ordered combination'" to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible application." *Id*. (quoting *Mayo*, 132 S. Ct. at 1291, 1297). In other words, the second step is to "search for an 'inventive concept'—i.e., an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id*. (alteration in original) (quoting *Mayo*, 132 S. Ct. at 1294). Further, the "prohibition against patenting abstract ideas 'cannot be circumvented by attempting to limit the use of the formula to a particular technological environment' or adding 'insignificant postsolution activity.'" *Bilski*, 130 S. Ct. at 3230 (quoting *Diamond v. Diehr*, 450 U.S. 175, 191–92 (1981)).

The patents at issue in *Alice* claimed "a method of exchanging financial obligations between two parties using a third-party intermediary to

mitigate settlement risk." *Alice*, 134 S. Ct. at 2356. Like the method of hedging risk in *Bilski v. Kappos*, 130 S. Ct. at 3240—which the Court deemed "a method of organizing human activity"—*Alice*'s "concept of intermediated settlement" was held to be "'a fundamental economic practice long prevalent in our system of commerce.'" *Alice*, 134 S. Ct. at 2356. Similarly, the Court found that "[t]he use of a third-party intermediary . . . is also a building block of the modern economy." *Id*. "Thus," the Court held, "intermediated settlement . . . is an 'abstract idea' beyond the scope of § 101." *Id*.

2. AvMarkets' Challenged Claims Are Unpatentably Abstract

AvMarkets' claims are in substance directed to creating a product catalog to generate sales leads. Ex. 1001, claim 1 and col. 1:6–13. In the Decision to Institute, we held that the concept of creating a product catalog is an abstract idea as it represents a "disembodied concept." Dec. to Inst. 14. AvMarkets does not dispute that the '430 patent claims are directed to an abstract idea. Accordingly, we analyze the '430 patent claims to determine whether they incorporate sufficient meaningful limitations to ensure that the claims are more than just an abstract idea. *Mayo*, 132 S. Ct. at 1297.

3. Claim 1 Does Not Contain Significant Meaningful Limitations Beyond the Abstract Idea

LinkedIn contends that claim 1 only adds "conventional and routine limitations to the underlying abstract idea." Pet. 24. AvMarkets disagrees, and contends that the claims add meaningful limitations and do not preempt the abstract idea of creating a product catalog. PO Resp. 3–16.

a. General Purpose Computer

AvMarkets contends that its claimed invention cannot be performed on a mere general purpose computer and requires specially programmed web servers in order to function. *Id*. at 14. To support its position, AvMarkets relies upon the testimony of Mr. Pollastro, who testifies that the step of "receiving and listing part numbers" can only be accomplished through the use of computers capable of operating server software. *Id*. (citing Ex. 2001 ¶ 10). Further, AvMarkets relies upon Mr. Pollastro's testimony that the claims require a computer specially configured to work as a server in order to generate the claimed web page having a product index. PO Resp. 14 (citing Ex. 2001 ¶¶ 9–10).

The '430 patent states that the invention may be described in the general context of computer-executable instructions that are executed by one or more computers or other devices. Ex. 1001, 8:19–21. Consistent with this generic computer hardware description, Dr. Freedman testifies that Web servers and databases were conventional, generic, and did not require "special" programming as of 2007, the time of the invention. Ex. 1012 ¶ 19. Dr. Freedman testifies that the division between computers that act as servers and those that cannot is a false division, just as laptops and desktops are effectively identical except in their external form factors. *Id*. ¶ 21. Dr. Freedman supports his opinion with a thorough analysis of the three important aspects of a computer: the physical hardware, the software operating system, and the software applications running on the operating system. *Id.* ¶¶ 22–36.

We find that the claimed invention merely requires the use of a general-purpose computer. This finding is based on the teachings of the

'430 patent Specification and Dr. Freedman's testimony. We credit the testimony of Dr. Freedman over that of Mr. Pollastro, as Dr. Freedman's testimony is consistent with the teachings of the '430 Specification and provides a thorough, well-reasoned analysis as to why the '430 claims require nothing more than a general-purpose computer.

b. Listing Part Numbers as Hyperlinks of Webpages and Part Number Web Pages

AvMarkets contends that its claims have very specific requirements that are meaningful limitations to the abstract idea of providing a product catalog. PO Resp. 11. For example, AvMarkets contends that meaningful limitations include:

> (1) a Web page on which part numbers are listed as hyperlinks; (2) a part number Web page; (3) the part number Web page being "created automatically, at the time of accessing"; and (4) the part number Web page including two or more components each of which incorporates the part number from the activated part number hyperlink, wherein each such component is selected from the group consisting of a title, a URL, a meta-tag and a text entry.

Id.

LinkedIn disputes AvMarkets' characterization of the above limitations as meaningful limitations. Reply 5. According to LinkedIn, the additional limitations are accomplished using conventional Internet technology and that the listing of part numbers or data items on a Web page was well known in 2007. *Id*. at 5–9.

The '430 patent Specification teaches that billions of documents were available on the Internet from hyperlinked data at the time of the invention. Ex. 1001, 1:15–16. The '430 Specification also discloses that it was known in the art to generate Web pages upon activation of a hyperlink. *Id*. at 1:52–

2:25. Further, the '430 Specification discloses that it was known in the art to include information in the title, metadata, and text of a Web page such that it would be indexed. *Id*. at 3:4–14. Accordingly, we find that the limitations AvMarkets has identified as meaningful represent merely routine computer technology used in conjunction with a conventional network—the Internet with its billions of existing documents—in a conventional manner, generating Web pages upon activation of a hyperlink.

AvMarkets' contentions focus on the alleged meaningful limitations appearing in each of the challenged independent claims, claims 1, 5, 9, and 13. Although argued separately by AvMarkets, we have reviewed the remaining challenged dependent claims, dependent claims 2–3, 6–7, 10–11 and 14–15, and likewise are persuaded that the remaining claims lack limitations that meaningfully limit the abstract idea. *See* Reply 9–10.

4. Preemption

AvMarkets contends that its independent claims do not preempt the abstract idea of creating a product catalog. PO Resp. 5. According to AvMarkets, a person of ordinary skill in the art can provide product catalogs via the Internet using methods that differ from the claimed invention. *Id*. at 7. AvMarkets states that, since there exist other methods of providing product catalogs on the Internet, the claims are not an inherent attempt to preempt every way of creating a product catalog and providing it via the Internet. *Id*. at 9–10.

Limiting an abstract idea to a specific field of use or adding token postsolution activity does not make an abstract concept patentable. *Diehr*, 450 U.S. 175, 191–192; *Parker v. Flook*, 437 U.S. 584, 590 (1978) ("[t]he notion that post-solution activity, no matter how conventional or obvious in

itself, can transform an unpatentable principle into a patentable process exalts form over substance."). The fact that AvMarkets' claims could be written differently does not demonstrate that the limitations added to the abstract idea are meaningful. Receiving part numbers, listing part numbers on a Web page, and generating a part number Web page for any activated part number hyperlink represent insignificant post-solution activity as they do not represent significant meaningful limitations on the claims. Specifically, creating a product catalog would require some form of data gathering (receiving part numbers) and displaying them in the catalog (listing part numbers on a Web page). Further, the generation of a part number Web page merely employs conventional, routine steps to ensure that the data could be retrieved on the Internet, which is in effect a standardized manner of ensuring that a document can be located and retrieved, like a card catalog in a library. We hold that the additional limitations in AvMarkets' claims that seek to narrow the application of the abstract idea of creating a product catalog are merely an attempt to limit the use of the abstract idea to a particular technological environment, which has long been held insufficient to save a claim in this context. *See Alice*, 134 S. Ct. at 2358; *Mayo*, 132 S. Ct. at 1294; *Bilski*, 561 U.S. at 610–11; *Diehr*, 450 U.S. at 191.

III. CONCLUSION

We conclude Petitioner has proven, by a preponderance of the evidence, that claims 1–3, 5–7, 9–11, and 13–15 of the ’403 patent are unpatentable under 35 U.S.C. § 101; and, Patent Owner has not shown it is entitled to exclude Dr. Freedman’s Declaration, Ex. 1012.

IV. ORDER

For the reasons given, it is hereby:

ORDERED that Petitioner has established by a preponderance of the evidence that claims 1–3, 5–7, 9–11, and 13–15 of the ’403 patent are unpatentable;

FURTHER ORDERED that Patent Owner’s Motion to Exclude is *denied*;

FURTHER ORDERED that because this is a Final Written Decision, parties to the proceeding seeking judicial review of the Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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