

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTLAKE SERVICES, LLC d/b/a WESTLAKE
FINANCIAL SERVICES, LLC,
Petitioner,

v.

CREDIT ACCEPTANCE CORP.,
Patent Owner.

Case CBM2014-00008
Patent 6,950,807 B2

Before JUSTIN T. ARBES, DAVID C. McKONE, and
GREGG I. ANDERSON, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Westlake Financial Services, LLC (“Petitioner”) filed a Corrected Petition (Paper 17, “Pet.”) to institute a covered business method review of claims 1–42 of U.S. Patent 6,950,807 B2 (“the ’807 patent”). On March 31, 2014, we granted the Petition and instituted trial for claims 1–9, 13, and 34–42 of the ’807 patent on one of the grounds of unpatentability alleged in the Petition. Paper 30 (“Decision on Institution” or “Dec. Inst.”).

After institution of trial, Credit Acceptance Corp. (“Patent Owner”) filed a Patent Owner Response. Paper 39 (“PO Resp.”). Petitioner filed a Reply. Paper 47 (“Pet. Reply”).

An oral hearing was held on November 5, 2014. The transcript of the hearing has been entered into the record. Paper 65 (“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).

A. Related Proceedings

Petitioner has been sued for infringement of the ’807 patent in a district court case titled *Credit Acceptance Corp. v. Westlake Services LLC*, No. 2:13-cv-01523-SJO-MRW (C.D. Cal.). Pet. 8.

The Board instituted a covered business method patent review of claims 10–12 and 14–33 of the ’807 patent in *Westlake Services, LLC v. Credit Acceptance Corp.*, Case CBM2014-00176 (PTAB Feb. 9, 2015) (Paper 15) (“’176 Decision”). We previously declined to review those same claims in the present case. Dec. Inst. 20–22. Our rationale for granting covered business method review in the ’176 Decision was based on additional guidance received from the Supreme Court and the Federal Circuit. ’176 Decision 10–12. Case CBM2014-00176 is pending.

B. The '807 Patent (Ex. 1001)

The '807 patent relates to a method for facilitating the purchase of products on credit and a system for implementing such a method, as may be employed in the sale of automobiles and other vehicles, for example.

Ex. 1001, 1:5–9. The invention is not limited to vehicle sales and also may be applied to the sale of any products for which a customer desires to finance the transaction. *Id.* at 1:9–12.

The '807 patent describes a system and method for providing financing to the customers of a dealer to allow the customers to purchase products from the dealer's inventory. Ex. 1001, 3:27–30. The system, implementing the method, generates prospective financing packages for every item in the dealer's inventory. *Id.* at 3:30–32.

Figure 6 is reproduced below:

302	304	306	308	310	312	314	316	318	320	322	324	326	330
CAV	16	1996	Cavalier	Blue	\$5625.00	53.3%	\$1820.81	\$3200.00	\$1569.31	\$180.77	\$211.17	24	332
A1202	13	1996	Cherokee	Red	\$8775.00	34.2%	\$4144.29	\$4250.00	\$2653.79	\$1088.59	\$267.60	39	332
B9895GT	57	1996	Cherokee	Blue	\$11950.00	25.1%	\$6775.74	\$7070.01	\$1274.73	\$1914.30	\$353.71	45	332
9454	97	1996	Cirrus	Beige	\$8925.00	33.6%	\$3021.66	\$6370.00	\$754.97	\$1839.77	\$289.04	36	334
AX2	55	1996	Continental	Black	\$12995.00	23.1%	\$4513.75	\$8500.00	\$1479.95	\$3646.09	\$408.15	42	334
9321	97	1996	Continental	Beige	\$11350.00	26.4%	\$4567.76	\$7600.00	\$427.24	\$2414.01	\$348.26	42	334

Select By All Vehicles ▾

Sort By Year/Model ▾

Order Descending ▾

Go

Enter Preferred Vehicle
Add a Vehicle to Inventory

FIG. 6

Figure 6 is an example of a screen displaying several financing packages. *Id.* at 5:1–2. According to this example, a financing package

includes a set price a customer would agree to pay for a particular vehicle (selling price in column 312), a down payment the customer would pay (column 314 shows down payment percentages), and an agreement by the customer to pay the rest of the sale price with interest in a series of monthly payments (column 324 shows monthly payment amounts and column 326 shows the number of months in the financing term). *Id.* at 8:40–45, 9:26–31. A party extending financing agrees to pay an “advance amount” when a sale is completed (column 316). “[T]he advance amount is determined by the party extending financing based on the customer’s credit score, the dealership’s past collection history, the particular vehicle being considered and other factors.” *Id.* at 9:21–24. As can be seen, the advance amount and the down payment together can be less than the sale price – in other words, the financier might not agree to loan the full purchase price to the customer. The dealer’s cost for each vehicle is shown in column 318 of Figure 6.

The patent describes two types of profit realized by the dealer. First, “[t]he front-end profit is the actual profit that the dealer realizes immediately upon closing a sale with the customer,” and “[p]ut simply . . . is equal to the down payment amount plus the advance amount minus the dealer’s costs.” *Id.* at 8:53–62. This is shown in column 320 of Figure 6. *Id.* at 9:29. Second, “[t]he back-end profits are generated by the monthly payments received from the customer in satisfaction for the outstanding obligation.” *Id.* at 8:63–65. As explained above, the purchase price might be higher than the down payment plus the advance amount. In this case, the dealer receives a share of the customer’s monthly payments. *Id.* at 8:65–67. According to the example in the patent, the dealer’s share of the monthly payments first is credited towards paying back the advance amount. *Id.* at 9:2–4. The

dealer's back-end profits can be estimated (column 322 of Figure 6) by "multiplying the total payment amount by the dealer's percentage share of collections and subtracting the advance amount" and, if a more realistic estimate is desired, by taking into account an expected payment collection rate. *Id.* at 9:11–17.

C. Illustrative Claim

Claims 1, 34, and 41 are the independent method claims under review. Claims 2–9 and 13 all depend directly or indirectly from claim 1. Claims 35–40 all depend directly or indirectly from claim 34. Claim 1 is reproduced below:

1. A method for providing a financing source to a customer to purchase a product selected from an inventory of products, the method comprising the steps of:
 - receiving information related to a database of a dealer's inventory, wherein the dealer's inventory includes a plurality of products, each product having a dealer cost associated therewith and a sale price at which the dealer desires to sell the product;
 - receiving information from the customer including a down payment amount which the customer has available for a down payment towards the purchase of a product;
 - calculating a credit score for the customer based at least in part on the information gathered from the customer;
 - determining an advance amount to be paid to the dealer from the financing source for each individual product in the dealer inventory in the event that that particular product is sold to the customer;
 - calculating a front-end profit to be realized by the dealer for each individual product in the dealer inventory based on the dealer cost associated with each individual product, the advance amount determined for each individual product, and the down payment amount; and

presenting a financing package to the dealer for each individual product in the dealer's inventory for immediate offer for sale to the customer.

D. Ground Upon Which Trial Was Instituted

Trial was instituted on the ground that claims 1–9, 13, and 34–42 of the '807 patent are drawn to non-statutory subject matter under 35 U.S.C. § 101.

II. ANALYSIS

A. Claim Construction

1. Principles

In a covered business method patent review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.300(b); *In re Cuozzo Speed Techs., LLC*, No. 2014-1301, 2015 WL 448667, at *5–*7 (Fed. Cir. Feb. 4, 2015). Claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

2. “front-end profit”

“Front-end profit” appears in independent claims 1 and 41, as well as dependent claims 36 and 40, but not independent claim 34. Petitioner argues that “front-end profit” should be interpreted to mean “the profit realized at the time of sale; revenue received at the time of sale minus cost.” Pet. 28. Patent Owner does not propose a specific interpretation for the term, but argues that the step associated with calculating a “front-end profit” distinguishes claim 1 from the abstract idea of financing a purchase because not all methods of financing would practice the claim. PO Resp. 9–10.

Claim 1 recites in pertinent part “calculating a *front-end profit* to be realized by the dealer for each individual product in the dealer inventory *based on the dealer cost* associated with each individual product, *the advance amount* determined for each individual product, and the *down payment amount*” (emphases added). The actual claim language as to calculation of the “front-end profit” is repeated in the Specification. Ex. 1001, 3:63–66. “Put simply, the front-end profit, is equal to the down payment amount plus the advance amount minus the dealer’s costs.” *Id.* at 8:60–63. “Advance amount” is construed immediately hereafter.

Thus, we construe “front-end profit” to mean “the down payment amount plus the advance amount minus the dealer cost.”

3. “*advance amount*”

“Advance amount” appears in independent claims 1, 34, and 41. Petitioner argues that “advance amount” should be interpreted to mean “an amount of money given by a lender to a dealer up front at the time a product is sold.” Pet. 29. As with “front-end profit,” Patent Owner does not propose a specific interpretation for the term, but argues that the step associated with calculating an “advance amount” distinguishes claim 1 from the abstract idea of financing a purchase because not all methods of financing would fall within the scope of the claim. PO Resp. 9–10.

Claim 1 recites in pertinent part “determining an advance amount to be paid to the dealer from the financing source for each individual product in the dealer inventory in the event that that particular product is sold to the customer.” The Specification describes the “advance amount” as the amount the party extending the financing agrees to pay the dealer when the sale is complete. Ex. 1001, 8:45–46. The advance amount may be determined by

the party extending financing based on the customer's credit score, the dealership's past collection history, the particular vehicle being considered, and other factors. *Id.* at 9:21–24.

Thus, we construe “advance amount” to mean “the amount the party extending the financing agrees to pay the dealer when the sale is complete.”

4. Other Terms

We construed two other terms in the Decision on Institution, “calculation unit” and “financing package generation unit.” Dec. Inst. 7–9. Both of the terms related to claims 14–24, none of which remain at issue after the Decision on Institution. *Id.* at 20–22. All remaining terms were not construed expressly in the Decision on Institution. *Id.* at 9.

Patent Owner now proposes fifteen terms for construction. PO Resp. 34–61. These terms were not previously designated for construction in Patent Owner's Preliminary Response. Petitioner argues Patent Owner should be precluded from proposing interpretations for terms it did not propose in the Preliminary Response. Pet. Reply 10. Petitioner does not cite any support for this position. Patent Owner was not required to file a Preliminary Response; thus, a Preliminary Response was not Patent Owner's sole opportunity to propose claim constructions. See 37 C.F.R. § 42.207(a) (a “patent owner may file a preliminary response to the petition”). Rather, Patent Owner properly presented its claim construction arguments in its Patent Owner Response. Petitioner does not propose alternative constructions in its Reply, nor does it propose any other terms for construction. We will address each of the terms Patent Owner proposes for construction.

5. “*database*”

The term “database” appears in claims 1, 34, and 41. Patent Owner proposes that “database” be construed as an “electronic collection of data stored on and/or accessible by a computer.” PO Resp. 34. Petitioner argues in its Petition that “database” should be construed to mean “an orderly collection of data.” Pet. 11.

Patent Owner supports the construction with citations from the Specification including, for example, that the “database [is] configured to store the inventory of a dealer” and that a server is configured to access the database. *See, e.g.*, PO Resp. 35 (citing Ex. 1001, 4:17–18). Patent Owner cites to the Declaration of John Nerenberg (“Nerenberg Declaration,” Ex. 2008) for what would be understood by a person of ordinary skill in the art, which tracks Patent Owner’s proposed construction. Ex. 2008 ¶ 40.

We agree that “database” has a meaning to those of ordinary skill in the art, which is consistent with the Specification, and that the term requires an *electronic* collection of data. Thus, we determine that the broadest reasonable construction of “database” is an “electronic collection of data stored on and/or accessible by a computer.”

6. “*receiving information related to a database*”

Claim 1 recites “receiving information related to a database.” Patent Owner proposes that the term be construed as “electronically obtaining information related to a database.” PO Resp. 37. Petitioner argues in its Petition that “receiving” should be construed to mean “acquiring” or “getting,” and that “related to a database” should be construed to mean “pertaining to, contained in, or associated with the contents or structure of a database.” Pet. 14.

Patent Owner cites to several disclosures in the Specification for various disclosed functions related to the database, including that: information related to the database is electronic data; and the database exchanges data with other computer components. PO Resp. 37–38 (citing Ex. 1001, 5:60–63; 5:67–6:5). Patent Owner cites to the Nerenberg Declaration for testimony that the financing options described in the ’807 patent need to be done quickly, i.e., electronically and not manually, and that the person of ordinary skill would recognize access requires “electronic means.” *Id.* at 39 (citing Ex. 2008 ¶¶ 42, 46).

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction, as they pertain primarily to the “database” itself, which we have construed already. We are not persuaded that “receiving information related to a database” requires any further construction. The addition of “electronically obtaining” is unnecessary for a clear understanding of the claim language, particularly in light of the fact that a person, i.e., a dealer, is involved. Ex. 1001, 5:60–63 (dealer uses terminal to access database).

7. *“receiving information from the customer”*

Claim 1 recites “receiving information from the customer.” Patent Owner proposes that the term be construed as “receiving over a network information gathered from a customer.” PO Resp. 40. Petitioner argues in its Petition that “receiving” should be construed to mean “acquiring” or “getting.” Pet. 14.

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction. PO Resp. 40–42. Patent Owner cites to the Nerenberg Declaration, as it did previously, for the proposition that

automation of financing options through a computer is quicker than doing so manually. *Id.* at 41 (citing Ex. 2008 ¶ 53).

The speed with which a computer may perform calculations is not a part of the construction of the term at issue. Further, we see no reason why the claims should be construed to require communication over a “network,” when the term is not recited in any of the challenged claims (but is recited in others, such as claim 14, for example). We determine that the term “receiving information from the customer” is plain on its face and requires no express construction.

8. “*calculating*”

Claims 1, 37, and 41 include the term “calculating.” Patent Owner proposes that the term be construed as “computing via a financing package generating unit.” PO Resp. 42. Petitioner argues in its Petition that “calculating” should be construed to mean “ascertaining through mathematical methods.” Pet. 16.

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction. PO Resp. 42–44. Patent Owner cites to the Nerenberg Declaration to argue that “calculating” is quicker and more accurate than manual calculations. *Id.* at 43 (citing Ex. 2008 ¶ 59).

The speed with which a computer may perform certain generic functions, including calculations, is not a part of the construction of the term at issue. Again, we see no reason why the claims should be construed to require a “financing package generating unit,” when the term is not recited in any of the challenged claims (but is recited in others, such as claim 14, for example). We determine that the term “calculating” is plain on its face and requires no further construction .

9. “*determining*”

Claims 1, 9, 34, 36, 37, and 41 include the term “determining.” Patent Owner proposes that the term be construed as “ascertain or establish via a financing package generating unit.” PO Resp. 44. Petitioner argues in its Petition that “determining” should be construed to mean “setting, deciding, or specifying a numerical value, as opposed to calculating a value.” Pet. 16.

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction. PO Resp. 44–46. Patent Owner cites to the Nerenberg Declaration for support that “determining” cannot be done manually without the use of a computer. *Id.* at 45 (citing Ex. 2008 ¶ 64).

The speed with which a computer may perform certain generic functions, like making a determination based on calculations, is not a part of the construction of the term at issue, and we see no reason why the challenged claims should be construed to require a “financing package generating unit.” The term “determining” is plain on its face and requires no further construction.

10. “*presenting . . . to the dealer*” and “*presenting . . . to the merchant*”

Claim 1 recites “presenting . . . to the dealer.” Claim 34 recites “presenting . . . to the merchant.” Patent Owner proposes that the terms be construed as “electronically providing to the dealer” and “electronically providing to the merchant,” respectively. PO Resp. 46–47. Petitioner argues in its Petition that “presenting” should be construed to mean “showing” or “displaying.” Pet. 19.

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction. PO Resp. 47–48. Patent Owner cites to the Nerenberg Declaration for support that “presentation” of information must

be done quickly and efficiently to allow review and sorting of multiple financing packages. *Id.* at 48 (citing Ex. 2008 ¶¶ 67, 69).

The speed with which a computer may perform certain generic functions, like automating a process, is not a part of the construction of the terms at issue. We determine that the terms “presenting . . . to the dealer” and “presenting . . . to the merchant” require no further construction..

11. *“for immediate offer” and “for immediate purchase”*

Claims 1 and 2 recite “for immediate offer” and claims 34 and 41 recite “for immediate purchase.” Patent Owner proposes that the terms be construed as “capable of being offered without further delay” and “capable of being purchased without further delay,” respectively. PO Resp. 48–49.

Patent Owner’s cites to the Specification relate to the prior process of submitting financing being “labor intensive, difficult, and inefficient.” *Id.* at 49 (citing Ex. 1001, 2:51–53). Patent Owner cites to the Nerenberg Declaration for support that “delay” causes lost customers and waste of resources. *Id.* (citing Ex. 2008 ¶ 73).

Patent Owner’s proposed additional language adds nothing to the ordinary meaning of the terms. Further, it is unclear what is meant by “further delay,” and how the scope of such delay would be able to be determined. The terms “for immediate offer” and “for immediate purchase” require no further construction and will be given their ordinary and customary meaning.

12. *“automatically recalculated”*

Claim 2 includes the term “automatically recalculated.” Patent Owner proposes that the term be construed as “upon modification of input data,

calculated again via [a] financing package generating unit.” PO Resp. 49–50.

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction. *Id.* at 49–52. For example, that calculations are performed by the “financing package generating unit” does not require “automatically recalculated” to include the “financing package generating unit.” *Id.* at 51 (citing Ex. 1001, 5:42–44). Patent Owner cites to the Nerenberg Declaration for support that “the ability to recalculate financing packages based on altered input data” greatly reduces the time required. *Id.* at 52 (citing Ex. 2008 ¶ 79).

The speed with which a computer may perform certain generic functions, like recalculating a formula based on new data, is not a part of the construction of the term at issue, and we see no reason why the challenged claims should be construed to require a “financing package generating unit.” The term “automatically recalculate” requires no further construction and will be given its ordinary and customary meaning.

13. “transmitted”

Claim 2 includes the term “transmitted.” Patent Owner proposes that the term be construed as “transmit[ted] over a network.” PO Resp. 52.

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction. *Id.* at 52–54. Patent Owner cites to the Nerenberg Declaration for support that “transmitted” requires transmission of information over a network, like the Internet. *Id.* at 53 (citing Ex. 2008 ¶¶ 82, 84). Patent Owner also cites to the *Microsoft Computer Dictionary* 528 (5th ed. 2002) (Ex. 2013) for a definition of transmit: “[t]o send information over a communications line or a circuit.”

Patent Owner's evidence does not support that a network is even required for "transmission." See Ex. 2013. We again see no reason why the challenged claims should be construed to require a "network," when they do not recite the term, but other claims, such as claim 14, do. The term "transmitted" requires no further construction and will be given its ordinary and customary meaning.

14. "generating"

Claims 34, 36, 37, and 41 include the term "generating." Patent Owner proposes that the term be construed as "generating via a financing package generating unit." PO Resp. 54. Petitioner argues in its Petition that "generating" should be construed to mean "producing or resulting in." Pet. 20.

Patent Owner cites to the Specification, arguing it "consistently teaches that the financing package generating unit 'generates' financing packages for each item in the dealer's inventory." PO Resp. 54 (citing Ex. 1001, 7:57–62). Patent Owner cites to the Nerenberg Declaration for support that "generating" requires a "specifically-configured" computer. *Id.* at 55 (citing Ex. 2008 ¶ 87).

The speed with which a computer may perform certain generic functions, like generating financing packages, is not a part of the construction of the term at issue, and we see no reason why the challenged claims should be construed to require a "financing package generating unit." The term "generating" requires no further construction and will be given its ordinary and customary meaning.

15. “merchant may select one or more”

Claim 34 includes the term “merchant may select one or more.”

Patent Owner proposes that the term be construed as “merchant may select on an interface one or more options displayed on the interface.” PO Resp. 56.

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction. *Id.* at 56–57. Patent Owner argues that disclosure of an interface in the Specification supports the construction. *Id.* at 56 (citing Ex. 1001, 6:54–57). Patent Owner cites to the Nerenberg Declaration for support that “select” is a computer term that refers to choosing options from an interface. *Id.* at 57 (citing Ex. 2008 ¶ 94). The interpretation of “select” as a computer term is further supported, according to Patent Owner, by the *Microsoft Computer Dictionary* 471 (5th ed. 2002) (Ex. 2013), which defines “select” as: “[i]n general computer use, to specify a block of data or text on screen by highlighting it or otherwise marking it with the intent of performing some operation on it.”

We are not persuaded that use of the word “select” in the claim necessarily requires that a computer interface be read into the construction. An extraneous limitation should not be read into the claims from the specification. *E.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed. Cir. 1988). The term “merchant may select one or more” requires no further construction and will be given its ordinary and customary meaning.

16. “estimating”

Claims 37 and 38 include the term “estimating.” Patent Owner proposes that the term be construed as “approximately calculating via a

financing package generating unit.” PO Resp. 58. Petitioner argues in its Petition that “estimating” should be construed to mean “forming an approximate judgment or opinion.” Pet. 22.

Patent Owner’s cites to the Specification are to the ordinary and customary meaning of “estimate.” PO Resp. 58 (citing Ex. 1001, 9:10–17 (“the dealer’s back-end profits may be estimated”)). Patent Owner cites to the Nerenberg Declaration for support that estimating requires a calculation on the “financing package generating unit.” *Id.* at 58–59 (citing Ex. 2008 ¶¶ 98–101).

The speed or accuracy with which a computer may perform certain generic functions, like estimation calculations, is not a part of the construction of the term at issue, and we see no reason why the challenged claims should be construed to require a “financing package generating unit.” The term “estimating” requires no further construction and will be given its ordinary and customary meaning.

17. “enabling the merchant to sort”

Claim 39 includes the term “enabling the merchant to sort.” Patent Owner proposes that the term be construed as “providing sorting commands on an interface.” PO Resp. 59.

Patent Owner cites to the Specification as disclosing sorting options. *Id.* at 59–60 (citing Ex. 1001, 8:7–10 (“the financing package display screen is provided with sorting options”)). Patent Owner again cites to the Nerenberg Declaration for support that “sorting” requires an electronic interface. *Id.* at 60 (citing Ex. 2008 ¶¶ 102–106).

That sorting is a generic computer function which a computer may perform does not require that a computer or a computer interface is part of

the construction of the term at issue. The term “enabling a merchant to sort” requires no further construction and will be given its ordinary and customary meaning.

18. “selectable criteria”

Claims 39, 40, and 42 include the term “selectable criteria.” Patent Owner proposes that the term be construed as “criteria electronically capable of being selected.” PO Resp. 60.

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction. *Id.* at 60–61. Patent Owner cites to the Nerenberg Declaration for support that “selectable criteria” cannot be viewed except by electronic means. *Id.* at 61 (citing Ex. 2008 ¶¶ 107–111).

That computer technology can be used for, among many other things, selecting from a range of choices via a menu, for example, does not mean that selectable criteria are necessarily selected electronically. The claim term does not require additional limitations for construction. The term “selectable criteria” requires no further construction and will be given its ordinary and customary meaning.

19. “accessing”

Claim 41 includes the term “accessing.” Patent Owner proposes that the term be construed as “electronically communicating with.” PO Resp. 61. Petitioner argues in its Petition that “accessing” should be construed to mean “obtaining the use of.” Pet. 23.

Patent Owner’s cites to the Specification are not directly supportive of its proposed construction. PO Resp. 61–62. Patent Owner’s citations to the Specification regarding “access” show the word is used in conformance with its ordinary meaning. *Id.* at 61 (citing Ex. 1001, 7:45–49 (“credit processing

server 104 accesses the credit processing database 106”)). Patent Owner cites to the Nerenberg Declaration for support that “access” cannot be done manually and requires electronic means. *Id.* at 61–62 (citing Ex. 2008 ¶¶ 112–117).

That computer technology may use the word “access” does not require its construction to include an electronic component. Such additional language is an unnecessary limitation. The term “accessing” requires no further construction and will be given its ordinary and customary meaning.

B. Whether the ’807 Patent is a Covered Business Method Patent

In the Decision on Institution, at 10, we determined that the ’807 patent is a covered business method patent. Patent Owner does not contest that determination in its Patent Owner Response. Petitioner has no additional arguments beyond those it advanced in the Petition. *See* Pet. 3–9. Neither did either party address the issue at the oral hearing. Thus, we are presented with no reason to change our original determination, a summary of which follows.

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.” 37 C.F.R. § 42.301(a). A covered business method patent “does not include patents for technological inventions.” *Id.* A technological invention is determined by considering whether the claimed subject matter as a whole recites a technical feature that is novel and unobvious over the prior art, and solves a technical problem using a technical solution. *See* 37 C.F.R. § 42.301(b).

The '807 patent is a covered business method patent. As Petitioner argues, the Specification supports that the claimed invention is not a technological invention but rather financial in nature. Pet. 4 (citing Ex. 1001, 3:27–30). Claim 1 does not describe any technological component. It simply describes the steps performed in a method of providing a financing source. As Petitioner argues, claim 1 includes steps directed to a business problem—including calculating a “front-end profit.” *Id.* at 7. For example, the Specification describes the front-end profit as “equal to the down payment amount plus the advance amount minus the dealer’s costs.” Ex. 1001, 8:53–62. Claim 1 does not recite a technical feature that is novel and unobvious over the prior art and solves a technical problem using a technical solution.

We conclude that the '807 patent is a “covered business method patent” and is eligible for a covered business method patent review.

C. Asserted Ground under 35 U.S.C. § 101

Petitioner argues that claims 1–9, 13, and 34–42 of the '807 patent claim patent ineligible subject matter under 35 U.S.C. § 101. Pet. 30–35. Petitioner relies on the Declaration of Jeff C. Parmet (Ex. 1006) in support of its position that the claims are not patent eligible. Pet. 31.

1. Legal Principles Under § 101

Section 101 establishes that patent protection may be obtained for “new and useful process[es], machine[s], manufacture, or composition[s] of matter.” 35 U.S.C. § 101. A “process” is defined as a “process, art, or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.” 35 U.S.C. § 100(b). The Supreme Court has long held that § 101 contains an implicit exception for “[l]aws of

nature, natural phenomena, and abstract ideas.” *Ass’n for Molecular Pathology v. Myriad Genetics*, 133 S. Ct. 2107, 2116 (2013).

Since the filing of the Petition and the Decision on Institution, the Supreme Court has provided additional guidance in determining whether claims are directed to patent eligible subject matter under 35 U.S.C. § 101 in *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014). Prior to *Alice*, in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012), the Court applied a two-part test to evaluate claims that involved a law of nature. Specifically, the Court held that, to determine if a claim is statutory, we must first determine whether it is directed to a law of nature and, if so, we search for an “inventive concept” that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [law of nature] itself” such that additional elements of the claim “transform the nature of the claim” into a patent eligible application of the law of nature. *Mayo*, 132 S. Ct. at 1294, 1297. *Alice* reiterated that we are to apply that framework to claims involving laws of nature, natural phenomena, and abstract ideas (specifically including those implemented using computers). *Alice*, 134 S. Ct. at 2355.

The Supreme Court identified patents that attempt to claim the “building blocks of human ingenuity” as patent ineligible. *Id.* at 2354–55, citing *Mayo*, 132 S. Ct. at 1303. On the other hand, patents that turn the building blocks into something more and pose no comparable risk of preemption, remain eligible for the limited monopoly granted under our patent laws. *Id.* Further, claims directed to the mere formation and manipulation of economic relations may involve abstract ideas. *See id.* at 2356–57.

We start with step one of the framework and determine whether or not the claims are directed to an abstract idea. The Supreme Court has found some classes of claimed inventions to be patent ineligible abstract ideas. Mathematical algorithms, including those executed on a generic computer, are abstract ideas. *Gottschalk v. Benson*, 93 S. Ct. 253, 255 (1972). “[R]isk hedging” and “intermediated settlement” are types of fundamental economic and conventional business practices, and are also abstract ideas. *Bilski v. Kappos*, 561 U.S. 593, 611–12 (2010) (risk hedging); *Alice*, 134 S. Ct. at 2356 (intermediated settlement). The Federal Circuit also has developed case law that is instructive as to what financial transactions are fundamental economic business practices that involve abstract ideas. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (creating a transaction performance guaranty for a commercial transaction on computer networks such as the Internet); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1338 (Fed. Cir. 2013) (generating rule-based tasks for processing an insurance claim); *Bancorp Servs., L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (managing a stable value protected life insurance policy); *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (processing loan information through a clearinghouse).

For the second step of the analysis, we must determine whether the limitations present in the claims represent a patent eligible application of the abstract idea. *Alice*, 134 S. Ct. at 2357. For the role of a computer in a computer-implemented invention to be deemed meaningful in the context of this analysis, it must involve more than performance of “well-understood, routine, [and] conventional activities previously known to the industry.”

Id. at 2359 (quoting *Mayo*, 132 S. Ct. at 1294 (internal quotation marks and brackets omitted)). In analyzing the second step of *Alice*, the Federal Circuit has said that we are required to determine whether the claims do significantly more than simply describe the abstract method.

See *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (*Ultramercial III*).¹ *Ultramercial III* found unpatentable claims directed to a business practice conducted over the Internet. There, a routine or conventional use of the Internet did not invoke an “inventive concept,” and was not patent eligible. *Ultramercial III*, 772 F.3d at 716. “That some of the eleven steps [of the representative claim] were not previously employed in this art is not enough—standing alone—to confer patent eligibility upon the claims at issue.” *Id.* Conversely, patent eligibility occurs, for example, if the “claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014).

2. *Whether the claims 1–9, 13, and 34–42 are directed to an abstract idea*

Claims 1–9, 13 and 34–42 of the ’807 patent each recite a “method,” or process, that is one of the enumerated categories of § 101. As discussed above, we declined to institute trial on the system claims 10–12 and 14–33

¹ In declining institution of trial on claims 10–12 and 14–33 of the ’807 patent, we relied on *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335 (Fed. Cir. 2013) (*Ultramercial II*). Following the *Alice* decision, the Supreme Court vacated *Ultramercial II*. See *WildTangent, Inc. v. Ultramercial, LLC*, 134 S. Ct. 2870 (2014). The cited Federal Circuit case, *Ultramercial III*, is the decision postdating the vacated decision.

of the '807 patent.² There is no dispute that of the three exceptions to patentable subject matter, this case relates to the abstract idea exception to § 101.

The first inquiry under *Alice* is whether the claims are directed to an abstract idea. Petitioner contends that claims 1–9, 13, and 34–42 of the '807 patent are directed to abstract ideas that are not tied to a particular machine such as a computer—namely, “providing financial assistance to a customer interested in purchasing a product from a seller’s inventory and calculating the amount of financing available to a customer based on both that customer’s creditworthiness and the seller’s expected profit from the sale.” Pet. 31–32, 37 (citing Declaration of Jeff. C. Parmet (“Parmet Declaration”), Ex. 1006 ¶ 280). At the hearing, Petitioner similarly argued that the abstract idea claimed is a method with which to provide financing packages to a dealer for every item in the dealer’s inventory, which can be presented to a customer for use in purchasing the product. Tr. 7:20–23; 21:14–20.

Patent Owner argues that the “claims do not monopolize any abstract ideas.” PO Resp. at 7. Patent Owner contends that Supreme Court and Federal Circuit cases “demonstrate that it is of critical importance to determine whether the actual claims preempt all practical applications of the underlying abstract idea.” *Id.* at 10. Patent Owner supports this argument by pointing to those steps in the method of claim 1 reciting calculating both a “front-end profit” and an “advance amount.” *Id.* Patent Owner argues that financing methods that calculate front-end profits and advance amounts for each individual product are not pre-empted unless the other elements of claim 1 are satisfied. *Id.* at 11. According to Patent Owner, the combination

² We instituted trial on claims 10–12 and 14–33 in the '176 Decision.

of steps in claim 1 “combine to create revolutionary methods of providing financing that avoid the protracted and wasteful prior art methods of negotiating financing.” *Id.* (citing Ex. 2008 ¶ 120).

Patent Owner states that some methods that calculate “front-end profits” and “advance amounts” would not fall within the scope of claim 1 because they do not calculate the amounts for every item in an inventory. PO Resp. 11. Further, Patent Owner argues these steps are not necessarily required in financing the purchase of a vehicle and thus, there are ways to provide financing that do not infringe claim 1. *Id.* at 9–10 (citing *Ultramercial II*, 722 F.3d at 1353).³ According to Patent Owner, this distinction prevents claim 1 from being infringed by every method of financing. *Id.* at 11.

In *Ultramercial III*, the Federal Circuit affirmed dismissal of a complaint alleging patent infringement. *Ultramercial III*, 772 F.3d at 714–715. Claims directed to a business practice conducted over the Internet were found unpatentable under Section 101. *Id.* Further, the Federal Circuit explained, “the addition of merely novel or non-routine components to the claimed idea [does not] necessarily turn[] an abstraction into something concrete.” *Id.* at 715. Rather, “any novelty in implementation of the idea is a factor to be considered only in the second step of the *Alice* analysis.” *Id.*

Patent Owner notes that beyond its own precedent, the Supreme Court has declined to further define what constitutes an abstract idea. PO Resp. 16–18. Concerning the claims at issue, Patent Owner argues they merely

³ Patent Owner relied on *Ultramercial II* in its Response. As explained above, however, after the Response was filed, the Federal Circuit, on remand from the Supreme Court’s vacating of *Ultramercial II*, decided *Ultramercial III*, which is controlling.

involve, but do not manifestly describe, the abstract idea of “providing financing.” *Id.* at 18. In addition, Patent Owner contends that, because the claims do not “explain the basic concept” of financing and add “apply it to a computer,” they are not directed to an abstract idea. *Id.* at 19 (citing *Bilski*, 130 S. Ct. at 3231). Patent Owner contrasts *Bilski*-type claims with those at issue here, which recite a specific method for providing financing that differs from other financing methods, which do not result in financing packages that “inherently contain advance amounts.” *Id.* at 20. Other “narrow limitations” are argued by Patent Owner as precluding the claims from claiming an abstract idea. *Id.* (citing the Nerenberg Declaration, Ex. 2008 ¶¶ 118–126). Patent Owner concludes that the claims are patent eligible because “the elements in combination do not merely amount to an explanation of a basic concept, but rather recite a specific method of implementing the concept.” *Id.* at 21.

At the hearing, Patent Owner agreed that the claims are directed toward the abstract idea of “processing an application for financing a purchase.” Tr. 31:21–25. However, Patent Owner argued that the claims taken together as a whole are not directed to an abstract idea. *Id.* at 31:25–32:1.

We conclude that claim 1 is directed to an abstract idea and, at most, merely recites implementing it with a computer. *See Bilski*, 130 S. Ct. at 3231. The abstract idea of processing an application for financing a purchase claimed is a known concept described in the ’807 patent. Ex. 1001, 1:33–2:50. Specifically, the ’807 patent describes processing a financing application as: a customer completing a credit application; obtaining financing from a financing institution; the customer providing a

down payment and signing a promissory note to the dealer; and the financing institution paying the dealer the balance for the purchase after applying the down payment. *Id.* at 1:33–2:14. If the financing is not completed, the process is repeated. *Id.* at 2:15–50; *see* Tr. 34:6–35:10. Patent Owner’s arguments that the claims are directed to a specific method are relevant, if at all, to the second step of the *Alice* framework, not the first, and are therefore unpersuasive.

We disagree that claim 1 taken “as a whole” is any more than an abstract idea relating to the general method of processing an application for financing a purchase. Claim 1 simply describes receiving information, including sale prices and dealer costs, for items in a dealer’s inventory; receiving down payment information from a customer wishing to buy a product from the dealer; calculating a credit score for the customer; determining how much a financier will advance to the dealer (advance amount) for each product in the inventory; calculating profits for the inventory items (using basic arithmetic based on the advance amount, dealer cost, and down payment); and presenting financing packages (with unspecified information) to the dealer. Ex. 1001, 12:56–13:14.

The arguments and evidence presented by Petitioner are persuasive that claim 1 is directed to no more than this abstract idea, not tied to any specific machine, of processing an application for financing a purchase. Pet. 37 (citing Ex. 1006 ¶¶ 280, 285). Patent Owner’s evidence and arguments in this case do not persuade us otherwise. For purposes of the first step of *Alice*, Patent Owner has not distinguished any of the other independent or dependent claims from claim 1. Thus, we determine that

Petitioner has proven that claims 1–9, 13, and 34–42 are directed to an abstract idea.

3. *Whether claims 1–9, 13, and 34–42 recite an inventive concept*

Having concluded the claims are directed to an abstract idea, we now turn to step two of the *Alice* framework and determine whether or not the claims include an “inventive concept.” *Alice*, 134 S. Ct. at 2355. Prior to the decision in *Alice*, Petitioner argued that each step of claim 1 is a mental step that could be done without computer assistance. Pet. 37–40 (citing *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011)). After *Alice*, Petitioner argues further that the claimed steps are conventional and do not provide an inventive concept. Pet. Reply 4. Petitioner contends that at best, the claimed methods of the ’807 patent are performed by a generic computer, which is not specifically recited in the claims at issue. *Id.*

Patent Owner argues the claims contain elements that transform the nature of the claims to patentable subject matter. PO Resp. 21, 32 (citing *Bilski*, 130 S. Ct. at 3227). The transformation Patent Owner alleges is a specific practical application of the abstract idea of providing financing for purchase of a product that “*did not exist* in prior art methods.” *Id.* at 22. Patent Owner contends at least the step of generating financing packages for every item in inventory could not be done by a human and requires a computer. *Id.* at 23. This capability allows a dealer to offer a financing package “immediately” for any vehicle and optimize the dealer’s ability to sell the vehicle. *Id.* at 24–28; Ex. 2008 ¶¶ 130–132, 140, 147. Patent Owner contends the methods claimed cannot be performed within the human mind and the claimed method requires a “database,” i.e., a computer, to “present”

financing packages for multiple products. *Id.* at 28–29 (citing Ex. 2008 ¶¶ 132, 140, 147). Patent Owner contends Petitioner offers “no credible evidence that financing packages have ever been or could ever be provided ‘manually’ for each item in inventory for *immediate* offer or purchase to customers.” *Id.* at 30 (citing Ex. 2007, 155:20–156: 19). Petitioner responds that Patent Owner has not shown that a particular machine is required to perform the limitations recited in the claims at issue. Pet. Reply 10.

We are not persuaded that the claims include something beyond the abstract idea that transforms the claimed abstract idea into patent eligible subject matter. Merely using a computer to speed the steps of generating a financing package for each item of inventory is not such a transformation. *See Bancorp Services*, 687 F.3d at 1278 (“The computer required by some of Bancorp’s claims is employed only for its most basic function, the performance of repetitive calculations, and as such does not impose meaningful limits on the scope of those claims.”). Likewise, the ability to create an “immediate offer” does nothing more than speed up that which can be done by a human.

Although we agree that the claimed steps require a computer, there is insufficient evidence for us to conclude that the computer is being utilized for anything beyond routine or conventional use. We have reviewed the Nerenberg Declaration, including specifically paragraphs 130–153, and find it to be conclusory and lacking sufficient underlying facts or data. As such, we give the declaration minimal weight in our determination. *See* 37 C.F.R. § 42.65(a). As noted above, routine use of a computer is not enough to meet the inventive concept step of *Alice*. *Ultramercial III*, 772 F.3d at 716; *see Alice*, 134 S. Ct. at 2358 (“Given the ubiquity of computers, wholly generic

computer implementation is not generally the sort of additional featur[e] that provides any practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”) (citations and quotation marks omitted); *Accenture*, 728 F.3d at 1344–45 (claims reciting a “database,” “client component,” “server component,” and “automated method,” for example); *CLS Bank Int’l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1289 (Fed. Cir. 2013) (claims reciting a “data storage unit” and “computer,” for example).

Even assuming some of the claimed steps were not previously known in the art is not alone enough to confer patent eligibility. *Id.* Moreover, the ’807 patent itself describes the steps in a financing process as they existed before the ’807 patent. Ex. 1001, 1:33–2:50. Thus, the record supports our conclusion that the steps of the method were known previously. Further, Patent Owner acknowledges the steps individually are known but argues the steps as a whole transform the claim into patentable subject matter. Tr. 31:21–32:1. This argument is not supported sufficiently by any evidence beyond attorney argument to persuade us of patent eligibility.

Patent Owner argues that there are many ways of providing financing that do not require calculating either a “front-end profit” or an “advance amount.” PO Resp. 10 (citing Ex. 2008 ¶ 120). Mr. Nerenberg testifies that examples where the two terms are not required for financing are mortgages and student education loans. Ex. 2008 ¶ 120. Nevertheless, calculating an amount a lender will advance or an amount by which a dealer will profit from a transaction are routine, conventional activities for financial transactions. *See, e.g.*, Ex. 1001, 1:34–2:10. Furthermore, our construction of the terms “front-end profit” and “advance amount” supports that they are

conventional. Regardless, neither term, alone or in combination, “transform[s] the nature of the claim” into patent eligible subject matter. *Mayo*, 132 S. Ct. at 1294, 1297.

Patent Owner engages in a detailed claim construction argument. PO Resp. 32–62. Patent Owner asserts that certain claim terms properly construed require computer implementation and are thereby meaningfully limited and transformed into patent-eligibility. *Id.* at 32 (citing *Bilski*, 130 S. Ct. at 3227). As discussed above, we agree with Patent Owner that “database” should be construed as an “electronic collection of data stored on and/or accessible by a computer,” but disagree as to the other identified terms. *Id.* at 34. Petitioner argues that “database” and the other terms Patent Owner proposes for construction should be given their ordinary and customary meaning and no additional construction is required. Pet. Reply 10–11.

That claims 1, 34, and 41 recite a database, and thus under our construction require a computer, does not add to the claims such that an inventive concept is present. For reasons discussed above, using a generic computer to execute the steps claimed is not sufficient to make the abstract idea of the claims patent eligible.

Patent Owner argues that claims 1–9 and 13 require a specially programmed computer and recite patent eligible subject matter. PO Resp. 62–68 (citing *Ultramercial II*, 722 F.2d at 1348). In addition, Patent Owner cites to its proposed constructions to support its argument that meaningful limitations are present in the claimed methods. As noted above, *Ultramercial II* has been vacated. That a computer is “specially programmed” is not dispositive. Rather, we look to, for example, whether or

not the claimed invention “improve[s] the functioning of the computer itself or effect[s] an improvement in any other technology or technical field,” or whether the steps are performed routinely by a computer or are rooted in computer technology. *See Alice*, 134 S. Ct. at 2359; *DDR Holdings*, 773 F.3d at 1257. For reasons discussed above, we have concluded that the claims require routine use of a computer and are not transformed sufficiently to make the claims patent eligible.

Patent Owner argues that claims “‘may be meaningfully limited if [they] require[] a particular machine implementing a process or a particular transformation of matter.’” PO Resp. 32 (citing *Bilski*, 130 S. Ct. at 3227). Patent Owner identifies certain claim elements it contends are “indicative of computer implementation.” *Id.* However, even if the terms are computerrelated, there can no longer be any doubt that, standing alone, computer elements of a claim do not make a claim patentable. *Ulramercial III*, 772 F.3d at 715 (business practice conducted over the Internet not patent eligible). Patent Owner advances no other argument under the machine-or-transformation test that would alter our determination.

Patent Owner makes specific arguments relating to claims 2 and 34–42. PO Resp. 67–75. The arguments are premised on Patent Owner’s proposed constructions of terms as relating to a “specifically programmed computer system” with information transmitted over a computer network. *Id.* at 67–69. Patent Owner also cites to the Nerenberg Declaration as evidence that the steps require a “specifically-configured database, a processor that can access the database and generate financing packages, and a network to communicate with the dealer, and an interface.” *Id.* at 69 (citing Ex. 2008 ¶ 144). Patent Owner argues the experts for both parties

conclude computer technology is required to practice the claim steps. *Id.* at 75–77. As already stated, the question of patent eligibility requires more than simply use of a computer for the purposes for which computers are routinely used.

Patent Owner does not persuade us that the generic computer technology required is used for anything beyond its routine use and thus does not do significantly more than simply describe the abstract method. *Ulramercial III*, 772 F.3d at 715. In our construction of terms Patent Owner proposed for construction we declined to read in computer and electronic limitations and, for the most part, relied on ordinary meaning. Therefore, the terms Patent Owner argues in connection with claims 2 and 34–42 do not even include computer technology limitations. *See* II.A.

Finally, we note that the challenged claims of the '807 patent are substantially similar to those at issue in *Dealertrack*. *See* Pet. 31, 45–46, 50. As in this case, the patent in *Dealertrack* claimed a “computer-aided method” for “processing credit applications over electronic networks” to provide car financing. *Dealertrack*, 674 F.3d at 1317. The claimed steps included, for example, “receiving credit application data,” “obtaining credit report data,” “forwarding the credit application data, and credit report data,” and “forwarding funding decision data.” *Id.* at 1319. The Federal Circuit affirmed the district court’s determination that the claims were directed to patent ineligible ideas under § 101, concluding that the generic computer limitations in the claims did not meaningfully limit the claims. *Id.* at 1330–1334.

4. Summary of 35 U.S.C. § 101 Ground

In light of the recent guidance from the Supreme Court and the Federal Circuit, and our review of Petitioner's and Patent Owner's arguments and evidence, Petitioner has shown by a preponderance of the evidence that claims 1–9, 13, and 34–42 are unpatentable under 35 U.S.C. § 101.

D. Motions to Exclude

Petitioner filed Petitioner's Motion to Exclude ("Petitioner's Motion," Paper 55) Sections IV.B.5–6 of Patent Owner's Preliminary Response, Sections V.A.(1)–(15) of Patent Owner's Response, and paragraphs 37–117 of the Nerenberg Declaration, pertaining to claim construction. Patent Owner filed Patent Owner's Motion to Exclude ("Patent Owner's Motion," Paper 57) certain testimony of its own expert, Mr. Nerenberg, adduced during Mr. Nerenberg's deposition as beyond the scope of the issues in this case.

Concerning Petitioner's Motion, as explained above, Patent Owner's claim construction arguments were presented properly in its Patent Owner Response. Moreover, Petitioner's Motion must be directed to excluding "evidence" under 37 C.F.R. § 42.64(c). The legal brief Petitioner seeks to exclude is not evidence. The Nerenberg Declaration is evidence and, as we discussed above, we considered it during our claim construction analysis because Patent Owner's claim construction arguments were presented properly. Accordingly, the Nerenberg Declaration is not excluded. Petitioner's Motion is therefore denied.

Concerning Patent Owner's Motion, in this Decision we have not relied on any of the testimony of Mr. Nerenberg that Patent Owner seeks to exclude. Patent Owner's Motion is therefore dismissed as moot.

III. CONCLUSION

This is a final written decision of the Board under 35 U.S.C. § 328(a). We determine that claims 1–9, 13, and 34–42 have been shown by a preponderance of the evidence to be unpatentable under 35 U.S.C. § 101.

IV. ORDER

For the reasons given, it is

ORDERED that claims 1–9, 13, and 34–42 of U.S. Patent No. 6,950,807 B2 are unpatentable;

FURTHER ORDERED that Petitioner's Motion to Exclude is denied;

FURTHER ORDERED that Patent Owner's Motion to Exclude is dismissed; and

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.

CBM2014-00008
Patent 6,950,807 B2

PETITIONER:

John van Loben Sels
Ellen J. Wang
FISH & TSANG, LLP
patents@fishiplaw.com

PATENT OWNER:

Douglas R. Nemec
James Y. Pak
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
smarquez@skadden.com
james.pak@skadden.com