

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CLOUD9 TECHNOLOGIES LLC,
Petitioner,

v.

IPC SYSTEMS, INC.,
Patent Owner.

Case CBM2017-00037
Patent 8,189,566 B2

Before SALLY C. MEDLEY, JENNIFER S. BISK, and
MIRIAM L. QUINN, *Administrative Patent Judges*.

QUINN, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

Petitioner requests covered business method patent review of claims 1, 5, 6, 7, 11, 12, 13, 17, and 18 of U.S. Patent No. 8,189,566 B2 (Ex. 1001, “the ’566 patent”). Paper 1 (“Petition” or “Pet.”). Patent Owner filed a Preliminary Response (Paper 7, “Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 324, which provides that a covered business method patent review may not be instituted “unless . . . it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” Because we determine that the ’566 patent is not a covered business method patent, we deny the Petition.

A. Related Matters

Petitioner identifies that the patent-at-issue is the subject matter of a district court case filed in the U.S. District Court for the District of Delaware (Case No. 1:16-cv-00443-GMS). Pet. 1.

B. Petitioner’s Standing

Petitioner represents that it has been sued for infringement. *Id.* at 7. In addition, Petitioner represents that it is not estopped from challenging the claims on the grounds identified in the Petition. *Id.* at 7–8.

I. The ’566 Patent (Ex. 1001)

The ’566 patent is directed to telecommunication systems, and more particularly to key telephone systems and trading turrets. Ex. 1001, 1:14–16. The ’566 patent describes a trading turret system as follows,

A trading turret system is a specialized telephony switching system that allows a relatively small number of users to access a large number of external lines and provides enhanced communication features such as hoot-n-holler, push-to-talk, intercom, video and large-scale conferencing.

These features are often utilized in the financial industry such as trading floor environments, as well as security/law enforcement, utilities, healthcare, and customer support (e.g., contact centers) environments.

Id. at 1:18–26. The patent describes that the advent of Voice over IP (VoIP) has allowed for VoIP turret devices to become “virtualized and remotely accessible” allowing trader mobility and use in disaster recovery planning.

Id. at 1:54–62. “Soft-phones,” or “soft-turrets,” in those VoIP devices, however, rely on an external media bridge and require a hard turret to be dedicated to the remote trader. *Id.* at 2:8–16. The ’566 patent describes a turret switching system connected to a private wire network and a phone connected to the public switched telephone network. *Id.* at 4:12–14. A personal computer running a soft-turret application renders a turret display on the PC. *Id.* at 4:23–26. This application subscribes to a Web server, which delivers line status change notifications to the soft-turret. *Id.* at 27–29. The turret switching system includes station cards that receive button presses from the soft-turret and bridges the left and right handset inside the media bridge, eliminating the need for an external media bridge or a dedicated hard-turret. *Id.* at 4:46–51. Figure 2 illustrates media bridge 216 as part of turret switching system 214. *Id.* at Fig. 2.

C. Illustrative Claim

Of the challenged claims, claims 1, 7, and 13 are independent claims. Claim 1, reproduced below, is illustrative of the subject matter at issue.

1. A communication system, comprising:
a turret switching system constructed to
communicate to a Web server, a turret device, and to a

remote communications device via a first communications network, the Web server being constructed to communicate to a client device via a second communications network, and the client device constructed to control switching across a plurality of lines; and

an interface having a button sheet corresponding to a plurality of line selectors and constructed to seize a corresponding line by causing the client device to communicate a predetermined message to the turret switching system over the second communication network.

D. Covered Business Method Patent

A covered business method (CBM) patent is defined as “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.” America Invents Act § 18(d)(1), Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”); 37 C.F.R. § 42.301(a). The definition of a CBM patent, therefore, contemplates two distinct aspects: (1) the financial product or service inquiry; and (2) the technological invention exception. Patent Owner disputes both aspects, and urges that we find neither one satisfied by the claims of the ’566 patent. Prelim. Resp. 9–20. Because it is dispositive, we focus our analysis below on the arguments presented with regard to whether the claims of the ’566 patent satisfy the financial product or service inquiry.

To determine whether a patent claim has the proper scope for CBM review, we first note that the Federal Circuit has described a CBM patent as one that includes a broad array of “monetary matters.” *See SAP Am., Inc. v.*

Versata Dev. Grp., Inc., Case CBM2012-00001, slip op. at 23 (PTAB Jan. 9, 2013) (Paper 36) (“The term financial is an adjective that simply means relating to monetary matters.”). More recently, however, the Court has clarified that determining whether the claims involve activities “incidental to,” or “complementary to,” a financial activity, as the legal standard to determine whether a patent is a CBM patent, does not accord with AIA § 18(d)(1). *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 1376, 1379–82 (Fed. Cir. 2016); *Secure Axxess, LLC v. PNC Bank Nat’l Ass’n*, 848 F.3d 1370, 1381 (Fed. Cir. 2017) (“Consistent with *Unwired Planet*, we hold that the emphasized phrase [i.e., ‘incidental to’ or ‘complementary to’ a financial activity (as set forth in the legislative history)] is not a part of the statutory definition of what is a CBM patent, and, as we did in *Unwired Planet*, we conclude that such a definition of a CBM patent is beyond the scope of the statutory standard and thus ‘not in accordance with law.’” (quoting *Unwired Planet*, 841 F.3d at 1382)). In particular, the Court has focused the inquiry on whether the patent claim contains “a financial activity element.” *Secure Axxess*, 848 F.3d at 1381.

Petitioner asserts that the ’566 patent qualifies as a CBM because “[t]he claims recite a method and corresponding apparatus for providing software trading turrets which are utilized in the financial industry, such as trading floor environments.” Pet. 3. In support of this argument, Petitioner focuses on a portion of the specification discussing a “trading turret system” as “often utilized in the financial industry such as trading floor environments.” *Id.* Moreover, according to Petitioner, the specification describes the voice communications as delivered to a “trader,” and that the remote client is located in a “back-up trading floor or trader’s home.” *Id.*

Thus, according to Petitioner the '566 patent “claims an activity that is financial in nature: a communication system for trading.” *Id.* at 4.

We determine that Petitioner has not shown sufficiently that the '566 patent claims recite or encompass a financial activity. First, we focus on the pertinent claim language, which properly construed does not refer to a financial activity. Claims 1 and 7 recite a “turret switching system,” and claim 13 includes the phrase a “software based trading turret” in the preamble, and further recites a “turret switching device.” The words in the phrase “turret switching system” or “turret switching device” do not explicitly refer to trading or any other activity that arguably could be financial. And, even if we were to consider the preamble of claim 13 (software based trading turret), which has not been shown to be a limitation of the claim, we are persuaded that its scope is not limited to financial activity. For instance, the specification describes a “trading turret system” in terms of its hardware and communication features as follows:

A trading turret system is a specialized telephony switching system that allows a relatively small number of users to access a large number of external lines and provides enhanced communication features such as hoot-n-holler, push-to-talk, intercom, video and large-scale conferencing. These features are often utilized in the financial industry such as trading floor environments, as well as security/law enforcement, utilities, healthcare, and customer support (e.g., contact centers) environments.

Ex. 1001, 1:18–26. That is, a “trading turret system” is defined as a telephony switching system with specific communication features, none of which has been shown to be a financial activity itself or exclusively used in a financial activity. Thus, although the phrase uses the word “trading,” the specification defines the “trading turret system” as not limited to trading.

Indeed, Patent Owner argues, and we agree, that the definition in the specification does not limit the claimed “turret switching system,” “turret switching device,” or “turret device” for use in the financial industry by traders, because it can also be used in a variety of other industries. Prelim. Resp. 12. Therefore, neither the plain meaning of the claim language alone nor the proper interpretation of the claim language conveys that the claims encompass a financial activity.

At best, the specialized communication system known as a turret system *may* be used by traders. However, this use, alone, does not pass the test for what constitutes a financial activity. The use of a specialized communication system does not require any of a “wide range of finance-related activities” within the CBM provision. *See Secure Axxess*, 848 F.3d at 1381. It is not sufficient that a user of the turret switching device may be a trader, where eventually the trader may use the system’s communication functions to conduct work that results in a financial reward. *See id.* (stating that “it is safe to assume that most, if not virtually all, inventors of methods or products claimed in a patent have some expectation that . . . their invention will produce financial rewards . . . [but] a definition that could sweep that broadly obviously will not do.”). The claimed system is akin to the lightbulb example in *Unwired Planet* (841 F.3d at 1382), which was used to illustrate a generally useful invention that *may* be, but is not exclusively, used in connection with financial activity. Here, the turret system provides communication features that are useful in trading rooms and for remote access to those rooms. The usefulness of the claimed communication system to traders does not make a patent covering that system a CBM patent. Especially here, where the specification describes the

use of the communication system features for other environments, such as security/law enforcement, utilities, healthcare, and customer support. Ex. 1001, 1:18–26; *see also* 1:60–62 (describing use of virtual turret systems for remote access in disaster recovery planning across a global corporate enterprise).

We have considered all the arguments presented regarding whether the claims of the '566 patent are used in the practice, administration, or management of a financial product or service. Because we find that the claims do not recite a financial element, but instead are directed to a specialized communication system, we determine that the '566 patent is not eligible for the transitional covered business method patent review program.

III. CONCLUSION

For the foregoing reasons, we determine that the '566 patent is not a covered business method patent.

IV. ORDER

In consideration of the foregoing, it is hereby

ORDERED that pursuant to 35 U.S.C. § 324(a), a covered business method patent review is not instituted as to any claim of the '566 patent.

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