

Seyfarth PTAB Blog



A legal look at Patent Trial and Appeal Board decisions and trends

Website Labeling Patent not “Financial” Enough for a CBM

By Patrick T. Muffo

Covered Business Method (CBM) petitions are limited to patents relating to “a financial product or service.” CBM petitions are generally favored by defendants over *Inter Partes* Review (IPR) petitions by allowing a defendant to challenge the patent-eligibility of the claimed invention. And while some believe the PTAB has broadly construed the inventions falling under the umbrella of “financial product or service,” the PTAB recently held a website labeling patent to be ineligible for CBM review.

The case of *Qualtrics, LLC v. OpinionLab, Inc.*, (CBM2016-00003, Decision Denying Institution, April 13, 2016) involves a patent directed to “a system and method for soliciting ‘page-specific’ feedback from website users.” The invention allows users to provide feedback on a specific web page by rating the web page on a numerical scale or answering a question regarding the web page. Software associated with the web page then stores the feedback to determine a collective evaluation of the web page.

The PTAB held the invention to be “technological,” rather than “financial,” in nature. Qualtrics argued the patent as a whole was directed to a financial system because the specification states that the invention can be used in “commercial transactions.” However, the PTAB noted the inquiry into whether a patent qualifies for CBM review is based on the *claimed* invention, not the invention as disclosed in the specification. Citing the statute itself (AIA §18(d)(1)) and the Office Patent Trial Practice Guide, the PTAB held “[t]he determination of whether a patent is eligible for CBM review focuses on ‘what the patent claims.’” Finding no financial component in the claims themselves, the PTAB held the challenged claims to be ineligible for CBM review.

This case involves an interesting procedural posture as well. Qualtrics had previously challenged the claims of the asserted patent in an IPR, arguing the claims were unpatentable as obvious. Unsuccessful in that attempt, Qualtrics then challenged the claims as being invalid under §101 for lacking patent eligibility in this subsequent CBM petition.

Takeaway

CBM petitions are popular tools for invalidating claims of an asserted patent. However, the apparently broad reading of the term “financial” is still limited, and does not extend to examples from the specification or hypothetical possibilities conjured up by an accused infringer. Practitioners should therefore focus on the claims of the asserted patent to illustrate a financial aspect of the patent, rather than focusing on the specification or financial products that may be argued as infringing the challenged claims.

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