

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTLAKE SERVICES, LLC,
Petitioner,

v.

CREDIT ACCEPTANCE CORP.,
Patent Owner.

Case CBM2014-00176
Patent 6,950,807 B2

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

McKONE, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Westlake Services, LLC d/b/a Westlake Financial Services (“Petitioner”) filed an Amended Petition (Paper 5, “Pet.”) to institute a covered business method patent review of claims 1–42 of U.S. Patent No. 6,950,807 B2 (“the ’807 patent”). Credit Acceptance Corp. (“Patent Owner”) filed a Preliminary Response (Paper 14, “Prelim. Resp.”).

Upon consideration of the Petition and Preliminary Response, we conclude, under 35 U.S.C. § 324(a), that Petitioner has shown that, if its evidence is not rebutted, it would demonstrate that it is more likely than not that claims 10–12 and 14–33 are unpatentable. Accordingly, we institute a covered business method patent review of claims 10–12 and 14–33 of the ’807 patent.

B. Related Matters

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

The Board instituted a covered business method patent review of claims 1–9, 13, and 34–42 of the ’807 patent in *Westlake Services, LLC v. Credit Acceptance Corp.*, Case CBM2014-00008 (PTAB Mar. 31, 2014) (Paper 30) (“the ’008 Decision”).

C. The Asserted Grounds

Petitioner challenges claims 1–42 on the following grounds

(Pet. 1, 13):

Claims	Grounds
10–12 and 14–33	35 U.S.C. § 101
1–42	35 U.S.C. § 112, ¶ 2
1–42	35 U.S.C. § 112, ¶ 1 (lack of enablement)

II. ANALYSIS

A. 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	<input type="radio"/>
A1202	13	1996	Cherokee	Red	\$8775.00	34.2%	\$4144.29	\$4250.00	\$2653.79	\$1088.59	\$267.60	39	<input type="radio"/>
B9895GT	57	1996	Cherokee	Blue	\$11950.00	25.1%	\$6775.74	\$7070.01	\$1274.73	\$1914.30	\$353.71	45	<input type="radio"/>
9454	97	1996	Cirrus	Beige	\$8925.00	33.6%	\$3021.66	\$6370.00	\$754.97	\$1839.77	\$289.04	36	<input type="radio"/>
AX2	55	1996	Continental	Black	\$12995.00	23.1%	\$4513.75	\$8500.00	\$1479.95	\$3646.09	\$408.15	42	<input type="radio"/>
9321	97	1996	Continental	Beige	\$11350.00	26.4%	\$4567.76	\$7600.00	\$427.24	\$2414.01	\$348.26	42	<input type="radio"/>

336

Select By

338

Sort By

340

Order

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.

Claim 14, reproduced below, is illustrative of the claimed subject matter:

14. A system for providing guaranteed financing to a customer for allowing the customer to purchase a product from an inventory of a dealer, the system comprising:

- a financing package generating unit including a database configured to store the inventory of the dealer including a plurality of individually priced items, and a calculation unit;
- a user terminal adapted to accept credit information from the customer and further adapted to transmit the credit information over a network; and
- a server configured to receive credit information through the network, and to access the financing package generating unit, which retrieves a credit report related to the customer, and calculates a credit score for the customer based on the credit report and the credit information, the financing package generating unit further generating financing packages for each of the individually priced items in the database, the financing packages including a front-end profit calculated based on the credit score, payment of an advance amount to the dealer in furtherance of the sale, and dealer costs, the server being[] further configured to transmit the financing packages to the user terminal for presentation to the dealer for immediate offer for sale to the customer.

B. Claim Construction

The Board interprets claims of an unexpired patent using the 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 (Fed. Cir. Feb. 4, 2015), Slip Op. at 16, 19. 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).

In the '008 Decision, we construed “calculation unit” to mean “a computer component configured to calculate.” ’008 Dec. 8. We also construed “financing package generating unit” to mean “a computer component that generates financing packages and contains a database and a calculation unit.” *Id.* at 9. The parties do not dispute these constructions in this case. Accordingly, for purposes of this decision, we adopt these constructions from the '008 Decision.

Patent Owner proposes the following constructions, but does not provide argument; rather, it just cites to the Specification in support (Prelim. Resp. 11–12):

Claim Term	Patent Owner’s Proposed Construction
“credit report”	A report received from a credit bureau
“credit information”	Information from the customer used to calculate a credit score
“information related to a database of a dealer’s inventory”	Information related to products in a database of a dealer’s inventory

Petitioner contends that each of these terms is indefinite. Pet. 32, 36–37.

We address the definiteness of these terms in Section II.E, below.

No other term requires express construction for purposes of this Decision.

C. Whether the '807 Patent is a Covered Business Method Patent

Section 18 of the Leahy-Smith America Invents Act (“AIA”) provides for the creation of a transitional program for reviewing covered business method patents. 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, except that the term does not include patents for technological inventions.” Pub. L. No. 112-29, § 18(d)(1), 125 Stat. 284, 331 (Sept. 16, 2011); *accord* 37 C.F.R. § 42.301(a). A patent need have only one claim directed to a covered business method to be eligible for review. *See* Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 Fed. Reg. 48,734, 48,736 (Aug. 14, 2012).

In the '008 Decision, at 10, we determined that the '807 patent is a covered business method patent. Petitioner advances substantially the same arguments in the Petition supporting its contention that the '807 patent is a covered business method patent as it did in CBM2014-00008. *See* Pet. 3–9. Patent Owner does not raise any new arguments in this case.¹

¹ Patent Owner, in a footnote, simply refers to its argument in CBM2014-00008 that the '807 patent is not eligible for covered business method patent review because it is directed to a technological invention. Prelim. Resp. 7 n.1. Doing so was improper, and we do not consider arguments Patent Owner attempts to incorporate by reference from its previous filing. *See* 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”). Further, as we explained in CBM2014-00008, this argument is unpersuasive. '008 Dec. 13.

For the reasons given in the '008 Decision, at 9–14, the '807 patent is a covered business method patent. Specifically, claim 1 is directed to a “method for providing a financing source to a customer to purchase a product selected from an inventory of products,” and, thus, is directed to a method of providing financing for purchased products. The Specification discloses that the invention performs a series of data processing steps in the administration of a financial activity, in particular, financing a product purchase. Ex. 1001, Fig. 7. Thus, the '807 patent claims subject matter that is financial in nature, incidental to a financial activity, or complementary to a financial activity. *See* Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 Fed. Reg. at 48,735. Accordingly, at least claim 1 covers a method for performing operations used in the practice, administration, or management of a “financial product or service” within the meaning of Section 18(d)(1) and Rule 42.301(a).

Claim 1 also is not directed to a “technological invention.” *See* '008 Decision 11–14; *see also* AIA, § 18(d)(1) (excluding “technological inventions” from covered business method patents). Specifically, claim 1 does not describe any technological component. Rather, it simply describes the steps performed in a method of providing a financing source. Claim 1, as a whole, does not recite a *technological* feature that is novel and unobvious over the prior art. *See* 37 C.F.R. § 42.301(b).

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

1. Overview

In CBM2014-00008, we instituted a trial as to claims 1–9, 13, and 34–42 on the ground of non-statutory subject matter under Section 101. ’008 Dec. 19, 33. Regarding claims 10–12 and 14–33, however, we declined to institute. *Id.* at 22. Specifically, in reliance on binding precedent from the Federal Circuit, *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335 (Fed. Cir. 2013) (*Ultramercial II*)², we determined that claims 10 and 14, and the claims that depended therefrom, were “tied to a computer in a specific way, such that the computer plays a meaningful role in the performance of the claimed invention,” and that “it is as a matter of fact not likely to pre-empt virtually all uses of an underlying abstract idea, leaving the invention patent eligible.” ’008 Dec. 20 (quoting *Ultramercial II*, 722 F.3d at 1349). We reasoned that those claims were analogous to the claims at issue in *Ultramercial II* (ruled statutory by the Federal Circuit at that time), recited specific computer components and interactions between those components, did not involve steps that could be performed entirely in the human mind (*cf. CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011)), and, thus, recited meaningful limitations restricting the claims to practical applications of an abstract idea. ’008 Dec. 21–22 (citing *Ultramercial II*, 722 F.2d 1350–54).

² *Ultramercial LLC v. Hulu, LLC*, 657 F.3d 1323 (Fed. Cir. 2011) (*Ultramercial I*) was vacated by the Supreme Court, *WildTangent, Inc. v. Ultramercial, LLC*, 132 S. Ct. 2431 (2012), after the Court’s decision in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 132 S. Ct. 1289 (2012). *Ultramercial II* was decided on remand from the Supreme Court. *Ultramercial II*, 722 F.3d at 1337.

After the '008 Decision, the Supreme Court decided *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014). Prior to *Alice*, in *Mayo*, 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 1296–98, 1294. *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. Furthermore, *Alice* treated the system claims at issue substantially the same as the method claims, reasoning that the computer structure recited in the system claims was “purely functional and generic” and did not offer meaningful limitations on the claims. *Id.* at 2360.

Following the *Alice* decision, the Supreme Court vacated *Ultramercial II*. See *WildTangent, Inc. v. Ultramercial, LLC*, 134 S. Ct. 2870 (2014). The Federal Circuit again decided *Ultramercial*, this time ruling that the claims at issue were non-statutory. See *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014) (*Ultramercial III*). The Federal Circuit concluded that (1) the claims at issue were directed to an abstract idea, using an advertisement as an exchange or currency; (2) “the addition of merely novel or non-routine components to the claimed idea” did not necessarily turn the abstraction into something concrete; and (3) the addition

of routine computer steps did not transform the otherwise abstract idea into patentable subject matter. *Id.* at 715–16. As to the apparatus claims in particular, the Federal Circuit explained that they were tied only to a general purpose computer and that “[a]ny transformation from the use of computers or the transfer of content between computers is merely what computers do and does not change the analysis.” *Id.* at 716–17.

In light of this recent guidance from the Supreme Court and the Federal Circuit, we are persuaded that Petitioner’s evidence, if not rebutted, would demonstrate that it is more likely than not that claims 10–12 and 14–33 are directed to non-statutory subject matter.

2. Whether the claims are directed to an abstract idea

Focusing on independent claims 1³, 14, and 25, we first determine whether the claims are directed to a patent-ineligible concept, in this case an abstract idea. *See Alice*, 134 S. Ct. at 2355. Petitioner contends that the claims of the ’807 patent, including claims 1, 14, and 25, are directed to “the concept of providing financing,” which it characterizes as a “fundamental economic practice” and an abstract idea. Pet. 21. This is similar to the ’008 Decision, where we preliminarily determined that claim 1 is directed to the abstract idea of “processing an application for financing a purchase.” ’008 Dec. 18.

Patent Owner responds that the claims of the ’807 patent, while they may include such concepts, do not describe simply “providing financing” or

³ Claim 10, at issue in this case, depends from claim 1, which is a subject of the trial in CBM2014-00008. Our analysis of claim 10 starts with claim 1.

“processing an application for financing a purchase.” Prelim. Resp. 16. Rather, Patent Owner argues, the specific limitations of the claims are integral to enabling users to compare financing packages for every item in an inventory and to involving the dealer in the financing transaction after the sale of the product. *Id.* at 17–18.

We are not persuaded. Claim 1, at issue in CBM2014-00008, 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. As we explained in CBM2014-00008, the arguments and evidence presented by Petitioner persuaded us that this is no more than the abstract idea of processing an application for financing a purchase. ’008 Dec. 18. Patent Owner’s arguments in this case do not persuade us otherwise.

Claim 10, at issue in this case, depends from claim 1 and recites providing generic computer components (“user terminal,” “server,” and “network”) for entering, receiving, generating, and transmitting the information received, calculated, and presented in claim 1. In essence, claim 10 recites applying the abstract idea of claim 1 on a generic computer. This is analogous to the claims at issue in *Alice*, which generically recited a “data storage unit” and “computer,” for example, *CLS Bank Int’l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1285–90 (Fed. Cir. 2013), and those at issue in

Accenture Global Servs., GmbH v. Guidewire Software, Inc., 728, F.3d 1336, 1344–45 (Fed. Cir. 2013), which recited a “database,” “client component,” “server component,” and “automated method,” for example.

Similarly, at its core, claim 14 describes a system for providing financing in which computers are used to collect information from a customer, generate a credit report and credit score, and generate financing packages for each item of a dealer’s inventory. A financing package includes an amount that a financier will contribute (an advance amount) based on the customer’s credit score and a front-end profit the dealer will make (calculated based on the sale price, down payment, advance amount, and vehicle cost). Nothing in claim 14 requires involving the dealer in the financing transaction after the sale of the product. Nor does claim 14 recite providing financing in a “particular manner,” as argued by Patent Owner (Prelim. Resp. 17). Rather, viewed as a whole, claim 14 does no more than describe the abstract idea of processing an application for financing a purchase, applied using generic computers.

Claim 25 is similar to claim 14, reciting generic computer components (“database,” “user terminal,” “server,” and “network”) for storing inventory information, receiving and communicating financial information about a customer, and generating and sending financing packages for each product in the inventory. Nothing in claim 25 requires involving the dealer in the financing transaction after the sale of a product. Thus, like claim 14, claim 25 does no more than describe the abstract idea of processing an application for financing a purchase, applied using generic computers.

Although claim 14 does not require involving the dealer in the financing transaction after the sale of a product, dependent claim 18

introduces the concept of the dealer receiving a share of the payments collected from the customer. Claim 26 arguably also introduces this concept through its recitation of a back-end profit. In this instance, we are persuaded based on the current record that claims 18 and 26 do no more than describe processing an application for financing a purchase in which a financier and a seller both lend a portion of the purchase price, an abstract idea, applied using generic computers.

Patent Owner argues that calculating an advance amount for every item in an inventory is “unconventional” and “non-routine.” Prelim. Resp. 17; *accord id.* at 18–19 (“Petitioner has provided no persuasive evidence that the claimed methods could ever or have ever been performed without the use of such technology.”). However, as 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.” *Ultramercial III*, 772 F.3d 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 further argues that the claims recite “specifically-configured computer components” that are “core limitations because they are necessary to effectively practice the invention.” Prelim. Resp. 18. We are not persuaded. Similar to the claims at issue in *Alice*, *Ultramercial III*, and *Accenture*, the computer components recited in the claims are recited functionally and generically, without any detail as to their configurations or implementations. Nor does Patent Owner point to anything in the Specification describing the configuration of the computer components in

substantially more detail or explain why the claims would require such detail.

In sum, on this record, we are persuaded that claims 10, 14, 18, 25, 26, and their dependents are directed to abstract ideas.

3. Whether the claims recite an inventive concept

After determining that the claims of the '807 patent are directed to patent-ineligible abstract ideas, “we consider the elements of each claim both individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (internal quotation marks omitted). The Supreme Court has “described step two of this analysis as a 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.* (internal quotation marks omitted).

Petitioner argues that the recitations of computer components in claims 10–12 and 14–33 are functional and generic and, as such, are not sufficient to transform the abstract ideas of those claims into patent-eligible inventions. Pet. 21–25; *see also DDR Holdings v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

Patent Owner argues that the claims of the '807 patent do not preempt the abstract idea of “processing an application for financing a purchase” because one could process an application for financing without calculating

an advance amount or front-end process, without doing so for each individual product in a dealer's inventory, or without presenting financing packages for immediate offer for sale. Prelim. Resp. 20–22. Patent Owner further points to claim 19, which recites “providing guaranteed financing as claimed in claim 18, wherein the share received by the dealer is 80%,” as reciting a meaningful limitation rather than a basic tool of scientific and technological work. *Id.* at 22.

We are not persuaded. Based on the current record, we are persuaded that the limitations to which Patent Owner refers simply “limit[] the use of an abstract idea to a particular technological environment,” which is not, according to *Alice*, sufficient to impart patent eligibility. *Alice*, 134 S. Ct. at 2358; *see also Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, No. 2013-1112, 2014 WL 7272219, at *5 (Fed. Cir. Dec. 23, 2014) (“[A]ll of the additional limitations in the claims cited in CET’s appeal brief recite well-known, routine, and conventional functions of scanners and computers. Thus, while these claims may have a narrower scope than the representative claims, no claim contains an ‘inventive concept’ that transforms the corresponding claim into a patent-eligible application of the otherwise ineligible abstract idea.”). 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. Performing those calculations using a general purpose computer does not transform the idea into something patent-eligible. *See Ultramercial III*, 772 F.3d at 716 (“[E]ach of those eleven steps merely instructs the practitioner to implement the abstract idea with routine, conventional activities, which is insufficient to transform the

patent-ineligible abstract idea into patent-eligible subject matter. That some of the eleven steps were not previously employed in this art is not enough—standing alone—to confer patent eligibility upon the claims at issue.” (internal quotation marks omitted)).

We also are not persuaded that repeating calculations for more than one inventory item, the “most basic function” of a computer, transforms the abstract ideas to patent-eligible inventions. *See Bancorp Services, L.L.C. v. Sun Live Assur. Co. of Canada*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (“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.”).

Patent Owner further contends that the claimed methods and systems improve upon conventional methods of providing financing in various ways, including: (1) the claimed techniques are not asset-specific, whereas in conventional financing, an application for a customer would be based on a specific product; (2) they ensure that financing will be made available for any customer, whereas in conventional financing, customers with poor credit would be rejected due to risk of default; (3) the claimed techniques inform the dealer which inventory items are most profitable to sell, whereas in conventional financing, the dealer would not have that information; and (4) the claimed techniques involve the dealer in the collection process, whereas, in conventional financing, the dealer was not involved post-sale. Prelim. Resp. 23–27. We are not persuaded. Patent Owner does not explain which purported advantages correspond to which claims. For example, as explained above, claims 10, 14, and 25 do not require involving a dealer in the collection process. Likewise, claim 25 does not require calculation of

profit. In any case, Patent Owner has not pointed to persuasive evidence supporting these arguments. Nor would these arguments be persuasive if supported. *See Ultramercial III*, 772 F.3d at 716.

Patent Owner also contends that the claims of the '807 patent are tied to a particular machine or apparatus. Prelim. Resp. 29. Regarding claim 10, Patent Owner argues that we found this to be the case in CBM2014-00008. *Id.* What we actually determined in CBM2014-00008 was that claim 10 incorporated specific computer technology into the method of claim 1, and that such computer technology constituted meaningful limitations, similar to the analysis set forth in *Ultramercial II*. '008 Dec. 20. We made similar determinations for claims 14 and 25 and dependent claims 11, 12, 15–24, and 26–33. *Id.* at 21–22. Under *Ultramercial III*, however, tying an abstract idea to a general purpose computer, rather than a particular novel machine or apparatus, is insufficient. *See* 772 F.3d at 716 (“Narrowing the abstract idea of using advertising as a currency to the Internet is an attempt to limit the use of the abstract idea to a particular technological environment, which is insufficient to save a claim.” (internal quotation marks omitted)). This claim drafting technique, “do[es] not, for example, purport to improve the functioning of the computer itself”; nor does it “effect an improvement in any other technology or technical field.” *BuySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2014) (internal quotation marks and citations omitted). *Compare with DDR Holdings*, 773 F.3d at 1258–59 (Rather than making routine or conventional use of the Internet, the claims at issue “amount[ed] to an inventive concept for resolving [a] particular Internet-centric problem, rendering the claims patent-eligible.”).

Patent Owner argues that its claims depend upon “specifically-configured computer components” that are “integral to the solution, and not merely a convenient way to speed up conventional practice.” Prelim. Resp. 32. For example, Patent Owner argues that the claimed techniques could not be accomplished effectively without the use of specifically configured databases, user terminals, servers, and networks. *Id.* at 32–33 n.4. Similarly, Patent Owner argues that “Petitioner [does not] offer any credible evidence that such limitations could be practiced in combination using generic computers without specifically configuring those computers to interface with and facilitate communication between databases, servers, and user terminals.” *Id.* at 35. The claims of the ’807 patent, however, do not recite such specific configurations, instead reciting generic computer components along with general recitations of their functions. *Cf. Alice*, 134 S. Ct. at 2360 (“Nearly every computer will include a ‘communications controller’ and ‘data storage unit’ capable of performing the basic calculation, storage, and transmission functions required by the method claims. As a result, none of the hardware recited by the system claims offers a meaningful limitation beyond generally linking the use of the method to a particular technological environment, that is, implementation via computers.” (internal quotation marks and citations omitted)).

In sum, on this record, Petitioner has shown that it is more likely than not that claims 10, 14, 18, 25, and 26 are directed to abstract ideas with no inventive concept. Claims 11 and 12 depend from claim 10; claims 15–17 and 22–24 depend from claim 14; claims 19–21 depend from claim 18; and claims 27–33 depend from claim 25. Other than to argue that the dependent claims include “configured computer technology” that is “integral to” those

claims, Patent Owner does not rebut specifically Petitioner’s argument and evidence regarding the dependent claims. *See* Prelim. Resp. 30–33. On this record, we are persuaded by Petitioner’s arguments and evidence (Pet. 23–24, 26–27), that the dependent claims similarly are directed to abstract ideas with no inventive concepts. *Cf. Content Extraction*, 2014 WL 7272219, at *5 (“[W]hile these claims may have a narrower scope than the representative claims, no claim contains an ‘inventive concept’ that transforms the corresponding claim into a patent-eligible application of the otherwise ineligible abstract idea.”); *BuySAFE*, 765 F.3d at 1355 (“The dependent claims’ narrowing to particular types of such relationships, themselves familiar, does not change the analysis. This kind of narrowing of such long-familiar commercial transactions does not make the idea non-abstract for section 101 purposes.”).

4. Application of 35 U.S.C. § 325(d) or (e) is Inappropriate in this Case

Patent Owner argues that Petitioner will be estopped under 35 U.S.C. § 325(e) from maintaining this proceeding once we issue a final written decision in CBM2014-00008. Prelim. Resp. 5. Because we have not yet issued a final written decision in CBM2014-00008, Patent Owner’s argument is not ripe.

Patent Owner also contends that we should exercise our discretion to deny the petition under 35 U.S.C. § 325(d) due to the similarities in the arguments Petitioner presented in the Petition and in CBM2014-00008. Prelim. Resp. 7–11. Regardless of the similarities, our decision not to institute as to claims 10–12 and 14–33 was based, to a significant degree, on

the Federal Circuit's precedent in *Ulramercial II*. '008 Dec. 20–22. As explained above, *Ulramercial II* was vacated by the Supreme Court and, on remand, the Federal Circuit changed its ruling in *Ulramercial III*. Accordingly, it is appropriate here to revisit Petitioner's arguments and evidence.

5. Conclusion

We have considered the evidence and argument put forward in the Petition and Preliminary Response. On this record, the information presented in the Petition, if not rebutted, would demonstrate that it is more likely than not that claims 10–12 and 14–33 are unpatentable as directed to patent-ineligible subject matter.

E. Asserted Ground Based on 35 U.S.C. § 112, Second Paragraph

Petitioner asserts that several terms in the claims of the '807 patent are indefinite. Petitioner made similar arguments in CBM2014-00008. In the '008 Decision, we concluded that the claims of the '807 patent reasonably apprise those of skill in the art of their scope and, accordingly, declined to institute a trial on Petitioner's indefiniteness ground. '008 Dec. 26–33. Petitioner asks us to revisit indefiniteness in light of the Supreme Court's ruling in *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120 (2014), which was decided after the '008 Decision. Petitioner's re-asserted arguments are similarly unpersuasive.

Pursuant to 35 U.S.C. § 112, ¶ 2,⁴ the specification of a patent “shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.” The Supreme Court has held that the statute “require[s] that a patent’s claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention with reasonable certainty. The definiteness requirement, so understood, mandates clarity, while recognizing that absolute precision is unattainable.” *Nautilus*, 134 S. Ct. at 2129. Similarly, as we have stated previously, “if a claim is amenable to two or more plausible claim constructions, the USPTO is justified in requiring the applicant to more precisely define the metes and bounds of the claimed invention by holding the claim unpatentable under 35 U.S.C. § 112, second paragraph, as indefinite.” *Ex parte Miyazaki*, 89 USPQ2d 1207, 1211 (BPAI 2008) (precedential).

Regarding Petitioner’s specific arguments, Petitioner contends that “receiving information related to a database of a dealer’s inventory,” recited in claim 1, is indefinite because it is not clear whether the “information” is related to the database or the dealer’s inventory. Pet. 32. In the context of the ’807 patent, it is clear that the recited information is related to the items in a dealer’s inventory. *See, e.g.*, Ex. 1001, 7:57–60. Thus, Petitioner has not shown this term to be indefinite.

⁴ Section 4(c) of the AIA re-designated 35 U.S.C. § 112, ¶ 2, as 35 U.S.C. § 112(b). *See* Pub. L. No. 112-29, 125 Stat. 284, 296 (2011). Because the ’807 patent has a filing date before September 16, 2012 (effective date of § 4(c)), we will refer to the pre-AIA version of § 112.

Several of Petitioner's indefiniteness challenges argue that certain claim terms are indefinite because they are not defined with sufficient precision. In particular:

Petitioner argues that "receiving information from the customer," recited in claim 1, is indefinite because a skilled artisan would not understand the outside limit of the term; for example, a customer could provide irrelevant information. Pet. 33.

Petitioner contends that "calculating a credit score for the customer based at least in part on the information gathered from the customer," recited in claim 1, is indefinite because it is open-ended as to what information could be gathered. Pet. 33.

Petitioner argues that "credit information," "credit report," and "credit score," recited in claim 14, are indefinite because the Specification does not differentiate them sufficiently and does not specify what factors go into each of the these terms. Pet. 36–37.

Petitioner argues that "financial information," recited in claim 25, is indefinite because the types of financial information that a dealer could receive from a customer is "limitless." Pet. 37.

We are not persuaded by Petitioner's arguments. The Specification explains in detail the well-known and long-established relationship among the information provided by a customer in seeking credit, a credit bureau that maintains credit reports regarding the customer, and lenders who use such information to generate credit scores in the process of determining whether to finance the customer's purchase. For example:

"In making this decision the agent typically pulls a credit report on the customer from one of the national credit bureaus and scores the customer based on his credit history." (Ex. 1001, 1:51–54);

“A credit bureau 110 is also shown. The credit bureau 110 is operated by a third party and is not, strictly speaking, part of the system 100. However, as will be described below, the interaction between the calculation unit 108 and the credit bureau 110 is integral to the operation of the system 100. Therefore the credit bureau has been included with the system 100 shown in FIG. 1.” (*Id.* at 5:44–51); and

“The calculation unit 108 receives the customer’s financial data and pulls a credit report on the customer from the credit bureau 110. The credit report is received from the credit bureau electronically, and the calculation unit 108 parses the received data into a format that can be used for calculating a credit score for the customer. The credit score is based on a number of factors including the customer’s credit history, income, current obligations, and the like.” (*Id.* at 7:50–57).

The Specification, therefore, makes clear that each of these terms had “an established, sufficiently objective meaning in the art,” and, therefore, each is definite. *DDR Holdings*, 773 F.3d at 1260. In light of the description in the Specification, Petitioner has not shown persuasively that the scope of any of these terms is not specified with reasonable clarity, or that any of these terms is amenable to multiple constructions. We also note that Petitioner attempts to incorporate indefiniteness arguments in claim charts through reference to the testimony of Dr. Steven R. Kursh (Ex. 1006 ¶¶ 27–30, Table A ¶ 51), contrary to 37 C.F.R. § 42.6(a)(3). *See* Pet. 30–41. Ever if we were to consider Dr. Kursh’s testimony, however, it is of little value, as it is conclusory and does not disclose the underlying facts or data on which it is based. *See* 37 C.F.R. § 42.65(a).

Petitioner also contends that the terms “financing package generating unit” and “calculation unit,” recited in claim 14, are indefinite. Pet. 36. As

explained above, in CBM2014-00008, we preliminarily construed “financing package generating unit” to mean “a computer component that generates financing packages and contains a database and a calculation unit.” ’008 Dec. 8–9. We also construed “calculation unit” to mean “a computer component configured to calculate.” *Id.* at 7–8. Petitioner argues that our constructions are indefinite, in that “computer component” is too general and because the patent does not set forth specific criteria by which the claim term is performed. Pet. 36. Petitioner again attempts to incorporate arguments in claim charts through reference to the Kursh Declaration (Ex. 1006, Table A ¶ 49), contrary to 37 C.F.R. § 42.6(a)(3). Again, even if considered, Dr. Kursh’s testimony is of little value, as it is conclusory and does not disclose the underlying facts or data on which it is based. *See* 37 C.F.R. § 42.65(a). We agree with Patent Owner (Prelim. Resp. 42–43) that Petitioner has not explained what it means by “specific criteria” and otherwise has not pointed to persuasive evidence that the scope of these terms is not specified with reasonable clarity, or that any of these terms is amenable to multiple constructions.

Petitioner argues that “immediate offer for sale,” recited in claims 1 and 14, and “immediate purchase,” recited in claims 25, 34, and 41, are indefinite because the claims do not recite when the timing for immediacy begins and ends. Pet. 34, 37–38, 40, 41. Patent Owner responds that “immediate” does not refer to the time period during which a dealer must offer a financing package to a customer. Prelim. Resp. 41. Rather, based on the Specification, Patent Owner argues, these terms refer to the condition that the package is in, namely that the lender has guaranteed financing and the package can be offered to and accepted by the customer without risk that

financing will be unavailable. *Id.* at 40–41 (citing Ex. 1001, 2:29–30, 5:18–30, 15:31–34). We agree with Patent Owner that this is the most reasonable reading of “immediate offer for sale” and “immediate purchase.” Petitioner does not point to any persuasive evidence showing that the terms refer to a period of time in which a package must be offered and/or accepted. Petitioner again attempts to incorporate arguments in claim charts through reference to the Kursh Declaration (Ex. 1006, Table A ¶ 33), contrary to 37 C.F.R. § 42.6(a)(3). Again, Dr. Kursh’s testimony is of little value, as it is conclusory and does not disclose the underlying facts or data on which it is based. *See* 37 C.F.R. § 42.65(a). Accordingly, Petitioner has not persuaded us that these terms are indefinite.

Petitioner also argues that “determining a down payment amount” and “determining an advance amount,” recited in claim 34 and 41, are indefinite because it is unclear how these terms differ from one another. Pet. 39, 41. We disagree. The Specification clearly explains the difference. *See* Ex. 1001, 7:38–39 (a “down payment” is the amount a customer puts down toward a purchase); 8:45–46 (an “advance amount” is the amount a financier extends to a dealer). Accordingly, Petitioner’s argument is unpersuasive.

In sum, on this record, Petitioner has failed to show persuasively that any claim term in the ’807 patent fails to meet the requirements of 35 U.S.C. § 112, ¶ 2. Accordingly, on this record, Petitioner has not demonstrated that it is more likely than not that claims 1–42 are unpatentable for indefiniteness.

F. Asserted Ground Based on 35 U.S.C. § 112, First Paragraph
Petitioner alleges, under 35 U.S.C. § 112, ¶ 1⁵, that the following claim terms are not enabled by the Specification of the '807 patent:

- “database” (claims 1, 14, 25, 34, 41);
- “receiving information from the customer” (claim 1);
- “calculating a credit score” (claims 1 and 14);
- “presenting [a/the] financing package[s]” (claims 1, 34);
- “collecting monthly payments” (claim 4);
- “collateral pool” (claims 7, 8);
- “guarantee[d] financing” (claim 14);
- “immediate offer for sale” (claims 1, 14); and
- “immediate purchase” (claims 25, 34, 41).⁶

Pet. 45–47.

Petitioner’s arguments for each of these terms are essentially the same. Petitioner argues that Patent Owner, in CBM2014-00008, took the position that its claims included specifically configured computer components that performed complex calculations. Pet. 43–45. As detailed above, Patent Owner continues to advance that argument here, in defending against Petitioner’s statutory subject matter allegations, while Petitioner contends the opposite. Despite contending that the claims recite no more

⁵ Recodified as 35 U.S.C. § 112(a).

⁶ Petitioner additionally identifies “receive credit score,” “providing financing package,” and “collecting advance amount” as claim terms lacking enablement. Pet. 46. As Patent Owner points out (Prelim. Resp. 48), these terms do not appear in any claims. Rather, they appear to be typographical errors. We, however, are unable to discern precisely which terms Petitioner intended to identify.

than abstract ideas applied on generic computers, Petitioner argues that several claim terms lack enablement because the Specification does not describe, in detail, the structure, design, hardware, and software necessary to build a system performing the claimed functionality that Patent Owner argues is complex. Pet. 45–47.

Patent Owner responds that Petitioner has not presented any evidence, including any analysis of the factors described in *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988), to show that a skilled artisan would have had to undergo undue experimentation to practice the claims. Prelim. Resp. 49–51. We agree with Patent Owner. Petitioner provides no analysis, other than to point to Patent Owner’s contentions, to show undue experimentation. Thus, Petitioner’s arguments are unpersuasive. We note that Petitioner attempts to incorporate most of its arguments through reference to the claim charts in the Kursh Declaration (Ex. 1006, Table A ¶¶ 28–30, 33, 34, 38, 39, 44, 45, 47, 49, 51, 65, 75, 82, 94, 99), contrary to 37 C.F.R. § 42.6(a)(3). Once again, Dr. Kursh’s testimony is of little value, as it is conclusory and does not disclose the underlying facts or data on which it is based. *See* 37 C.F.R. § 42.65(a).

Petitioner also argues that the claims are not enabled for all products that might be sold using the claimed technique (i.e., the sale of products other than vehicles). Pet. 47–48. According to Petitioner, Patent Owner has admitted that the sales of some products, including mortgages and student loans, are not enabled by the ’807 patent. *Id.* at 48 (citing CBM2014-00008, Paper 39, at 10). We do not understand Patent Owner to have made such an admission. Rather, in CBM2014-00008, Patent Owner argued that mortgages and student loans do not require calculating a front-end profit or

an advance amount. This is not an admission that a skilled artisan would not have been able to calculate an advance amount or a front-end profit without undue experimentation in the context of mortgages or student loans.

Accordingly, we are not persuaded by Petitioner's argument.

In sum, on this record, Petitioner has failed to show persuasively that any claim of the '807 patent is not enabled. Accordingly, on this record, Petitioner has not demonstrated that it is more likely than not that claims 1–42 are unpatentable for lack of enablement.

III. CONCLUSION

For the foregoing reasons, we are persuaded that the information presented in the Petition, if not rebutted, would demonstrate that it is more likely than not that claims 10–12 and 14–33 of the '807 patent are unpatentable as directed to non-statutory subject matter.

The Board has not made a final determination of the patentability of any challenged claim or the construction of any claim term.

IV. ORDER

Accordingly, it is:

ORDERED that pursuant to 35 U.S.C. § 324(a), a covered business method patent review is hereby instituted for claims 10–12 and 14–33 of the '807 patent as drawn to non-statutory subject matter under 35 U.S.C. § 101;

FURTHER ORDERED that all other grounds raised in the petition are *denied* for the reasons discussed;

FURTHER ORDERED that pursuant to 35 U.S.C. § 324(d) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial on the ground of unpatentability authorized above; the trial commences on the entry date of this decision; and

FURTHER ORDERED that the August 15, 2014, versions of Exhibits 1001–05 and 1007–11 and the August 22, 2014, version of Exhibit 1006 are expunged from the record of this proceeding.

CBM2014-00176
Patent 6,950,807 B2

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