

Seyfarth PTAB Blog



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

The PTAB Giveth, and the PTAB Taketh Away

By Patrick T. Muffo

The PTAB cancelled claims of a financing patent as lacking patentable subject matter in *Westlake Services LLC v. Credit Acceptance Corp.*, CBM2014-00176 (PTAB January 25, 2016, Order) (McKone, APJ). *Westlake* is interesting because the challenged claims were previously upheld as patentable during a prior PTAB proceeding, but also prior to the Supreme Court's *Alice* decision that changed the analysis for the patent eligibility of software patents. In this petition, *Westlake Services* made the most of their second bite at the apple and persuaded the PTAB to cancel the remaining claims of *Credit Acceptance's* patent.

The patent at issue relates to a system for providing a financing package to a potential buyer of a vehicle. The system determines a set price the customer would pay for the vehicle, a down payment, and an agreement by the customer to pay the rest of the sales price with interest in a series of monthly payments.

Westlake Services challenged the patent claims for want of patentable subject matter based on the guidance from *Alice*. For the first *Alice* prong, the PTAB agreed that the claimed invention was directed to the abstract idea of processing a financing application, which is akin to organizing human activity.

The underlying concept of claim 1, when viewed as a whole, simply is to receive information from a customer's credit application, process that information, and present the processed information as potential financing packages to the dealer. Rephrased, this is the abstract idea of "processing an application for financing a purchase."

The PTAB continued and found no inventive concept in any of the challenged claims. *Credit Acceptance* hurled a litany of arguments at the PTAB for why the claims survive §101 scrutiny, but each failed. For example, *Credit Acceptance* argued the "server" for performing calculations, the "user terminal" for entering the information to be calculated, and the "network" for transferring the information back and forth, rendered the claim patent eligible. The PTAB disagreed and found these features to be the type of generic computer elements referred to specifically in *Alice* as being insufficient to transform an abstract idea into a patent-eligible invention.

Credit Acceptance also argued the claimed computer was necessary for the invention to increase the speed and efficiency of the credit application process. The PTAB again disagreed, holding "speeding up the process of generating financing packages using a computer does not provide an inventive concept."

After refuting several other arguments, and citing precedent both pre- and post-*Alice*, the PTAB held the challenged claims invalid as lacking patentable subject matter.

Takeaway

There is rarely any doubt that *Alice* changed §101 challenges, but this case is a great example of just how much it altered the landscape. The PTAB declined to institute a trial for some of the asserted claims in a prior CBM challenge. In a second CBM challenge, the claims previously determined to be patent-eligible were cancelled as lacking patentable subject matter due to *Alice* and the cases that followed. *Westlake* is a stark reminder that financial and software patents now live in a different era with a different analysis for determining whether a claimed invention passes muster under §101.

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