

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTLAKE SERVICES, LLC d/b/a WESTLAKE
FINANCIAL SERVICES,
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*.

ARBES, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

A conference call in the above proceeding was held on June 25, 2014, among respective counsel for Petitioner and Patent Owner, and Judges Arbes, McKone, and Anderson. The purpose of the call was to discuss Petitioner's request for authorization to file a second request for rehearing of our decision instituting a covered business method patent review.

On March 31, 2014, we instituted a covered business method patent review of claims 1–9, 13, and 34–42 of U.S. Patent No. 6,950,807 B2 (“the ’807 patent”) on one ground of unpatentability (the claims being drawn to non-statutory subject matter under 35 U.S.C. § 101) and denied review as to claims 10–12 and 14–33. Paper 30 at 33. Petitioner filed a request for rehearing within 14 days of that decision, pursuant to 37 C.F.R. § 42.71(d)(1), arguing that we misapprehended certain issues regarding claims 14 and 25. Paper 32. Petitioner's request for rehearing was denied. Paper 36.

Petitioner argued during the call that it should be permitted a second request for rehearing in light of the United States Supreme Court's recent decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, No. 13-298, ___ U.S. ___, 2014 WL 2765283 (U.S. June 19, 2014). Petitioner stated that its new rehearing request would be directed solely to the claims on which a covered business method patent review was not instituted, and would show that we erred in not instituting review of those claims under 35 U.S.C. § 101 based on the *Alice* decision. Patent Owner opposed Petitioner's request, arguing that Petitioner had multiple opportunities to argue the alleged unpatentability of the remaining claims in its Petition and first request for rehearing. Patent Owner further argued that the *Alice* decision has no impact on the analysis of whether those claims recite statutory subject matter.

As explained during the call, Petitioner is not authorized to file a second request for rehearing. A request for rehearing of a decision to institute a covered business method patent review is due within 14 days of the decision. 37 C.F.R. § 42.71(d)(1). Petitioner availed itself of that opportunity, and its request was denied. Any additional request would be outside the time period permitted by rule. Although extensions of time are permitted based on good cause under 37 C.F.R. § 42.5(c), Petitioner has not shown good cause for a second rehearing request at this stage of the proceeding. The trial is well underway, with at least one deposition having been completed and Patent Owner's response filed on June 30, 2014. *See* Papers 33, 38, 39. Further, Petitioner has not explained sufficiently how we could have overlooked or misapprehended anything based on the *Alice* decision, when that decision was issued after our decision on institution. Thus, we are not persuaded that a second rehearing request is warranted under the circumstances.

Petitioner is free to file another petition challenging the claims of the '807 patent (assuming Petitioner is not otherwise statutorily barred), should it choose to do so. We reminded Petitioner, however, of 35 U.S.C. § 325(d), which provides that in determining whether to institute a covered business method patent review, "the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office."

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner is not authorized to file a second request for rehearing of the decision instituting a covered business method patent review.

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PETITIONER:

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