

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SMARTFLASH LLC,
Patent Owner.

Case CBM2014-00104
Patent 7,334,720 B2

Before JENNIFER S. BISK, RAMA G. ELLURU, NEIL T. POWELL,
JEREMY M. PLENZLER, and MATTHEW R. CLEMENTS,
Administrative Patent Judges.

ELLURU, *Administrative Patent Judge.*

DECISION

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

INTRODUCTION

A. Background

Petitioner, Apple Inc. (“Apple”), filed a Petition (Paper 6, “Pet.”) to institute a covered business method patent review of claims 1, 3, 11, and 13–15 (“the challenged claims”) of US Patent No. 7,334,720 B2 (Ex. 1001, “the ’720 patent”) pursuant to § 18 of the Leahy-Smith America Invents Act (“AIA”). Patent Owner, Smartflash LLC (“Smartflash”), 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.” Pub. L. No. 112-29, 125 Stat. 284, 329 (2011).

B. Asserted Grounds

Apple contends that the challenged claims are unpatentable under 35 U.S.C. §§ 102 and/or 103 based on the following grounds (Pet. 22, 43–80).

References	Basis	Claims Challenged
Stefik ’235 ¹ and Stefik ’980 ²	§ 102 ³	1, 3, 11, 13, and 14
Stefik ’235 and Stefik ’980	§ 103	1, 3, 11, 13, and 14

¹ US Patent No. 5,530,235 (Ex. 1013) (“Stefik ’235”).

² US Patent No. 5,629,980 (Ex. 1014) (“Stefik ’980”).

³ Petitioner refers to Stefik ’235 and Stefik ’980 collectively as “Stefik” and argues that they should be considered as a single reference for anticipation purposes because, according to Petitioner, Stefik ’235 incorporates Stefik ’980 by reference. Pet. 28–29, n.13. Patent Owner disagrees. Prelim. Resp. 13–15. We do not reach this issue because even when considered as one reference, we determine that Stefik ’235 and Stefik ’980 do not teach all the recited claim limitations in the same form and order as listed in the claims.

References	Basis	Claims Challenged
Stefik '235, Stefik '980, and Poggio ⁴	§ 103	3, 11, and 13–15
Stefik '235, Stefik '980, Poggio, and Sato ⁵	§ 103	3, 11, and 13–15
Stefik '235, Stefik '980, and Sato	§ 103	1, 3, 11, and 13–15
Stefik '235, Stefik '980, and Maari ⁶	§ 103	1
Stefik '235, Stefik '980, Maari, and Sato	§ 103	1

Petitioner also provides a declaration from Anthony J. Wechselberger.⁷ Ex. 1021.

After considering the Petition and Preliminary Response, we determine that the '720 patent is a covered business method patent. We further determine, however, that Apple has not demonstrated that it is more likely than not that at least one of the challenged claims is unpatentable.

⁴ European Patent Application, Publication No. EP 0 809 221 A2 (translation), published November 26, 1997 (Ex. 1016, “Poggio”).

⁵ JP Patent Application Publication No. H11-164058 (including translation), published June 18, 1999 (Ex. 1018, “Sato”).

⁶ JP Patent Application Publication No. H10-269289 (including translation), published October 9, 1998 (Ex. 1019, “Maari”).

⁷ On this record, we are not persuaded by Patent Owner’s argument that we should disregard the Wechselberger Declaration. *See* Prelim. Resp. 16–18. Patent Owner identifies purported omissions from the Declaration, but offers no evidence that Mr. Wechselberger used incorrect criteria, failed to consider evidence, or is not an expert in the appropriate field. *Id.*

Therefore, we deny institution of a covered business method patent review of claims 1, 3, 11, and 13–15 of the '720 patent.

C. Related Matters

The parties indicate that Smartflash has sued Apple for infringement of the '720 patent and identify the following district court case: *Smartflash LLC v. Apple Inc.*, Case No. 6:13-cv-447 (E.D. Tex.). Pet. 21; Papers 5, Related Matter, 8, Updated Mandatory Notice Information. The parties also indicate that the '720 patent is the subject of a second case, to which Apple is not a party: *Smartflash LLC v. Samsung*, Case No. 6:13-cv-448 (E.D. Tex.). *Id.*

Apple filed a concurrent petition for covered business method patent review of the '720 patent: CBM2014-00105.⁸ In addition, Apple filed ten other Petitions for covered business method patent review challenging claims of patents owned by Smartflash and disclosing similar subject matter: CBM2014-00102; CBM2014-00103; CBM2014-00106; CBM2014-00107; CBM2014-00108, CBM2014-00109; CBM2014-00110; CBM2014-00111; CBM2014-00112; and CBM2014-00113.

D. The '720 Patent

The '720 patent relates to “a portable data carrier for storing and paying for data and to computer systems for providing access to data to be

⁸ Patent Owner argues that the multiple petitions filed against the '720 patent violate the page limit requirement of 37 C.F.R. § 42.24(a)(iii), but does not cite any authority to support its position. Prelim. Resp. 11–12. The page limit for petitions requesting covered business method patent review is 80 pages (37 C.F.R. § 42.24(a)(iii)), and each of the '104 and '105 Petitions meets that requirement.

stored” and the “corresponding methods and computer programs.”

Ex. 1001, 1:6–10. Owners of proprietary data, especially audio recordings, have an urgent need to address the prevalence of “data pirates,” who make proprietary data available over the Internet without authorization. *Id.* at 1:15–41. The ’720 patent describes providing portable data storage together with a means for conditioning access to that data upon validated payment. *Id.* at 1:46–62. According to the ’720 patent, this combination of the payment validation means with the data storage means allows data owners to make their data available over the Internet without fear of data pirates. *Id.* at 1:62–2:3.

As described, the portable data storage device is connected to a terminal for internet access. *Id.* at 1:46–55. The terminal reads payment information, validates that information, and downloads data into the portable storage device from a data supplier. *Id.* The data on the portable storage device can be retrieved and output from a mobile device. *Id.* at 1:56–59. The ’720 patent makes clear that the actual implementation of these components is not critical and may be implemented in many ways. *See, e.g., id.* at 26:13–16 (“The skilled person will understand that many variants to the system are possible and the invention is not limited to the described embodiments.”).

E. Challenged Claims

Petitioner challenges claims 1, 3, 11, and 13–15 of the ’720 patent. Claims 1, 3, and 14 are independent. Claims 11 and 13 depend from claim 3 and claim 15 depends from claim 14. Claims 1 and 3 are illustrative of the claims at issue and recite the following.

1. A method of controlling access to content data on a data carrier, the data carrier comprising non-volatile data memory storing content memory and non-volatile parameter memory storing use status data and use rules, the method comprising:

receiving a data access request from a user for at least one content item of the content data stored in the non-volatile data memory;

reading the use status data and use rules from the parameter memory that pertain to use of the at least one requested content item;

evaluating the use status data using the use rules to determine whether access to the at least one requested content item stored in the content memory is permitted; and

displaying to the user whether access is permitted for each of the at least one requested content item stored in the non-volatile data memory.

Ex. 1001, 26:18–36.

3. A data access terminal for retrieving data from a data supplier and providing the retrieved data to a data carrier, the terminal comprising:

a first interface for communicating with the data supplier;

a data carrier interface for interfacing with the data carrier;

a program store storing code; and

a processor coupled to the first interface, the data carrier interface, and the program store for implementing the stored code, the code comprising:

code to read payment data from the data carrier and to forward the payment data to a payment validation system;

code to receive payment validation data from the payment validation system;

code responsive to the payment validation data to retrieve data from the data supplier and to write the retrieved data into the data carrier; and

code responsive to the payment validation data to receive at least one access rule from the data supplier and to write the at least one access rule into the data carrier, the at least one access rule specifying at least one condition for accessing the retrieved data written into the data carrier, the at least one condition being dependent upon the amount of payment associated with the payment data forwarded to the payment validation system.

Ex. 1001, 26:41–67.

ANALYSIS

A. *Claim Construction*

In a covered business method patent review, claim terms are given their broadest reasonable interpretation in light of the specification in which they appear. *See* 37 C.F.R. § 42.300(b). Applying that standard, we interpret the claim terms of the '720 patent according to their ordinary and customary meaning, in the context of the patent's written description. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

For purposes of this decision, we must construe the following claim term of the challenged claims as they are critical terms in the independent claims. Neither party proposed a construction for these terms.

“use rule” and “access rule”

Independent claim 1 requires parameter memory storing “use rules” and evaluating use status data using the “use rules” to determine whether access to the requested content item is permitted. Ex. 1001, 26:21–22, 30–33.

While independent claims 3 and 14 do not recite “use rules,” they require receiving at least one “access rule” from the data supplier. The '720 patent Specification imparts the same meaning to “access rule” as “use rule.” For example, when discussing a particular embodiment, the Specification

states “one or more content *access rules* is received from the system owner data supply computer and written to the smart Flash card so that each content data item has an associated *use rule* to specify under what conditions a user of the smart Flash card is allowed access to the content data item.” Ex. 1001, 22:4–9 (emphasis added). Thus, we give the same construction to “use rules” and “access rule.”

Claim 3 recites that the “at least one access rule specif[ies] at least one *condition for accessing* the retrieved data.” (Emphasis added). Similarly, in describing a particular embodiment, the ’720 patent Specification explains that each content data item has an associated “use rule” “to specify under what conditions a user of the smart Flash card is allowed access to the content data item.” Ex. 1001, 22:4–9; *see id.* at 4:62–63 (a data carrier may store content “use rules *pertaining to allowed use* of stored data items.”) (emphasis added). The Specification explains that the data access device uses the use status data and “use rules” to determine *what access is permitted* to data stored on the data carrier. *Id.* at 9:21–23 (emphasis added).

Accordingly, pursuant to the claim language and the ’720 patent Specification, we construe “use rules” and “access rule” as a rule specifying a condition under which access to content is permitted.

For purposes of this decision, we determine that no other terms in the challenged claims require an express construction at this time.

B. Covered Business Method Patent

Section 18 of the AIA provides for the creation of a transitional program for reviewing covered business method patents. A “[c]overed 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.” AIA § 18(d)(1); *see* 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; Final Rule, 77 Fed. Reg. 48,734, 48,736 (Aug. 14, 2012) (“CBM Rules”) (Comment 8).

1. Financial Product or Service

Apple asserts that because claim 14 “explicitly describes electronically transferring money and allowing such a transfer, as well as restricting access based on payment, it clearly relates to a financial activity and providing a financial service.” Pet. 15. Based on this record, we agree with Apple that the subject matter recited by claim 14 is directed to activities that are financial in nature, namely data access conditioned on payment validation. Claim 14 recites:

writing the at least one access rule into the data carrier, the at least one access rule specifying at least one condition for accessing the retrieved data written into the data carrier, the at least one condition being dependent upon the amount of payment associated with the payment data forwarded to the payment validation system.

We are persuaded that payment validation is a financial activity, and conditioning data access based on the amount of payment associated with the payment data forwarded to the payment validations system amounts to a financial service. This is consistent with the Specification of the ’720 patent, which confirms claim 14’s connection to financial activities by stating that the invention “relates to a portable data carrier for storing and paying for data.” Ex. 1001, 1:6–7. The Specification also states repeatedly

that the disclosed invention involves managing access to data based on payment validation. *See, e.g.*, Ex. 1001, 1:46–49, 2:4–19, 3:19–27, 3:50–54, 7:62–8:9, 8:21–35.

Smartflash disagrees that claim 14 satisfies the financial-in-nature requirement of AIA § 18(d)(1), arguing that that section should be interpreted narrowly to cover only technology used specifically in the financial or banking industry. Prelim. Resp. 5–8. Smartflash cites to various portions of the legislative history as support for its proposed interpretation. *Id.*

We do not agree that the phrase “financial product or service” in § 18(d)(1) is as limited as Smartflash proposes. The AIA does not include as a prerequisite for covered business method patent review, a “nexus” to a “financial business,” but rather 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.” AIA § 18(d)(1). Further, contrary to Patent Owner’s view of the legislative history, the legislative history indicates that the phrase “financial product or service” is *not* limited to the products or services of the “financial services industry” and is to be interpreted broadly. CBM Rules, 77 Fed. Reg. at 48,735–36. For example, the “legislative history explains that the definition of covered business method patent was drafted to encompass patents ‘claiming activities that are financial in nature, incidental to a financial activity or complementary to a financial activity.’” *Id.* (citing 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer)).

In addition, Smartflash asserts that claim 14 is not directed to an apparatus or method that is financial in nature because claim 14 “omits the

specifics of how payment is made.” Prelim. Resp. 8. We are not persuaded by this argument because § 18(d)(1) of the AIA does not include such a requirement, nor does Patent Owner point to any other authority that makes such a requirement. *Id.* We determine that because payment is required by claim 14, as Patent Owner acknowledges (*id.*), the financial-in-nature requirement of § 18(d)(1) is satisfied.

For the reasons stated above, and based on the particular facts of this proceeding, we conclude that the ’720 patent includes at least one claim that meets the financial-in-nature requirement of § 18(d)(1) of the AIA.

2. *Exclusion for Technological Inventions*

Apple asserts that claim 14 does not fall within § 18(d)(1)’s exclusion for “technological invention.” Pet. 16–20. In particular, Apple argues that claim 14 “does not claim ‘subject matter as a whole [that] recites a *technological feature* that is novel and unobvious over the prior art[] and solves a *technical problem* using a *technical solution*.’” *Id.* at 16 (quoting 37 C.F.R. § 42.301(b)). Smartflash disagrees and argues that claim 14, as a whole, recites at least one technological feature. Prelim. Resp. 9.

We are persuaded that claim 14 as a whole does not recite a technological feature that is novel and unobvious over the prior art. The claimed “portable data carrier” is a generic hardware device known in the prior art. The Specification discloses, for instance, that a portable data carrier may be a “standard smart card.” *See* Ex. 1001, 11:36–39; Pet. 17. Claim 14 also recites a “payment validation system.” The Specification, however, discloses that the required payment validation system may be one that is already in use or otherwise commercially available. For example, “[t]he payment validation system may be part of the data supplier’s

computer systems or it may be a separate e-payment system.” *Id.* at 8:64–66; *see id.* at 13:46–58.

In addition, the ’720 patent makes clear that the asserted novelty of the invention is not in any specific improvement of software or hardware, but in the method of controlling access to data. For example, the ’720 patent states that “there is an urgent need to find a way to address the problem of data piracy,” (*id.* at 1:40–41) while acknowledging that the “physical embodiment of the system is not critical and a skilled person will understand that the terminals, data processing systems and the like can all take a variety of forms” (*id.* at 12:38–41). Thus, we determine that claim 14 is merely the recitation of a combination of known technologies, which indicates that it is not a patent for a technological invention. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48, 756 48,764.

Smartflash also argues that claim 14 falls within § 18(d)(1)’s exclusion for “technological invention” because it is directed towards solving the technological problem of “data piracy” with the technological solution of “(1) a data carrier from which payment data is read and to which retrieved data from a data supplier is written and (2) at least once access rule, also stored on the data carrier, specifying at least one condition for accessing the retrieved data written into the data carrier.” Prelim. Resp. 9–10. We are not persuaded by this argument because, as Petitioner argues, the problem being solved by claim 14 is a business problem—data piracy. Pet. 19. For example, the Specification states that “[b]inding the data access and payment together allows the legitimate owners of the data to make the data available themselves over the internet without fear of loss of revenue, thus undermining the position of data pirates.” Ex. 1001, 1:66–2:3.

Therefore, based on the particular facts of this proceeding, we conclude that claim 14 does not recite a technological invention and is eligible for a covered business method patent review.

3. Conclusion

In view of the foregoing, we conclude that the '720 patent is a covered business method patent under AIA § 18(d)(1) and is eligible for review using the transitional covered business method patent program.

C. Claim 1

Petitioner asserts that independent claim 1 is anticipated by “Stefik” or is rendered obvious by Stefik alone or in combination with various other references, including Maari and Sato. Pet. 22. Petitioner provides one claim chart for claim 1. Pet. 44–48.

Claim 1 requires “use rules,” which, as explained above, we construe as a rule specifying a condition under which access to content is permitted. Specifically, claim 1 recites “non-volatile parameter memory storing [] use rules,” “reading the [] use rules from the parameter memory that pertain to use of the at least one requested content item,” and “evaluating the use status data using the use rules to determine whether access to the at least one requested content item stored in the content memory is permitted.”

Petitioner’s claim chart states that the claimed “use rules” corresponds to Stefik’s “(e.g., conflict rules; descriptor tree files containing usage rights).” Pet. 45, 47. The claim chart also cites the following disclosure: “The description file contains the usage rights for the document and a pointer to the document in the content part.” *Id.* at 46 (citing Ex. 1013, 7:35–42). Petitioner also asserts that Stefik discloses “using the use rules (e.g., checking the usage rights to determine if all conditions associated with a

right are satisfied; applying conflict rules).” *Id.* at 47; *see* Ex. 1013, 7:25–29. Petitioner provides insufficient explanation as to how Stefik’s “usage rights” operate. Petitioner also does not show sufficiently why “usage rights” satisfies “use rules.” Even though “usage rights” may have “conditions,” they are not necessarily rules, and Petitioner has not persuaded us otherwise. For example, rights portion 504 is described as “a data structure, such as a look-up table, wherein the various information associated with a right is maintained.” Pet. 47 (citing Ex. 1013, 8:8–10); *see also* Ex. 1014, 9:54–10:1. An exemplary data structure is illustrated in Figure 10 of Stefik ’980 and the information contained in such a data structure is indicated in Table 1. Ex. 1014, 10:28–32. Table 1 of Stefik ’980 discloses, for example, a “Loan-Period” property with a value in “Time-Units” that is an “[i]ndicator of the maximum number of time-units that a document can be loaned out.” Ex. 1014, 10:55–57. A data structure and the information within it, however, cannot be a rule. At best, a rule might use the information in the data structure—e.g., if the number of time-units that a document has been leased out is less than Loan-Period, then allow access—but the usage right itself (e.g., Loan-Period) is not “a rule specifying a condition under which access to content is permitted,” as we have construed “use rule.”

Claim 1 also requires “use status data.” Specifically, claim 1 recites “non-volatile parameter memory storing use status data,” “reading the use status data [] from the parameter memory that pertain to use of the at least one requested content item,” and “evaluating the use status data using the use rules to determine whether access to the at least one requested content item stored in the content memory is permitted.” Petitioner’s claim chart

states that the claimed “use status data” corresponds to Stefik’s “(e.g., conflict rules; descriptor tree files containing usage rights).” Pet. 45. Petitioner’s chart also asserts “[t]he use status data and use rules (e.g., usage rights; conflict rules) are stored in parameter memory.” *Id.* at 46. In addition, Petitioner contends that “Stefik discloses evaluating use status data (e.g., examining usage rights status, for example number of copy rights remaining, stored in a descriptor file for the requested content).” *Id.* at 47. Petitioner does not explain, however, why “usage rights” satisfies the recited “use status data.” For example, Petitioner does not explain sufficiently why the “number of copy[ing] rights remaining” is within the scope of the examples of “use status data” provided by the Specification of the ’720 patent (e.g., “indicating a use status of data” (Ex. 1001, 9:14–16), “indicating past use of the stored data” (*id.* at 9:36–37), “present use status” (*id.* at 25:1), “actual use of the data item made so far” (*id.* at 25:5–8), “how much use has been made of the accessed content data time” such as “start and end time markers or simply a play duration time” (*id.* at 25:26–32)).

For the reasons set forth above, Petitioner has failed to establish that it is more likely than not that it would prevail in demonstrating that claim 1 is unpatentable as anticipated by Stefik ’235 and/or Stefik ’980 or obvious over Stefik ’235 and/or Stefik ’980 alone or in combination with any other asserted reference.

D. Claims 3, 11, and 13

Petitioner asserts that independent claim 3 is anticipated by “Stefik” or is rendered obvious by Stefik alone or in combination with various other references, including Poggio and Sato. Pet. 22. Petitioner provides one claim chart for claim 3. Pet. 49–69.

Claim 3 requires an “access rule,” which we have interpreted as having the same meaning as “use rule.” Specifically, claim 3 recites “code . . . to receive at least one access rule from the data supplier,” “code . . . to write the at least one access rule into the data carrier,” and “the at least one access rule specifying at least one condition for accessing the retrieved data written into the data carrier.” Petitioner’s claim chart states that the claimed “access rule” corresponds to “(e.g., usage rights)” and includes cites to Stefik ’235 and Stefik ’980. Pet. 67–68. For the same reasons discussed above as to why Stefik ’235 and/or Stefik ’980 do not disclose or teach “use rules,” as recited in claim 1, we determine that Petitioner has not shown sufficiently that Stefik ’235 and/or Stefik ’980 alone or in combination with other references teaches an “access rule,” as recited in claim 3.

In addition, claim 3 recites “code responsive to the payment validation data to receive at least one access rule from the data supplier and to write the at least one access rule into the data carrier.” Petitioner’s claim chart asserts that “Stefik discloses attaching at least one access rule (e.g., usage rights) to retrieved data (e.g., digital works), and then transmitting the attached access rule (e.g., usage rights) with the content when the content is provided to a data carrier (e.g., requesting repository).” Pet. 67. Petitioner, however, does not explain why transmitting usage rights *with the content* when the content is provided to a data carrier teaches code that is *responsive to payment validation data* to receive an access rule. Petitioner’s claim chart further asserts that “Stefik discloses an example in which the receipt of payment validation data (e.g., acceptance of assigned fees) is a prerequisite to providing a user with options to select a document and a desired function to perform for the document, and the requested content and attached access

rule (*e.g.*, usage rights) is provided to the requester responsive to (*e.g.*, only after) payment validation.” *Id.* Petitioner, however, does not explain why *a requesting repository providing a user with the usage rights* in response to payment validation teaches code that is responsive to the payment validation system to receive an access rule *from the data supplier* and to *write the rule to the data carrier*.

Furthermore, claim 3 requires “at least one access rule specifying at least one condition for accessing the retrieved data . . . the at least one condition being dependent upon the *amount of payment associated with the payment data forwarded* to the payment validation system.” (Emphasis added). For this claim limitation, Petitioner’s claim chart asserts that “[t]he type of content sent to the data carrier (*e.g.*, requesting repository) and its attached access rules and conditions (*e.g.*, usage rights) are dependent on the type of request and the *amount of payment (e.g., the fees paid by the requester)* transmitted to the payment validation system (*e.g.*, billing server) for certain usage rights (*e.g.*, “print” or “view” rights and “purchase” or “loan” rights).” Pet. 67–68 (emphasis added). The claim chart does not indicate which specific disclosure in either Stefik ’235 or Stefik ’980 supports Petitioner’s assertion.⁹ In any event, Petitioner does not explain sufficiently why “usage rights” dependent *on the fees paid by the requester* teaches an access rule that specifies a condition being dependent upon the *amount of payment associated with the payment data forwarded* to the payment validation system. In other words, the fees paid by the requester may occur after the amount of payment associated with the payment data is

⁹ We note that the references to Stefik ’235 and Stefik ’980 are preceded with “*See, e.g.*” Pet. 68.

forwarded to the payment validation system. Petitioner has not persuaded us that, more likely than not, the amount a user is charged is the same amount of payment forwarded to the payment validation system.

Petitioner's claim chart also refers to disclosure from Poggio for this claim element. For example, Petitioner's claim chart provides the following.

Poggio discloses receiving at least one access rule (*e.g.*, license information) responsive to (*e.g.*, only after) payment validation data (*e.g.*, confirmation that the payment has been made) from the payment validation system.

Pet. 68. Petitioner, however, fails to explain persuasively why receiving an access rule in response to “payment validation data” or “confirmation that the payment has been made” teaches “at least one access rule specifying at least one condition for accessing the retrieved data . . . the at least one condition being dependent upon the *amount of payment associated with the payment data forwarded* to the payment validation system.” For example, Petitioner does not explain persuasively why the amount of the payment that was made is the same amount of payment associated with the payment data *forwarded* to the payment validation system. Our review of the Petition does not indicate that Petitioner refers to any other reference as teaching this claim limitation.

For the reasons set forth above, Petitioner has failed to establish that it is more likely than not that it would prevail in demonstrating that claim 3 is unpatentable as anticipated by Stefik '235 and/or Stefik '980 or obvious over Stefik '235 and/or Stefik '980 alone or in combination with any other asserted reference. For the same reasons, we determine that Petitioner has failed to establish that it is more likely than not that it would prevail in

demonstrating that claims 11 and 13, which depend from claim 3, are anticipated by or rendered obvious over Stefik '235 and/or Stefik '980 alone or in combination with any other asserted reference.

E. Claims 14 and 15

Petitioner asserts that independent claim 14 is anticipated by “Stefik” or is rendered obvious by Stefik alone or in combination with various other references, including Poggio and Sato. Pet. 22. Petitioner provides one claim chart for claim 14. Pet. 77–78.

Claim 14 requires an “access rule,” which we have interpreted as having the same meaning as “use rule.” Specifically, claim 14 recites “receiving at least one access rule from the data supplier,” “writing the at least one access rule into the data carrier,” and “the at least one access rule specifying at least one condition for accessing the retrieved data written into the data carrier, the at least one condition being dependent upon the amount of payment associated with the payment data forwarded to the payment validation system.” For this limitation, Petitioner’s claim chart refers to claim 3. Pet. 77–78. For the same reasons discussed above as to why Stefik '235 and/or Stefik '980 do not disclose or teach “use rules,” as recited in claim 1, we determine that Petitioner has not shown sufficiently that Stefik '235 and/or Stefik '980 alone or in combination with other references teaches an “access rule,” as recited in claim 14.

In addition, claim 14 recites “the at least one access rule specifying at least one condition for accessing the retrieved data written into the data carrier, the at least one condition being dependent upon *the amount of payment associated with the payment data forwarded* to the payment validation system.” (Emphasis added). For this limitation, Petitioner’s claim

chart refers to claim 3. Pet. 77–78. For the same reasons discussed above, with respect to claim 3, as to why neither Stefik ’235 and/or Stefik ’980 nor Poggio teaches “at least one access rule specifying at least one condition for accessing the retrieved data . . . the at least one condition being dependent upon the *amount of payment associated with the payment data forwarded to the payment validation system,*” we determine that Petitioner has not shown sufficiently that Stefik ’235 and/or Stefik ’980 alone or in combination with other references teaches the similar claim limitation recited in claim 14.

For the reasons set forth above, Petitioner has failed to establish that it is more likely than not that it would prevail in demonstrating that claim 14 is anticipated or rendered obvious over Stefik ’235 and/or Stefik ’980 alone or in combination with any other asserted reference. For the same reasons, we determine that Petitioner has failed to establish that it is more likely than not that it would prevail in demonstrating that claim 15, which depends from claim 14, is rendered obvious over Stefik ’235 and/or Stefik ’980 alone or in combination with any other asserted reference.

CONCLUSION

For the foregoing reasons, we determine that the information presented in the Petition does not establish that it is more likely than not that Petitioner would prevail in establishing the unpatentability of any of the challenged claims, claims 1, 3, 11, and 13–15 of the ’720 patent.

ORDER

For the reasons given, it is:

ORDERED that a covered business method patent review of US Patent No. 7,334,720 B2 is *denied*.

CBM2014-00104
Patent 7,334,720 B2

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