Trials@uspto.gov
Tel: 571-272-7822

Paper 7
Entered: September 30, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SMARTFLASH LLC,
Patent Owner.

Case CBM2014-00110
Patent 8,336,772 B2

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

POWELL, *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 2, "Pet.") to institute a covered business method patent review of claims 1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32 ("the challenged claims") of U.S. Patent No. 8,336,772 B2 (Ex. 1001, "the '772 patent") pursuant to § 18 of the Leahy-Smith America Invents Act ("AIA"). Patent Owner, Smartflash LLC ("Smartflash"), filed a Preliminary Response (Paper 6, "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."

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. 18, 31–79).

References	Basis	Claims Challenged
Stefik '235[1] and Stefik '980[2]	§ 102[3]	8, 10, 19, 22, 30, and 32

[1] U.S. Patent No. 5,530,235 (Ex. 1013) ("Stefik '235").

[2] U.S. Patent No. 5,629,980 (Ex. 1014) ("Stefik '980").

[3] Apple 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 Apple, Stefik '235 incorporates Stefik '980 by reference. Pet. 23–24, n.11. Smartflash disagrees. Prelim. Resp. 13–15. We do not reach the issue because we determine that Apple does not demonstrate that the combined teachings of Stefik '235 and Stefik '980 teach all the recited claim limitations. In the discussion below, we use "Stefik" to refer to the combined teachings of Stefik '235 and Stefik '980.

References	Basis	Claims Challenged
Stefik '235 and Stefik '980	§ 103	1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32
Stefik '235, Stefik '980, and Poggio[4]	§ 103	1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32
Stefik '235, Stefik '980, and Sato[5]	§ 103	1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32
Stefik '235, Stefik '980, Poggio, and Sato	§ 103	1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32

Apple also provides a declaration from Anthony J. Wechselberger ("the Wechselberger Declaration").[6] Ex. 1021.

After considering the Petition and Preliminary Response, we determine that the '772 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. Therefore, we deny institution of a covered business method patent review of claims 1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32 of the '772 patent.

[4] European Patent Application, Publication No. EP0809221A2 (translation) (Ex. 1016) ("Poggio").

[5] JP Patent Application Publication No. H11-164058 (including translation) (Ex. 1018) ("Sato").

[6] On this record, we are not persuaded by Smartflash's argument that we should disregard the Wechselberger Declaration. *See* Prelim. Resp. 16–18. Smartflash 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*.

C. Related Matters

The parties indicate that Smartflash has sued Apple for infringement of the '772 patent, identifying the following district court case: *Smartflash LLC v. Apple Inc.*, Case No. 6:13-cv-447 (E.D. Tex.). Pet. 17; Papers 4, 5. The parties also indicate that the '772 patent is the subject of other district court cases, to which Apple is not a party: *Smartflash LLC v. Samsung*, Case No. 6:13-cv-448 (E.D. Tex.), and *Smartflash LLC v. Google*, Case No. 6:14-cv-435 (E.D. Tex.). *Id*.; *Apple, Inc. v. Smartflash LLC*, Case CBM2014-00111 (PTAB), Pet. 19, Papers 4, 5.

Apple filed a concurrent Petition for covered business method patent review of the '772 patent: CBM2014-00111.[7] In addition, Apple filed ten other Petitions for covered business method patent reviews challenging claims of patents owned by Smartflash and disclosing similar subject matter: CBM2014-00102; CBM2014-00103; CBM2014-00104; CBM2014-00105; CBM2014-00106; CBM2014-00107; CBM2014-00108, CBM2014-00109; CBM2014-00112; and CBM2014-00113.

D. The '772 Patent

The '772 patent relates to "a portable data carrier for storing and paying for data and to computer systems for providing access to data to be stored" and the "corresponding methods and computer programs." Ex. 1001, 1:24–28. Owners of proprietary data, especially audio recordings,

[7] Smartflash argues that the multiple petitions filed against the '772 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 the Petition in each of CBM2014-00110 and CBM2014-00111 meets that requirement.

have an urgent need to address the prevalence of "data pirates," who make proprietary data available over the internet without authorization. *Id*. at 1:32–58. The '772 patent describes providing portable data storage together with a means for conditioning access to that data upon validated payment. *Id.* at 1:62–2:3. According to the '772 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 2:10–18.

As described, the portable data storage device is connected to a terminal for internet access. *Id.* at 1:62–2:3. 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 2:4–7. The '772 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 25:59–62 ("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

Apple challenges claims 1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32 of the '772 patent. Claims 1, 8, 14, 19, 25, and 30 are independent. Claim 5 depends from claim 1; claim 10 depends from claim 8; claim 22 depends from claim 19; claim 26 depends from claim 25; and claim 32 depends from claim 30. Claims 1 and 25 are illustrative of the claims at issue and recite the following.

1. A handheld multimedia terminal, comprising:

a wireless interface configured to interface with a wireless network for accessing a remote computer system;

non-volatile memory configured to store multimedia content, wherein said multimedia content comprises one or more of music data, video data and computer game data;

a program store storing processor control code;

a processor coupled to said non-volatile memory, said program store, said wireless interface and

a user interface to allow a user to select and play said multimedia content;

a display for displaying one or both of said played multimedia content and data relating to said played multimedia content;

wherein the processor control code comprises:

code to request identifier data identifying one or more items of multimedia content stored in the non-volatile memory;

code to receive said identifier data;

code to present to a user on said display said identified one or more items of multimedia content available from the non-volatile memory;

code to receive a user selection to select at least one of said one or more of said stored items of multimedia content;

code responsive to said user selection of said at least one selected item of multimedia content to transmit payment data relating to payment for said at least one selected item of multimedia content via said wireless interface for validation by a payment validation system;

code to receive payment validation data via said wireless interface defining if said payment validation system has validated payment for said at least one selected item of multimedia content; and

code to control access to said at least one selected item of multimedia content on said terminal responsive to said payment validation data,

wherein said user interface is operable to enable a user to select said at least one item of multimedia content available from said non-volatile memory; and

wherein said user interface is operable to enable a user to access said at least one selected item of multimedia content responsive to said code to control access permitting access to said at least one selected item of multimedia content.

Ex. 1001, 25:65–26:43.

25. A handheld multimedia terminal for retrieving and accessing protected multimedia content, comprising:

a wireless interface configured to interface with a wireless network for communicating with a data supplier;

non-volatile memory configured to store multimedia content, wherein said multimedia content comprises one or more of music data, video data and computer game data;

a program store storing processor control code;

a processor coupled to said non-volatile memory, said program store, said wireless interface and

a user interface to allow a user to select and play said multimedia content;

a display for displaying one or both of said played multimedia content and data relating to said played multimedia content;

wherein the processor control code comprises:

code to request identifier data identifying one or more items of multimedia content available for retrieving via said wireless interface;

code to receive said identifier data via said wireless interface, said identifier data identifying said one or more items of multimedia content available for retrieving via said wireless interface;

code to request content information via said wireless interface, wherein said content information comprises one or more of description data and cost data pertaining to at least one

of said one or more items of multimedia content identified by said identifier data;

code to receive said content information via said wireless interface;

code to present said content information pertaining to said identified one or more items of multimedia content available for retrieving to a user on said display;

code to receive a first user selection selecting at least one of said one or more items of multimedia content available for retrieving;

code responsive to said first user selection of said selected at least one item of multimedia content to transmit payment data relating to payment for said selected at least one item of multimedia content via said wireless interface for validation by a payment validation system;

code to receive payment validation data via said wireless interface defining if said payment validation system has validated payment for said selected at least one item of multimedia content; and

code responsive to said payment validation data to retrieve said selected at least one item of multimedia content via said wireless interface from a data supplier and to write said retrieved at least one item of multimedia content into said non-volatile memory, code to receive a second user selection selecting one or more of said items of retrieved multimedia content to access;

code to read use status data and use rules from said non-volatile memory pertaining to said second selected one or more items of retrieved multimedia content; and

code to evaluate said use status data and use rules to determine whether access is permitted to said second selected one or more items of retrieved multimedia content,

wherein said user interface is operable to enable a user to make said first user selection of said selected at least one item of multimedia content available for retrieving,

> wherein said user interface is operable to enable a user to make said second user selection of said one or more items of retrieved multimedia content available for accessing, and
>
> wherein said user interface is operable to enable a user to access said second user selection of said one or more item of retrieved multimedia content responsive to said code to control access permitting access to said second selected one or more items of retrieved multimedia content.

Ex. 1001, 29:4–30:47.

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 '772 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). We determine that the claim terms do not require an express construction for purposes of this Decision.

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 claim 8 "clearly concerns a computer system . . . for performing data processing and other operations used in the practice, administration, or management of a financial activity and service," because it "describes transmitting payment data to a payment validation system, receiving payment validation, and controlling access to data based on payment." Pet. 13. Based on this record, we agree with Apple that the subject matter recited by claim 8 is directed to activities that are financial in nature, namely data access conditioned on payment validation. Claim 8 recites "code . . . to transmit payment data relating to payment for said at least one selected item of multimedia content . . . for validation by a payment validation system," "code to receive payment validation data . . . defining if said payment validation system has validated payment for said at least one selected item of multimedia content," and "code to control access to said at least one selected item of multimedia content on said terminal responsive to said payment validation data." We are persuaded that payment validation is a financial activity, and conditioning data access based on payment validation amounts to a financial service. This is consistent with the Specification of the '772 patent, which confirms claim 8's connection to financial activities by stating that the invention "relates to a portable data carrier for storing and paying for data." Ex. 1001, 1:23–25. The Specification also states repeatedly that the disclosed invention involves

managing access to data based on payment validation. *See*, *e.g.*, Ex. 1001, 1:62–2:3; 6:64–7:1; 20:59–63.

Smartflash disagrees that claim 8 satisfies the financial-in-nature requirement of AIA § 18(d)(1), arguing that section should be interpreted narrowly to cover only technology used specifically in the financial or banking industry. Prelim. Resp. 3–9. 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) of the AIA 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 Smartflash'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 8 is not directed to an apparatus or method that is financial in nature, because claim 8 "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 Smartflash point to any other authority that makes such a requirement. *See* Prelim. Resp. 8. We determine that because payment is required by claim 8, as Smartflash 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 '772 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 8 does not fall within § 18(d)(1)'s exclusion for "technological inventions." Pet. 13–17. In particular, Apple argues that claim 8 "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 13 (quoting 37 C.F.R. § 42.301(b)) (emphases in original). Smartflash disagrees and argues that claim 8, as a whole, recites at least one technological feature. Prelim. Resp. 9.

We are persuaded that claim 8 as a whole does not recite a technological feature that is novel and unobvious over the prior art. The claimed "data access terminal" is a generic hardware device known in the prior art. The Specification discloses, for instance, that a data access terminal "may be a conventional computer or, alternatively, it may be a mobile phone." *See* Ex. 1001, 4:8–9. Claim 8 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 9:1–3; *see id.* at 13:55–67.

In addition, the '772 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 '772 patent states that "there is an urgent need to find a way to address the problem of data piracy" (*id.* at 1:56–58), 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 12:37–40). Thus, we determine that claim 8 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. 48,756, 48,764 (Aug. 14, 2012).

Smartflash also argues that claim 8 falls within § 18(d)(1)'s exclusion for "technological inventions," because it is directed towards solving the technological problem of "controlling access to content data items available from a data carrier, e.g., as part of a convenient, legitimate acquisition of data from a data supplier" with the technological solution of "a data access terminal from which payment data is read and which controls access to a selected content data item responsive to the payment validation data." Prelim. Resp. 9–10. We are not persuaded by this argument because, as Apple argues, the problem being solved by claim 8 is a business problem—data piracy. Pet. 13–14. 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, 2:15–19. Therefore, based on the particular facts of this proceeding, we conclude that claim 8 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 '772 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 Challenges

Apple asserts that each of claims 1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32 is unpatentable over "Stefik" alone or in combination with one or both of Poggio and Sato. Specifically, Apple asserts that claims 8, 10, 19, and 22 are anticipated by Stefik. Pet. 18. Apple also asserts that claims 1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32 are obvious over 1) Stefik alone, 2) Stefik in combination with Poggio, 3) Stefik in combination with Sato, and 4) Stefik in combination with Poggio and Sato. *Id.* Apple provides one claim chart for each of claims 1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32.

1. Claims 1, 5, 8, 10, 14, 19, and 22—Anticipation and Obviousness

Independent claim 1 recites "code to request identifier data identifying one or more items of multimedia content stored in the non-volatile memory." In addressing this limitation, Apple asserts that Stefik discloses a hierarchical document storage system that allows an operator to navigate layers of hierarchy directories to find and select desired multimedia content "(e.g., digital work or document stored in memory on a repository, such as a DocuCard)." Pet. 37. Apple also states that "[t]he multimedia content (e.g., digital work or document) is identified to the user by identifier data (e.g.,

identification stored in a description tree file)," and that "Stefik's hierarchical document storage system permits a user to navigate through displayed content identifier data (e.g. identification information in a description tree file)." *Id.* Additionally, Apple argues that Stefik's system includes a processor that implements stored code "to provide identifier data and navigation to a user." *Id.* Apple further argues that a person of ordinary skill in the art "would understand that Stefik's disclosure of a hierarchical document storage system navigated by a user necessarily, and thus inherently, discloses requesting and receiving the identifier data (e.g., the description tree file information) that is then displayed to a user." *Id.* at 37, n.19; *see id.* at 37, n.20.

These arguments do not explain sufficiently how Stefik or any of the other cited references disclose, teach, suggest, or would have otherwise rendered obvious the claimed "code to request identifier data." Regarding Apple's assertions that Stefik discloses allowing a user to navigate a hierarchical document storage system with the system identifying multimedia content to the user by identifier data from a description tree file, these arguments do not allege sufficiently that Stefik discloses "code to request identifier data." Likewise, even if assumed accurate, Apple's assertion that a processor executes stored code to provide navigation and identifier data also does not address whether the stored code includes "code to *request* identifier data" (emphasis added). Regarding the inherency argument, Apple does not explain *why* a person of ordinary skill in the art allegedly would understand that Stefik necessarily discloses requesting identifier data. "Inherency . . . may not be established by probabilities or possibilities." *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981) (quoting

Hansgirg v. Kemmer, 102 F.2d 212, 214 (CCPA 1939)). For the foregoing reasons, Apple does not persuade us that Stefik discloses the "code to request identifier data," recited in claim 1, either inherently or otherwise. And Apple does not argue that the claim limitation is taught, suggested, or would have been otherwise rendered obvious by Stefik alone or in combination with the other cited references.

Each of independent claims 8, 14, and 19 includes a limitation similar to the above-discussed limitation of claim 1. Independent claim 8 recites "code to request identifier data identifying one or more content data items stored on the data carrier." Claim 14 recites "code to request identifier data identifying one or more items of multimedia content available for retrieving via said wireless interface." Claims 19 recites "code to request identifier data identifying one or more content data items available for retrieving." Apple addresses each of these limitations of claims 8, 14, and 19 with the same or substantially the same arguments as presented to address the above-discussed limitation of claim 1. *See* Pet. 51, 53, 68. For the reasons discussed above, these arguments do not persuade us that the limitations are disclosed by Stefik, either inherently or otherwise. And Apple does not argue that the claim limitations are taught, suggested, or would have been otherwise rendered obvious by Stefik alone or in combination with the other cited references.

For the foregoing reasons, Apple has failed to establish that it, more likely than not, would prevail in demonstrating that any of independent claims 1, 8, 14, and 19 is unpatentable (as anticipated or obvious) over Stefik alone or in combination with the other cited references. For the same reasons, we determine that Apple has failed to establish that it, more likely

than not, would prevail in demonstrating that any of claims 5, 10, and 22, each of which depends from one of claims 1, 8, and 19, is unpatentable (as anticipated or obvious).

2. Claims 25, 26, 30, and 32—Anticipation and Obviousness

Like claim 1, independent claims 25 and 30 include limitations that recite "code to request identifier data." Claim 25 recites "code to request identifier data identifying one or more items of multimedia content available for retrieving via said wireless interface." Claim 30 recites "code to request identifier data identifying one or more content data items available for retrieving." To address these limitations, Apple refers to its arguments regarding the similar limitations of claim 1. Pet. 73, 77. For the reasons discussed above, these arguments do not persuade us that the foregoing claim limitations, as recited in claims 25 and 30, are disclosed, taught, suggested, or would have been otherwise rendered obvious by the cited references.

Claims 25 and 30 also require "use status data." Claim 25 recites "code to read use status data and use rules from said non-volatile memory pertaining to said second selected one or more items of retrieved multimedia content" and "code to evaluate said use status data and use rules to determine whether access is permitted to said second selected one or more items of retrieved multimedia content." Claim 30 recites "code to read use status data and use rules from said data carrier pertaining to said selected one or more retrieved content data items" and "code to evaluate said use status data and use rules to determine whether access is permitted to said second selected one or more retrieved content data items."

Apple's claim chart states that the claimed "use status data" corresponds to Stefik's "(e.g., usage rights; conflict rules)." Pet. 74, 78. Apple's claim chart also asserts that "[t]he use status data and use rules (e.g., usage rights; conflict rules) are stored in non-volatile memory (e.g., description tree storage; parameter memory) and are read (e.g., accessed by a processor, such as a processor element 1201) when content access rights are received." *Id*. at 74. Apple's claim chart further states that "[t]he use status data and use rules (e.g., usage rights; conflict rules) are read from memory (e.g., accessed by a processor, such as a processor element 1201) when content access requests are received." *Id.* at 78. In addition, Apple 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 74–75, 78–79.

Apple does not explain, however, why "usage rights" satisfies the recited "use status data" of claims 25 and 30. For example, Apple does not explain sufficiently why the "number of copy rights remaining" is within the scope of the examples of "use status data" provided by the Specification of the '772 patent (e.g., "indicating a use status of data" (Ex. 1001, 9:19–20), "indicating past use of the stored data" (*id*. at 9:39–41), "present use status" (*id*. at 24:47), "actual use of the data item made so far" (*id*. at 24:51–54), "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 25:5–11)). Accordingly, Apple does not persuade us that Stefik discloses the claimed "use status data." And Apple does not argue that the claim limitations are taught, suggested, or would have been otherwise rendered obvious by Stefik alone or in combination with the other cited references.

For the reasons discussed above, Apple has failed to establish that it, more likely than not, would prevail in demonstrating that independent claims 25 and 30 are unpatentable (as anticipated or obvious) over Stefik alone or in combination with the other cited references. For the same reasons, we determine that Apple has failed to establish that it, more likely than not, would prevail in demonstrating that claims 26 and 32, which depend from claims 25 and 30, are unpatentable (as anticipated or obvious).

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 Apple would prevail in establishing the unpatentability of any of the challenged claims, claims 1, 5, 8, 10, 14, 19, 22, 25, 26, 30, and 32 of the '772 patent.

ORDER

For the reasons given, it is:

ORDERED that a covered business method review of U.S. Patent No. 8,336,772 is *denied*.

PETITIONER:

J. Steven Baughman
Ching-Lee Fukuda
ROPES & GRAY LLP
steven.baughman@ropesgray.com
ching-lee.fukuda@ropesgray.com

PATENT OWNER:

Michael R. Casey
J. Scott Davidson
DAVIDSON BERQUIST JACKSON & GOWDEY LLP
mcasey@dbjg.com
jsd@dbjg.com