

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FRONT ROW TECHNOLOGIES, LLC,
Petitioner,

v.

MLB ADVANCED MEDIA, L.P.,
Patent Owner.

Case PGR2015-00023
Patent 8,876,638 B2

Before RICHARD E. RICE, SCOTT A. DANIELS, and CARL M. DEFRANCO,
Administrative Patent Judges.

DEFRANCO, *Administrative Patent Judge.*

DECISION
Denying Institution of Post-Grant Review
37 C.F.R. § 42.208

I. INTRODUCTION

MLB Advanced Media L.P. (“MLB”) is the owner of U.S. Patent No. 8,876,638 B2 (“the ’638 patent”). Front Row Technologies, LLC (“Front Row”) filed a Petition (“Pet.”) for post-grant review of claims 1–17 of the ’638 patent, asserting that the claimed invention is unpatentable under 35 U.S.C. § 101 as

directed to a patent-ineligible abstract idea. MLB, in turn, filed a Preliminary Response (“Prelim. Resp.”), opposing the Petition. We have jurisdiction under 35 U.S.C. § 324(a). After considering the Petition and Preliminary Response, we conclude that Front Row fails to demonstrate that the ’638 patent is eligible for post-grant review. We, therefore, deny the Petition.

II. BACKGROUND

The ’638 patent relates to an automated system for real-time classification of pitches thrown by a pitcher in the course of a baseball game. Ex. 1001. A “pitch classification algorithm” is stored on a computer and determines the “class,” or “type,” of pitch thrown—four-seamer, two-seamer, curve, slider, cutter, sinker, etc.—based on the properties of the thrown ball and the pitcher’s repertoire of pitches. *Id.* The claimed invention aside, of particular significance to this post-grant review proceeding is that the application for the ’638 patent was filed on January 29, 2010, well before enactment of the Leahy-Smith America Invents Act, Pub. L. No. 112–29, 125 Stat. 284 (2011) (“AIA”). Also, the ’638 patent does not cross-reference any related applications filed subsequent to the AIA’s enactment, nor does the record indicate the existence of any such applications.

III. ANALYSIS

The post-grant review process is available only to patents subject to the first-inventor-to-file provisions of the AIA. AIA § 6(f)(2)(A). And, more specifically, the first-inventor-to-file provisions apply only to patents issuing from *applications that have an effective filing date on or after March 16, 2013*. AIA § 3(n)(1). As defined by statute, the “effective filing date” for a claimed invention is either:

(A) if subparagraph (B) does not apply, the actual filing date of the patent or the application for the patent containing a claim to the invention; or

(B) the filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority under section 119, 365(a), or 365(b) or to the benefit of an earlier filing date under section 120, 121, or 365(c).

35 U.S.C. § 100(i)(1) (emphasis added).

Here, subparagraph (B) does not apply because the '638 patent does not cross-reference any other application, let alone claim a right of priority or benefit to another filing date. Ex. 1001. The only filing date indicated on the face of the '638 patent is January 29, 2010. *Id.* Thus, subparagraph (A) applies, meaning that the effective filing date of the application for the '638 patent is its actual filing date of January 29, 2010, well before the March 13, 2013 starting point for eligibility of post-grant review.

Nonetheless, Front Row argues that the '638 patent “has an effective filing date of September 23, 2013” because the application for the '638 patent included claims that “were submitted in an amendment” of that date. Pet. 4. Front Row’s argument is inconsistent with the definition of “effective filing date” (discussed above), which provides expressly that “if subparagraph (B) does not apply,” the effective filing date is *the actual filing date of the application for the patent*. 35 U.S.C. § 100(i)(1)(A). Nowhere does the statute contemplate that the effective filing date might depend on the date of a *later-filed* amendment to a claim. Instead, the statute speaks only to “priority” or “earlier” dates, not dates subsequent to the actual filing date. Thus, as a matter of law, if a claim in the application is not entitled to an earlier filing date, then the effective filing date is the actual filing date of the application (per subparagraph (A)), regardless of whether a later-filed amendment to a claim finds sufficient support in the application. Accordingly, without any evidence to the contrary, we hold that the

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effective filing date for claims 1–17 of the '638 patent is January 29, 2010, which thereby takes the '638 patent out of the purview of post-grant review.

IV. CONCLUSION

Because claims 1–17 are not entitled to an effective filing date subsequent to January 29, 2010, the '638 patent is not subject to the first-inventor-to-file provisions of the AIA, and thus, not eligible for post-grant review. As such, we do not institute a post-grant review as to any of the challenged claims.

V. ORDER

In consideration of the foregoing, it is ORDERED that the Petition is denied and no trial is instituted.

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