

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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XEROX CORP., ACS TRANSPORT SOLUTIONS, INC.,  
XEROX TRANSPORT SOLUTIONS, INC.,  
CONDUENT INC., and  
NEW JERSEY TRANSIT CORP.,  
Petitioner,

v.

BYTEMARK, INC.,  
Patent Owner.

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Case CBM2018-00011  
Patent 8,494,967 B2

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Before JOSIAH C. COCKS, BRIAN J. McNAMARA, and  
BARRY L. GROSSMAN, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION

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

## I. INTRODUCTION

### A. Background

Pursuant to 35 U.S.C. § 321 and § 18 of the Leahy-Smith America Invents Act, Pub. L. No. 112–29, § 6, 125 Stat. 284, 299–305 (2011) (“AIA”), Xerox Corp., ACS Transport Solutions, Inc., Xerox Transport Solutions, Inc., Conduent Inc., and New Jersey Transit Corp. (collectively “Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting a Covered Business Method (“CBM”) patent review of claims 1–6, 17–23, and 34 of U.S. Patent No. 8,494,967 B2 (Ex. 1001, “the ’967 patent”). Bytemark, Inc. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 11 (“Prelim. Resp.”).

Section 18 of the AIA statute<sup>1</sup> states that “The Director may institute a [CBM proceeding under § 18] only for a patent that is a covered business method patent.” AIA § 18(a)(1)(E). The statute defines a “covered business method patent” as “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 . . . . *Id.* § 18(d)(1); *see also* 37 C.F.R. § 42.301(a) (repeating the statutory definition in the applicable rule). To establish standing to initiate a CBM review, “[t]he petitioner must demonstrate that the patent for which review is sought is a covered business method patent . . . .” 37 C.F.R. § 42.304(a).

The Board considers the Petition on behalf of the Director.  
*Id.* § 42.4(a).

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<sup>1</sup> Section 18 of the AIA, pertaining to CBM review, is not codified. References to AIA § 18 in this opinion are to the statutes at large.

Upon considering the Petition, the Preliminary Response, and the evidence filed therewith, we determine that Petitioner has not established that the '967 patent is a "covered business method patent" pursuant to the statutory definition in § 18(d)(1) of the AIA. Accordingly, we deny the Petition and do not institute CBM review of the challenged claims.

*B. Related Matters*

The '967 patent is currently the subject of a patent infringement lawsuit brought by the Patent Owner against Petitioner, captioned *Bytemark, Inc. v. Xerox Corp., et al.*, No. 17-cv-01803 (S.D.N.Y) (filed March 10, 2017) Pet. 1.

The '967 patent also is asserted in patent infringement litigations captioned *Bytemark, Inc., v. Masabi Ltd.*, Case No. 2:16-cv-00543-JRG-RSP (E.D. Tex.), and *Bytemark Inc. v. Unwire APS and Unwire US, Inc.*, Case No. 1:17-cv-10124 (SDNY). Paper 10, 2.

The '967 patent is the subject of IPR2017-01449. Pet. 2 (citing Ex. 1024). Oral argument in this IPR proceeding is scheduled for August 22, 2018. *See Masabi Ltd. V. Bytemark, Inc.*, IPR2017-01449, Paper 21, 5 (PTAB May 21, 2018).

U.S Patent No. 9,239,993 (the "'993 patent") is based on an application that is a continuation-in-part of the application that matured into the '967 patent. Bytemark, the Patent Owner in the proceeding now before us, also is the Patent Owner of the '993 patent. A petition seeking a CBM review of the '993 patent has been filed by the same collective Petitioner as the Petitioner in the proceeding now before us. *See Xerox Corp et al.v. Bytemark, Inc.*, CBM2018-00018, Paper 6 (PTAB Jan. 15, 2018).

## II. ANALYSIS

### A. *The '967 Patent*

The '967 patent discloses a system and method for verifying electronic tickets. The disclosed and claimed system and method is summarized clearly and concisely in the Abstract of the '967 patent, which we reproduce below.

This invention discloses a novel system and method for distributing electronic ticketing such that the ticket is verified at the entrance to venues by means of an animation or other human perceptible verifying visual object that is selected by the venue for the specific event. This removes the need to use a bar-code scanner on an LCD display of a cell phone or other device and speeds up the rate at which human ticket takers can verify ticket holders. The system providing the service also can maintain a persistent communication channel with the user device in order to control the ticket verification process.

Ex. 1001, Abstract; *see* 37 C.F.R. § 1.72(b) (“The purpose of the abstract is to enable the Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure.”).<sup>2</sup>

As disclosed in the '967 patent,

Conventional electronic tickets display a barcode or QR code on a user's telephone, typically a cellphone or other portable wireless device with a display screen. The problem with this approach is that a barcode scanner has to be used by the ticket taker. Barcode scanners are not highly compatible with LCD screen displays of barcodes. The amount of time that it takes to process an electronic ticket is greater than that of a paper ticket.

*Id.* at 2:12–19.

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<sup>2</sup> While the purpose of the Abstract is to summarize the “technical disclosure,” in this case, as we explain below, it also is a summary of the claimed invention.

To solve this problem, a randomly selected validation symbol that a human can readily recognize is sent to the ticket holder's cell phone or other electronic device. Examples of such symbols include a blue square (Ex. 1001, 3:25–26), a sailboat (*id.*, Fig. 5), or any other human recognizable image (*id.*, 3:25–35). The ticket holder shows the device with the displayed symbol to a human ticket taker who can confirm quickly that the proper validating symbol for the ticketed event is displayed. The ticket holder is then admitted to enter the event.

According to one embodiment of the disclosed system and method, the user purchases a ticket from an on-line website. *Id.* at 2:45–46. The website sends to the user's device a unique number or other electronic identifier, referred to as a “token.” *Id.* at 2:46–47. The token also is stored in the ticketing database. *Id.* at 2:47–48.

When the time comes to present the ticket, the venue can select what visual indicator will be used as the designated validation symbol, or “validation visual object.” *Id.* at 2:48–50. Counterfeit tickets cannot be prepared in advance of the event because counterfeiters will not know the visual indicator that will be used. *Id.* at 2:66–3:11. The user communicates with the on-line ticket seller using the supplied token. The token is verified, which causes the validation visual object to be sent to the user and displayed on the user's device. *Id.* at 2:60–63; 3:61–4:6. The ticket taker knows what the validating visual object is, and simply looks to see that the user's device is displaying the correct visual object. *Id.* at 2:63–65. No scanning or bar code reading is required. *Id.* at 2:25–26 (“the verification is determined by a larger visual object that a human can perceive without a machine scanning it.”). Barcodes and similar codes like the QR code are not validating “visual

objects” because a person looking at them cannot tell one apart from another. *Id.* at 3:20–23.

The “visual object” may be, for example, patterns of color, animations, or geometric patterns. *Id.* at 2:32–33; 3:12–40.

The token may be in the form of a computer code, a command that specifies what the visual pattern should be, or video or image data transmitted directly from the website to the user’s device for immediate display. *Id.* at 2:36–44. As asserted by Patent Owner, the ’967 patent discloses the use of “tokens” to maintain the security of the “visual validation display objects” and other data stored in a data record. Prelim. Resp. 3 (citing Ex. 1001, 7:20-41).

We recognize that the disclosed system and method also can accommodate the original purchaser reselling the ticket to a second purchaser. *E.g., id.* at 4:43–62; Fig. 8. This purchase and reselling, however, is not included in the challenged claims.

### *B. Representative Claim*

Petitioner challenges claims 1–6, 17–23, and 34. Of the challenged claims, claims 1, 17, and 18 are independent claims. Independent claim 1 is representative and is reproduced below.

1. A method by a server system for obtaining visual validation of the possession of a purchased electronic ticket on a user's computer device for presentation to a ticket taker comprising:

receiving from the user's computer device a request to verify purchase of a previously purchased electronic ticket and to obtain a visual validation display object that confirms that the user possesses the previously purchased electronic ticket for utilization of a service monitored by the ticket taker, the visual

validation display object configured to be readily recognizable visually by the ticket taker;

receiving from the user's computer device a token associated with the received request;

determining whether a token associated with the purchased electronic ticket has been stored in a data record associated with the received request, and if it has, whether the received token is valid; and

in dependence on the determination that the received token is valid, causing an activation of the purchased electronic ticket by transmitting to the user's computer device a data file comprising the visual validation display object that causes upon visual recognition by the ticket taker, the user to be permitted to utilize the service monitored by the ticket taker.

Challenged dependent claims 2–6 depend directly or indirectly from claim 1.

Independent claim 17 is directed to a “non-transitory computer readable data storage medium containing computer program code that when loaded and executed by a computer system causes the computer system to perform a method for obtaining visual validation.” It is substantively similar to claims 1 and 18.

Independent claim 18 is directed to a system for obtaining visual validation of an electronic ticket using computers “configured to” perform the recited method steps. It is substantively similar to claims 1 and 17.

Challenged dependent claims 19–23 depend directly or indirectly from claim 18. These claims correspond to and repeat the claimed subject matter in dependent claims 2–6, respectively. Challenged dependent claim 34 also depends from claim 18.

### *C. Claim Construction*

In a CBM post-grant review, we generally construe claims by applying the broadest reasonable interpretation in light of the specification. 37 C.F.R. § 42.300(b); *see Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (confirming the “broadest reasonable” claim construction in the context of an *inter partes* patent review). Under that standard, and absent any special definitions, we give claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). The correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is “an interpretation that corresponds with what and how the inventor describes his invention in the specification, *i.e.*, an interpretation that is ‘consistent with the specification.’” *In re Smith Int’l, Inc.*, 871 F.3d 1375, 1382–83 (Fed. Cir. 2017).

Only terms that are in controversy need to be construed expressly, and then only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). We determine that an explicit construction of the claims is not necessary for the purposes of determining whether the claims recite a covered business method eligible for a CBM review.

### *D. Covered Business Method Patent*

A threshold and dispositive issue in this proceeding is whether the ’967 patent is a “covered business method” patent subject to review under Section 18 of the AIA.

Petitioner asserts that “the ‘visual validation of the possession of a purchased electronic ticket’ and ‘previously purchased electronic ticket for utilization by a service monitored by a ticket taker’ that are required by every Challenged Claim is a financial product or service.” Pet. 25.

Petitioner does not cite the source of the language quoted by Petitioner. We note, however, that the quoted language on which Petitioner relies comes from the claims. *E.g.*, *see* claim 1, Ex. 1001, 14:2–3 (“visual validation of the possession of a purchased electronic ticket”) and 14:9–11 (“previously purchased electronic ticket for utilization of a service monitored by the ticket taker”).<sup>3</sup> Similar claim language appears in independent claim 17 (Ex. 1001, 15:56–57 and 16:11–13) and independent claim 18 (*id.* at 16:14–15 and 16:38–40).

Petitioner also asserts that “each operation *associated with* the claimed ‘purchased electronic ticket’ represents a financial activity.” Pet. 25 (emphasis added).

Patent Owner takes a different view of the claimed invention and the applicable law. According to Patent Owner, the claimed invention is directed to “delivering a visual validation display object that authenticates a previously purchased ticket.” Prelim. Resp. 18. It is Patent Owner’s position that “[e]ach of the independent claims 1, 17 and 18 positively recites a previously purchased electronic ticket. The claims of the ’967

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<sup>3</sup> The language quoted in the Petition refers to “*a* ticket taker,” whereas the claim language recites “*the* ticket taker” (emphases added).

Patent recite post-sale activity that occurs after the movement of money and are not CBM-eligible.” *Id.* at 18–19.

To resolve this dispute between the parties, we start with the statute.<sup>4</sup>

### 1. *The CBM Statute*

The statutory language states the fundamental qualification for a CBM patent review. In order to be eligible for a CBM review, the challenged patent must “*claim[] 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) (emphasis added). The PTO adopted the statutory definition of CBM patents by regulation without alteration. Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 Fed. Reg. 48,734 (Aug. 14, 2012).

In *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331 (Fed. Cir. 2016), the Federal Circuit explained that “§ 18(d)(1) directs us to examine *the claims* when deciding whether a patent is a CBM patent.” *Id.* at 1340. Moreover, the Federal Circuit recognized that this statutory requirement “*properly focuses on the claim language at issue.*” *Id.* (emphasis added). The Court affirmed the Board’s conclusion that “*the challenged claims of the Blue Calypso Patents meet the statutory definition of CBM patent.*” *Id.* at 1341. In *Blue Calypso*, the Court determined that “*the claims at issue in the instant case*” had an express financial component in the form of a subsidy. *Id.* at 1340 (emphasis added). The claims were “directed to

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<sup>4</sup> Howard T. Markey, *Why Not the Statute?*, 65 J. Pat. Off. Soc’y 331, 331 (1983) (“When all else fails, read the instructions”).

methods in which advertisers *financially* induce ‘subscribers’ to assist their advertising efforts.” *Id.* at 1340.

Thus, our analysis is on whether the patent claims at issue in this proceeding, that is the challenged claims, recite 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 as determined by a proper claim construction. “[P]atents that fall outside the definition of a CBM patent are outside the Board’s authority to review as a CBM patent.” *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 1376, 1381 (Fed. Cir. 2016). Whether a patent “claims activities ‘incidental to’ or ‘complementary to’ a financial activity” is *not* “the legal standard to determine whether a patent is a CBM patent.” *Id.* at 1382.<sup>5</sup> For example, a patent “does not become a CBM patent because of its incidental or complementary use in banks.” *Id.*

Similarly, a patent covering a method and corresponding apparatuses does not become a CBM patent “because its practice could involve a potential sale of a good or service.” *Id.* “*It is not enough that a sale has occurred or may occur, or even that the specification speculates such a potential sale might occur.*” *Id.* (emphasis added). As the Federal Circuit noted, “[a]ll patents, at some level, relate to potential sale of a good or service. *Id.*

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<sup>5</sup> We note, however, that in *Blue Calypso* the Federal Circuit endorsed a consideration by the Board of whether a claimed invention was “financial in nature” as consistent with the statutory definition of “covered business method patent.” 815 F.3d at 1340; *see Unwired Planet*, 841 F.3d at 1380, n.5.

We recognize, however, that “the definition of ‘covered business method patent’ is not limited to products and services of only the financial industry, or to patents owned by or directly affecting the activities of financial institutions such as banks and brokerage houses.” *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1325 (Fed.Cir.2015). In *Versata*, at least one of the claims at issue, claim 17, expressly claimed a “method for determining a price of a product.” 793 F.3d 1312–13. *See also SightSound Techs., LLC v. Apple Inc.*, 809 F.3d 1307, 1315 (Fed. Cir. 2015) (holding that “a ‘financial activity’ not directed to money management or banking can constitute a ‘financial product or service’ within the meaning of the statute.”).

Because the CBM statute requires that CBM eligibility is based on the claims, we next turn to an analysis of the scope of the claims.

## 2. *The '967 Claims*

The challenged claims each recite that the claimed invention is limited to obtaining visual validation of a previously purchased electronic ticket. The visual validation occurs at the time the electronic ticket is presented to a ticket taker when the ticket purchaser is seeking entry to the ticketed event. Thus, the claimed activity, visual validation, occurs *after* the purchase has occurred. As stated above, a patent does *not* become a CBM patent merely because it involves the sale of a good or service. *Unwired Planet*, 841 F.3d at 1382 (“It is not enough that a sale has occurred or may occur, or even that the specification speculates such a potential sale might occur.”).

The preamble of claim 1 sets the stage for the method recited therein. Indeed, Petitioner cites language from the preamble in arguing its position. *See* Pet. 25 (relying on the preamble phrase “visual validation of the

possession of a purchased electronic ticket”). The preamble states the claimed invention is “[a] method by a server system *for obtaining visual validation* of the possession of a *purchased electronic ticket* on a user's computer device *for presentation to a ticket taker*.” Ex. 1001, 14:2–4 (emphasis added). Thus, the sale of the ticket has already occurred. The claimed invention is directed to “visual validation.”

Claim 1 recites the step of “verify[ing] purchase of a *previously purchased electronic ticket*.” *Id.* at 14:6–8 (emphasis added). Verification results from a “visual validation display object” that is “readily recognizable visually by the ticket taker.” *Id.* at 14:8–13. Petitioner and Patent Owner agree, as do we, that the “readily recognizable” requirement of the “visual validation display object” means that the object is “readily recognizable from human observation.” *See* Pet. 22–23; Prelim. Resp. 5, 11. This means that the “ticket taker” is a human, not a machine. Ex. 1001, 3:14–16 (“The criterion for what constitutes a validating visual object is one that is readily recognizable from human observation”).

Claim 1 also recites that the user communicates with the on-line ticket seller using an electronic “token” supplied with the electronic ticket. Ex. 1001, 14:14–15. The token is verified (*id.* at 14:16–19), which causes the validation visual object to be sent to the user and displayed on the user's device. *Id.* at 14:20–26. The ticket taker knows what the validating visual object is, and simply looks to see that the user's device is displaying the correct visual object. *Id.* at 2:63–65. No scanning or bar code reading is required. *Id.* at 2:25–26

Thus, independent claim 1 recites that *after* buying an electronic ticket, a visual validation is sent electronically to the purchaser and, if the

correct visual object is confirmed by a human ticket taker, the user is permitted entry to the ticket event. The claims are directed to a person validating an electronic ticket based on a visual object. We find nothing explicitly or inherently financial in the claim language. There are no limitations recited that are directed to the practice, administration, or management of a financial product or service.

At best, validating a purchased ticket may be complementary to the purchase of a ticket. Complementary activity, however, does not establish CBM review eligibility. *Unwired Planet*, 841 F.3d at 1382 (Whether a patent “claims activities ‘incidental to’ or ‘complementary to’ a financial activity” is *not* “the legal standard to determine whether a patent is a CBM patent.”)

Independent claims 17 and 18 are similar in scope to claim 1. Each focuses on visual validation of an electronic ticket by a human ticket taker after the ticket has been purchased.

### *3. The '967 Specification*

The Specification fully supports the construction of the claims as being directed to validating a previously purchased ticket, and not directed to the practice, administration, or management of a financial product or service. The Abstract summarizes the disclosed invention stating that the “ticket is verified at the entrance to venues by means of an animation or other human perceptible verifying visual object,” thus eliminating the need to use a bar-code scanner on an LCD display of a cell phone or other device, which speeds up the rate at which human ticket takers can verify tickets. Ex. 1001, Abstract.

The written description emphasizes that the invention is verifying a previously purchased ticket. In describing the problem addressed by the disclosed and claimed invention, the written description states:

Conventional electronic tickets display a barcode or QR code on a user's telephone, typically a cellphone or other portable wireless device with a display screen. The problem with this approach is that a barcode scanner has to be used by the ticket taker. Barcode scanners are not highly compatible with LCD screen displays of barcodes. The amount of time that it takes to process an electronic ticket is greater than that of a paper ticket. Sometimes the LCD display does not scan at all and a passenger has to be sent away to get a paper printout of a ticket. Given the potential large crowds that often attend open venues, this is impractical.

*Id.* at 2:12–22.

In describing the disclosed invention, the written description further states, “[i]n this invention, the ticket is procured electronically and stored on the user's device. However, when the ticket is to be validated or verified, the verification is determined by a visual object that a human can perceive without a machine scanning it.” *Id.* at 2:23–26. The written description also notes that the invention is intended to limit “piracy” or counterfeit tickets.

*Id.* at 2:66–3:19.

We find nothing explicitly or inherently financial in nature in these passages from the Specification, which support the claimed invention. These disclosures are not directed to the practice, administration, or management of a financial product or service.

We recognize that the written description also discloses that “[t]he use of electronic ticketing provides opportunities that change how tickets can be bought and sold.” Ex. 1001, 4:43–44. Additionally, the written description

states that “the system can operate a typical on-line payment and credit system.” *Id.* at 4:58–59. These disclosures do not change our analysis of the claims. A patent covering a method and corresponding apparatus does not become a CBM patent because the claims could involve a potential sale of a good or service. *Unwired Planet*, 841 F.3d at 1382. It is not enough that the Specification “speculates such a potential sale might occur.” *Id.* See also *Fairchild Semiconductor Corp. v. In-Depth Test LLC*, CBM2015-00060, 2015 WL 4652717, at \*5–6 (PTAB Aug. 3, 2015) (rejecting CBM status for semiconductor devices, despite ubiquitous use in the financial system, because the “statutory language . . . requires us to focus on the challenged claims rather than speculate on possible uses of products recited in the claims”); *Par Pharm., Inc. v. Jazz Pharm., Inc.*, CBM2014-00149, -00150, -00151, -00153, 2015 WL 216987, at \*5–6 (PTAB Jan. 13, 2015) (rejecting CBM status because petitioner did not explain persuasively how the claim language recites method steps involving the movement of money or extension of credit in exchange for a product or service”); *PNC Fin. Servs. Grp., Inc. v. Intellectual Ventures I LLC*, CBM2014-00032, 2014 WL 2174767, at \*6 (PTAB May 22, 2014) (rejecting CBM status of computer file-security patent, despite suit against financial institutions, because “the focus is on the claims”).

#### 4. “Associated” Operations

Petitioner also argues that “each operation *associated with* the claimed ‘purchased electronic ticket’ represents a financial activity.” Pet. 25 (emphasis added). Again, we disagree. Petitioner cites no persuasive evidence or controlling authority to support its argument. We understand an operation “associated with” the purchase of a ticket to be an activity

incidental to the purchase of a ticket. *See* Ex. 3001 (the word “incidental” is a synonym of the adjective “associated”). Whether a patent claims activities “incidental to” a financial activity is *not* the legal standard to determine whether a patent is a CBM patent. *Unwired Planet*, 841 F.3d at 1382.

#### 5. *Patent Owner’s General Business*

Petitioner also asserts that “[t]he Patent Owner admits to being a provider of financial products and services employing the ’967 Patent with generic computer components.” Pet. 25–27. Petitioner cites no authority for the proposition that the nature of a party’s business determines whether a patent owned by that party qualifies as a covered business method patent. Nevertheless, as discussed below, we find the evidence cited does not support Petitioner’s argument as to the ’967 patent.

To establish that the challenged claims qualify as a CBM patent, Petitioner relies, in part, on generic statements about Patent Owner’s business from Patent Owner’s infringement complaint against Petitioner. Pet. 26 (citing Ex. 1019 ¶ 3). The cited paragraph states:

Bytemark is generally in the business of providing a secure mobile ticketing platform for transit, tourism, and events through smartphone apps, point-of-sale plugins, and open APIs. Bytemark is a market leader in providing mobile ticketing technologies to the transit industry and delivers a comprehensive platform that improves the ticket and payment experience for consumers and merchants.

Ex. 119 ¶ 3. This paragraph does not mention the ’967 patent and is irrelevant to construing the proper scope of the claims in the ’967 patent. *See Blue Calypso*, (“§ 18(d)(1) directs us to examine *the claims* when deciding whether a patent is a CBM patent.”).

Similarly, Petitioner cites excerpts from Patent Owner’s website that also are irrelevant to the scope of the claims in the ’967 patent. Pet. 26–27 (citing Exs. 1025–1030). For example, Ex. 1025 is a nine page brochure obtained from Patent Owner’s website that presents a “Company Overview” of Patent Owner Bytemark. Pet. 26 (“(Ex.1025, Bytemark’s Website, Bytemark’s Media Kit, p. 5)”). Petitioner cites specifically to page 5 of Exhibit 1025. *Id.* The cited excerpt from page 5 is reproduced below.

#### **PATENTED V3 TICKETING TECHNOLOGY**

- Visually Verifiable Virtual (V3) Tickets
- V3 tickets deploy an animated watermark with a multi-layer validation system
- U.S. Patent No. 8,494,967
- No additional hardware required to use Bytemark’s ticketing applications using this ticketing method
- Demo: <http://www.youtube.com/watch?v=jL-Je-5WY34>

Ex. 1025, 5.

The excerpt on which Petitioner relies states, “No additional hardware required to use Bytemark’s ticketing applications using this ticketing method.” Pet. 26 (citing and quoting Ex. 1025, p. 5). Petitioner does not explain persuasively why the cited excerpt requires the claims at issue in the ’967 patent to be construed to recite 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.

Exhibit 1026 is cited for an excerpt from Patent Owner’s website that states, in part, “Bytemark is a provider of Transit Fare Collection solutions.” Pet. 26 (citing and quoting an excerpt from Ex. 1026). The more complete statement is reproduced below.

Bytemark is a provider of Transit Fare Collection solutions to cities and agencies across the globe. Based in New York City, Bytemark also operates regional offices in the United Kingdom, Canada, Australia, and India.

*Bytemark's core offering is a comprehensive suite of products that digitize transit passes, tickets and fare media in a variety of innovative ways. Purchase of these fare products by transit riders is simple and instantaneous by means of web-based and smartphone-based purchasing experiences. Agencies are provided with powerful fare validation solutions, and cloud-based access to a complete back office portal to manage and report on their operation.*

Ex. 1026, 1 (emphases added). We find nothing in the excerpt cited by Petitioner, or the more complete statement reproduced above, that requires the claims at issue in the '967 patent to be construed to recite 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. The more complete statement refers to a "comprehensive suite of products." Petitioner provides no evidence that connects Ex. 1026 to the claims of the '967 patent.

Petition cites Exhibit 1029 for reference to a potential use for payments. Pet. 27 (citing Ex. 1029). Exhibit 1029 states that "For clients with an existing mobile app, the Bytemark software development kit (SDK) *can be used* to add mobile ticketing and payments within the familiar ecosystem of your current app." Ex. 1029, 1 (emphasis added). This potential use does not establish that the challenged claims in the '967 patent can or should be construed to recite 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. *Unwired*

*Planet*, 841 F.3d at 1382 (“It is not enough that a sale has occurred or may occur, or even that the specification speculates such a potential sale might occur.”).

Exhibits 1027 and 1028 similarly are unconnected to the claims of the ’967 patent.

#### *6. Summary for Independent Claims 1, 17, 18*

To determine whether a patent is eligible for CBM review, the CBM statute directs us to examine the claims at issue and evidence relevant to the claims at issue. *Blue Calypso*, 815 F.3d at 1340. Petitioner must demonstrate that the patent for which review is sought is a covered business method patent. 37 C.F.R. § 42.304(a). Petitioner has not met its burden of proof on this issue.

Our analysis above focuses on the challenged independent claims. There is nothing recited in the challenged dependent claims that changes this analysis, our findings, or our conclusion.

#### *7. Dependent Claims*

Claims 2 and 19, dependent from claims 1 and 18, respectively, each recite that if it is determined that a token has not been stored, initiating confirmation that the purchased electronic ticket has been purchased, and, in dependence on such confirmation, storing a token in the data record associated with the purchased electronic ticket; and transmitting to the user’s computer device a visual validation display object corresponding to the purchased electronic ticket.

Claims 3 and 20, dependent from claims 1 and 18, respectively, each recite the steps of storing in the database a data value representing a predetermined lock time, determining whether a duration of time from the

transmission of the visual validation display object to the predetermined lock time has expired, and, based on this determination, permitting or not permitting the visual validation display object to be transmitted to the user's computer device.

Claims 4 and 21, dependent from claims 1 and 18, respectively, each recite the step of transmitting an authorization key to the ticket purchaser's computer device that transmitted the received request.

Claims 5 and 22, dependent from claims 4 and 21, respectively, each recite the step of encrypting the visual validation display object using the authorization key.

Claims 6 and 23, dependent from claims 4 and 21, respectively, each recite the step of encrypting the visual validation display object with a public key of a public/private key pair for which the transmitted authorization key is an associated private key.

Claim 34, dependent from claim 18, recites that the visual validation display object is an animation that operates in reaction to a touch of the user's computer device screen.

Petitioner does not direct us to any persuasive evidence to support its argument that these dependent claims recite 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.

### III. CONCLUSION

Based on the analysis of the arguments and evidence in the Petition and Preliminary Response, we determine that Petitioner has not established that the '967 patent is a "covered business method patent" pursuant to the

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statutory definition in § 18(d)(1) of the AIA. Accordingly, we deny the Petition and do not institute CBM review of the challenged claims.

#### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied* and do not institute a covered business method review of the '967 patent.

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