

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SALESFORCE.COM, INC.

Petitioner

v.

VIRTUALAGILITY, INC.

Patent Owner

Case CBM2013-00024

Patent 8,095,413

Before JAMESON LEE, ADAM V. FLOYD, and
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

DECISION

Institution of Covered Business Method Review

37 C.F.R. § 42.208

Petitioner, Salesforce.com, Inc., filed a petition (Paper 4) (“Pet.”) to institute a covered business method review of claims 1-21 of U.S. Patent No. 8,095,413 (“the ’413 patent”) pursuant to 35 U.S.C. § 321 *et seq.* Patent Owner, VirtualAgility, Inc., filed a preliminary response (Paper 13) (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 324.¹

The standard for instituting a covered business method review is set forth in 35 U.S.C. § 324(a):²

THRESHOLD—The Director may not authorize a post-grant review to be instituted unless the Director determines that the information presented in the petition filed under section 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

Petitioner challenges claims 1-21 as unpatentable under 35 U.S.C. §§ 101, 102, and 103. Pet. 1, 3-4.

Upon consideration of the petition and preliminary response, we grant the petition, because Petitioner has demonstrated that claims 1-21 are, more likely than not, unpatentable under 35 U.S.C. §§ 101, 102, and 103.

I. BACKGROUND

A. *The ’413 Patent (Ex. 1001)*

The ’413 patent, titled “Process Management Information,” issued on

¹ See Section 18(a) of the Leahy-Smith America Invents Act, Pub. L. 112-29, 125 Stat. 284, 329 (2011) (“AIA”).

² See Section 18(a)(1) of the AIA, which provides that the transitional program for covered business method patents will be regarded as a post-grant review under chapter 32 of title 35 United States Code and will employ the standards and procedures of a post-grant review, subject to certain exceptions.

January 10, 2012. The '413 patent issued from Application 09/312,740, filed May 14, 1999, which claims priority to Provisional Application 60/133,152, filed on May 7, 1999.

The disclosed invention of the '413 patent is directed generally to a method and apparatus for managing collaborative activity (e.g., strategic planning and project management). Ex. 1001, col. 1, ll. 32-33, col. 5, ll. 25-31. To aid in the management of collaborative activity, a computer database is created with data, and the data represents models of the collaborative activity. Ex. 1004, p. 0116. The models, which include model entities, are then arranged into hierarchies, and the data regarding collaborative activity can be shared between different people. Ex. 1001, col. 1, ll. 27-31; col. 5, ll. 25-33.

For one embodiment, the Specification describes a method of acquiring a first set of data that can represent a first model entity. Ex. 1001, col. 2, ll. 50-54. The first model entity can represent an organization of people (*id.* at col. 2, ll. 39-40), customer relationships (*id.* at col. 2, ll. 51-52), a program management office (*id.* at col. 3, ll. 38-39), or a scalable process (*id.* at col. 4, ll. 29-30). The first set of data includes “fundamental components.” *id.* at col. 2, ll. 41-42. These “fundamental components” can include data related to customer information (*id.* col. 2, ll. 62-67), company capability information (*id.* at col. 3, ll. 16-26), or economic information (*id.* at col. 3, ll. 25-34; col. 3, l. 65—col. 4, l. 4; col. 4, ll. 15-20). The data can also be a list of goals for an organization or for a project. *Id.* at col. 5, ll. 42-44.

The method associates the first set of data (i.e., first model entity) with a second set of data. The second set of data represents a second model

entity, and the second model entity represents a portfolio of management concepts. *Id.* at col. 2, ll. 43-44. The first model entity can be associated with the second model entity so that the two model entities are considered related. *Id.*

The model entities are organized into a plurality of hierarchies, and a model can belong to more than one hierarchy. *Id.* at col. 9, ll. 33-37; col. 11, ll. 12-14; claims 1 and 8. The hierarchies provide different contexts through which users may view and access model entities. Ex. 1004, 0016.

According to the Specification, examples of such hierarchies include a priority of goals handled by the manager module. Ex. 1001, col. 5, l. 44—col. 6, l. 58. Figure 1 of the '413 patent is reproduced below:

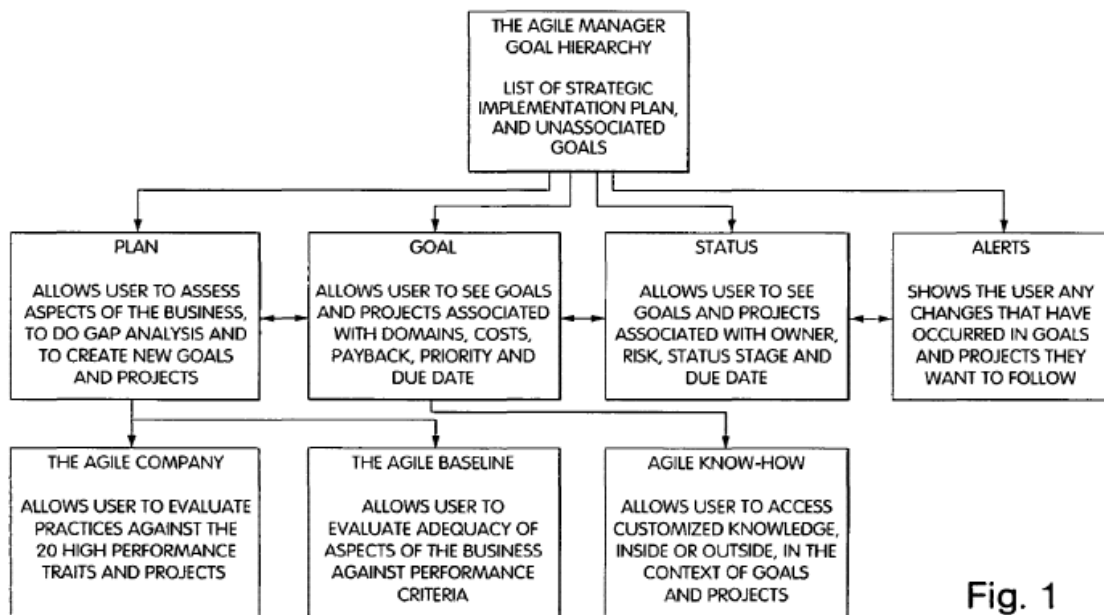


Fig. 1

Figure 1 of the '413 patent, reproduced above, illustrates the basic structure of a suite of modules, including (i) functions performed by a manager module and (ii) pathways to other modules in the system. Ex. 1001, col. 8, ll. 30-33. According to the '413 patent, the manager

module can be used to manage a project, organize project goals, and allocate resources for a project. *Id.* at col. 5, l. 49—col. 6, l. 32.

The '413 patent also discloses facilitating strategic planning by employing a company comparison module and a baseline module that would facilitate users setting new goals, displaying already existing goals, and/or identifying and developing potential new goals. Ex. 1001, col. 10, ll. 11-44. The manager module, described above, keeps a hierarchy of goals and contributing goals in constant view and up-to-date with changing circumstances. Figure 3 of the '413 patent is reproduced below:

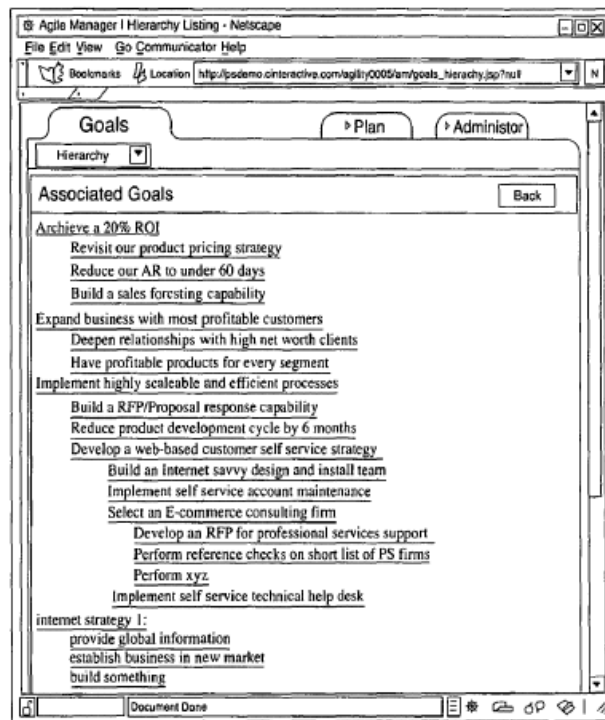


Fig. 3

As shown in Figure 3, reproduced above, the goal hierarchy can illustrate an organization's total goals and any contributing goals affecting the enterprise, or the goal hierarchy can illustrate an organization's

priorities, such as top goals (*see* FIG. 14) or specific goal (*see* FIG. 15). Ex. 1001, col. 11, ll. 12-18. According to the '413 patent, if an organization is addressing budget issues, then a user can use the claimed method to sort by goal or project cost (*see* FIG. 19), or by priority or return on investment ("payback") (*see* FIG. 20). *Id.* at col. 11, ll. 27-31. The sorted information can be provided to help the user decide where to commit resources based on factors such as benefit and risk. *Id.*

According to the Specification, once data regarding project goals or cost have been loaded into a model entity, the information can be presented as a goal or cost hierarchy. This hierarchy can be used in different ways. For example, once the data is available, a user can readily access financial information, such as (i) the cost of or investment in each particular goal or initiative, (ii) the economic return anticipated for achievement of the particular goal or initiative, (iii) the ratio of return on investment, or (iv) the potential profit or loss of a scalable process. Ex. 1001, col. 5, ll. 5-8; col. 14, ll. 21-29. Such information allows people within the organization to assess the relative value of one goal versus another. *Id.* at col. 14, ll. 30-31.

A major purpose of the '413 invention is to aid an organization in the planning and managing of goals and projects. Ex. 1001, col. 11, ll. 63-65. The claimed invention aims to achieve this purpose by facilitating the listing of goals in a hierarchy and allowing information regarding goals (allocated resources, time lines, progress reports, costs, etc.) to be readily available to multiple individuals within the organization. *Id.* at col. 11, l. 65; col. 12, ll. 4-16.

C. Exemplary Claims

Claims 1, 7, 8, and 20 are independent claims, of which claims 1 and 8 are representative and reproduced below:

1. A system for supporting management of a collaborative activity by persons involved therein, the persons not being specialists in information technology, the system being implemented using a processor and a storage device accessible to the processor, and the system comprising:

a representation of a model of the collaborative activity in the storage device, the model of the collaborative activity including model entities, the model entities providing access to information concerning the collaborative activity, being organized into a plurality of hierarchies having a plurality of types, and a given model entity being capable of simultaneously belonging to a hierarchy having one of the types and a hierarchy having another of the types; and

said processor being configured to provide a graphical user interface to a person of the persons for providing outputs to the person and responding to inputs from the person by performing operations on a model entity as limited by a type of access which the person has to the model entity,

the operations including controlling access to the model entity, creating, modifying, and/or deleting the model entity, assigning the model entity to a location in a hierarchy, accessing and/or modifying the information concerning the collaborative activity via the model entity, viewing model entities as ordered by a hierarchy to which the entities belong, and viewing model entities as ordered by a value in the information concerning the collaborative activity to which the entities give access.

8. A method of supporting management of a collaborative activity by persons involved therein, the persons not being specialists in information technology and the method being performed in a system which includes a processor and a storage device

accessible to the processor, the storage device containing a model of the collaborative activity, the model including representations of model entities, a given representation of a model entity being capable of simultaneously belonging to hierarchies including a hierarchy and another hierarchy, and the representations of model entities providing access to information relating to the collaborative activity, the processor providing an interface for a person of the persons, and the method comprising the steps performed in the system of:

receiving a definition of a model entity belonging to the model of the collaborative activity from a person of the persons via the interface and responding thereto by producing a representation of the model entity in the storage device; and

receiving a first indication of a first hierarchical relationship between the model entity and another model entity belonging to the hierarchy from the person via the interface and responding thereto by relating the model entity to the other model entity in the hierarchy and

receiving a second indication of a second hierarchical relationship between the model entity and a third model entity belonging to the other hierarchy from the person via the interface and responding thereto by relating the model entity to the third model entity in the other hierarchy.

D. Prior Art Relied Upon

Petitioner relies upon the following references:³

Lowery	<i>Managing Projects with Microsoft® Project 4.0 For Windows™ and Macintosh®, Wiley & Sons, Inc.</i>	1994	Ex. 1005
Ito	U.S. Patent No. 5,761,674	Jun. 2, 1998	Ex. 1007

³ Petitioner also relies on the declaration of Peter Alexander, Ph.D. (Ex. 1002).

E. Alleged Grounds of Unpatentability

Petitioner alleges the following grounds of unpatentability:

Reference(s)	Basis	Claims Challenged
Not applicable	§ 101	1-21
Lowery	§ 102(a)	1-21
Ito	§ 102(a)	1-21
Lowery and Ito	§ 103(a)	1-21

F. Related Proceedings

The '413 patent is involved currently as an asserted patent in the following district court litigation: *VirtualAgility, Inc. v. Salesforce.com, Inc., et al.*, E.D. Tex. (Marshall Division), Case No. 2:13-cv-00011 (filed January 4, 2013). Pet. 10.

II. ANALYSIS

A. Whether the '413 Patent is a Covered Business Method Patent

Section 18 of the AIA provides for the creation of a transitional program for reviewing covered business method patents. Section 18 limits reviews to persons, or their privies, that have been sued or charged with infringement of a “covered business method patent.” AIA §§ 18(a)(1)(B), 18(d)(1); *see* 37 C.F.R. § 42.302(a). It is undisputed that Petitioner has been sued for infringement of the '413 patent. The only dispute is whether the '413 patent is a “covered business method patent,” as defined in the AIA. *See* Pet. 6-10; Prelim. Resp. 15-30. For the reasons explained below, we conclude that the '413 patent is a “covered business method patent.”

1. Financial Product or Service

A “covered 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). For purposes of determining whether a patent is eligible for a covered business method (“CBM”) patent review, the focus is on the claims. *See* 37 C.F.R. § 42.301(a), definition of CBM patent; *see also* 77 Fed. Reg. 48734, 48736 (Aug. 14, 2012) Response to Comments on Notice of Proposed Rulemaking, response to comment 8. A single eligible claim qualifies a patent for CBM patent review. *See* 37 C.F.R. § 42.301(a).

In promulgating rules for CBM review, the Office considered the legislative intent and history behind the AIA’s definition of “covered business method patent.” *See* 37 C.F.R. § 42.301(a), definition of CBM patent; *see also* 77 Fed. Reg. 48734, 48736 (Aug. 14, 2012) Response to Comments on Notice of Proposed Rulemaking, responses to comments 3 and 5. 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.” *See* 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer). The statements of Senator Schumer indicate that “financial product or service” should be interpreted broadly. *Id.*

Claim 8 is directed to a method for supporting management of a collaborative activity using a system that includes a processor, a storage device, and an interface provided by the processor. The method includes the steps of:

- (i) receiving a definition of a model entity and responding to the

definition of a model entity by producing a representation of the model entity,

- (ii) receiving a first indication of a hierarchical relationship between the model entity and another model entity belonging to a hierarchy and relating the model entity to another model entity in the hierarchy, and
- (iii) receiving a second indication of a second hierarchical relationship between the model entity and a third model entity belonging to a hierarchy and relating the model entity to the third model entity in the hierarchy.

Although claim 8 does not expressly refer to financial activity, such as those described in the Specification, the claimed method has particular application involving financial activities. The Specification discloses that the method can be used to evaluate: (i) budgeting issues, (ii) the cost of or investment in each particular goal or initiative, (iii) the economic return anticipated for achievement of the particular goal or initiative, (iv) the ratio of return on investment, or (v) the potential profit or loss of a scalable process. Ex. 1001, col. 5, ll. 5-8; col. 14, ll. 21-29. When applied to the activities listed above, and based on the legislative history that a covered business method patent is to cover activities that are financial in nature, the method of claim 8 represents a financial product or service used by an organization, which allegedly improves the financial health of the organization.

According to Petitioner, the '413 patent is a covered business method patent, because it claims methods and apparatus used in the practice, administration, or management of a financial product or service, including

activities that are financial in nature, incidental to a financial activity, or complementary to a financial activity. Pet. 7. The Specification discloses the management and modeling of “collaborative activity” that can include financial aspects or activities of an organization. Ex. 1001, col. 11, ll. 27-31; Figures 19-22. Several examples from the Specification, which can be implemented by the method of claim 8, are reproduced below:

[I]f the topic is budgets, the user can sort by goal or project cost (see FIG. 19), or by priority or return on investment (“payback”) (see FIG. 20) and can be provided with information that can help the user decide where to commit resources based on factors such as benefit and risk.

Ex. 1001, col. 11, ll. 27-31; Figs. 19-20 (emphasis omitted).

The fundamental components may include an economics component . . . [which] may include a description of a profit and loss aspect of the scalable process or a description of an investments aspect of the scalable process.

Id. at col. 5, ll. 1-8.

[A] user can readily access financial information related to decision making and priorities economic return anticipated for achievement of the particular goal or initiative.

Id. at col. 14, ll. 21-27.

Access to information, such as that described above, that is organized in a usable manner allows people within the organization to assess the relative value of one goal versus another or the potential profit or loss of a project. Ex. 1001, col. 14, ll. 29-31; col. 5, ll. 1-8. The Specification discloses that the hierarchy organization allows goals or initiatives to be sorted by category, such as costs, thereby helping people decide whether the level of investment required can be afforded. *Id.* at col. 16, ll. 48-53. Additionally, according to

the Specification, the claimed invention allows management teams “to quickly plan, design, and work on a common portfolio of strategic goals and initiatives” in order “make the business grow and prosper.” *Id.* at col. 5, ll. 28-31.

Based on the foregoing examples noted by Petitioner and the language of claim 8, the Board is persuaded that claim 8 recites a method for performing data processing or other operations, used in the practice, administration, or management of a financial product or service, as required by Section 18(d)(1) of the AIA.

Patent Owner contends that Congress intended covered business method reviews to apply only to a “narrow range of patents,” relying on various statements in the legislative history of the AIA. Prelim. Resp. 15-25. In particular, Patent Owner asserts that “Congress expressly chose not to make all patents that cover methods that can be used by a business available for CBM review, but only those directly related to financial products or services” used in the financial services industry. *Id.* at 16.

The Board is not persuaded by Patent Owner’s contention, because the legislative history indicates that the phrase “financial product or service” is *not* limited to the products or services directly related to the financial services industry and is to be interpreted broadly. *See* 37 C.F.R. § 42.301(a), definition of covered business method patent. Senator Schumer, for example, stated:

Nothing in the America Invents Act limits use of section 18 to banks, insurance companies or other members of the financial services industry. Section 18 does not restrict itself to being used by petitioners whose primary business is financial products or services. Rather, *it applies to patents that can apply to financial products or services.*

157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer) (emphasis added). Although the claims of the '413 patent do not recite elements directly related only to a financial services business, the Specification describes application of the claimed method to activities that are financial in nature.

Patent Owner further argues that a determination that the '413 patent is a covered business method patent would contravene the intent of Congress when it enacted the AIA. Patent Owner further contends that such a determination would give the phrase “financial products and services” a different meaning depending on the implemented procedure, which could result in inconsistent, even irreconcilable, administration of the same statute by the same agency. Prelim. Resp. 18. Patent Owner’s argument is not persuasive. The Board reviews each petition based on its own facts, and construes each claim in the context of the specification of the particular involved patent. A specification that describes no financial product or service application is different from a specification that does describe such an application. Here, as discussed above, the Specification describes applying the invention as a financial product or service for use by an organization to improve the financial health of the organization.

Patent Owner finally argues that the '413 patent is not a covered business method patent, because the claimed invention is not limited to use in a business, but is applicable to any collaborative activity. *Id.* at 23. According to Patent Owner, the Specification of the '413 patent makes clear that the inventor contemplated applying the invention in non-business contexts such as universities, government agencies, and social and political organizations. *Id.* at 20 (citing Ex. 1001, col. 2, ll. 23-27). However, the

question is not whether the claimed invention only has application in business contexts, but whether the claimed invention is a method or apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, technological inventions excepted.

The Patent Owner's argument is not persuasive. As discussed above, the '413 patent discloses use of the claimed method and apparatus for the practice, administration, or management of collaborative activity that can include financial aspects or activities of an organization. *See* Ex. 1001, col. 5, ll. 1-8; col. 11, ll. 27-31; col. 14, ll. 21-31; Figs. 19-20.

For the reasons stated above, and based on the particular facts of this proceeding, we conclude that claim 8 of the '413 patent meets the "financial product or service" component of the definition in Section 18(d)(1) of the AIA.

2. Technological Invention

The definition of "covered business method patent" in Section 18(d)(1) of the AIA excludes patents for "technological inventions." To determine whether a patent is for a technological invention, we consider "[w]hether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art; and solves a technical problem using a technical solution." 37 C.F.R. § 42.301(b). The following claim drafting techniques, for example, typically do not render a patent a "technological invention":

- (a) Mere recitation of known technologies, such as computer hardware, communication or computer networks, software, memory, computer-readable storage medium, scanners, display devices or databases, or specialized machines, such as an ATM or point of sale device.

(b) Reciting the use of known prior art technology to accomplish a process or method, even if that process or method is novel and non-obvious.

(c) Combining prior art structures to achieve the normal, expected, or predictable result of that combination.

Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48763-64 (Aug. 14, 2012).

The method of claim 8 uses various technical components: a “processor,” a “storage device,” and an “interface.” According to Petitioner, all of these components are generic hardware devices known and used in the prior art. Pet. 9-10. Petitioner points to the Specification of the ’413 patent, which discloses, for instance, that a computer could be “industry standard server components.” *Id.* (citing Ex. 1001, col. 7, l. 60).

Patent Owner does not dispute that the individual technical components described in the Specification for implementing the claimed invention are conventional components, known in the art, such as the processor and the storage unit. The Patent Owner contends that they qualify as technical components, because they require a specific structure, function, and operation. Prelim. Resp. 27-28.

However, Patent Owner does not sufficiently identify or explain the specific structure, function, and operation required by the recited components, which would extend beyond that which can be provided by a processor and storage device of conventional design and configuration, with conventional programming techniques. According to the Specification, only conventional components and programming, used in their known ways to achieve expected results, are needed for the processor and storage device. Ex. 1001, col. 7, ll. 59-67; col. 17, ll. 53-63.

The challenged claims are directed to creating models or representation of models for organizing information relating to a collaborative activity (e.g., defining projects and organizing goals for that project) and making such information easily accessible to collaborators on a project. Ex. 1001, col. 2, ll. 37-47; Fig. 3. All the components used to implement the claimed method are known and conventional components. Ex. 1001, col. 7, ll. 54-67; col. 17, ll. 35-50.

Furthermore, software that supports management and organization of collaborative activity is well known. Ex. 1004, p. 0115. The file history for the '413 patent states that the prior art software generally fell into two categories: (1) software which is usable by non-technical people but provides the user with only a single simple model for collaboration, and (2) software which permits the user to make any kind of model for the collaboration but is not usable by non-technical people. *Id.*

According to the Patent Owner, the problem with the first class of software is the inflexibility of only having one model, while the problem with the second class of software is its complexity to non-technical users. Ex. 1004, p. 0115. However, neither problem is a technical problem from the perspective of one with ordinary skill in the art. Software supporting more than one model is available and non-technical personnel may be specifically trained on such software. Training non-technical people to use particular software does not constitute a technical solution. Additionally, organizing data into hierarchies or determining the relationship between hierarchies is not a technical solution to any problem. Organizing data by hierarchies may be done by use of conventional charts and tables.

Accordingly, for the foregoing reasons, the Board determines that the invention of claim 8 does not constitute a technological invention.

B. Claim Construction

Consistent with the statute and legislative history of the AIA, the Board interprets claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.300(b); *see also Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48766 (Aug. 14, 2012). Also, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). An inventor may rebut that presumption by providing a definition of the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

Neither Petitioner nor Patent Owner contends that any special definition has been provided in the Specification for any claim term. For the purposes of this decision, the Board concludes the same.

1. “*system being implemented using a processor and a storage device accessible to the processor*”

The preamble of claim 1 recites a “system being implemented using a processor and a storage device.” Petitioner contends that the recited processor and storage device need not be components of the claimed system because they are not positively recited elements. Pet. 11 (citing Ex. 1002 at ¶ 39). The Board is not persuaded by Petitioner’s reasoning. The processor

and storage device recited in the preamble of each independent claim serve as the antecedent basis for “said processor” and “the storage device” recited in the body of each claim. *See, e.g., C.W. Zumbiel Co., Inc., v. Kappos and Graphic Packaging Int’l*, 702 F.3d 1371, 1385 (Fed. Cir. 2012) (noting that a preamble constitutes a limitation when the elements in the body of a claim depend on it for antecedent basis). Furthermore, if the plain language of a claim indicates that a system is implemented by certain components, then those components constitute required parts of the system. “Implemented,” in that setting, can mean “constituted” or “formed.” Therefore, the Board construes the clause as setting forth that the processor and the storage device are both components of the claimed system.

2. “*model entities*”

Petitioner contends that the ’413 patent does not define the term “entities” with respect to a model—a term found in all the challenged claims. Pet. 12. Therefore, Petitioner relies on a non-technical dictionary definition to support a broad construction of “entity” to include anything that has a distinct and separate existence. *Id.*

Patent Owner contends that the term “model entities” should be construed as a set of assembled computer data or data item that represents fundamental components of the model. Prelim. Resp. 12. In support of that contention, Patent Owner cites to the Specification, which states:

In one aspect, the invention features a method for use in processing management information. The method includes acquiring a first set of computer data representing a model of an organization of people, the model having fundamental components, *the first set of computer data including data items representing the fundamental components*

Ex. 1001, col. 2, ll. 37-42 (emphasis added).

The Patent Owner then contends that a data set only qualifies as a “model entity” if the data set provides a user with the capability to perform specified operations on the model. *Id.* (citing Ex. 1001 at col. 18, ll. 12-25).

According to the Patent Owner, its proposed construction for the term “model entity” is consistent with the understanding of one of ordinary skill in the computer and software arts. In support of its construction, the Patent Owner cites *The IEEE Standard Dictionary of Electrical and Electronics Terms*, 6th Ed., published in 1997 (hereinafter IEEE dictionary). Prelim.

Resp. 12. The IEEE dictionary defines “model” in the computer context as “[a]n approximation, representation, or idealization of selected aspects of the structure behavior, operation, or other characteristics of a real-world process, concept, or system.” Ex. 2001 at p. 660 (dictionary entry for “model”). The IEEE dictionary defines “entity” as “[i]n an open system, an element in a hierarchical division” that “has attributes that describe it, a name that identifies it, and an interface that provides management operations.” *Id.* at p. 361 (dictionary entry for “entity”).

The Board agrees with Patent Owner that the Specification indicates that “model entity” is a set of assembled computer data or data item that represents fundamental components of a model. *See* Ex. 1001, col. 2, ll. 37-42. However, Patent Owner does not point to any disclosure in the Specification that requires a data object to provide the capability for a user to perform specified operations on the model in order for the data object to qualify as a “model entity.” Therefore, on the present record, the Board construes “model entity” to be “a set of assembled computer data or data item, that represents fundamental components of a model.”

3. “*hierarchies having a plurality of types*”

Independent claims 1 and 7 recite “hierarchies having a plurality of types.” Petitioner contends that the broadest reasonable construction of the term “hierarchy” includes at least two levels, with a lower level having a subordinate relationship to a higher level. Pet. 13. The Petitioner then contends that with regard to hierarchies, a “plurality of types” includes two or more identical or distinct hierarchies. *Id.* (citing Ex. 1002 ¶ 46). The Board is not persuaded by Petitioner’s contention that a “plurality of types” would include identical hierarchies. Identity simply is not consistent with a contrast in type.

The Patent Owner contends that, in the computer and software arts, a hierarchy is understood to be “[a] structure in which components are ranked into levels of subordination.” Prelim. Resp. 13 (citing Ex. 2001, p. 485). The Patent Owner then contends that the term “type” is understood in the computer and software arts as a “category into which attribute values are placed on the basis of their purpose.” *Id.* (citing Ex. 2001, p. 1155). Thus, Patent Owner concludes that “hierarchies having a plurality of types” means “a grouping of data structures according to their subject matter or purpose, with each grouping being ranked into levels of subordination.” According to the Patent Owner, such a construction is consistent with how the term is used in the Specification of the ’413 patent. *See, e.g.*, Ex. 1001, Figs. 3, 8 and 16 (illustrating “goal,” “plan,” and “domain” hierarchies).

The Board is persuaded by Patent Owner’s contention as it accounts for multiple levels of subordination and different subject matter. Furthermore, it is consistent with the Specification. Therefore, the Board adopts Patent Owner’s proposed construction. Thus, “hierarchies having a

plurality of types” is construed to mean “a grouping of data structures according to their subject matter or purpose, with each grouping being ranked into levels of subordination.”

C. Asserted Ground Based on 35 U.S.C. § 101—Claims 1-21 Directed to Non-Statutory Subject Matter

Petitioner challenges claims 1-21 of the '413 patent, under 35 U.S.C. § 101, as directed toward patent-ineligible subject matter. Pet. 15-20. Patent Owner asserts that the challenged claims are not patent-ineligible, because they are directed to a specific combination of “critical hardware components” rather than an “abstract idea.” Prelim. Resp. 30-42. Upon review of Petitioner’s analysis and supporting evidence, as well as Patent Owner’s responsive arguments, we determine that Petitioner has shown that claims 1-21 are, more likely than not, unpatentable under 35 U.S.C. § 101.

1. Statutory Class of Subject Matter—Claims 1-7

For claimed subject matter to be patent eligible, it must fall into one of four statutory classes set forth in 35 U.S.C. § 101: a process, a machine, a manufacture, or a composition of matter. The Petitioner alleges that claims 1-7 fail to satisfy this statutory requirement, and are, therefore, patent ineligible. Pet. 15-16. However, Petitioner’s argument is premised on its claim construction that the system of independent claim 1, and therefore dependent claims 2-6 that depend on claim 1, does not include a processor or storage device. We have determined, for the purposes of this decision, that the processor and storage device are positively recited elements of claim 1. Although, not addressed by Petitioner, independent claim 7 is directed to a data storage device. Consequently, claims 1-7 are directed to a machine, which fits within one of the four statutory classes set forth in § 101.

The subject matter eligibility analysis does not end here, however, because the Supreme Court has set forth three exceptions of subject matter ineligible for patent protection: “laws of nature, physical phenomena, and abstract ideas.” *Bilski v. Kappos*, 130 S. Ct. 3218, 3225 (2010) (internal quotations and citation omitted). Here, the issue before us is whether the claimed subject matter amounts to no more than an abstract idea. *See Bancorp Servs., LLC v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1280 (Fed. Cir. 2012) (although a claim, on its face, cites a machine, the claim may be patent ineligible as a law of nature, physical phenomena, or abstract ideas); *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011). To resolve this issue, we determine whether the challenged claims pose “any risk of preempting an abstract idea.” *CLS Bank Int’l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1282 (Fed. Cir. 2013) (plurality opinion).

2. *Abstract Idea—Claims 1-21*

Petitioner alleges that claims 1-21 are directed to an abstract idea. Pet. 16-17. Its analysis in that regard is provided in Section A(ii) of the Petition. The reasoning is persuasive. Specifically, Petitioner argues that claims 1, 7, and 20 recite a data storage device containing a representation of a model of collaborative activity, whereas claim 8 recites a method of supporting management of a collaborative activity. Pet. 16. Petitioner argues these models and methods are intangible abstract ideas. *Id.* at 17. Further, Petitioner argues that the addition of basic computer operations, such as those recited in claim 1, do not sufficiently narrow the scope of the claims beyond the abstract idea, as they are insignificant pre- or post-solution activity. *Id.* at 18. Likewise, Petitioner argues that the incidental

use of a processor and storage device, to permit a solution to be achieved more quickly, does not impose sufficiently meaningful limits on the claims so as to satisfy § 101. *Id.* at 18-19.

Patent Owner asserts that Petitioner ignores several tangible claim limitations that narrow the claims, so that they do not cover the full, abstract idea of collaborative activity. Prelim. Resp. 33-34. Specifically, Patent Owner points to: a processor, which is required to carry out six specific operations; a storage device; a model of collaborative activity; model entities; and a plurality of hierarchies having a plurality of types. *Id.* at 34. Patent Owner argues that these limitations are not insignificant pre- or post-solution activity because they are part of the solution for building a model of collaborative activity. *Id.* at 35-36. Further, Patent Owner asserts that the processor and storage device do *not* merely permit the solution to be achieved more quickly, but, rather, are a specific way of supporting management of a collaborative activity. *Id.* at 37. Patent Owner argues that its claims are similar to those which were found patentable in *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335 (Fed. Cir. 2013). *Id.* at 35, 37-40.

As the first step of our analysis, we identify the abstract idea represented in the claim. “[I]t is important at the outset to identify and define whatever fundamental concept appears wrapped up in the claim so that the subsequent analytical steps can proceed on a consistent footing.” *CLS Bank Int’l*, 717 F.3d at 1282. Here, the challenged claims are directed to a representation of a model for use in processing management information of a collaborative activity. Ex. 1001, col. 2, ll. 37-47. To aid in the management of a collaborative activity (e.g., developing customer relationships), a computer database is created that represents a model of the

collaborative activity. Ex. 1004, p. 0116. The model includes model entities (e.g., goals and projects) organized into a plurality of hierarchies (e.g., goals to be done and project hierarchy for doing them, or domain hierarchy of functional areas) having a plurality of types. *Id.*; *see also* Ex. 1001, Fig. 3 (hierarchy of goals and projects) and Fig. 8 (hierarchy of domains). The model may contain data such as the customer segment, products, needs, etc. Ex. 1001, col. 2, l. 60–col. 3, l. 16. A processor provides a graphical user interface (“GUI”) for interaction with a user. Ex. 1004, 0116; *see* Ex. 1001, Fig. 9 (GUI displaying goals belonging to a domain). Therefore, based on the Specification and challenged claims, the abstract idea at the heart of the challenged claims is a model to aid in processing management information by organizing and making the information readily accessible by the collaborators of the project. *See, e.g.*, Ex. 1001, col. 2, l. 9–col. 5, l. 8. The model, as described by the Specification, is a disembodied concept that it is not tied to a specific algorithm or specialized computer.

Next, proceeding to the preemption analysis, we determine whether “additional substantive limitations . . . narrow, confine, or otherwise tie down the claim so that, in practical terms, it does not cover the full abstract idea itself.” *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344-45 (Fed. Cir. 2013) (internal quotations and citation omitted). The relevant inquiry here is “whether a claim, as a whole, includes *meaningful* limitations restricting it to an application, rather than merely an abstract idea.” *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335, 1344 (Fed. Cir. 2013).

Patent Owner attempts to limit the abstract idea of the challenged claims by applying them in a computer environment. Prelim. Resp. 34. For

instance, Patent Owner points to the processor of claim 1, which is alleged to perform six operations: (i) controlling access to the model entity; (ii) creating, modifying, and/or deleting the model entity; (iii) assigning the model entity to a location in a hierarchy; (iv) accessing and/or modifying the information concerning the collaborative activity via the model entity; (v) viewing model entities as ordered by a hierarchy; and (vi) viewing model entities as order by a value in the information concerning the collaborative activity. *Id.* The Patent Owner also relies upon “a storage device” as a substantive limitation. *Id.* First, with respect to the processor, we note that at least operations (ii) through (vi) actually are carried out by the user, albeit, via the processor. Second, with respect to both the processor and storage device, we note that simply implementing an abstract concept on a computer does not transform a patent-ineligible claim into a patent-eligible one. *See Bancorp Servs., LLC v. Sun Life Assurance Co. of Can.*, 687 F.3d 1266, 1280 (Fed. Cir. 2012).

The Federal Circuit has provided guidance on how claim limitations involving computers apply in the § 101 analysis in *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011). There, the Court explained that “the basic character of a process claim drawn to an abstract idea is not changed by claiming only its performance by computers, or by claiming the process embodied in program instructions on a computer readable medium.” *CyberSource Corp.*, 654 F.3d at 1375 (Fed. Cir. 2011); *see also Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333 (Fed. Cir. 2012) (quoting *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1333 (Fed. Cir. 2010)) (“Simply adding a ‘computer aided’ limitation to a claim covering an abstract concept, without more, is insufficient to render the

claim patent eligible.”). Instead, “to impart patent-eligibility to an otherwise unpatentable process under the theory that the process is linked to a machine, the use of the machine ‘must impose meaningful limits on the claim’s scope.’” *CyberSource*, 654 F.3d at 1375 (*quoting In re Bilski*, 545 F.3d 943, 961 (Fed. Cir. 2008)). Here, adding a computer and an associated storage device to the abstract idea of using a model, to organize and make available management information to collaborators jointly working on a project, does not impose meaningful limits on the claims. Specifically, the storage device merely stores the data, and the processor just performs insignificant, conventional, and routine steps (e.g., creating, editing, displaying) in direct response to the user’s input. These pre- and post-solution activities do not impose meaningful limits on the scope of the claims and are not integral to the invention as a whole. *See Bancorp*, 687 F.3d at 1278; *SiRF Tech., Inc.*, 601 F.3d at 1333 (“In order for the addition of a machine to impose a meaningful limit on the scope of a claim, it must play a significant part in permitting the claimed method to be performed”). Thus, Patent Owner’s attempt to characterize the claimed invention as covering more than an abstract idea is unpersuasive, as it is not supported by corresponding meaningful substantive limitations.

Patent Owner also cites to a model of collaborative activity, model entities, and a plurality of hierarchies having a plurality of types, as describing a particular type of model. Prelim. Resp. 34-35. However, all of those claim limitations are overly broad in scope and essentially would preempt the abstract idea (i.e., using a model to organize and make available management information to collaborators jointly working on a project). For example, a “model entity” is simply data representing a fundamental

component of the model; and “hierarchies having a plurality of types” are ranked groupings of data according to their subject matter or purpose. *See* II.B. Claim Construction, above. The claims would apply broadly to a customer list ranked by size of past orders, geographic location, or product type. Thus, the claims essentially would preempt the sharing of a database used for a collaborative activity, provided that the data is organized in ranked groupings according to subject matter or purpose.

Moreover, as Patent Owner acknowledges, the claims are not limited to a particular type of collaborative activity (Prelim. Resp. 4-5), or to a particular industry or business (Prelim. Resp. 20-21). The claims are directed to any activity involving two or more people working together and sharing data arranged in a hierarchical fashion. While the claims are limited to using a storage device and/or processor, such limitations are not meaningful as most practical applications of such a database would involve a computer.

Lastly, we are not persuaded by Patent Owner’s argument that the challenged claims are similar to those at issue in *Ultramercial*, 722 F.3d at 1337-38. Prelim. Resp. 34-35. In *Ultramercial*, the invention involved an extensive computer interface and a specific application of a method implemented by several computer systems, operating in tandem, over a communication network. *Ultramercial*, 722 F.3d at 1350-52. The claims in *Ultramercial* contained additional limitations beyond the abstract idea of using advertising as currency, such as limiting the transaction to an Internet website, offering free access conditioned on viewing a sponsor message, and only applying to a media product. *Ultramercial*, 722 F.3d at 1350. As the Court explained in *Ultramercial*, “the claim appears far from over

generalized.” *Id.* at 1352-53. The steps recited in the claim there involved specific electronic interactions between specific computer systems over a communications network. *Id.* at 1350.

According to the Federal Circuit, the method in *Ultramercial* required an “extensive computer interface” and performance of the method “through computers, on the internet, and in a cyber-market environment.”

Ultramercial, 722 F.3d at 1350-52. In the present case, the processor and storage device limitations are to a general, rather than a specific, computer system, and the general system does not provide meaningful limitations to the scope of the claimed invention. Therefore, unlike in *Ultramercial*, the claims here involve generalized steps using a conventional software component, and appear to claim broadly the unpatentable abstract concept of using a model to aid in processing management information by organizing that information for ready access by multiple collaborators.

The challenged claims are more similar to the patent-ineligible system claim of *CLS Bank*. There, the claims contained limitations such as a data storage unit and a general purpose computer that received transactions, adjusted variables in the data storage unit, and generated instructions. *CLS Bank*, 717 F.3d at 1289.

For the foregoing reasons, we conclude that Petitioner has demonstrated that the challenged claims are, more likely than not, directed to patent-ineligible subject matter under § 101.

*D. Asserted Grounds Based on 35 U.S.C. § 102—Claims 1-21
Anticipated by Ito*

Petitioner alleges that claims 1-21 of the ’413 patent are unpatentable under 35 U.S.C. § 102 over Ito. Pet. 48.

For the reasons discussed below, Petitioner has shown that claims 1-21 are, more likely than not, anticipated by Ito.

Ito

Ito describes a system for managing information relating to construction projects, so that project data can be exchanged between people engaged in different domains of a project. Ex. 1007, col. 1, ll. 10-12; col. 1, ll. 50-57. Figure 1 of Ito is reproduced below.

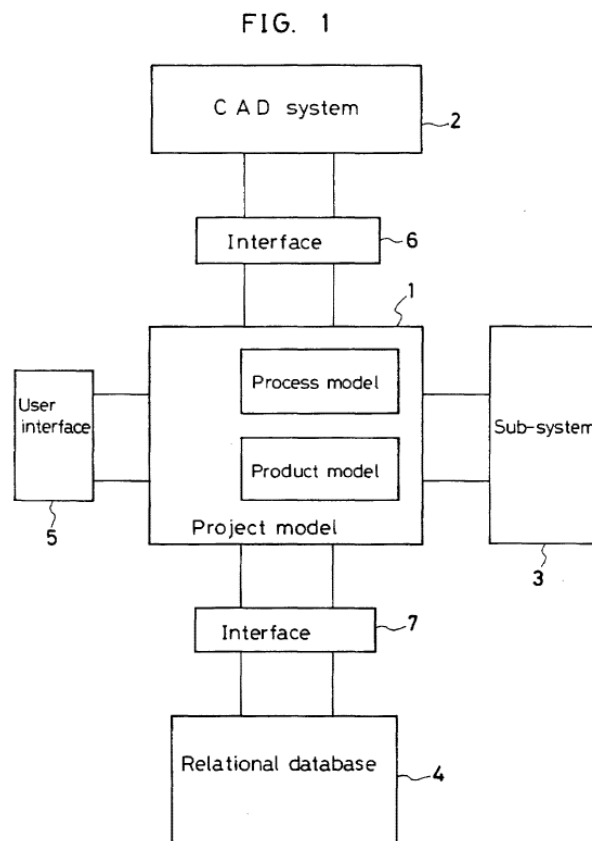


Figure 1, reproduced above, illustrates one embodiment of the system in Ito, which includes (i) project model 1, which combines a product model and a process model, and (ii) user interface 5 for interacting with project model 1. The product model and process model are comprised of objects that are arranged in a hierarchical structure. Ex. 1007, col. 1, ll. 13-15. The product model defines a product by using physical elements and functional

elements, while the process model defines activities related to the product. *Id.* at col. 2, ll. 8-10. The process model includes an information reference method for fetching necessary information from the data in the product model. Ex. 1007, col. 2, ll. 20-23. According to Ito, it is possible to store client information, site neighborhood information, cost information, etc., in the product model. *Id.* at col. 12, ll. 19-21.

User interface 5 controls access to the information and hierarchical structures in the product and process models. Ex. 1007, col. 5, ll. 9-10.

In one embodiment of Ito, as shown in Figure 2, project model 1 (from Figure 1) is composed of (i) a global view; (ii) a project view, which constitutes a process model; and (iii) an object view, which constitutes a product model, for each project. *Id.* at col. 5, ll. 13-16. Figure 2 of Ito is reproduced below:

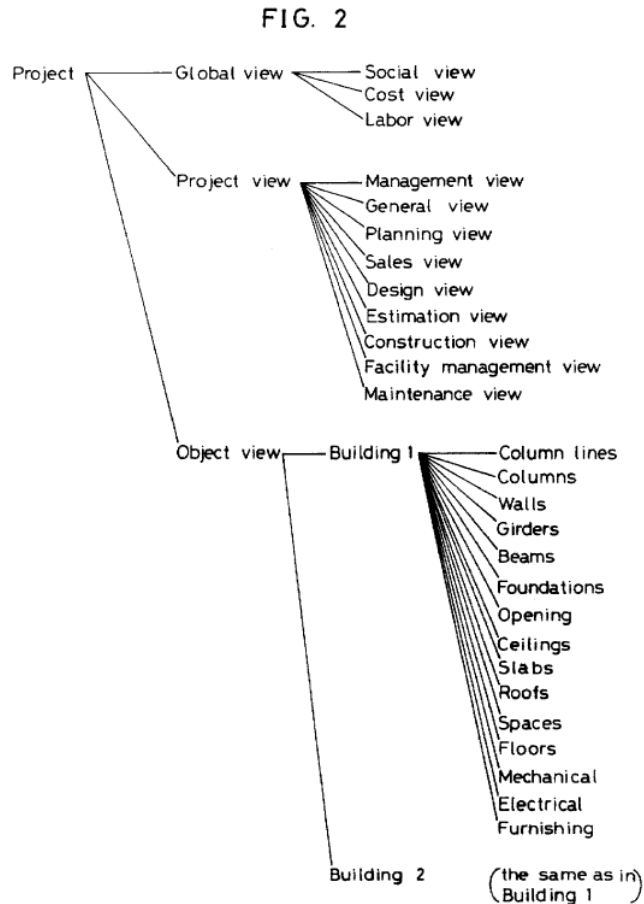


Figure 2, reproduced above, illustrates that within the global view, project view, and object view, there are additional subordinate views. Ex. 1007, col. 5, ll. 13-21. Views are viewpoints, which are each defined as objects along the flow of productive activities in the process or product model. *Id.* at col. 5, ll. 44-45. For example, the management view (a subordinate view to the Project view) is a project manager's viewpoint, which may be broken down further into various subordinate views. *Id.* at col. 5, ll. 46-49. Figure 3(b) of Ito reproduced below:

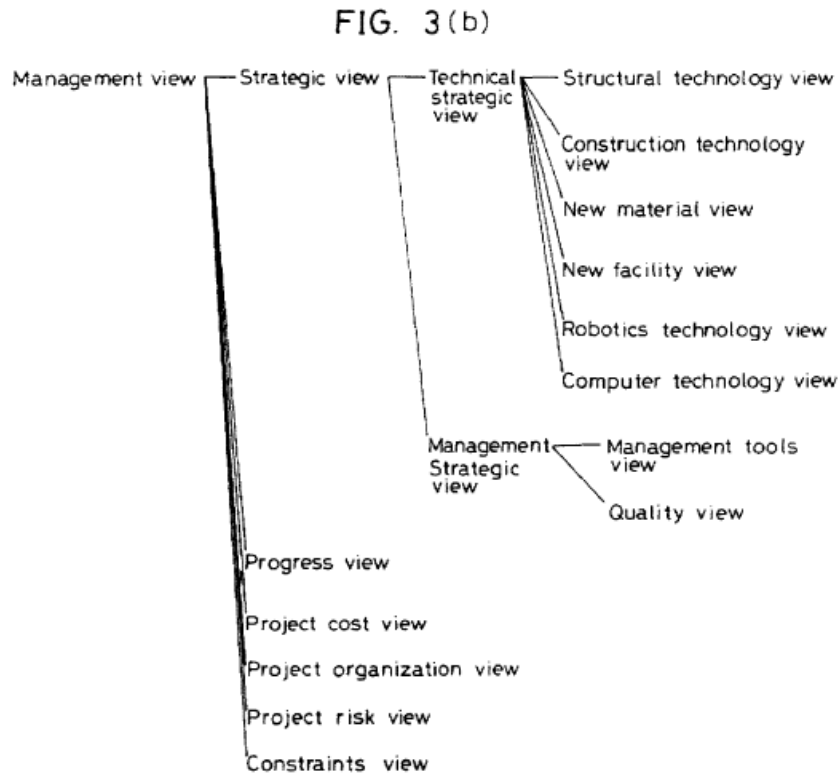


Figure 3(b), reproduced above, illustrates that from the project manager's viewpoint, the progress of the project may be strategically considered. This strategic view may contain sub-views (e.g., a progress view, a project cost view, a project organization view, and a project risk view). Ex. 1007, col. 5, ll. 50-54.

Each object that is defined as a process model can have data, various kinds of functions, system rules, etc., as the contents of the model. That approach enables each person-in-charge to remove or obtain information necessary for a specific activity from the product model or objects, so that it may be used by other persons-in-charge based on their particular activity. *Id.* at col. 12, ll. 49-54. In addition, Ito discloses that the functions and rules defined in each object enable an authorized user to change a relationship defined in an object, in the product model, as desired. Ex. 1007, col. 12, ll. 55-58. A user can also view model entities in an order selected by the user.

Id. at col. 9, ll. 33-35.

Whether Ito meets the claim limitations

Claims 1 and 7 require a model entity capable of simultaneously belonging to a hierarchy having one type and a hierarchy having another type. Claims 8 and 20 require that a representation of a model entity be capable of simultaneously belonging to hierarchies, including a hierarchy and another hierarchy. The Board considers that a hierarchy “having a type” means the hierarchy is “being of one type,” and that a hierarchy “having another type” means the hierarchy is “being of another type.”

Petitioner contends that Ito discloses views, and that those views constitute hierarchies. Pet. 50. Ito teaches that the views are sets of hierarchical objects, where each object can have data and various functions so that information necessary for a given activity can be accessed. Ex. 1007, col. 2, ll. 46-50. Examples of views that constitute hierarchies are illustrated in Figures 2, 3b, and 4a of Ito. According to Petitioner, Figure 2 shows a hierarchical structure for a Project View, whereas Figures 3b and 4a show a different hierarchical structure for a Management View. Pet. 50-51.

Petitioner reasons that although the Management View is a subordinate view to the Project View, the Management View has multiple views distinct from just the Project View. Likewise, the Project View has multiple subordinate views, in addition to the Management View. Therefore, the Petitioner concludes that the Project View is a hierarchy having one type and the Management View is a hierarchy having another type. *Id.*

The Board is persuaded by Petitioner’s contention regarding the reading of views as hierarchies, because the disclosed views fall within the

scope of the term “hierarchies having a plurality of types.” That is, the views are a grouping of data structures according to their subject matter or purpose, with each grouping being ranked into levels of subordination. The Board notes that although a view containing a subordinate view satisfies “hierarchies,” a view on the lowest level, which does not have a subordinate view, would not qualify as a “hierarchy.” The Board is persuaded further by Petitioner’s contention that the Project View and the Management View are of different types, based on the disclosures in Ito’s Figures 2, 3b, and 4a.

The Petitioner then contends that model entities or representations of model entities can be associated with more than one view or hierarchy. Pet. 49-50. According to Petitioner, model entities in Ito are items that appear in a view. *Id.* at 50. The Petitioner reasons that the items (or model entities) subordinate to the Management View, are also subordinate to the Project View hierarchy, and therefore, belong to multiple different hierarchies. *Id.* at 55. The Board is persuaded by the Petitioner’s reasoning.

Patent Owner asserts that Ito does not meet the claim limitation recited above because none of the items (referred to as model entities or representations of model entities by Petitioner) simultaneously belong to a hierarchy having one type and a hierarchy having another type. Prelim. Resp. 56. Patent Owner reasons that because none of the model entities or representations in the Project View structure of Figure 2 appears in the Management View structure of Figures 3b and 4a, Petitioner has failed to identify a single model entity that appears in both the Project View and the Management View. *Id.* Therefore, Patent Owner concludes that not a single model entity or representation appears in both the Project View (a hierarchy having one type) and Management View (a hierarchy having another type).

Id. The Board is not persuaded by Patent Owner’s argument for the following reason.

Upon reviewing Figures 2 and 3, it is apparent that the subordinate views in the Management View hierarchy (such as Strategic View and Technical Strategic View) are also subordinate views in the Project View hierarchy. Therefore, a model entity in the Strategic View belongs simultaneously to the Management View hierarchy and the Project View hierarchy, thus meeting the pertinent claim limitation.

Furthermore, the claims only require that (i) model entities be **capable of** simultaneously belonging to a hierarchy having one type and a hierarchy having another type, or (ii) that a representation of a model entity be **capable of** simultaneously belonging to hierarchies, including a hierarchy and another hierarchy. Although neither party addresses the “capable of” language, it is clear that Ito indicates that a model entity in the Management View hierarchy is capable of simultaneously belonging to the Project View hierarchy. Thus, the Board is persuaded that the disclosure in Ito meets the disputed claim limitation.

Claims 1, 7, and 16 of the ’413 patent recite the following limitation: “viewing model entities as ordered by a value in the information concerning the collaborative activity.”

Petitioner asserts that Ito discloses software that allows a user to view model entities in a hierarchy. Pet. 56 (citing Ex. 1007, col. 5, ll. 9-10). According to Petitioner, Ito can display model entities in an order based on the value of the information in a model entity. Pet. 58 (citing Ex. 1007, col. 10, ll. 47-53); *see also* Ex. 1007 at col. 9, ll. 33-35; col. 9, ll. 46-49; col. 9, ll. 57-66; col. 10, ll. 47-53; Fig. 6(b). Ito teaches that the display order of model

entities can differ according to the user's intended usage for various activities in the project. Ex. 1007, col 10, ll. 34-39. The display order and view is set automatically in Ito, when a user declares his position regarding a project during log-on to the computer interface. *Id.*

Patent Owner disagrees with Petitioner's reading of Ito, specifically Petitioner's reading of the information found in Figure 6(b). Prelim. Resp. 58-59. According to Patent Owner, Petitioner's reliance on exemplary Figure 6(b) for the disclosure of the disputed claim limitation is misplaced, because Figure 6(b) merely lists general information about a building. *Id.* However, Patent Owner does not address Petitioner's other citations to Ito, where Ito discloses that a "value associated with the information is placed in the slot or data item in the form of a function" (Ex. 1007, col. 6, ll. 54-56), and that a user can also model entities in an order selected by the user based on the function of each entity (*id.*, col. 9, ll. 33-35). *See* Pet. 58.

Patent Owner also fails to address the full scope of the claim limitation at issue, but instead takes a narrow view of the term "value" simply as the cost of an item. Prelim. Resp. 59. For example, in its analysis, Patent Owner refers to an order of model entities in Figure 17 of the '413 patent, when the model entities are sorted according to the value of the cost of each item. *Id.* at 58-59. Patent Owner compares the sorting of objects based on cost to sorting items as illustrated in Figure 6(b) of Ito. *Id.* Patent Owner then concludes that Ito does not sort items based on their cost, and therefore, does not meet the claim limitation. *Id.*

However, the term "value" is not restricted in meaning to merely the "cost" of an item. As Ito discloses, "value" can be associated with information that is not cost. Ex. 1007, col. 6, ll. 54-56; col. 9, ll. 33-35.

Therefore, the Board is persuaded by Petitioner's contention that Ito allows viewing of model entities ordered by a value in the information concerning the collaborative activity, thereby meeting the recited claim limitation.

For the foregoing reasons, Petitioner has shown that claims 1-21 are, more likely than not, anticipated by Ito.

*E. Asserted Grounds Based on 35 U.S.C. § 102—Claims 1-21
Anticipated by Lowery*

Petitioner alleges that claims 1-21 of the '413 Patent are unpatentable under 35 U.S.C. § 102 as anticipated by Lowery. Pet. 20.

For the reasons discussed below, we are not persuaded that Petitioner has shown that claims 1-21 are, more likely than not, anticipated by Lowery.

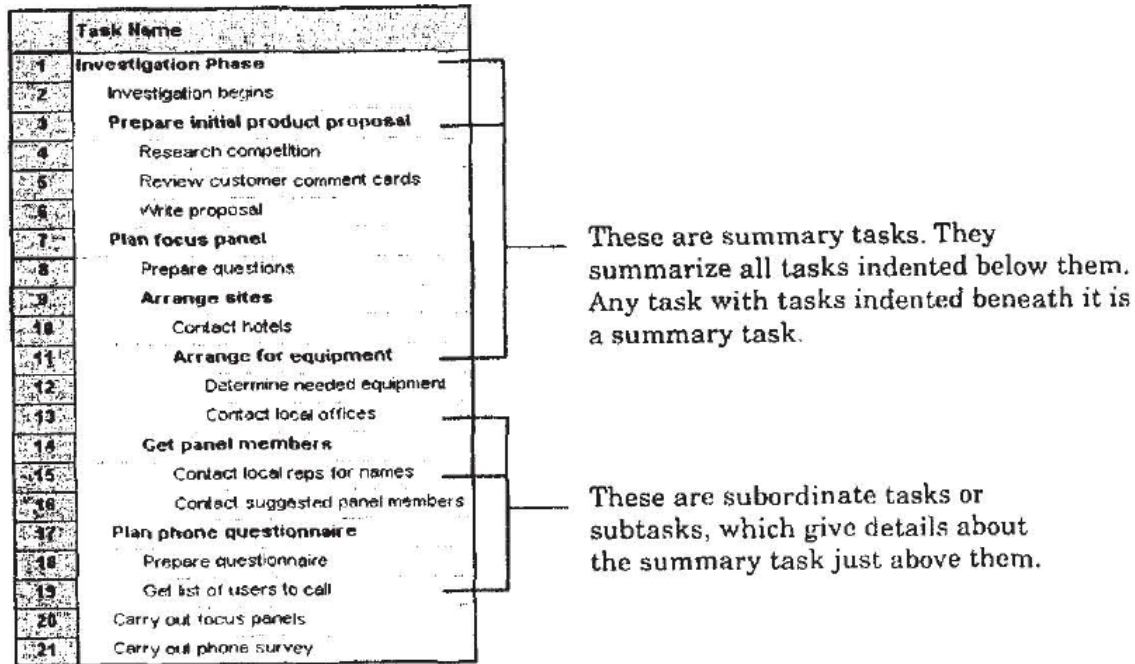
Lowery

Lowery describes a system for managing collaborative activity of individuals within an organization using software titled "Microsoft Project 4.0." Ex. 1005, p. 0011. The system focuses on the scheduling of a project and project goals. *Id.* at pp. 0011, 0041. The project is broken down into tasks that must be accomplished to meet the project goals. *Id.* at p. 0041. A schedule is created by entering all the tasks for the project, setting when each task should start, and when each task must be completed. *Id.* at p. 0011. The schedule allows a user to track the project. *Id.* at 0041.

Lowery teaches that each task is entered into a Task List and used to populate the schedule. Ex. 1005, pp. 0015, 0043. Under each task, a user lists more detailed tasks (i.e., sub-task) that must be done to complete the task. *Id.* at p. 0044.

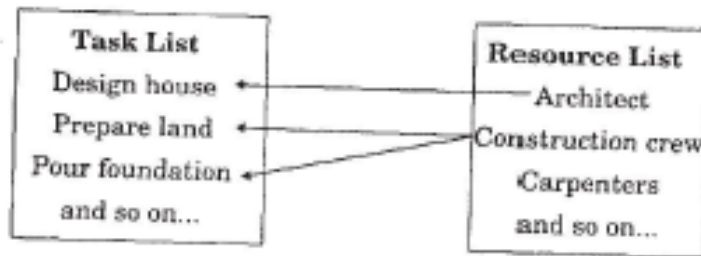
Lowery also teaches that each project can be organized by software in a way that allows users to view the project goals and necessary tasks and

subordinate tasks. Ex. 1005, pp. 0045, 0048. One way to organize and view project information is in outline format. The Figure from Chapter 4, page 78 (Ex. 1005, p. 0048) is reproduced below.



The Figure from Chapter 4, page 72, reproduced above, illustrates an outline of tasks and subordinate tasks. Ex. 1005, p. 0048. Another format that can be used to visualize and manage a project is a work breakdown structure (“WBS”). *Id.* at p. 0045. A work breakdown structure is a tree-type structure that includes every task and every result. Ex. 1005, p. 0045. At the bottom or lowest level of a WBS is a work package; this is where the actual work is done and the resources are assigned. *Id.*

Lowery discloses that every project has two lists—a list of all tasks and a list of all resources. Ex. 1005, p. 0015. The two lists are connected by assigning the resources to the tasks. The Figure from Chapter 2, page 13 of Lowery (Ex. 1005, p. 0015) is reproduced below.



The Figure from Chapter 2, page 13 of Lowery illustrates that links can be created from the Task List and the Resource List. Ex. 1005, pp. 0015-0016. The links are created by assigning resources to each task. *Id.*

Lowery teaches that all resources can be viewed in a list referred to as a resource pool. The Figure from Chapter 8, page 156 (Ex. 1005, p. 0087) is reproduced below:

	Resource Name	Group	Max. Units	Peak	Std. Rate	Ovt. Rate	Cost	Work
1	Marcia	Marketing	1	2.1	\$50,000.00/y	\$0.00/h	\$13,701.92	566.8h
2	Marketing staff	Marketing	3	3	\$32,000.00/y	\$0.00/h	\$17,969.23	1168h
3	Jim	Marketing	1	0	\$32,500.00/y	\$0.00/h	\$0.00	0h
4	Cheryl	Marketing	1	1.25	\$16,000.00/y	\$11.50/h	\$1,630.76	212h
5	Janet	Marketing	1	1.1	\$47,500.00/y	\$0.00/h	\$9,043.27	396h
6	Roberto	Marketing	1	1	\$30,000.00/y	\$0.00/h	\$115.38	8h
7	Carmen	Marketing	1	1	\$60,000.00/y	\$0.00/h	\$230.77	8h
8	Research Inc	Vendor	1	1	\$500.00/d	\$0.00/h	\$5,000.00	80h
9	Dave	Design	1	1	\$60,000.00/y	\$0.00/h	\$10,311.06	357.45h
10	Bill	Design	1	1	\$25,000.00/y	\$0.00/h	\$3,771.83	313.82h
11	Terri	Design	1	1	\$6.50/h	\$9.75/h	\$284.70	43.8h
12	Design staff	Design	3	3	\$25,000.00/y	\$0.00/h	\$8,230.77	684.8h
13	Sales engineers	Sales	3	3	\$32,000.00/y	\$0.00/h	\$10,455.38	679.8h
14	Testing staff	Testing	3	2	\$25,000.00/y	\$0.00/h	\$7,211.55	600h
15	Merlynn	Testing	1	1	\$32,500.00/y	\$0.00/h	\$7,391.15	473.03h
16	Production engineers	Production	2	4	\$32,500.00/y	\$0.00/h	\$5,125.00	328h
17	Production team	Production	10	3	\$25,000.00/y	\$0.00/h	\$2,644.23	220h
18	Nancy	Production	1	1.5	\$32,500.00/y	\$0.00/h	\$2,062.50	132h
19	Shop crew	Production	5	3	\$15.00/h	\$22.50/h	\$1,800.00	120h

Overallocated resources are bold or red.

Peak column shows highest number allocated at any time.

Level message indicates Marcia is overallocated.

The Figure from Chapter 8, page 156, reproduced above, illustrates a listing of all resources in the resource pool. Ex. 1005, p. 0087. The resource pool indicates the resource name, where the resource comes from (resource group), how much of the resource the company has (max. units), the highest number of units allocated at any time (peak), the rate for each resource, the

cost for each resource per task, and how many hours of work each resource will dedicate to a task. *Id.*

Whether Lowery meets the claim limitations

As discussed above, claims 1 and 7 each require a model entity capable of simultaneously belonging to a hierarchy having one type and a hierarchy having another type. Claims 8 and 20 each require that a representation of a model entity be capable of simultaneously belonging to hierarchies, including a hierarchy and another hierarchy. The claim element “a hierarchy having one of the types and a hierarchy having another of the types” recited in claims 1 and 7 indicates that there are at least two different types of hierarchies. However, the claim element “hierarchies[,] including a hierarchy and another hierarchy” indicates that there are at least two hierarchies, but the hierarchies may be of the same type.

Petitioner contends that Lowery discloses a plurality of hierarchies. Pet. 27-28 (citing Ex. 1005, Figs. at pp. 128 and 156). According to Petitioner, Lowery meets this claim limitation, because Lowery discloses (1) a task hierarchy that depicts tasks, subordinate tasks, etc., and (2) a resource hierarchy, with individual resources being associated with resource groups. *Id.* at 39. The Petitioner relies on the declaration testimony of its expert witness, Dr. Alexander, who testifies that the figure in Lowery (Ex. 1005) at page 156 discloses a resource hierarchy. Ex. 1002 ¶ 57.

The Patent Owner disagrees, asserting that the figure at page 156 of Lowery (Ex. 1005, p. 0087, reproduced above) does not show a resource in a resource hierarchy or a structure in which model entities are ranked into levels of subordination.

We are persuaded by Patent Owner's contentions, because the Petitioner does not adequately explain what it considers to be a hierarchy in the figure in Lowery (Ex. 1005) at page 156. Although individual resources in the resource groups of Lowery are listed, as explained by Petitioner, there is insufficient evidence to establish that either the resources or resource groups are ranked into levels of subordination. The Board is not persuaded that the figure in Lowery (Ex. 1005) at page 156 discloses a hierarchy.

Thus, the Board is not persuaded that Lowery discloses either (1) "a hierarchy having one type and a hierarchy having another type" as recited in claims 1 and 7, or (2) "hierarchies[,] including a hierarchy and another hierarchy" as recited in claims 8 and 20.

For the foregoing reason, the Petitioner has failed to show that claims 1-21 are, more likely than not, anticipated by Lowery.

*F. Asserted Ground Based on 35 U.S.C. § 103—Claims 1-21
Obvious in view of Lowery and Ito*

Petitioner alleges that claims 1-21 of the '413 patent are unpatentable under 35 U.S.C. § 103 in view of Lowery and Ito. Pet. 72-74.

For the reasons discussed below, we are not persuaded that Petitioner has shown that claims 1-21 are, more likely than not, unpatentable for obviousness over Lowery and Ito.

Petitioner contends that Lowery and Ito disclose similar systems and that combining the known aspects of the systems would have been a matter of common sense for a person of ordinary skill in the art. Pet. 73. However, as the Patent Owner points out, neither Petitioner nor Dr. Alexander specifically states which elements of Lowery would be combined with which elements of Ito. Prelim. Resp. 62-63.

The Board is persuaded by Patent Owner's contentions, because the Petitioner does not adequately explain the basis for combining Lowery and Ito, or how the two references would be combined to arrive at the claimed subject matter. The Board credits Dr. Alexander's testimony that Lowery and Ito disclose similar systems for managing information. However, merely because systems are similar does not explain adequately (1) what parts of each system would be combined, (2) why a person of skill in the art would combine the references, or (3) that the combination would meet the recited claim limitations.

For the foregoing reasons, we conclude that Petitioner has not shown that claims 1-21 are, more likely than not, unpatentable for as would have been obviousness over Ito and Lowery.

G. Conclusion

For the foregoing reasons, the information presented in the petition establishes that Petitioner has shown that claims 1-21, more likely than not, are unpatentable.

The Board has not made a final determination on the patentability of any claim.

IV. ORDER

Accordingly, it is

ORDERED that pursuant to 35 U.S.C. § 324(a), a covered business method review is hereby instituted for claims 1-21 of the '413 patent on the following grounds:

1. Claims 1-21 as anticipated by Ito under 35 U.S.C. § 102(a);
2. Claims 1-21 as being drawn to non-statutory subject matter under 35 U.S.C. § 101;

FURTHER ORDERED that all other grounds raised in Salesforce.com, Inc.'s petition are *denied*;

FURTHER ORDERED that pursuant to 35 U.S.C. § 324(d) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial on the grounds of unpatentability authorized above; the trial commences on the entry date of this decision; and

FURTHER ORDERED that an initial conference call with the Board is scheduled 2:00 PM Eastern Time on December 3, 2013; the parties are directed to the Office Trial Practice Guide⁴ for guidance in preparing for the initial conference call, and should come prepared to discuss any proposed changes to the Scheduling Order entered herewith and any motions the parties anticipate filing during the trial.

⁴ *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48765-66 (Aug. 14, 2012).

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Patent 8,095,413

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