

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONY COMPUTER ENTERTAINMENT AMERICA LLC
and MICROSOFT CORPORATION INC.,
Petitioner,

v.

ADC TECHNOLOGY INC.,
Patent Owner.

Case CBM2015-00026
Patent 6,193,520

**PATENT OWNER'S PRELIMINARY RESPONSE TO
PETITION FOR COVERED BUSINESS METHOD PATENT
REVIEW
OF UNITED STATES PATENT NO. 6,193,520**

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I. Introduction

Pursuant to 37 C.F.R. §§ 42.207(a) and 42.300(a), Patent Owner, ADC Technology Inc. (“ADC”), submits this Preliminary Response to the Corrected Petition (Paper No. 6) (the “Petition”) filed on January 12, 2015, by Sony Computer Entertainment America LLC and Microsoft Corporation Inc (collectively, “Petitioner”) requesting covered business method review of claims 8-14 of U.S. Patent No. 6,193,520 (the “’520 Patent,” Ex. 1001). ADC respectfully requests that the Patent Trial and Appeal Board (the “Board”) deny institution of Covered Business Method Patent Review.

II. The Petition Should Be Denied Because The '520 Patent Is Not Subject To Covered Business Method Review

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

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.

Under section 18(a)(1)(E) of the Leahy-Smith America Invents Act (“AIA”), the Board may institute a transitional proceeding only for a patent that is a covered business method patent. 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); 37 C.F.R. § 42.301(a). For purposes of determining whether a patent is eligible for a covered business method patent review, the focus is on the claims. *See* Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 Fed. Reg. 48,734, 48,736 (Aug. 14, 2012).

A. No Claim Of The '520 Patent Falls Within the Definition of a Covered Business Method

In promulgating rules for covered business method patent reviews, the Office considered the legislative intent and history behind the AIA’s definition of “covered business method patent.” *Id.* at 48,735-36. The “legislative history explains that the definition of covered

business method patent was drafted to encompass patents ‘claiming activities that are financial in nature, incidental to a financial activity or complementary to a financial activity.’” *Id.* at 48,735 (citing 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer)). Although the legislative history suggests that “financial product or service” should be interpreted broadly, it recognizes that the term cannot be read so broadly as to encompass every issued patent. 77 Fed. Reg. at 48,735-36.

Although “financial product or service” should be interpreted broadly, not all patents fall within the definition of “covered business method patents.” The ‘520 Patent is one such patent that falls outside the scope of a “financial product or service.” Claim 8 of the '520 Patent is the only independent claim being challenged.

For convenience, independent Claim 8 is reproduced below:

8. A communication system for transmitting at least one of the program, the data, and a combination of the program and data from a host facility to a communication terminal device, said communication terminal device comprising:

an input device for inputting instructions to execute the program or to process the data,

receiving means for receiving one of the program, the data, and a combination of the program and data as sent out from said host facility,

storage means for storing the program, the data, or a combination of the program and data received by said receiving means,

executing means for executing the program stored in said storage means or executing data processing by using the data stored in said storage means, in accordance with instructions from said input device,

clock means for keeping a predetermined time period after said executing means starts execution of the program or data processing, and

interference means for interfering with execution of said executing means when said clock means counts said predetermined time period; and

said host facility comprising:

storage means for storing at least one of the program, the data, and a combination of the program and data together with the duration data indicative of the predetermined time period to be counted by said clock means, and

sending out means for sending out at least one of the program, the data, and a combination of the program and data together with the duration data stored in said storage means to said communication terminal device.

Upon review of each of the terms in Claim 8, one cannot disagree that there is no term that alludes to a particular relationship to the financial service sector or is used in the practice, administration, or management of a financial product or service. Far from it. All of the claims of the '520 Patent are directed to a technological invention directed at the delivery of software in one form or another. Absolutely nothing in any of the claims is remotely related to the provision of financial services—indeed there is nothing related to the provision of *any* service at all, financial or otherwise.

Apparently recognizing this undeniable truth, Petitioner attempts to improperly import limitations from the specification into Claim 8 in a labored attempt to squeeze the '520 Patent into the definition of a covered business method. For example, Petitioner argues that because the '520 Patent specification discloses one embodiment where a host facility performs a charging process, any claim that recites a host facility must have this limitation. Corrected Petition at 3-4. However, Petitioner's position is flatly contradictory to one of the few well-settled tenets of claim construction: Limitations from the specification are not

read into a claim. *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004) (“[T]his court has expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment”); *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327-28 (Fed. Cir. 2002); *Inverness Med. Switzerland GmbH v. Warner Lambert Co.*, 309 F.3d 1373, 1379 (Fed. Cir. 2002) (“It is improper to limit the claim based on a preferred embodiment of the invention”). Petitioner’s argument is thus fatally defective. Using Petitioner’s logic, there would be no need for a patent to even have claims. Instead, every word of the specification would be read as a claim limitation.

In contrast to Petitioner's allegation, Claim 8 does not recite any “charging process.” The simple fact that the ‘520 Patent may contain references to embodiments that include a mechanism for charging a fee does not render any of the claims of the ‘520 Patent financial in nature. Petitioner is completely ignoring that the focus is on the **claims** when determining whether a patent is eligible for a covered business method patent review or not.

The only actual claim term in Claim 8 that Petitioner refers to in its argument is “host facility,” which is recited in Claim 8 to include a “storage means” and a “sending out means.” Neither a “storage means” nor a “sending out means” is used in the practice, administration, or management of a financial product or service.

Petitioner cites some CBM proceedings for the proposition that “the definition of covered business method patents shall be interpreted broadly to encompass patents ***claiming*** activities that are financial in nature, incidental to a financial activity or complementary to a financial activity.” (emphasis added). Corrected Petition at 3. Petitioner’s argument is self-defeating in that even Petitioner seems to concede that it is the ***claimed invention*** that must be reviewed, ***not*** the disclosed embodiments. Still further, each of the CBM proceedings cited by Petitioner can be distinguished from '520 Patent. In *SAP America Inc. v. Versata Development Group, Inc.*, CBM2012-00001, Paper 36 at 7 (P.T.A.B. Jan. 9, 2013), one of the challenged claims, claim 17, recites “a method for determining a price of a product offered to a purchasing organization comprising: ...storing pricing information.” The Board

stated that the “term financial is an adjective that simply means relating to monetary matters.” *Id.* at 21. The Board then determined that Versata's '350 Patent claims methods and products for determining a price and that these claims, which are complementary to a financial activity and relate to monetary matters, are considered financial products and services under § 18(d)(1). Unlike the cited claim of Versata's patent, no claim of the '520 Patent recites any term “relating to monetary matters.”

In *Agilysys, Inc. et al. v Ameranth, Inc.*, CBM2014-00016, Paper 19 at 11 (P.T.A.B March 26, 2014), the Board reasoned as follows:

Claim 1 of the '325 patent is directed to an apparatus that corresponds to an activity that is at least incidental to an activity financial in nature. Claim 1 is directed to an apparatus that is used in electronically generating a menu. The specification describes that the menu is used in the context of online or mobile ordering and paying in restaurant and other hospitality contexts. *See* Ex. 1032, 3:48- 57. *See also id.* at Fig. 7. Also, the last phrase in claim 1 specifies that the generated second menu is “applicable to a predetermined type of ordering.” The “ordering” pertains to the sale of a product, which generates revenue. Consequently, the subject matter of claim 1 is incidental to financial activity.

While the Board reviewed the specification and stated that the “specification describes that the menu is used in the context of online or mobile ordering and paying in restaurant and other hospitality contexts,” the Board reasoned that because the claim specifies that the generated second menu is “applicable to a predetermined type of ordering,” the term “ordering” in Claim 1 pertains to the sale of a product, which generates revenue. The Board then concluded that the subject matter of Claim 1 was incidental to financial activity. In contrast to *Agilysys*, Claim 8 of the ‘520 Patent does not include any subject matter incidental to financial activity. Specifically, there is no term that even hints to being incidental to financial activity. Instead, as will be discussed more fully below, Claim 8 of the ‘520 Patent provides a technological solution to a technical problem. The technical problem is how to prevent unwarranted access to one of the program, the data, or a combination of the program and data. The solution is to interfere with execution of the executing means when the clock means counts the predetermined time period. Dependent Claims 11-14 of the ‘520 Patent further recite limitations related to the interference means. For example, limitations in Claims 11-14 include the interference means

comprises means for deleting at least one of the program, the data, and a combination of the program and data stored in said storage means (Claim 11); interference means comprises means for blocking the view of what is displayed on said screen (Claim 12); interference means comprises means for invalidating the operation of said input device (Claim 13); and interference means comprises means for preventing said sound generating means from generating the sound (Claim 14).

Apparently Petitioner concedes that Claims 11-14 are outside the definition of a covered business method. Instead, Petitioner focuses on only Claims 8, 9, and 10 as allegedly satisfying the financial product or service requirement. Corrected Petition at 2. While the Patent Owner acknowledges that only one claim needs to be directed to a covered business method in order for all the challenged claims to be eligible for review, the limitations recited in Claims 11-14 bolster the conclusion that Claims 8, 9, and 10 are directed at a technological solution and are not incidental to financial activity.

Petitioner argues that because Claim 9 depends from claim 8, Claim 9 satisfies the financial product or service requirement for the

same reasons as Claim 8. Petitioner concedes that Claim 9 bears no relationship at all to financial activity other than Petitioner's erroneous argument regarding Claim 8. Therefore, Patent Owner reiterates the argument presented above for Claim 8 as demonstrating that Claim 9 does not fall within the definition of a covered business method.

For Claim 10, Petitioner again relies exclusively on the specification to argue that Claim 10 recites "activities that are financial in nature, namely requiring a user to pay a "surcharge" in order to keep using a transmitted program and/or data." Corrected Petition at 4. Again, Petitioner fails to rely on any actual claim language, and instead focuses exclusively on illustrative embodiments from the specification. Petitioner is making misleading arguments by wrongfully implying that certain words in the specification (e.g., "surcharge") are actually recited in Claim 10, which they are not. For convenience, Claim 10 is reproduced below:

10. The communication terminal device according to claim 9, further comprising:

third clock means for keeping a third predetermined time period after said interference means interferes with execution of said executing means,

interference stop instruction means for instructing to stop the interference performed by said interference means, and

means for stopping the interference performed by said interference means and thereby allowing resumption of execution of the program or data processing performed by said executing means when said interference stop instruction means receives the instruction before said third clock means counts said third predetermined time period.

Patent Owner points out that there is no “surcharge” recited in claim 10 as alleged by the Petitioner, nor is there any language whatsoever that implicates a “surcharge.” Still further, there are no terms that even allude to “activities that are financial in nature” as alleged by Petitioner. Again, it appears that Petitioner is ignoring that for purposes of determining whether a patent is eligible for a covered business method patent review, the focus is on the **claims**, not the specification. In order for a claim to be eligible for a covered business method patent review there must be some term within the claim that relates to monetary matters.

Therefore, because Petitioner failed to identify even one single claim from the ‘520 Patent directed to a covered business method,

Patent Owner requests that the Board deny this Petition and not institute this covered business method review.

B. The '520 Patent Is Instead A Technological Invention

While Patent Owner believes that the arguments above are sufficient to make the '520 Patent ineligible for a covered business method patent review, Patent Owner wishes to further advance that the '520 Patent claims a technological invention, which is explicitly excluded from a covered business method review.

The definition of “covered business method patent” in Section 18(d)(1) of the AIA does not include patents for “technological inventions.” In order to determine whether to exclude a patent for a technological invention, a determination is made “whether 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 review requires both prongs to be satisfied in order for the patent to be excluded. Claims drafted using the following claim drafting techniques do not typically 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. 48,756, 48,763-64 (Aug. 14, 2012).

The '520 Patent satisfies the first prong, whether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art. Patent Owner submits that the '520 Patent has undergone an extensive reexamination and appeal process, which has resulted in an *Ex Parte* Reexamination Certificate issued July 23, 2014, confirming the patentability of Claims 8-14 over the same art that is presented in the present Petition. Exhibit 1010 at 1, *Reexam 90/010666 File History* at July 23, 2014 Reexamination Certificate Issued. Therefore, the first prong is met. In addition, because the claims of the '520 Patent have expired, the standard of

review for these claims is now even more narrow, thus making the arguments that the claimed subject matter as whole does not recite a novel and nonobvious technological feature even more unattainable.

The '520 Patent also satisfies the second prong, whether the claimed subject matter recites a technological feature that solves a technical problem using a technical solution. As discussed above, the technical problem addressed by the '520 Patent is how to prevent unwarranted access to one of the program, the data, or a combination of the program and data. The claimed solution is to interfere with execution of the executing means when the clock means counts the predetermined time period.

The '520 Patent's dependent Claims 11-14 recite further limitations related to the interference means. For example, limitations in Claims 11-14 include the interference means comprises means for deleting at least one of the program, the data, and a combination of the program and data stored in said storage means (Claim 11); interference means comprises means for blocking the view of what is displayed on said screen (Claim 12); interference means comprises means for

invalidating the operation of said input device (Claim 13); and interference means comprises means for preventing said sound generating means from generating the sound (Claim 14).

As stated in 35 C.F.R. § 42.304(a), Petitioner bears the burden of “demonstrate[ing] that the patent for which review is sought is a covered business method patent.” This requires demonstrating “whether the claimed subject matter ... *solves a technical problem using a technical solution.*” 35 C.F.R. § 42.301 (emphasis added). If the determination is affirmative, the patent is not a covered business patent.

Petitioner makes the self-serving and conclusory statement that “claims 8-10 are not technological inventions under any of these guidance attributes” and then proceeds to argue that the technological features of Claim 8 are nothing more than generic hardware devices with common programming or generic computer hardware. Corrected Petition at 5-6. According to Petitioner, “technological innovations” are only innovations such as “a faster computer, more efficient communication hardware or protocols, novel software” as determined by

the expert in the Kitchen declaration. Corrected Petition at 6-7. However, Petitioner's view is summary, conclusory, and not based on an examination of each claim as a whole, as required.

For the forgoing reasons, the claims of the '520 Patent recite one or more technological features that are novel and unobvious over the prior art, and those claims solve the technical problem set forth in the patent using a technical solution. Accordingly, the '520 Patent is ineligible for CBM patent review and the Petitioner's request should be denied.

III. The Petition Should Also Be Denied Under 35 U.S.C. § 325(d)

While Patent Owner believes that the arguments above are sufficient to deny the petition to institute covered business method patent review on the '520 Patent, Patent Owner further requests the Board to use their discretion by denying the Petition under 35 U.S.C. § 325(d). The relevant portions of 35 U.S.C. § 325(d) are reproduced below:

In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director

may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.

A. Procedural History Of Challenged Claims 8-14

Claims 8, 9, 11-14 are original issued claims of the '520 Patent and are the claims as originally filed in the application for the '520 Patent filed on July 2, 1998. Exhibit 1015 at 209-212, '520 Patent File History, 1998-07-02 Claims. Claim 10 is an original claim of the issued '520 Patent, but was amended during prosecution to correct the dependency of the claim. *Id.* at 83, 2000-08-04 Amendment. On May 9, 2000, the Examiner mailed an Office rejecting Claims 8-10 and 12 under the judicially created doctrine of double patenting over claims 1-3 of U.S. Patent No. 5,775,995, since the claims, if allowed, would improperly extend the “right to exclude” already granted in the patent. *Id.* at 89, 2000-05-09 Non_final Rejection. The Examiner stated that “the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter.” The Examiner further stated that “there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant

application during prosecution of the application which matured into a patent.” *Id.*

Patent Owner filed an Amendment, along with a terminal disclaimer, on August 1, 2000. The Amendment amended Claim 10 to depend from Claim 9 rather than Claim 8. *Id.* at 83, 2000-08-04 Amendment. The terminal disclaimer disclaimed the terminal part of the statutory term of any patent granted on the application, which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 5,775,995, filed May 3, 1996. *Id.* at 85. A Notice of Allowability was mailed on August 25, 2000, and the application was issued on February 27, 2001, Ex. 1001, as the '520 Patent. *Id.* at 80-81.

On October 27, 2008, Patent Owner sued Petition for infringement of the '520 Patent, *ADC v. Microsoft Corp., et al.*, No. 2:08-CV-01579-RSM (W.D. Wash.). Ex. 1027. On July 9, 2009, Patent Owner filed an *ex parte* reexamination request (Control No. 90/009524) as to the '520 Patent, including claims 8, 9, 11, 12, and 14. References submitted for review included *Kato*, *Tsumura*, *Kaniwa*, *Chernow*, *Nakagawa*, *Hornbuckle*, *Bakoglu*, Ex. 1016 at 2-6, Reexam 90/009,524 August 17,

2009 Response to Notice of Incomplete Request. On November 14, 2009, the Examiner granted the request and determined that prior art references, including *Kato*, *Tsumura*, and *Chernow*, among others, raised substantial new questions of patentability with respect to independent claim 8. Ex. 1017 at 2-3, Reexam 90/009,524 Nov. 14, 2009 Order Granting Request.

On September 4, 2009, Petitioner (Microsoft Corporation) filed an *ex parte* reexamination request (Control No. 90/010666) as to the '520 Patent, including 53 substantial new questions of patentability and proposed grounds of rejection. Ex. 1018 at 5-9, Reexam 90/010,666 Sep. 4, 2009 Request. References submitted for review included *Okamoto* Japanese Application (priority document for '520 Patent), *Chernow*, *Kato*, *Nakagawa*, *Oseki*, *Bakoglu*, *Garfinkle*, *Griswold*, *Hornbuckle*, *Kaniwa*, *McCarten*, *Tsumura*, *Cooper*, *Sanyo*, *Suzuki*, *Morales*, and *Russo*. *Id.* at 3-4. On December 3, 2009, the Examiner granted the request. Ex. 1010 at 601-604, Reexam 90/010,666 at Dec. 3. 2009 Order Granting Request.

On March 12, 2010, the two proceedings (Control Nos. 90/009524 and 90/01066) were merged. *Id.* at 590, Mar. 12, 2010 Decision Merging Proceeding.

On July 16, 2010, Petitioner (Sony Computer Entertainment America LLC) attempted to initiate yet another *ex parte* reexamination (Control No. 90/011,098) as to the '520 Patent for claims 1, 3, 10, 15, 17, 22-38 (claims 22-38 being new claims added during *ex parte* reexamination Control No. 90/009,524). Ex. 1019 at 157-160, Reexam 90/011,098 at July. 16, 2010 Request. References submitted for review again included *Tsumura*, *Suzuki*, *Kaniwa*, *Sanbe*, *Thacher*, and *Roskowski*. On October 14, 2010, the Examiner denied that *ex parte* reexamination stating that limitations of requested claims are addressed in the merged proceeding and other claims that have been amended in a live reexamination proceeding will not be considered nor commented upon when deciding a request for reexamination. Ex. 1019 at 3-10, 2010-10-14 Determination – Reexam Denied.

On January 6, 2011, the Examiner issued a final Office Action rejecting all claims. Ex. 1010 at 369-372, Reexam 90/010,666, which Patent Owner appealed.

On January 11, 2013, the Board reversed the Examiner's decision in part and affirmed in part. Importantly, the Board reversed the Examiner's rejection of original claims 8-14. Ex. 1010 at 68-69, 118-120.

On February 20, 2014, the PTO issued a Notice of Intent to Issue a Reexamination Certificate. *Id.* at 4, NIIRC.

On July 23, 2014, the PTO issued the Reexamination Certificate, which confirmed original claims 8-14 and found that amended or new claims 15-33 are patentable. Ex. 1010 at 1-3.

B. The Patent Office Has Already Considered The Same Prior Art and Arguments Being Made By Petitioner Now

In this proceeding, Petitioner is asserting a sub-set of the art that has already been considered by the Patent Office. More specifically, Petitioner again asserts the *Chernow*, *Tsumura*, *Kata*, and *Okamoto* against the '520 Patent. As outlined above, **all** of those references have

been considered by the Examiner in **three** separate *ex parte* reexamination requests, two of which were merged. In addition, the Patent Board has already reviewed Claims 8-14 with regard to those references **and found those claims to be patentable**. Therefore, the same prior art and arguments have been previously presented to the Office. Thus, Patent Owner respectfully requests the Board to use their discretion by denying the Petition under 35 U.S.C. § 325(d).

C. The Standard Of Review Is Even Higher Now Than The First Time The Claims Were Affirmed By The Board

The first time this Board affirmed the patentability of the claims at issue in this matter, those claims were reviewed under the “broadest reasonable interpretation” standard set by rule and used during the initial prosecution of the ‘520 Patent. However, the ‘520 Patent is now expired, meaning that its claims are no longer subject to the “broadest reasonable interpretation” standard when assessing their patentability. Rather, as Petitioner concedes, the **narrower** claim construction standard used in litigation must be applied. See, *Amkor Technology, Inc. V. Tessera, Inc.*, Case IPR2013-00242 (Order April 14, 2014).

Accordingly, Claims 8-14 are not given their “broadest reasonable interpretation” in this proceeding, thus making it **less likely** that the Petitioner will meet its burden of proof since it is only relying on the same references in its attempt attack the validity of the challenged claims. In other words, if Petitioner was unable to establish that the claims of the ‘520 Patent were invalid when those claims were given a broader interpretation, then it is a futile exercise to raise those same arguments again, using the same prior art references, against a narrower claim construction.

D. Institution of CBM Review Unnecessary Delay and Duplication

Patent Owner contends that instituting a CBM review at this late date unfairly disadvantages Patent Owner without any real burden to the Petitioner. For example, even if the Petitioner fails to invalidate any of the expired claims during the CBM review, any issues that could have been raised in the CBM, but were not, can be presented in the District Court when this matter returns to that venue. Unlike *inter partes* or post grant review proceedings which estop a petitioner from challenging the validity of the claims in a court, CBM estoppel only

attaches to arguments raised during the CBM proceeding. Issues that were not raised in the CBM can still be presented should the CBM be unsuccessful even if those issues could have been raised.

Requiring Patent Owner to litigate whether “the issue was raised in the CBM,” along with any new prior art that the Petitioner adds during litigation, creates an unnecessary burden on Patent Owner.

The purpose of the Covered Business Method Patent Review is to expedite the determination of a patent’s validity. The intended result is a speedy, efficient, and definitive determination of a patent’s validity. Petitioner could have filed this Petition as early as September 16, 2012. However, Petitioner delayed until after the **validity** of the '520 Patent was already confirmed by the Patent Board in January of 2013. Not satisfied that the patentability of the '520 Patent has been confirmed no less than three times already, Petitioner mounts yet another challenge to the validity of the '520 Patent while citing all the same art as before.

IV. Conclusion

At some point, the attacks must be stopped. The patentability of the '520 Patent was established initially when it issued in 2001. Three

separate *ex parte* reexaminations were launched against the '520 Patent, all of which culminated in the same result: That the '520 Patent is **valid** over the art that was cited against it. Now, Petitioner seeks yet another (now **fifth**) review of the same claims using the **same art**. Although formal estoppel has not yet attached against Petitioner, justice and efficiency require that this review be denied as nothing except a re-re-re-hashing of the same arguments using the same art that has already been rejected numerous times. Patent Owner respectfully requests that the instant petition be denied.

Dated: April 6, 2015.

Respectfully submitted,

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Certificate of Service

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the date indicated below, a complete copy of the foregoing document was served on Petitioner as follows:

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