

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

YAHOO! INC.,
Petitioner,

v.

ALMONDNET, INC.,
Patent Owner.

Case CBM2017-00058
Patent 8,671,139 B2

Before MICHAEL W. KIM, JUSTIN T. ARBES, and
THOMAS L. GIANNETTI, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

DECISION

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

Petitioner, Yahoo! Inc., filed a Petition (Paper 2, “Pet.”) requesting covered business method patent review of claims 1, 2, 4, 7, 9, 12, and 13 of U.S. Patent No. 8,671,139 B2 (Ex. 1001, “the ’139 patent”) pursuant to 35 U.S.C. § 321(a). Patent Owner, AlmondNet, Inc., filed a Preliminary Response (Paper 6, “Prelim. Resp.”) pursuant to 35 U.S.C. § 323. Patent Owner states, in its Preliminary Response, that it filed with the Office a statutory disclaimer of claims 2, 20, and 38 of the ’139 patent pursuant to 37 C.F.R. § 1.321(a). Prelim. Resp. 36; *see* Ex. 3001 (copy of statutory disclaimer filed in the underlying application file). Accordingly, no covered business method patent review will be instituted for claim 2. *See* 37 C.F.R. § 42.207(e).

For the remaining claims 1, 4, 7, 9, 12, and 13, we determine whether to institute a covered business method patent review under 35 U.S.C. § 324.¹ Pursuant to 35 U.S.C. § 324(a), the Director may not authorize a covered business method patent review unless the information in the petition, if un rebutted, “would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” For the reasons that follow, we have decided not to institute a covered business method patent review.

¹ *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,764–65 (Aug. 14, 2012) (“[A] patent owner may file a statutory disclaimer of one or more challenged claims to streamline the proceedings. Where no challenged claims remain, the Board would terminate the proceeding. Where one or more challenged claims remain, the Board’s decision on institution would be based solely on the remaining claims.”).

I. BACKGROUND

A. The '139 Patent²

The '139 patent discloses “profile-based behavioral targeting advertisement placement methods.” Ex. 1001, col. 1, ll. 20–21. Behavioral targeting (BT) companies “specialize in targeting ads based on observed behavior of sites’ visitors.” *Id.* at col. 1, ll. 63–66. BT companies or media properties (e.g., web sites) may track the “observed behavior” of a particular visitor, which the '139 patent refers to as “profile information” about the visitor. *Id.* at col. 3, ll. 34–48, col. 4, ll. 38–43.

Figure 3 of the '139 patent is reproduced below.

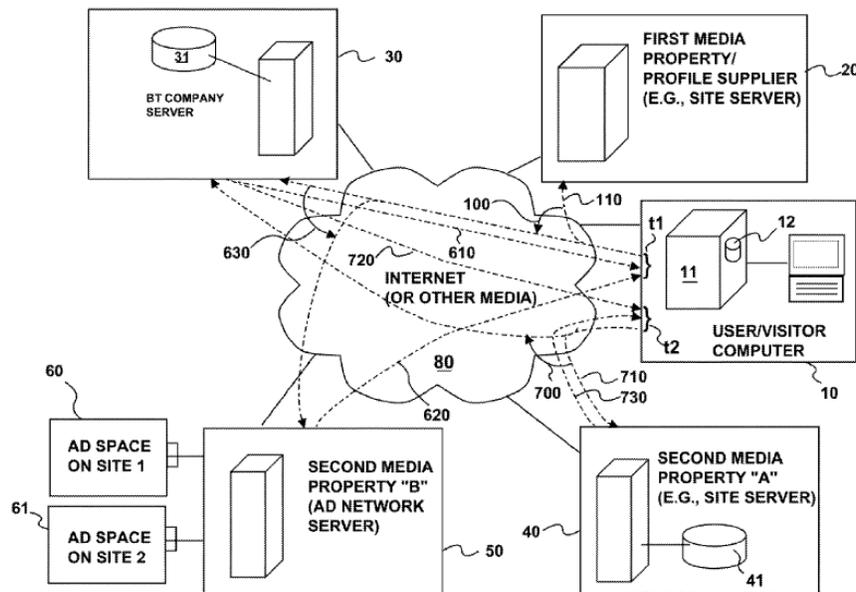


FIG. 3

As shown in Figure 3, first media property/profile supplier 20 receives a request (e.g., for a web page) from user 10, and redirects user 10 to BT company 30 “along with the visitor’s profile.” *Id.* at col. 7, ll. 40–53. BT Company 30 recognizes and categorizes various types of information

² A continuation of the '139 patent, U.S. Patent No. 8,959,146 B2, is being challenged in Case CBM2017-00056.

regarding the interaction between user 10 and profile supplier 20, such as “the content read by the user 10, the category to which the content read by the user 10 belongs, [or] the keyword searched for by the user.” *Id.* at col. 7, l. 55–col. 8, l. 8. BT company 30 then “calculates . . . expected revenues from delivering ads based on the collected profile” for user 10. *Id.* at col. 8, ll. 9–11. Expected revenues depend on the type of profile information:

- (a) Expected revenues from content read by the visitor 10 can be calculated by checking, for example, how much advertisers are willing to pay for delivering ads to visitors who read specific content.
- (b) Expected revenues from delivering ads based on a keyword searched by the visitor 10 can be calculated by checking, for example, how much advertisers are willing to pay for each click on an ad related to the keyword for which the visitor searched and multiplying that price per click by an assumed click-through rate on ads related to the searched-for keyword, up to 14 days after the visitor’s search.

Id. at col. 8, ll. 11–23. Next, BT company 30 selects a media property, such as second media property 40, for delivery of an advertisement based on a calculated expected profit for doing so, using various equations disclosed in the ’139 patent. *Id.* at col. 6, l. 63–col. 7, l. 39, col. 8, ll. 30–36.

BT company 30 then arranges for user 10 to be tagged with a tag (e.g., a cookie) readable by second media property 40 (e.g., by placing the tag itself or redirecting user 10 to second media property 40 with a request for it to tag user 10). *Id.* at col. 8, ll. 32–46.

Later, when user 10 visits second media property 40’s ad space and is recognized via the tag, second media property 40 redirects user 10 to BT company 30 so that BT company 30 can serve the advertisement, “which will appear with the media content . . . requested by” user 10. *Id.* at col. 8, l. 64–col. 9, l. 3. BT company 30 pays second media property 40 to use its

ad space to deliver the advertisement, receives payment from the advertiser for delivering the advertisement, and derives a profit, for example, because the former amount was determined to be less than the latter amount (in the expected profit calculation). *Id.* at col. 6, l. 63–col. 7, l. 39, col. 9, l. 27–64.

Finally, the '139 patent states that although the description illustrated above “focuses on profit calculation that takes into account expected revenues from delivery of an ad based on a collected profile, media property ad space cost and other costs, other parameters beyond costs and revenues might be taken into account.” *Id.* at col. 12, ll. 32–36. The '139 patent also describes a time-based condition for display of advertisements:

Given that some kind[s] of profiles such as behavioral profiles are time-sensitive (in other words, their value diminishes with time), the BT company 30—in addition to arranging the placement of a tag readable by the second media property 40, 50—may also provide the second media property 40 . . . (via the tag, for example) with a time period within which the BT company 30 will agree to deliver ads to the profiled visitor 10 within the ad space of the second media property 40

Id. at col. 10, ll. 22–29.

B. Illustrative Claim

Claim 1 of the '139 patent recites:

1. A method of directing electronic advertisements, performed by a computer system comprised of one or more computers, the method comprising:

for each of a multitude of different electronic visitors to a first media property:

(a) automatically with the computer system directing, to a third-party server computer controlling advertising space on a second media property, indicia of

a condition for display of an advertisement, which condition relates specifically to an electronic visitor; and

(b) automatically with the computer system electronically authorizing the server computer to automatically cause display of an advertisement, to the electronic visitor when the electronic visitor visits the second media property at a time after the electronic visitor visits the first media property, subject to determining that the condition has been met;

(c) wherein the act of authorizing in part (b) is based on information indicating at least one of a plurality of profile attributes possibly applicable to the electronic visitor, which indicated profile attribute or attributes was received by the computer system as a result of the electronic visitor visiting the first media property; and

(d) wherein the advertisement is correlated with the indicated profile attribute or attributes.

C. The Asserted Ground

Petitioner challenges claims 1, 4, 7, 9, 12, and 13 of the '139 patent³ on the ground that the claims do not recite patent-eligible subject matter under 35 U.S.C. § 101.

D. Claim Interpretation

The Board interprets claims in 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 Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). Under this standard, we interpret claim

³ As explained above, Patent Owner disclaimed claim 2.

terms using “the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

We presume that claim terms have their ordinary and customary meaning. *See Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1062 (Fed. Cir. 2016) (“Under a broadest reasonable interpretation, words of the claim must be given their plain meaning, unless such meaning is inconsistent with the specification and prosecution history.”); *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (“The ordinary and customary meaning is the meaning that the term would have to a person of ordinary skill in the art in question.” (internal quotation marks omitted)). A patentee, however, may rebut this presumption by acting as his own lexicographer, 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). Petitioner provides proposed interpretations for two claim terms, “condition” and “advertisement,” both of which Patent Owner disputes. *See* Pet. 18–32; Prelim. Resp. 24–36.

1. “Condition”

Claim 1 recites (emphases added):

(a) automatically with the computer system directing, to a third-party server computer controlling advertising space on a second media property, indicia of a *condition* for display of an advertisement, which *condition* relates specifically to an electronic visitor; and

(b) automatically with the computer system electronically authorizing the server computer to automatically cause display of an advertisement, to the electronic visitor when the electronic visitor visits the second media property at a time after the electronic visitor visits the first media property, subject to determining that the *condition* has been met;

Claims 19 and 37 include similar limitations.

Petitioner argues that “condition” should be interpreted to mean “profitability criteria” for two reasons. Pet. 20–28. First, Petitioner contends that the statement in the Specification that “the present invention relates to electronic advertisement placement based on expected profit from the placement” characterizes the present invention as “targeting advertisements based on profitability.” *Id.* at 21–22 (quoting Ex. 1001, col. 1, ll. 22–24). Second, according to Petitioner, the Specification defines the term by implication because it “consistently and repeatedly indicates that advertisements are only displayed when profitable.” *Id.* at 22–28. Petitioner points to the title of the ’139 patent (“Media Properties Selection Method and System Based on Expected Profit From Profile-Based Ad Delivery”) and various descriptions in the Specification of calculating expected revenues and profit. *Id.* at 22–24 (citing, *inter alia*, Ex. 1001, col. 6, l. 63–col. 7, l. 10, Figs. 1 (steps 2000 and 3000), 2 (steps 400 and 500); Ex. 1002 ¶¶ 67–69). Petitioner also argues that the Specification “disparages the prior art for failing to adequately consider profitability when targeting advertisements.” *Id.* at 25 (citing, *inter alia*, Ex. 1001, col. 5, l. 43–col. 6, l. 8; Ex. 1002 ¶ 70).

Patent Owner responds that “condition” is not limited to criteria based on profitability, as it also can be, for example, a time-based condition. Prelim. Resp. 24–29. Patent Owner relies on certain dependent claims and

portions of the Specification disclosing other types of conditions, as well as the prosecution histories of the '139 patent and its parent applications, where the applicant allegedly broadened the claims beyond profitability-based conditions. *Id.* at 25–27.

We agree with Patent Owner. The Specification does not include an express definition for the claim term “condition” or otherwise indicate that the inventor was acting as a lexicographer and limited the term to only criteria based on profitability. The “present invention” statement cited by Petitioner appears in the “Field of the Invention” portion of the Specification, and merely introduces the general field of what is disclosed. *See* Ex. 1001, col. 1, ll. 20–24. We are not persuaded that it limits the scope of the claims, particularly given that it is not tied to any “condition,” and the claims do not recite any limitations regarding profit or expected profit.

Further, although the Specification includes various descriptions of placing advertisements based on profitability that is not the only condition for displaying an advertisement that is disclosed. The Specification states that because “some kind[s] of profiles such as behavioral profiles are time-sensitive (in other words, their value diminishes with time),” the BT company may provide “a time period within which the BT company 30 will agree to deliver ads to the profiled visitor 10 within the ad space of the second media property 40.” *Id.* at col. 10, ll. 22–29. Thus, the Specification discloses at least two examples of conditions—one based on whether placement of the advertisement will be profitable, and one based on the time period in which the advertisement would be displayed after receiving information about the user.

This is reflected in the dependent claims. Claims 2, 20, and 38 recite the profitability-based condition: “the condition for display of the advertisement is that a price charged by the second media property is less than a profile-attribute-dependent price that an advertiser is willing to pay for display of the advertisement.” Claims 18, 36, and 54 recite the following time-based condition: “the condition is a specified time period after receiving profile-attribute information about the electronic visitor.” Petitioner argues that the time-based condition in the dependent claims is still “rooted in profitability,” based on the Specification’s statement that certain profiles are time-sensitive, because “their value diminishes with time.” Pet. 27–28 (quoting Ex. 1001, col. 10, ll. 23–25). Regardless of the underlying motivation for using a particular type of condition, though, the actual condition disclosed in the Specification, and recited in the dependent claims, is a “time period,” which is time-based, not profitability-based as Petitioner contends. *See* Ex. 1001, col. 10, ll. 22–29, claims 18, 36, 54; Prelim. Resp. 25–27.

The Specification suggests that other types of conditions are possible as well, specifically noting that “other parameters beyond costs and revenues might be taken into account.” Ex. 1001, col. 12, ll. 32–36. For example, “an advertiser might insist that its ads appear on media properties that have certain content and not on other media properties,” or “a media property might not agree to show ads from a certain category.” *Id.* at col. 12, ll. 36–41. Petitioner attempts to discount this language by arguing that the parameters are in addition to profitability, not substitutes for profitability. Pet. 22 n.5. We are unpersuaded, however, as the Specification refers to

them as “other,” not “additional,” parameters. *See* Ex. 1001, col. 12, ll. 32–36.

Finally, we agree with Patent Owner that the prosecution histories of the ’139 patent and its parent applications also support its position. *See* Prelim. Resp. 25–26. The original application in the chain of continuation applications leading to the ’139 patent, U.S. Patent Application No. 11/763,286, included claims reciting determining “revenue” and authorizing display of an advertisement “for a price that does not exceed a price cap that is a selected amount less than the revenue available for display of the advertisement.” Ex. 1007, 301. During prosecution of the next application in the chain, U.S. Patent Application No. 12/823,709, the applicant stated that it was “remov[ing] the step . . . of determining the revenue and the ‘price cap’” and “instead generaliz[ing] the concept by inserting the limitation that the authorizing is performed ‘subject to a visitor-specific condition for display of the advertisement,’” arguing that the claims resulting from the “broadening amendment” should still be patentable because the prior art does not disclose authorizing subject to “any condition.” Ex. 1008, 207 (emphases omitted). The applicant also cited as support the same portions of the Specification quoted above regarding time-based and “other” types of conditions. *Id.* at 208. Patent Owner made similar arguments during prosecution of the subsequent application that issued as the ’139 patent, U.S. Patent Application No. 13/491,454, as well. *See* Ex. 1009, 125 n.1, 196 n.2 (noting the two types of conditions recited in the dependent claims); *see also* Ex. 1009, 116 (Examiner stating that the “condition” claim language is “substantially broad”). Thus, contrary to Petitioner’s position that “condition” is limited to profitability criteria, we

find that the prosecution histories of the '139 patent and its parent applications demonstrate an intent to broaden the types of conditions being claimed.

The written description and dependent claims of the '139 patent, as well as the cited prosecution histories, when considered collectively, demonstrate that “condition” is not limited to profitability criteria. On this record, applying the broadest reasonable interpretation of the claims in light of the Specification, we do not interpret “condition” as limited to criteria based on profitability and conclude that it may be, for example, based on time instead. No further interpretation is necessary.

2. “*Advertisement*”

Claim 1 recites “display of an *advertisement*, to the electronic visitor when the electronic visitor visits the second media property” where “the *advertisement* is correlated with the indicated profile attribute or attributes” (emphases added). Claims 19 and 37 include similar limitations.

Petitioner argues that “advertisement” should be interpreted to mean “paid announcement,” because “the central focus of the '139 [p]atent is to ensure that a BT company profits from targeted advertisements,” and the Specification “consistently and repeatedly indicates that an advertiser pays the BT company, and the BT company pays a media property, for delivering advertisements.” Pet. 28–32. Patent Owner disagrees. Prelim. Resp. 29–36.

Again, we are persuaded that Petitioner’s proposed interpretation is too narrow and improperly reads into the claims a limitation from the Specification. First, the claim language itself imposes no condition on the recited “advertisement.” There is no adjective modifying the term (e.g.,

“paid” or “unpaid”), whereas Petitioner’s proposed interpretation reads in a qualification to the type of “advertisement.” Second, the ordinary meaning of “advertisement” is not limited to paid announcements. Although many advertisements are paid for, certainly there exist types of advertisements that are disseminated without charge, such as public service announcements. A dictionary definition submitted by Patent Owner confirms that fact. *See* Ex. 2001, 20 (defining “advertisement” as “a public notice or announcement, *usually* paid for, as of things for sale, needs, etc.” (emphasis added)). The dictionary definitions submitted by Petitioner do not support its position, as they merely indicate that a paid announcement is an example of an “advertisement,” not that the term is limited to such types of announcements. *See* Pet. 31; Ex. 1005, 20 (“[a] notice, *such as* a poster or a paid announcement in the print, broadcast, or electronic media, designed to attract public attention or patronage” (emphasis added)); Ex. 1006, 20 (“[a] notice, *such as* a poster, newspaper display, or paid announcement in the electronic media to attract public attention or patronage” (emphasis added)). Third, the Specification of the ’139 patent does not include an express definition of the term, and instead discloses merely exemplary embodiments where various entities purchase ad space and receive funds for the display of advertisements. *See, e.g.*, Ex. 1001, col. 6, l. 47–col. 7, l. 39 (“Description of Preferred Exemplary Embodiments”), col. 9, ll. 27–64. Petitioner does not point to—and we do not see—any language in the Specification indicating that the term is defined to require payment in all circumstances.

On this record, applying the broadest reasonable interpretation of the claims in light of the Specification, we do not interpret “advertisement” as

limited to being a paid announcement, and conclude that no further interpretation is necessary.

II. DISCUSSION

Section 18 of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), provides for the creation of a transitional program for reviewing covered business method patents, and limits reviews to persons or their privies that have been sued or charged with infringement of a “covered business method patent,” which does not include patents for “technological inventions.” AIA §§ 18(a)(1)(B), 18(d)(1); *see* 37 C.F.R. § 42.302. Petitioner bears the burden of demonstrating that the ’139 patent is a covered business method patent. *See* 37 C.F.R. § 42.304(a). For the reasons explained below, Petitioner has not demonstrated that the ’139 patent 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) (emphasis added); *see* 37 C.F.R. § 42.301(a). The Federal Circuit has limited the scope of covered business method (CBM) patent review as follows:

CBM patents are limited to those with claims that are directed to methods and apparatuses of particular types and with particular uses “in the practice, administration, or management of a financial product or service.” The patent for a novel lightbulb that is found to work particularly well in bank vaults does not become a CBM patent because of its incidental or complementary use in banks. Likewise, it cannot be the case

that a patent covering a method and corresponding apparatuses becomes a CBM patent because its practice could involve a potential sale of a good or service. All patents, at some level, relate to potential sale of a good or service. Take, for example, a patent for an apparatus for digging ditches. Does the sale of the dirt that results from use of the ditch digger render the patent a CBM patent? No, because the claims of the ditch-digging method or apparatus are not directed to “performing data processing or other operations” or “used in the practice, administration, or management of a financial product or service,” as required by the statute. It is not enough that a sale has occurred or may occur, or even that the specification speculates such a potential sale might occur.

Unwired Planet, LLC v. Google Inc., 841 F.3d 1376, 1382 (Fed. Cir. 2016) (citations omitted); *see also Secure Access, LLC v. PNC Bank Nat’l Ass’n*, 848 F.3d 1370, 1381 (Fed. Cir. 2017) (“Necessarily, the statutory definition of a CBM patent requires that the patent have a claim that contains, however phrased, a financial activity element.”), *reh’g en banc denied*, 859 F.3d 998 (Fed. Cir. 2017); *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1340 (Fed. Cir. 2016) (approving of prior Board decisions that “properly focuse[d] on the claim language at issue and, finding nothing explicitly or inherently financial in the construed claim language, decline[d] to institute CBM review,” and finding that the challenged patent was eligible for review because the claims recited “an express financial component in the form of a subsidy” that was “central to the operation of the claimed invention”); *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1325 (Fed. Cir. 2015) (stating that “the definition of ‘covered business method patent’ is not limited to products and services of only the financial industry” and “on its face covers a wide range of finance-related activities”). A patent need have only one claim directed to a covered business method to be eligible for

review. Transitional Program for Covered Business Method Patents—
Definitions of Covered Business Method Patent and Technological
Invention; Final Rule, 77 Fed. Reg. 48,734, 48,736 (Aug. 14, 2012).

Petitioner cites six claims of the '139 patent in support of its argument that the '139 patent is a covered business method patent: dependent claims 2, 20, and 38, and independent claims 1, 19, and 37. Pet. 32–38.

A. Dependent Claims 2, 20, and 38

Patent Owner statutorily disclaimed claims 2, 20, and 38. *See* Prelim. Resp. 36; Ex. 3001. For purposes of establishing covered business method patent review eligibility, we treat the '139 patent as though these claims never existed. *See Facebook, Inc. v. Skky, LLC*, Case CBM2016-00091, slip op. at 4–8 (PTAB Sept. 28, 2017) (Paper 12). Petitioner's arguments regarding claims 2, 20, and 38, therefore, are not persuasive. *See* Pet. 33–34.

B. Independent Claims 1, 19, and 37

Petitioner's arguments regarding independent claims 1, 19, and 37 are premised entirely on its proposed interpretations of the claim terms “condition” and “advertisement.” *See* Pet. 34–36. Specifically, Petitioner argues that “condition” means “profitability criteria” and, therefore, the claims “require determining that a profitability criteria has been met, which relates to monetary matters.” *Id.* at 34–35 (citing Ex. 1002 ¶ 79). Likewise, Petitioner contends that “advertisement” means “paid announcement” and “[p]aying for announcements . . . is an electronic sale of a good or service

that falls squarely in the definition of “finance-related activities.” *Id.* at 35–36 (citing Ex. 1002 ¶ 80).

As explained above, we disagree with both of Petitioner’s proposed interpretations. *See supra* Section I.D. Given their broadest reasonable interpretation in light of the Specification, the recited “condition” is not limited to profitability criteria (e.g., it can be a time-based condition) and the recited “advertisement” need not be a paid announcement. *Id.* Thus, independent claims 1, 19, and 37 do not recite any financial activity element. Claim 1, for example, recites (emphases added) a method of directing electronic advertisements comprising:

(a) automatically with the computer system directing, to a third-party server computer controlling *advertising* space on a second media property, indicia of a *condition* for display of an *advertisement*, which *condition* relates specifically to an electronic visitor; and

(b) automatically with the computer system electronically authorizing the server computer to automatically cause display of an *advertisement*, to the electronic visitor when the electronic visitor visits the second media property at a time after the electronic visitor visits the first media property, subject to determining that the *condition* has been met;

...

(d) wherein the *advertisement* is correlated with the indicated profile attribute or attributes.

As used in claim 1, “condition” and “advertisement” are generic, context-neutral terms, without any express or implicit connection to financial products or services. Although Internet advertising often involves one or more entities paying for, and being paid for, delivering an advertisement, the fact that a sale has occurred or may occur is not enough when the challenged claims neither recite a sale nor are otherwise directed to

the practice, administration, or management of a financial product or service. *See Unwired Planet*, 841 F.3d at 1379, 1382. Further, the fact that the Specification discloses various embodiments in which the “condition” is based on profitability and the “advertisement” is paid is not sufficient. Our focus is on what the ’139 patent claims, not solely the exemplary embodiments described in the Specification. *See Secure Access*, 848 F.3d at 1378–79 (“the written description alone cannot substitute for what may be missing in the patent ‘claims,’ and therefore does not in isolation determine CBM status”). Petitioner’s arguments are not persuasive, given the generic claim language and non-limiting disclosure in the Specification cited above.⁴

C. Conclusion

For the foregoing reasons, based on the record presented and particular facts of this proceeding, Petitioner has not established that the ’139 patent claims a method or apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service. Therefore, the ’139 patent does not qualify as a “covered business method patent” under § 18(d)(1) of the AIA, and we do not institute a covered business method patent review on the asserted ground as to any of the challenged claims.

⁴ Petitioner also argues that the Specification of the ’139 patent “makes plain” that the ’139 patent meets the financial product or service requirement, but “acknowledges that this argument is inconsistent with the Federal Circuit’s language in *Secure Access*” and states that it “submits this argument for the Board’s consideration should the Federal Circuit or Supreme Court overrule or modify the *Secure Access* decision.” Pet. 37–38 & n.8. As *Secure Access* has not been overruled, we do not consider this argument.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is denied as to all challenged claims of the '139 patent.

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