

Seyfarth PTAB Blog



A legal look at Patent Trial and Appeal Board decisions and trends

First Ever PGR Decision Invalidates Livestock Valuation Patents

By Tyrus S. Cartwright

Background

Post grant review (PGR) is a trial proceeding conducted at the PTAB to review the patentability of one or more claims in a patent on any ground that could be raised under § 282(b)(2) or (3) (i.e. §§ 101, 102, 103 or 112). Before PGR became effective in September, 2012, an issued patent was only subject to patentability review under §§102 and 103. The Patent Office recently issued their first ever PGR decision, invalidating patents directed to livestock valuation under § 101.

Case Summary

In *American Simmental Association v. Leachman Cattle of Colorado, LLC*, Case No. PGR2015-00003 (2016), the patents-in-suit relate to the genetic quality and relative market value of livestock. After considering all the evidence by both parties, the Board found that the Petitioner had shown by a preponderance of the evidence that all claims 1-20 were unpatentable as lacking patent-eligibility.

Case Analysis

The Board found the invention to be directed to an abstract idea, that did not include limitations that are significantly more than the abstract idea itself, in violation of the test set forth in *Alice v. CLS Bank*.

Claim 1 is directed to an online genetic merit scorecard system to generate a display to a user to allow input of genetic merit estimates associated with a sale group. The sale group includes cattle that are fed and harvested for beef production. Claim 1 is further directed to determining relative market value and ranking of the genetic merits of the sale group in response to receiving relevant information, and outputting the online genetic merit scorecard that includes the relative market value and rankings of genetic merits of the group.

The Board stated that the '888 Patent was directed to the mere abstract idea of "determining an animal's relative economic value based on its genetic and physical traits." The Board agreed with Petitioner that the claims appeared to be directed largely to applications of mathematical formulas and algorithms in the field of animal valuation.

The Board refused to allow Patent Owner to amend the claims and opined that the additional limitations still would not alter the fundamental concept of the claims so as to render them patent-eligible. The Board determined that "none of the other terms to be added by Patent Owner are rooted sufficiently in the express claim language, and in any case, are peripheral to the above-identified fundamental concept, in that while they may represent variations of the fundamental concept, we are unpersuaded that they alter materially the fundamental concept itself." (See *American Simmental Assoc. v. Leachman Cattle of CO., LLC.*, PGR2015-00003, page 28) (2016).

The Board referred to the Specification in support of Petitioner's proposed fundamental concept, in contrast to Patent Owners' proposed interpretation. "Given the fundamental concept of 'determining an animal's relative economic value based on its genetic and physical traits,' we are persuaded by Petitioner's assertion that this concept is a 'fundamental economic practice...long prevalent in our system of commerce,' or 'a fundamentally necessary and decades old principle,' or a 'building block of human ingenuity.'" (See *American Simmental Assoc. v. Leachman Cattle of CO., LLC.*, PGR2015-00003, page 29) (2016). The Board explained that their determination was supported by the "Description of Related Art," which was replete with examples of prior attempts at "determining an animal's relative economic value based on its genetic and physical traits." (See *Id.*) Further, in support of holding the claims were directed to a patent-ineligible abstract idea, the Board held that the "fundamental concept is closely akin to the patent-ineligible abstract ideas of 'hedging' found in *Bilski* and 'intermediated settlement' found in *Alice*."

The Board also agreed with the Petitioner that the claims did not recite "significantly more" than the patent-ineligible abstract idea because Petitioner's assertion that all computer recitations in the challenged claims are recitations to generic computer hardware used in a conventional manner, which are insufficient to impart patentability under *Alice*. The Patent Owner moved to amend to cancel claims 9-20 if they were determined to be unpatentable, and enter substitute claims 21-28 as meeting the statutory requirements of § 101. However, the Board was unpersuaded that the burden was met under this issue. The Patent Owner attempted to add the term "broker module" to an independent claim to overcome the § 101 threshold. The Board held that "the added claim limitation is non-specific as to how any of the 'facilitating' and 'in response to' occurs; it merely recites an input and a result,' and absent more specificity as to how the input arrives at the result, we are unpersuaded that the computer technology that performs the operation is anything more than generic, and, thus, not 'significantly more' for the reasons outlined above." (See *American Simmental Assoc. v. Leachman Cattle of CO., LLC.*, PGR2015-00003, page 36) (2016)

Takeaway

In its first PGR decision, *American Simmental Association*, the Board applied the two-prong test for patent eligibility articulated in the Supreme Court's *Alice* decision and held that the claims were directed to a patent-ineligible abstract idea. In particular, the Board held that the claimed abstract idea of determining an animal's relative economic value based on genetic and physical traits and did not include limitations that were significantly more than the abstract idea itself. The Board considered evidence offered by both parties, but the specification proved to have a significant impact on how the Board construed the claim terms at issue.

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