UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SKIMLINKS, INC. and SKIMBIT, LTD.,
Petitioner,

v.

LINKGINE, INC.,
Patent Owner.

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Case CBM2015-00086
Patent 7,818,214 B2

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Before KEVIN F. TURNER, PHILLIP J. KAUFFMAN, and
KRISTINA M. KALAN, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION
Institution of Covered Business Method Review and
Grant of Motion for Joinder
37 C.F.R. § 42.208
37 C.F R § 42.222(b)

I. INTRODUCTION

Skimlinks, Inc. and Skimbit, Ltd. ("Petitioner") filed a Petition to institute a covered business method ("CBM") review of claims 1–7 of U.S. Patent No. 7,818,214 B2 (Ex. 1001, "the '214 patent"). Paper 1 ("Pet."). On April 17, 2015, Petitioner filed a Motion for Joinder ("Mot.," Paper 13) seeking to join this proceeding with *VigLink*, *Inc. v. Linkgine, Inc.*, Case CBM2014-00184 (the "VigLink CBM"). Mot. 1. Linkgine, Inc. ("Patent Owner") did not file an opposition to Petitioner's Motion. Patent Owner filed a Waiver of Preliminary Response. Paper 16. We have jurisdiction under 35 U.S.C. § 324, which provides that a post-grant review may not be instituted "unless . . . 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 determine that the '214 patent qualifies as a covered business method patent under § 18(d)(1) of the Leahy-Smith America Invents Act ("AIA"). Leahy-Smith America Invents Act, Pub. L. No. 112–29, 125 Stat. 284, 331 (Sept. 16, 2011). We further determine that it is more likely than not that at least one claim of the '214 patent is unpatentable. We, therefore, (1) institute a covered business method patent review of claims 1–7, *see* 35 U.S.C. § 324(a), and (2) grant Petitioner's Motion for Joinder.

A. Related Cases

The '214 patent is at issue in *Linkgine, Inc. v. Skimlinks, Inc. and Skimbit, Ltd.*, No. 1:14-cv-00571 (E.D. Va.) ("the district court proceeding"). Paper 12, 2; Pet. 5. We instituted trial in the VigLink CBM on March 18, 2015. VigLink CBM, Paper 13. In addition, Petitioner has

filed a petition for covered business method patent review of U.S. Patent 8,027,883 B2 (CBM2015-00087).

B. The '214 Patent

The '214 patent relates to an affiliate manipulation system that permits consumers, Internet Service Providers (ISPs), search engines, and intermediaries to maximize affiliate program participation in transactions by or through them. Ex. 1001, Abstract. The operation of the affiliate manipulation system is illustrated in Figure 4 from the patent reproduced below:

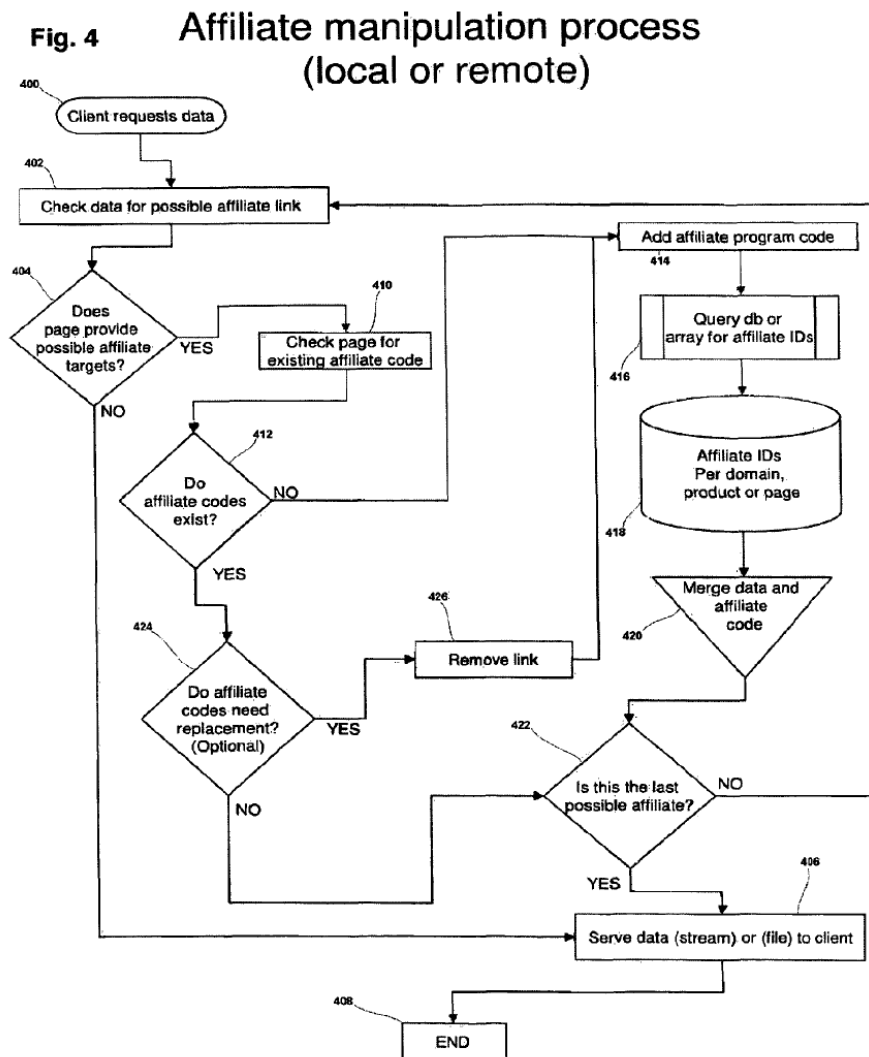Fig. 4 Affiliate manipulation process (local or remote)

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Figure 4 is a process flowchart for an embodiment of the affiliate manipulation system. *Id.* at 2:26–27. In the flowchart reproduced above, the user requests data through the Internet at step 400. *Id.* at 8:8–10. At step 402, the system checks the data for a possible affiliate link. *Id.* at 8:13–14. Affiliate links that contain Uniform Resource Locators ("URLs") that participate in affiliate programs are affiliate targets. *Id.* at 8:17–18. If there are no possible affiliate targets 404, the system serves the data to the user in step 406 and ends the process in step 408. *Id.* at 8:18–20. If there are possible affiliate targets, the system checks the URLs for existing affiliate codes in step 410; if no affiliate codes exist, the system adds the affiliate program code to the affiliate target information in step 414. *Id.* at 8:21–25. If affiliate codes exist, the system determines if the affiliate codes need to be replaced at step 424. *Id.* at 8:40–42. If the existing affiliate code is not for a preferred commercial agent, then the existing affiliate code is removed in step 426, and the system continues to step 414. *Id.* at 8:42–45. At step 416, the system queries the database or array for affiliate information based on the affiliate target information; retrieves the affiliate information in step 418, and merges the data and affiliate code in step 420. *Id.* at 8:28–33. The system may then serve the data to the user and end the process if this is the last possible affiliate, or go back to step 402 to analyze the data for additional possible affiliate links. *Id.* at 8:33–37.

C. Illustrative Claim

Claims 1 and 7 are independent method claims. Claims 2–6 depend directly from claim 1. Claim 1 is illustrative:

1. A method for operating an automated affiliate manipulation system comprising:

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receiving a request for preexisting data from a first computer,

identifying the requested preexisting data at an intermediary computer, the intermediary computer being separate from the first computer, analyzing the requested preexisting data at the intermediary computer to automatically identify at least one data element corresponding to an affiliate-capable merchant,

determining that the at least one data element comprises an existing affiliate code

determining that the existing affiliate code does not comprise the preferred affiliate code,

creating modified data at the intermediary computer by automatically associating the preferred affiliate code with the data element, and removing any existing affiliate code associated with the data element, the modified data comprising at least one affiliate link, wherein the affiliate link comprises a URL associated with the affiliate-capable merchant, delivering the modified data to the first computer, and communicating the affiliate code to the affiliate-capable merchant upon selection of the affiliate link.

Ex. 1001, 8:56–9:12.

D. The Asserted References

Petitioner relies on the following references:

1. U.S. Patent No. 6,804,660 B2, issued October 12, 2004 ("Landau") (Ex. 1010);

2. Int'l Pub. No. WO 00/58861 A1, published October 5, 2000 ("Priest") (Ex. 1012); and

3. Robert McRackan, "Overture Partnering with Gator," The LED Digest, 1576, 1 (May 8, 2003), *available at* http://www.abestweb.com/ forums/suspicious-activity-161/led-digest-articleoverture-gator-partnership-29873.html. ("McRackan") (Ex. 1013).

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