

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE INC.,  
Petitioner,

v.

BETTER FOOD CHOICES LLC,  
Patent Owner.

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Case CBM2015-00071  
Patent 5,841,115

Before MICHAEL P. TIERNEY, GLENN J. PERRY, and MINN CHUNG,  
*Administrative Patent Judges.*

CHUNG, *Administrative Patent Judge.*

FINAL WRITTEN DECISION  
*35 U.S.C. § 328(a) and 37 C.F.R. § 42.73*

## I. INTRODUCTION

In this covered business method patent review, instituted pursuant to 35 U.S.C. § 324, Petitioner Google Inc. (“Petitioner”) challenges the patentability of claims 1–20 (the “challenged claims”) of U.S. Patent No. 5,841,115 (Ex. 1001, “the ’115 patent”), owned by Better Food Choices LLC (“Patent Owner”). The Board has jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is entered pursuant to 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73. With respect to the grounds instituted in this trial, we have considered the papers submitted by the parties and the evidence cited therein. For the reasons discussed below, we determine Petitioner has shown by a preponderance of the evidence that claims 1–20 of the ’115 patent are unpatentable.

### *A. Procedural History*

On February 4, 2015, Petitioner filed a Petition (Paper 1, “Pet.”) requesting a covered business method patent review of claims 1–20 of the ’115 patent under Section 18 of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011) (“AIA”). Patent Owner filed a Preliminary Response (Paper 8, “Prelim. Resp.”). On August 20, 2015, we instituted a covered business method patent review based on the following specific grounds (Paper 10, “Dec. on Inst.,” 30–31):

Claims Challenged	Statutory Basis	Ground
1–20	§ 101	Lack of patent-eligible subject matter
1–10	§ 112, ¶ 2	Indefiniteness

After institution of trial, Patent Owner filed a Patent Owner Response (Paper 14, “PO Resp.”), to which Petitioner filed a Reply (Paper 18, “Pet. Reply”). The parties also briefed whether certain exhibits submitted by Patent Owner should be excluded from the record. *See* Papers 21, 25, 27.

An oral hearing was held on May 19, 2016. A transcript of the hearing is included in the record as Paper 34 (“Tr.”).

### *B. Related Proceedings*

Petitioner indicates that the ’115 patent has been asserted against Petitioner in the following patent infringement case: *Better Food Choices, LLC v. MyNetDiary, Inc.*, No. 14-cv-00204-CWD (D. Idaho). Pet. 4. According to Petitioner, the case has been transferred to the United States District Court for the Northern District of California as Case No. 3:15-cv-00198-EDL. *Id.*

Patent Owner indicates that the ’115 patent is also the subject of the following patent infringement case: *Better Food Choices, LLC v. Amazon, Inc.*, No. 3:15-cv-00198 (N.D. Cal.). Paper 9, 2.

## II. THE ’115 PATENT

### *A. Described Invention*

The ’115 patent describes a computerized method and system to provide personalized nutritional information to consumers. Ex. 1001, Abstract, col. 5, ll. 40–43. The computerized apparatus and method correlate personal data—such as age, height, weight, medical conditions, nutritional preferences, and demographic data—with the food products the person seeks to purchase or consume, or has purchased or consumed. *Id.* at col. 5, ll. 43–48. In an embodiment, personal data may be provided or

entered by using a magnetic card reader, a barcode reader, a keypad entry device, or a touch screen entry system. *Id.* at col. 5, ll. 60–63. The data input regarding an individual may include the individual’s age, gender, and weight; the existence of dietary regulated conditions such as high cholesterol level or diabetes; and the existence of medical conditions such as heart disease. *Id.* at col. 5, l. 64–col. 6, l. 3. In another embodiment, a shopper at a supermarket may provide personal and product information by using a barcode scanner available on a shopping cart to scan a user identification card and the barcodes on packaged food. *Id.* at col. 7, ll. 16–19. The system accesses a nutritional database (NDB)—which contains a listing of foods, the UPC barcode number for prepackaged food products, and nutritional information regarding those foods—and correlates the personal data input by the individual with the nutritional data pertaining to the food products the individual intends to purchase. *Id.* at col. 6, ll. 24–28; col. 7, ll. 19–26. The correlated data output may include information and/or recommendations regarding the particular food choices of the individual—e.g., if an individual is a diabetic, the system will inform the person whether any of the chosen food items contain sugars or glucose. *Id.* at col. 6, ll. 37–41. By using the claimed system, the food shoppers can obtain individualized nutritional information while they shop, allowing them to make better informed food choices. *Id.* at col. 7, ll. 31–35.

In another embodiment, the claimed system may provide personalized nutritional information at the check-out counter of a food market. *Id.* at col. 7, ll. 64–66. The information provided to the shopper would be in the form of a printed report the shopper receives at the time of purchase, and

may be based on a single purchase of food items or based upon weekly food purchases. *Id.* at col. 7, ll. 66–67; col. 8, ll. 4–5.

*B. Illustrative Claim*

Of the challenged claims, claims 1, 4, and 11 are independent.

Claims 1 and 11 are illustrative of the challenged claims and are reproduced below:

1. Apparatus for generating personalized nutritional information for a shopper comprising:

(a) means for inputting personal data relating to an individual;

(b) barcode means for inputting data identifying at least one food product which said shopper has selected or specified, or has purchased or consumed;

(c) processor means under the control of a prestored computer program for correlating the personal data with prestored nutritional data, including a barcode address, pertinent to the at least one food product which said shopper has selected or specified, or has purchased or consumed; and

(d) means for outputting information pertinent to the at least one food product and the personal data of the individual.

11. A method for providing a shopper with personalized nutrition information regarding food purchased or consumed, or food selected or specified by said shopper, comprising the following steps:

(a) inputting personal data relating to an individual;

(b) selecting or specifying at least one food product which said shopper is interested in, or has purchased or consumed, and inputting data identifying said food product;

(c) correlating the personal data with prestored nutritional data including a barcode address, pertinent to the at least one food product which said shopper has specified or selected, or has purchased or consumed; and

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