

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

GOOGLE INC.,  
Petitioner,

v.

BETTER FOOD CHOICES LLC,  
Patent Owner.

---

Case CBM2015-00071  
Patent 5,841,115

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

CHUNG, *Administrative Patent Judge.*

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

## I. INTRODUCTION

Google Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting a covered business method patent review of claims 1–20 (the “challenged claims”) of U.S. Patent No. 5,841,115 (Ex. 1001, “the ’115 patent”). Better Food Choices LLC (“Patent Owner”) filed a Preliminary Response (Paper 8, “Prelim. Resp.”).<sup>1</sup> We have jurisdiction under 35 U.S.C. § 324. *See* Section 18(a) of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011) (“AIA”).

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

**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.

Upon consideration of the information presented in the Petition and Preliminary Response, we conclude Petitioner has demonstrated all of the

---

<sup>1</sup> The Preliminary Response appears to suffer from various formatting deficiencies, including using a 12-point proportional font instead of the required 14-point or larger proportional font. *See* 37 C.F.R. § 42.6(a)(2)(ii)(A). Block quotations may be 1.5 spaced, but must be indented from both the left and right margins. *Id.* The Preliminary Response, however, appears to use single spacing, instead of 1.5 spacing, for block quotations. For these reasons, the Preliminary Response is not compliant with 37 C.F.R. § 42.6. Patent Owner is reminded that non-compliance with the Board’s rules may lead to adverse consequences, including rejection of any non-compliant filings. Patent Owner is advised to consult the Board’s trial rules and the Office Patent Trial Practice Guide (*available at* <http://www.uspto.gov/patents-application-process/appealing-patent-decisions/resources/board-trial-rules-and-practice>) for future filings.

CBM2015-00071  
Patent 5,841,115

challenged claims are more likely than not unpatentable under 35 U.S.C. § 101 or § 112. Accordingly, we institute a covered business method patent review of claims 1–20.

#### *A. 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. *Id.*

Patent Owner indicates that the above-mentioned case has been terminated but is on appeal before the United States Court of Appeals for the Federal Circuit as *Better Food Choices, LLC v. MyNetDiary, Inc.*, No. 15-1304. Paper 9, 2. According to Patent Owner, the '115 patent is also the subject of the following pending patent infringement case: *Better Food Choices, LLC v. Amazon, Inc.*, No. 3:15-cv-00198 (N.D. Cal.). *Id.*

#### *B. The '115 Patent*

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.

*C. Illustrative Claim*

Of the challenged claims, claims 1, 4, and 11 are independent. Claim 11 is illustrative of the challenged claims and is reproduced below:

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

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

*D. Asserted Grounds of Unpatentability*

Petitioner asserts the following grounds of unpatentability (Pet. 19–39):

Claims Challenged	Statutory Basis	Ground
1–20	§ 101	Lack of patent-eligible subject matter ( <i>id.</i> at 19–36)
1–10	§ 112, ¶ 2	Indefiniteness ( <i>id.</i> at 36–39)

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.