

**IN THE**  
**United States Patent and Trademark Office**  
**Before the Patent Trial and Appeal Board**

EBAY INC. and PAYPAL, INC.,

*Petitioner,*

v.

XPRT VENTURES, LLC

*Patent Owner.*

CBM2017-00024

Patent No. 7,610,244 B2

**PATENT OWNER'S RESPONSE TO THE**  
**PETITIONER'S PETITION**

**(37 C.F.R. Section 42.220)**

Dated: November 1, 2017

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iv
SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	5
I. PATENT OWNER’S CHALLENGED CLAIMS ARE NOT CBM CLAIMS AND THEY RECITE PATENTABLE SUBJECT MATTER.....	5
A. Challenged Claims Recite Patentable Subject Matter.....	5
B. Challenged Claims Are Not CBM Claims...7	
II. PATENTS ARE PRIVATE RIGHTS, AND THE PTAB INCORRECTLY ADHERED TO A “PUBLIC RIGHTS” THEORY IN GRANTING THE PETITION.....	10
A. The U.S. Supreme Court Has Historically Treated Patent Rights as Private Rights, Not “Public Rights” .....	11
B. The PTAB’S “Public Rights” Theory Is Inconsistent With the Quid Pro Quo That Underlies the Patent System.....	19
III. THE IPR AND CBM PROCESSES AS ENACTED AND IMPLEMENTED ARE CONSTITUTIONALLY INFIRM.....	22

A.	The U.S. Supreme Court Has Recognized Exceptions To Article III Jurisdiction Only In Limited Circumstances. ....	22
B.	IPR and CBM Proceedings Conducted By The PTAB Do Not Meet The Supreme Court’s Criteria For Agency Adjudication of Private Rights .....	24
	1. <i>The PTAB Operates More Broadly, And With Less Independence, Than the Tribunals Approved By The U.S. Supreme Court</i> .....	26
	2. <i>The PTAB Has Failed To Adopt Fair Procedures To Secure Patent Rights</i> .....	31
	3. <i>The Contrast With Other PTO Procedures For Reviewing Issued Patents Shows That The IPR and CBM Processes Do Not Operate In A Fair Or Valid Manner</i> .....	36
IV.	THE IPR AND CBM SYSTEMS ARE ESPECIALLY TROUBLING AS APPLIED TO PATENTS ISSUED BEFORE THE AIA .....	39
V.	CBM PROCESS UNDERMINES OR DENIES A PATENT OWNER’S RIGHT TO A JURY TRIAL UNDER THE SEVENTH AMENDMENT .....	43

VI.    CBM PROCESS IS UNFAIR TO A  
      PATENT OWNER SINCE A PATENT  
      INFRINGEMENT CAN ASSERT GROUNDS  
      IT COULD HAVE REASONABLY  
      ASSERTED IN THE DISTRICT  
      COURT .....44

CONCLUSION .....45

WORD COUNT CERTIFICATION.....48

CERTIFICATE OF SERVICE .....49

## TABLE OF AUTHORITIES

### CASES:

<i>Andrews v. Columbia Gas Transmission Corp.</i> , 544 F.3d 618 (6th Cir. 2008) .....	13
<i>Board of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems, Inc.</i> , 131 S.Ct. 2188 (2011).....	17
<i>Cammeyer v. Newton</i> , 94 U.S. (4 Otto) 225 (1876) .....	12
<i>Cleveland v. United States</i> , 531 U.S. 12 (2000).....	11
<i>Commodity Futures Trading Comm’n v. Schor</i> , 478 U.S. 833 (1986) .....	<i>passim</i>
<i>Consolidated Fruit-Jar Co. v. Wright</i> , 94 U.S. (4 Otto) 92 (1876) .....	11
<i>Crowell v. Benson</i> , 285 U.S. 22 (1932) .....	<i>passim</i>
<i>Crozier v. Fried, Krupp Aktiengesellschaft</i> , 224 U.S. 290 (1912) .....	12
<i>Cuozzo Speed Techs., LLC v. Lee</i> , No. 15-446 .....	31
<i>Enfish, LLC v. Microsoft Corporation</i> , (Fed. Cir. 2016).....	5, 7
<i>Evans v. Jordan</i> , 8 Fed. Cas. 872 (C.C.D. Va. 1813).....	15

# 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.