UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTERNATIONAL BUSINESS MACHINES CORPORATION,
Petitioner,

v.

ENVISIONIT, LLC,
Patent Owner.

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Case IPR2017-01248
Patent 7,693,938 B2

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Before LYNNE E. PETTIGREW, DAVID C. McKONE, and TERRENCE
W. MCMILLIN, *Administrative Patent Judges*.

McMILLIN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

International Business Machines Corporation ("Petitioner") filed a Petition (Paper 1, "Pet.") to institute an *inter partes* review of claims 1, 11–13, 42, 47, and 57 of U.S. Patent No. 7,693,938 B2 (Ex. 1001, "the '938 patent"). EnvisionIT, LLC ("Patent Owner") filed a Preliminary Response (Paper 6, "Prelim. Resp."). We have statutory authority under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." *See also* 37 C.F.R § 42.4(a) (delegating authority to the Board).

Upon consideration of the Petition and Preliminary Response, we conclude Petitioner has not established a reasonable likelihood that it would prevail with respect to any of the challenged claims. Accordingly, we decline to institute an *inter partes* review of claims 1, 11–13, 42, 47, and 57 of the '938 patent.

B. Related Matters

The parties indicate that the '938 patent has been asserted in *CellCast Technologies, LLC v. United States*, Case No. 1:15-cv-01307 (Fed. Cl.) ("*CellCast* Litigation"). Pet. 4; Paper 4, 2. The '938 patent also was the subject of *Department of Justice v. EnvisionIT, LLC*, Case IPR2017-00183 (PTAB). Pet. 4.

C. The '938 Patent

The '938 patent relates to admission control for message broadcast systems. Ex. 1001, 1:18–20. Figure 1, reproduced below, illustrates an example:
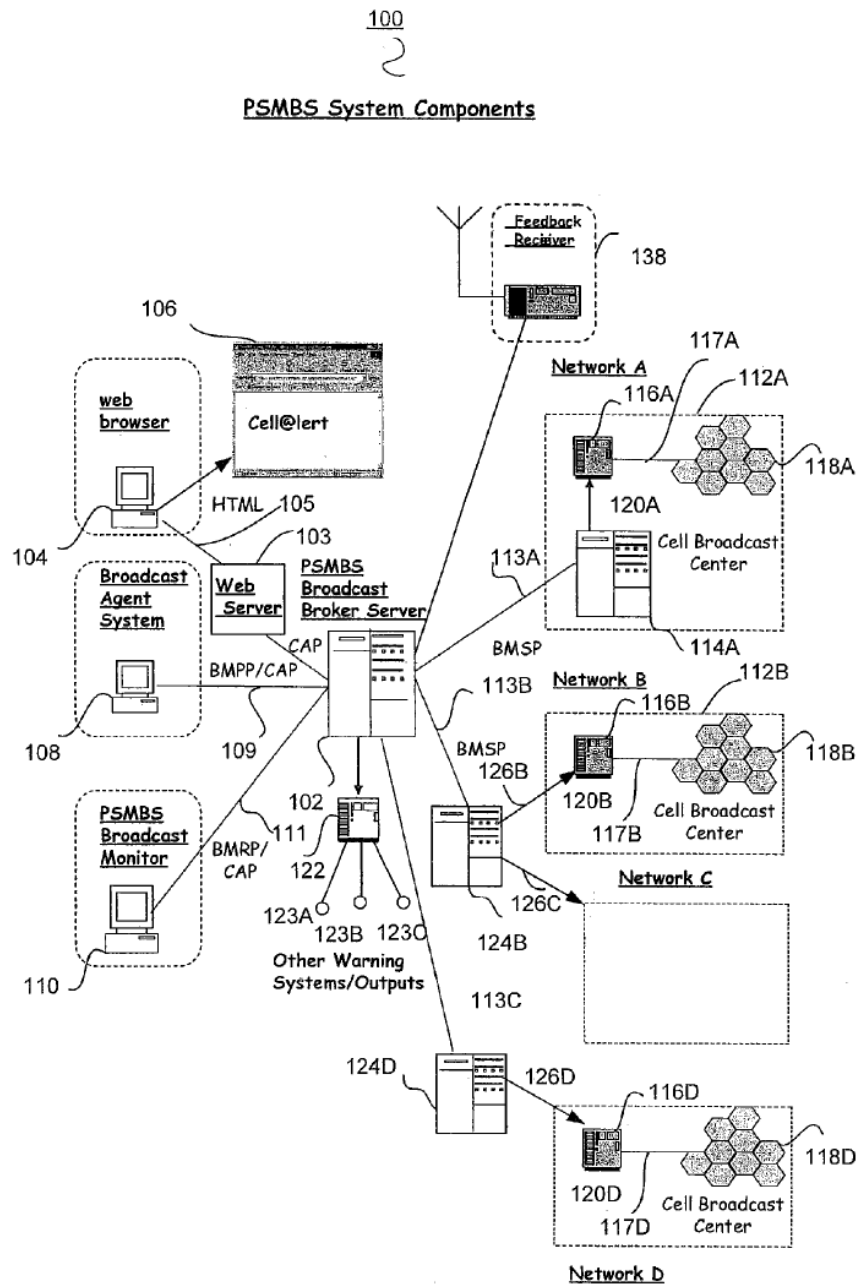
100

PSMBS System Components

FIG. 1

Figure 1 is a functional block diagram of public service message location broadcast system ("PLBS") 100. *Id.* at 3:9–11, 5:29–30.

One or more broadcast agent devices 104 are connected to public service location broadcast service bureau ("service bureau" or "PLBS-SB")

102. *Id.* at 5:37–39. Broadcast agent device 104 provides cell@lert display 106 to a broadcast agent, who inputs a message and defines a geographic target area for delivery of the message. *Id.* at 5:39–43. Service bureau 102 also is connected to one or more local carrier networks 112A, 112B, which can include cellular carrier networks, wireline networks, satellite networks, and cable television networks. *Id.* at 6:17–25. Local carrier network 112A can include Cell Broadcast Center ("CBC") 114A that receives broadcast messages and local delivery instructions from service bureau 102. *Id*. at 6:25–29.

Service bureau 102 ensures the authenticity of the broadcast messages and the authority of the senders to create the messages. *Id.* at 6:50–52. "The signal from the Broadcast Agent Terminal 104, for example, at a police station, to the PLBS-SB 102, would only indicate the geographical area to be covered, plus the message. PLBS-SB 102 then sends the broadcast request signal to the Carrier Broadcast Center 114 at the office of each local carrier concerned." *Id.* at 6:54–59.

The '938 patent contains 59 claims. Ex. 1001, 39:21–46:17. As noted above, Petitioner challenges claims 1, 11–13, 42, 47, and 57. Pet. 1. Challenged, independent claim 1 is directed to a message broadcasting system. Ex. 1001, 39:21–43.

Claim 1, reproduced below, is illustrative of the invention:

1. A message broadcasting system providing a broadcast message to a broadcast target area, the system comprising:

a broadcast request interface configured for receiving a broadcast message record having a broadcast message, a defined broadcast target area, and a broadcast message originator identifier;

a broadcast admission control module configured for receiving the broadcast message record, validating the broadcast message record as a function [sic] one or more of the broadcast message originator identifier, the broadcast target area, and a broadcast message transmission network parameter associated with a broadcast transmission network adapted for broadcasting the message to at least a portion of the broadcast target area, said broadcast admission control module configured for generating a validated broadcast message record as a function of the validating; and;

a broadcast message distributor module configured for receiving the validated broadcast message record and transmitting the broadcast message and the broadcast target area, or a part thereof, to an output interface configured for distributing the broadcast message to at least a portion of the broadcast target area.

D. Evidence Relied Upon

Petitioner relies on the following references:

Common Alerting Protocol Technical Working Group, *Common Alerting Protocol (v 0.5a) – Alert Message Data Dictionary, Draft 6/20/2002* (Ex. 1007, "CAP 0.5");

U.S. Patent Application Publication 2002/0103892 A1, published Aug. 1, 2002 (Ex. 1009, "Rieger"); [1]

In re Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further

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[1] R*ie*ger is consistently misspelled "R*ei*ger" in the Petition. We have corrected these misspellings in our quotations of the Petition.

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