

CBM Standing

Analysis of PTAB Institution Decisions
Addressing Standing Under AIA § 18(d)(1)

About this report

CBM review is available only to a party charged with infringement of a CBM patent. A CBM patent “claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.” AIA § 18(d)(1).

Financial Product or Service. The legislative history of the AIA “explains that the definition of covered business method patent was drafted to encompass patents ‘claiming activities that are financial in nature, incidental to a financial activity or complementary to a financial activity.’” 77 Fed. Reg. 48734, 48,735 (Aug. 14, 2012) (quoting 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011)).

Technological Invention. Under 37 CFR 42.301, the determination of whether a patent is for a technological invention is made on a case-by-case basis and considers “whether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art; and solves a technical problem using a technical solution.

This report examines the PTAB’s track record in determining whether patents challenged in petitions for CBM review satisfy the requirements of AIA § 18(d)(1).

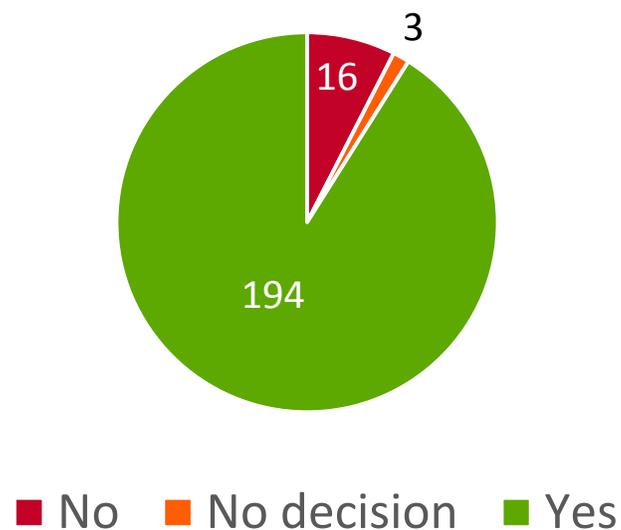
Our methodology

This report is based on Docket Navigator’s review of PTAB institution decisions in CBM proceedings through June 5, 2015. In many proceedings, the question of standing under AIA § 18(d)(1) was addressed in the PTAB’s final written decision. But in each instance, the final written decision did not alter the determination made in the institution decision.

Some patents were challenged in more than one CBM proceeding. This report treats those proceedings as separate events. So for example, if the PTAB found that a patent was directed to a financial product or service in two separate CBM proceedings, those decisions would be counted twice.

The underlying data is available to Docket Navigator subscribers via a link at the end of this report. Please contact us [here](#) with questions, corrections, or suggestions.

Financial Product or Service?



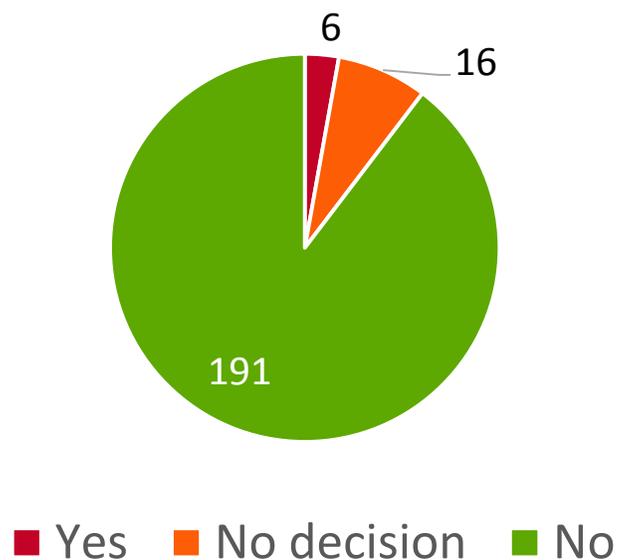
91%

Institution decisions finding the challenged patent was directed to a financial product or service.

Of the 213 institution decisions in which the PTAB addressed the petitioner's standing to seek CBM review under AIA § 18(d)(1), 194 (91%) resulted in a finding that the challenged patent was directed to a financial product or service. Only 16 (7.5%) reached the opposite conclusion.

This chart shows the outcomes of PTAB institution decisions in CBM proceedings as of June 5, 2015 in which the PTAB's authority to review the challenged patent under AIA § 18(d)(1) was challenged. "No decision" means the PTAB did not address the question of whether the challenged patent was directed to a financial product or service either because the parties did not address or dispute that issue, or because resolution of that issue was unnecessary in light of the PTAB's decision as to other aspects of the institution determination.

Technological Invention?



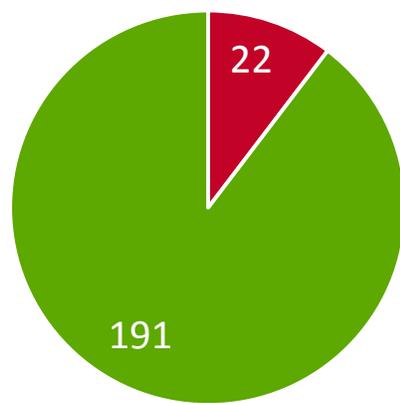
2.8%

Institution decisions finding the challenged patent was for a technological invention.

Of the 213 institution decisions in which the PTAB addressed the petitioner's standing to seek CBM review under AIA § 18(d)(1), only 6 (2.8%) resulted in a finding that the challenged patent was directed to a technological invention. 191 (89.7%) reached the opposite conclusion.

This chart shows the outcomes of PTAB institution decisions in CBM proceedings as of June 5, 2015 in which the PTAB's authority to review the challenged patent under AIA § 18(d)(1) was challenged. "No decision" means the PTAB did not address the question of whether the challenged patent was directed to a technological invention either because the parties did not address or dispute that issue, or because resolution of that issue was unnecessary in light of the PTAB's decision as to other aspects of the institution determination.

Covered Business Method Patent?



■ No ■ Yes

90%

Institution decisions finding the challenged patent was eligible for CBM review under AIA § 18(d)(1).

Of the 213 institution decisions in which the PTAB addressed the petitioner's standing to seek CBM review under AIA § 18(d)(1), 191 (89.7%) resulted in a finding that the challenged patent was a covered business method patent eligible for CBM review. Only 22 (10.3%) reached the opposite conclusion.

This chart shows the outcomes of PTAB institution decisions in CBM proceedings as of June 5, 2015 in which the PTAB's authority to review the challenged patent under AIA § 18(d)(1) was challenged.

Data

The data used to create this report, including links to the underlying PTAB decisions, is available to Docket Navigator subscribers at the link below. Download and use of the data is subject to “The Fine Print” on the following page and our [Terms of Use](#).



THE FINE PRINT

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