



Federal Housing Finance Agency

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June 7, 2010

Honorable Darrell Issa
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Honorable Jason Chaffetz
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Representatives Issa and Chaffetz:

Your letter of May 27, 2010, requested supplemental and additional information regarding Fannie Mae U.S. Patent No. 6,904,336 as well as information on two other patents granted to Fannie Mae. I have also provided certain additional information on Fannie Mae's patent program as requested by your office during a telephone conversation on June 2, 2010. The May 27th letter sought information regarding Fannie Mae U.S. Patent No. 6,904,336, which was granted on June 7, 2005 to Fannie Mae and a joint owner, CO2e.com, LLC ("CO2e.com") and to which I responded on May 25, 2010, on behalf of the Federal Housing Finance Agency (FHFA), acting as conservator for Fannie Mae.

Supplemental Information

Patent No. 6,904,336

As discussed with your staff, all Fannie Mae employees with personal knowledge of this patent, including those listed in question 6 of your letters, have left the company. My May 25th letter was based on diligent internal research by Fannie Mae staff, inquiries with Fannie Mae's former and current outside counsels for patent matters and review of outside counsels' records. Further efforts to locate documentation dating back more than eight years ago would be costly, burdensome and potentially unproductive. For this reason, and in light of the facts set forth in the May 25th letter, your staff agreed that such a search for responsive documents would be unnecessary.

Patent No. 7,133,750

Your May 27th letter requested information regarding U.S. Patent No. 7,133,750, which was granted to Fannie Mae and CO2e.com on November 7, 2006. Patent No. 7,133,750 resulted from a continuation application filed by Fannie Mae and CO2e.com on April 28, 2005, during the course of consideration of Patent No. 6,904,336, pursuant to and consistent with the statutory requirements and standards of the U.S. Patent and Trademark Office ("USPTO"); 35 USC 120, 37 CFR 1.53. Because the USPTO often requires separate prosecution for different types of claims in a patent, Fannie Mae followed the customary practice to file this continuation application.

The original application leading to Patent No. 6,904,336 covered both the implementation of the invention through a *method* (i.e., the “steps” of implementing the invention) and the implementation of the invention through a *system* (i.e., implementation by devices, such as computer systems). To facilitate the prosecution of Patent No. 6,904,336, the claims for the *method* were pursued in the patent application that led to Patent No. 6,904,336, while the claims for the *system* were pursued in the newer, separate continuation application that led to Patent No. 7,133,750. In other words, the filing of the continuation application was a procedural filing, prompted not by the management of Fannie Mae or CO2e.com, but rather by the standard filing processes before the USPTO.

Because the *method* claims covered by Patent No. 6,904,336 are essentially identical to the *system* claims covered by Patent No. 7,133,750, the responses I provided in my May 25 letter regarding the former patent apply equally to the latter.

Patent No. 6,674,003

Your May 27th letter also requested information regarding U.S. Patent No. 6,674,003, for a “tamper-resistant outlet cover.” This device, invented by an electrician on Fannie Mae’s staff, protects computer systems and hard drives containing critical data in an office environment. More specifically, the device prevents unauthorized or unqualified personnel from connecting equipment to outlets, such as vacuum cleaners or heaters, which may cause circuit overloads, trip circuit breakers and result in the loss or alteration of data residing on the computer systems powered by the same electrical network. Fannie Mae has made use of this device in its data centers to minimize the risk of unintentional circuit interruptions.

Fannie Mae’s time and effort in developing and deploying this simple invention was consistent with its regulatory obligations. In its Policy Guidance on “Safety and Soundness Standards for Information,” the Office of Federal Housing Enterprise Oversight (FHFA’s predecessor organization) required Fannie Mae to evaluate and adopt “[m]easures to protect against destruction, loss or damage of information due to potential environmental hazards, such as . . . technological failures.”; 12 CFR 1720, Appendix C, “Policy Guidance; Safety and Soundness Standards for Information.” Fannie Mae management supported the filing of a patent for this invention to formally acknowledge the personal contribution of an employee and to promote a culture of inventiveness and a problem solving attitude among employees.

Fannie Mae has not licensed or otherwise benefitted from Patent No. 6,674,003. Following the grant of the patent in 2004, Fannie Mae opted not to pay the maintenance fee due in 2007, thereby placing the patent in the public domain.

Department of Housing and Urban Development (“HUD”) Determination Letter

In 2006 and 2007, HUD, the former mission regulator for Fannie Mae and Freddie Mac, conducted a thorough review of Fannie Mae’s patent activities, including its applications to patent the residential emission trading concept described by Patent Nos. 6,904,336 and 7,133,750. HUD considered both the company’s business reasons for seeking patent protection and its legal

authority to do so. HUD also conducted independent research into the financial service industry's patenting practices, particularly in regard to technology innovations for business processes. In its determination letter dated August 7, 2007, HUD noted the growing number of patents issued for technology-based business processes, the significant increase in patent infringement litigation, and the enormous costs associated with patent defense. HUD concluded that "Fannie Mae is permitted to acquire, hold and license domestic and foreign patents for any activity except those that are expressly prohibited by its charter," but that "Fannie Mae may only use patents to engage in activities that are authorized under its charter." I enclose a copy of HUD's determination letter, as requested by your staff.

Contribution of Fannie Mae Patent to the Mortgage Industry

Finally, during our conversation on June 2, your staff requested additional information about Fannie Mae's contribution of the SMART Doc Validation Patent (U.S. Patent No. 7,299,408) to the mortgage industry. I enclose a copy of the Mortgage Bankers Association ("MBA") press release of March 18, 2008, and a copy of a March 24, 2008 article published in National Mortgage News, illustrative of the industry press coverage at the time, which describe Fannie Mae's electronic mortgage validation patent and the royalty-free contribution of that patent to MISMO, the MBA's not-for-profit data standards subsidiary.

Thank you for your inquiry and I believe this response meets the additional and supplemental requests. I appreciate your staff assistance in bringing this matter to conclusion.

With all best wishes, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Alfred M. Pollard", with a long, sweeping flourish extending to the right.

Alfred M. Pollard
General Counsel

Attachments



1 of 8 DOCUMENTS

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National Mortgage News

March 24, 2008

SECTION: Pg. 1 Vol. 32 No. 25

LENGTH: 587 words

HEADLINE: GSE Move to Aid E-Mortgages

BYLINE: Anthony Garritano

DATELINE: DALLAS

BODY:

With all of the clamor to increase data purity and transparency, the migration to SMART Docs and e-mortgages appears inevitable. However, the idea of tackling SMART Docs is daunting to some lenders, which is why Fannie Mae has stepped in to make things easier.

Fannie Mae has played a significant role in MISMO in moving the e-mortgage further. The GSE has gone further to accept e-mortgages in a production setting for over five years now. Along the way Fannie has had a lot of experience working with live SMART Docs that it now wants to share with the whole industry.

So, Fannie Mae has contributed a new patent to MISMO under the MISMO Intellectual Property Rights Policy so that it may be used by the real estate finance industry on a royalty-free basis that demonstrates how to validate a SMART Doc. This patent can act as a how-to on doing quality control on SMART Docs

"This contribution of a SMART Doc validation method is another example of Fannie Mae's ongoing support for open standards and eMortgage adoption," said Harry Gardner, MBA's vice president of industry technology and head of MISMO. "We thank Fannie Mae for their support and are pleased to make this intellectual property available to the industry. It will undoubtedly help as we continue down the path toward industry-wide e-mortgages."

The SMART Doc specification was originally licensed to MISMO in 2002 by Fannie Mae, and then developed and released as an open industry standard for electronic documents. The new patent, which was granted to Fannie Mae this past November, defines processes for validating the view and data sections of a SMART Document with automated systems. Additionally, the processes can enable "lights-out" post-closing and certification, two critical elements within the automated transaction process.

"Fannie Mae supports the need for industry-wide standards for e-mortgages as they increase efficiency and transparency while driving down costs and improving accuracy," said Mark Oliphant, director of business strategy for automated business Solutions at Fannie Mae. "This contribution will help the industry in the movement toward paperless processing and the realization of its full business value within real estate finance transactions."

Further, Kim Weaver, vice president of product management for Fiserv's eLending platform, sees the e-mortgage as a compliance and efficiency initiative that will greatly improve the way loans are originated. "I think everybody would agree with the market being what it is, when you can add data that is transparent and easily accessible that has a tamper-evident seal wrapped around it, that's very powerful," she told NMN sister publication Mortgage Technology.

"Investors will have a greater idea of the quality of the collateral in that mortgage-backed security. When you have access to the data you can run programs against it to determine risk. Once you can access the data and it's in a common language everyone can understand better what makes up that loan.

"Certainly there's always going to be fraud, but with the digital age there are current ways and new ways being developed to check for fraud. When the mortgage is in e-note form it's easier for these systems to work."

This patent clearly demonstrates how to take the steps Ms. Weaver describes to electronically validate SMART Docs. MISMO has been publishing voluntary e-mortgage and electronic data standards since 2000. The patent number is US 7,299,408.

<http://www.nationalmortgagenews.com/> <http://www.sourcemia.com/>

LOAD-DATE: March 24, 2008

Fannie Mae Contributes SMART Doc Validation Patent to MISMO

18 March 2008

Targeted News Service

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WASHINGTON, March 18 -- The Mortgage Bankers Association issued the following news release:

MISMO, the not-for-profit data standards subsidiary of the Mortgage Bankers Association (MBA), and Fannie Mae today announced that Fannie Mae has contributed a new patent to MISMO under the MISMO Intellectual Property Rights Policy so that it may be used by the real estate finance industry on a royalty-free basis.

"This contribution of a SMART Doc validation method is another example of Fannie Mae's ongoing support for open standards and eMortgage adoption," said Harry Gardner, MBA's Vice President of Industry Technology and head of MISMO. "We thank Fannie Mae for their support and are pleased to make this intellectual property available to the industry. It will undoubtedly help as we continue down the path toward industry-wide eMortgages."

The SMART Doc specification was originally licensed to MISMO in 2002 by Fannie Mae, and then developed and released as an open industry standard for electronic documents. The new patent, which was granted to Fannie Mae this past November, defines processes for validating the VIEW and DATA sections of a SMART document with automated systems. Additionally, the processes can enable "lights-out" post-closing and certification, two critical elements within the automated transaction process.

"Fannie Mae supports the need for industry-wide standards for eMortgages as they increase efficiency and transparency while driving down costs and improving accuracy," said Mark Oliphant, Director of Business Strategy for Automated Business Solutions at Fannie Mae. "This contribution will help the industry in the movement toward paperless processing and the realization of its full business value within real estate finance transactions."

MISMO has been publishing voluntary eMortgage and electronic data standards since 2000. The patent number is US 7,299,408.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

AUG 7 2007

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Mr. Daniel H. Mudd
Chairman and Chief Executive Officer
Fannie Mae
3900 Wisconsin Avenue, NW
Washington, DC 20016-2892

Dear Mr. Mudd:

Last year, the Department initiated a review of Fannie Mae's patent activities to determine the charter implications of these activities. By letter to Fannie Mae dated November 17, 2006, the Department requested extensive information on Fannie Mae's patent activities, including information on its pending and completed patent applications. Fannie Mae responded to this request for information by letter dated December 18, 2006. In conducting its review of Fannie Mae's patent activities, the Department reviewed the information provided by Fannie Mae, including the business reasons that Fannie Mae provided for seeking patent protection, and its legal authority to do so.

The Department has completed its review and has concluded that Fannie Mae is permitted to acquire, hold and license domestic and foreign patents for any activity except those that are expressly prohibited by its charter, as set forth in the Fannie Mae Act (12 U.S.C. § 1716 et seq.). However, Fannie Mae may only use patents to engage in activities that are authorized under its charter. Whether the acquisition and use of a specific patent is authorized must be determined on a case-by-case basis. These conclusions are more fully described below.

As a Government Sponsored Enterprise ("GSE"), Fannie Mae must operate within the narrow confines of the powers expressly granted to it by Congress under its Charter Act. Fannie Mae's general corporate powers in section 309(a) of its charter authorize Fannie Mae to "lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same. . . ." Patents are considered personal property under United States patent law. Because Fannie Mae's charter permits it to acquire and hold property, personal or real, and to lease and dispose of property, the Department concludes that acquiring, holding and licensing domestic patents fall within the narrow range of ordinary corporate activities that are authorized under section 309(a) of Fannie Mae's charter.

With respect to foreign patents, Fannie Mae stated that foreign patents might be needed to protect against infringing activity that might occur in another country. For example, computer-implemented inventions can be performed on computers located outside of the United States without violating U.S. patent laws, but infringing activity must occur within the United States for a patent holder to obtain recourse for infringement. Therefore, in order to protect its inventions from infringement outside of the United States, Fannie Mae may need to acquire a foreign patent.

The Department concludes that Fannie Mae's Charter Act does not prohibit acquisition and holding of foreign patents. In addition, because patents are considered personal property, Fannie Mae is authorized under section 309(a) of its charter to license foreign patents. However, the Department's finding in no way implies that Fannie Mae may use foreign patents to engage in activities outside of the United States that are in violation of its charter.

With respect to its business rationale for seeking patent protection, Fannie Mae stated that the acquisition of patents is critical to protecting its innovations and providing a means for managing the risk from patent infringement claims. Fannie Mae cited the large number of patents that have been obtained during the past decade by the financial services industry and stated that the emergence of these patents has changed the business environment in which the industry operates. Fannie Mae also stated that without a robust patent program, it would be unable to protect its business process innovations, and the risks of patent infringement claims, through damages awards or injunctions, would have the potential to threaten the enterprise's financial safety and soundness.

The Department's research into the financial services industry's patenting practices, particularly in regard to technology innovations for business processes, disclosed that both the number of patent applications and patents issued for technology-based business processes have increased significantly since 1995. Many of Fannie Mae's competitors in the financial services industry have active and growing patent programs, as do several government and quasi-government agencies. Patent infringement litigation has also increased significantly in the past decade. This litigation often requires several years to resolve, and costs associated with patent defense can amount to millions of dollars. Larger corporations are especially vulnerable to this type of litigation.

The Department concludes that Fannie Mae is permitted to acquire, hold, and license domestic and foreign patents for any activity except those that are expressly prohibited under its charter. For instance, Fannie Mae may not acquire a patent for an invention or process if the only use of that patent would be for a process to originate mortgages, which is an activity expressly prohibited by the Charter Act. In addition, Fannie Mae may only use its patents to engage in activities that are authorized under its charter. In rendering this conclusion, the Department is aware that in filing an application for patent approval, Fannie Mae may describe multiple uses, one or more of which may be inconsistent with its charter authorities. HUD will not consider such descriptions as the sole basis for a determination that Fannie Mae intends to implement the activity in an unauthorized manner. Nevertheless, especially with respect to those patent applications that describe direct access to borrowers as one potential usage, the Department cautions Fannie Mae that actually implementing this type of activity could trigger issues of charter authority. Activities characteristic of the primary market must be managed by Fannie Mae's lender partners.

This determination letter does not address whether individual patent applications either obtained or sought by Fannie Mae represent authorized activities. It is Fannie Mae's responsibility to ensure that it obtains the necessary regulatory approvals for activities that may be new programs or which might otherwise raise issues of charter authority.

Sincerely,

A handwritten signature in black ink, appearing to read 'BDM', written over a horizontal line.

Brian D. Montgomery
Assistant Secretary for Housing-
Federal Housing Commissioner

cc: Bill Senhauser
Senior Vice President and
Chief Compliance Officer
Fannie Mae