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Live Nation Can't Get PTAB To Review Ticket-Resale Patent

By **Matthew Bultman**

Law360, New York (January 17, 2018, 8:04 PM EST) -- The Patent Trial and Appeal Board declined Tuesday to institute post-grant review of a patent covering technology related to the resale of event tickets, finding Live Nation's invalidity arguments were too similar to ones considered during the prosecution of a related patent.

The board denied a petition for review that Live Nation Entertainment Inc. filed in June, which argued the patent covered nothing more than an abstract idea. Live Nation also contended the patent was invalid because it would have been obvious.

"The petition before us presents the same or substantially the same arguments and prior art as were presented to the [U.S. Patent and Trademark Office] during prosecution of the related [patent]," the PTAB wrote. "Accordingly, we may and do reject the petition."

When Live Nation filed its challenge, the patent belonged to a company called Songkick.com B.V. Last week, Live Nation announced it had agreed to pay Songkick's parent company, Complete Entertainment Resources Group, **\$110 million to end an antitrust suit** filed in the wake of Live Nation's merger with Ticketmaster.

As part of the deal, Live Nation took over several of Songkick's assets, including its patent portfolio. Live Nation and Complete Entertainment recently asked the PTAB to end the post-grant review, saying that Live Nation was now "both the petitioner and the new patent owner."

The PTAB did not mention the request to terminate the review in its decision. Rather, it relied on a rule that allows the board to use its discretion to deny review when the "the same or substantially the same prior art or arguments previously were presented" to the USPTO.

The invention described relates to the prioritization of potential purchasers of event tickets based on their internet behavior. For example, a music group might want to give priority to people who show loyalty to the group on their social media accounts.

The patent was issued in 2016 to Songkick. Songkick was granted a second patent a year later after filing what is known as a continuation patent application, which was based on the earlier application.

Live Nation argued in its petition that the earlier patent covered nothing more than an abstract idea that cannot be patented under Section 101 of the Patent Act.

It drew comparisons to *FairWarning IP LLC v. Iatric Systems Inc.*, a 2016 Federal Circuit ruling that invalidated a patent covering a method for detecting fraud by identifying unusual patterns in users' access of sensitive data. Live Nation argued the claims in Complete Entertainment's patent were similar.

The problem, the PTAB said, is the same argument was considered by a patent examiner during the prosecution of Songkick's subsequent patent, which has claims that were of "very similar scope." The PTAB said the examiner rejected those arguments in a detailed analysis.

"[O]n the record presented, petitioner's patent-ineligibility arguments are substantially the same as those previously presented to the office during prosecution of the [other] patent," it wrote.

The board came to a similar conclusion regarding Live Nation's argument that the patent claims were invalid as obvious.

"Petitioner's obviousness challenges rely on the same or substantially the same prior art and arguments that were presented and rejected by the examiner during prosecution of the [related] patent," the board wrote.

An attorney for Complete Entertainment declined to comment. Counsel for Live Nation did not immediately respond to a request for comment.

The patent at issue is U.S. Patent No. 9,466,035.

Live Nation is represented by Scott Kolassa, Thomas Franklin, Brian Brisnehan and Alton Absher III of Kilpatrick Townsend & Stockton LLP.

Complete Entertainment is represented by Joel Weiss of Weiss & Arons.

The case is Live Nation Entertainment Inc. v. Complete Entertainment Resources B.V., case number PGR2017-00038, before the Patent Trial and Appeal Board.

--Editing by Jack Karp.

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