



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', is written over the printed name.

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

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