



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

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

AUG 7 2007

Mr. Richard F. Syron  
Chairman and Chief Executive Officer  
Freddie Mac  
8200 Jones Branch Drive  
McLean, VA 22102-3110

Dear Mr. Syron:

Last year, the Department initiated a review of Freddie Mac's patent activities to determine the charter implications of these activities. By letter to Freddie Mac dated December 4, 2006, the Department requested extensive information on Freddie Mac's patent activities, including information on its pending and completed patent applications. Freddie Mac responded to this request for information by letter dated January 10, 2007. In conducting its review of Freddie Mac's patent activities, the Department reviewed the information provided by Freddie Mac, including the business reasons that Freddie Mac provided for seeking patent protection, and its legal authority to do so.

The Department has completed its review and has concluded that Freddie Mac 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 Freddie Mac Act (12 U.S.C. § 1451 et seq.). However, Freddie Mac 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"), Freddie Mac must operate within the narrow confines of the powers expressly granted to it by Congress under its charter. Freddie Mac's general corporate powers in section 303(c) of its charter authorize Freddie Mac to "acquire, take, hold, and own, and to deal with and dispose of any property." Section 302(g) of Freddie Mac's charter defines property to include "...any property, whether real, personal, mixed, or otherwise..." Patents are considered personal property under United States patent law. Therefore, the Department concludes that acquiring, holding and licensing domestic patents fall within the narrow range of ordinary corporate activities that are authorized under section 303(c) of Freddie Mac's charter.

With respect to foreign patents, Freddie Mac stated that it had no foreign patents and had no pending foreign patent applications. However, Freddie Mac stated that a number of its inventions, particularly those based on technology, could have applicability outside the United States. Freddie Mac added that depending on future developments, it may determine that it is prudent to seek and obtain foreign patents for one or more of its inventions.

The Department concludes that the Freddie Mac Act does not prohibit acquisition and holding of foreign patents. In addition, because patents are considered personal property, Freddie Mac is authorized under section 303(c) of its charter to license foreign patents. However, the Department's finding in no way implies that Freddie Mac 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, Freddie Mac stated that the acquisition of patents helps to protect its innovations and preserves its ability to effectively conduct its business operations and fulfill its mission. Freddie Mac cited the increasingly prominent role of patents in the financial services industry, and stated that the development and enforcement of patents have created economic risk and legal uncertainty. Freddie Mac stated that in order to compete in the financial services industry where participants are obtaining and enforcing patents, it must protect itself by building its own patent portfolio for defensive purposes.

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 Freddie Mac'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 Freddie Mac 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, Freddie Mac 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 Freddie Mac Act. In addition, Freddie Mac 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, Freddie Mac 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 Freddie Mac 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 Freddie Mac that actually implementing this type of activity could trigger issues of charter authority. Activities characteristic of the primary market must be managed by Freddie Mac's lender partners.

This determination letter does not address whether individual patent applications either obtained or sought by Freddie Mac represent authorized activities. It is Freddie Mac'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: Lisa Ledbetter  
Associate General Counsel  
Freddie Mac