IN THE

United States Patent and Trademark Office

Before the Patent Trial and Appeal Board

 $EBAY\,INC.\,and\,\,PAYPAL,INC.,$

Petitioner,

v.

XPRT VENTURES, LL

Patent Owner.

CBM2017-00024 (Patent No. 7,610,244 B2)

PATENT OWNER'S RESPONSE TO THE PETITIONER'S PETITION
(37 C.F.R. Section 42.220)

Dated: October 23, 2017



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TABLE OF AUTHORITIES

CASES:

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Cammeyer v. Newton, 94 U.S. (4 Otto) 225 (1876)7
Cleveland v. United States, 531 U.S. 12 (2000)6
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Consolidated Fruit-Jar Co. v. Wright, 94 U.S. (4 Otto) 92 (1876)6
Crowell v. Benson, 285 U.S. 22 (1932)passim
Crozier v. Fried, Krupp Aktiengesellschaft, 224 U.S. 290 (1912)7
Cuozzo Speed Techs., LLC v. Lee, No. 15-44616
Enfish, LLC v. Microsoft Corporation, (Fed. Cir. 2016)
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J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc., 534 1 124 (2001)	
James v. Campbell, 104 U.S. 356 (1881)	7
Lutz v. Orinick, 401 S.E.2d 464 (W.Va. 1990)	7
Mazer v. Stein, 347 U.S. 201 (1954)	11
McClurg v. Kingsland, 42 U.S. (1 How.) 202 (1843)	21
McCRO, Inc. v. Bandai Namco Games America, Inc., (Fed. Cir. 2016)	3, 4
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McKeever v. United States, 14 Ct. Cl. 396 (1878)	
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