UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MASTERCARD INTERNATIONAL INCORPORATED,
Petitioner,

v.

JOHN D'AGOSTINO,
Patent Owner.

_____

Case IPR2014-00543 (Patent 8,036,988)
Case IPR2014-00544 (Patent 7,840,486)

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Held: May 12, 2015

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BEFORE SALLY C. MEDLEY, KARL D. EASTHOM, and
KALYAN K. DESHPANDE, Administrative Patent Judges.

The above-entitled matter came on for hearing on Tuesday, May 12,
2015, commencing at 1:01 p.m., at the U.S. Patent and Trademark
Office, 600 Dulany Street, Alexandria, Virginia.

IPR2014-00543 (Patent 8,036,988)
IPR2014-00544 (Patent 7,840,486)

APPEARANCES:

ON BEHALF OF THE PETITIONER:
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ON BEHALF OF PATENT OWNER:
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1   P R O C E E D I N G S

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3   JUDGE DESHPANDE: Good afternoon, everyone. We're

4   here for the hearing for IPR2014-00543 and IPR2014-00544,

5   Mastercard v. John D'Agostino.

6   I'm Judge Deshpande. To my right is Judge Medley. To my

7   left is Judge Easthom. Let's have the parties' appearances. Who do

8   we have for Petitioner?

9   MR. SCHEINFELD: Robert Scheinfeld, Baker Botts.

10   MR. CHEN: Henry Chen, Baker Botts.

11   MR. LEWELLYN: Stephen Lewellyn for D'Agostino.

12   MR. BREES: William Brees for D'Agostino.

13   JUDGE DESHPANDE: Great. Thank you and welcome to

14   the Patent Trial and Appeal Board. We set forth the procedure for

15   today's hearing in our hearing order, but just to remind everybody,

16   each party will have 60 minutes to present arguments. You may

17   allocate your time per case as you see fit. Petitioner has the burden of

18   proof, so Petitioner will argue first. Petitioner may reserve rebuttal

19   time. Subsequently, Patent Owner may present arguments.

20   We remind each party that under no circumstances are they

21   to interrupt the other party. If you have objections, please state so

22   during your time to speak. I will keep track of time and I'll give

23   counselors' warning as they're approaching their time limit. Does

24   anyone have any questions about today's procedure?

1   MR. LEWELLYN: No, Your Honor.

2   JUDGE DESHPANDE: Okay. Petitioner, you may present

3 your arguments first.

4   MR. SCHEINFELD: Good afternoon, Your Honors.

5   MR. CHEN: If I could ask, could we get a little help on the

6 audio-visual equipment? It should be set up.

7   MR. SCHEINFELD: Sorry, Your Honor, would that be

8 acceptable?

9   JUDGE DESHPANDE: Sure.

10   MR. SCHEINFELD: Thank you.

11   MR. CHEN: I think it's working. It's just going to take a

12 second or two.

13   MR. SCHEINFELD: I'll proceed, if that's okay. I'd like to

14 reserve 20 minutes for rebuttal, if that's okay.

15   JUDGE DESHPANDE: Okay.

16   MR. SCHEINFELD: What I'd like to do first, Your Honor,

17 is to address a motion to exclude. Patent Owner submitted a

18 declaration of Edward Gussin that we believe should be excluded

19 from this proceeding under Rule 702 in the case law that covers expert

20 testimony.

21   We believe that Rule 702 in the Sundance case made clear

22 that an expert needs knowledge, expertise, skill, experience, training

23 in the pertinent art and here that's not the case, Your Honor. The

24 pertinent art is secure credit card -- credit cards and we don't believe

25 that Mr. Gussin has that particular experience. In fact, he has no

1   experience in the financial industry, no experience with credit cards or

2   transaction codes or payment categories, no experience in the

3   pertinent art and we believe that's required under Rule 702 in the case

4   law.

5   In fact, if you look at Gussin's declaration -- that would

6   be -- I want to see if I could use this. This is Exhibit Number 2007,

7   Your Honor, I'm about to show you, that I thought I was about to

8   show you. It's not coming up.

9   Regardless, I think I'll proceed and just say that, for

10   example, Mr. Gussin opines in paragraph 38 of his declaration that at

11   most merchant type limit creates an indeterminable numerical limit on

12   a number of merchants with a number greater than one and, similarly,

13   he opines in paragraph 50, Cohen's merchant type limitation, e.g.,

14   limitation to an entire industry of merchants does not fall within this

15   meaning because it does not create a limit to a reasonable, finite

16   number of merchants.

17   We believe that Mr. Gussin has no basis to make these

18   opinions, no basis to make any of the opinions that he sets forth in his

19   declaration because he lacks the fundamental expertise and experience

20   in the pertinent art and, therefore, his declaration should be excluded.

21   I'd like to proceed to claim construction. If you could just

22   show slide 24. There you go. Okay. If we could turn to slide 24. I'm

23   going to start with generating a transaction code in the next line.

24   We believe the Board's construction of this code in its

25   Institution Order was correct. Patent Owner argues that this term

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