

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL
BOARD

MASTERCARD INTERNATIONAL INCORPORATED,
Petitioner,
v.

D'AGOSTINO, JOHN,
Patent Owner.

Case IPR2014-00543
Patent No. 8,036,988 C1

**PATENT OWNER'S NOTICE OF APPEAL TO THE FEDERAL CIRCUIT
(35 U.S.C. § 141(c))**

NOTICE OF APPEAL

Patent Owner hereby provides notice of appeal to the United States Court of Appeals for the Federal Circuit under 35 U.S.C. §§ 141 and 142, and 37 C.F.R. § 90.2(a) from the Decision on Remand entered July 28, 2017 (Paper No. 38) of the Patent Trial and Appeal Board, and from all orders, decisions, rulings, and opinions underlying the Decision on Remand.

Pursuant to 37 C.F.R. § 90.2(a)(3)(ii) the expected issues on appeal will include (as well as any underlying findings, determinations, rulings, decisions, opinions, claim interpretations, or other related issues):

1. Whether the Board erred in finding that claims 1-10, 15-25, 27-33, and 35-38 are unpatentable under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,422,462 to Cohen (“Cohen”).
2. Whether the Board erred in finding that claims 11-14, 26, and 34 are unpatentable under 35 U.S.C. § 103(a) as being obvious over the combination of Cohen and U.S. Patent No. 5,826,243 to Musmanno (“Musmanno”).
3. Whether the PTAB lacks jurisdiction to enter any final decision other than dismissal of the Petition when the Federal Circuit vacates and remands.
4. Whether inter partes review, an adversarial process used by the Patent and Trademark Office (PTO) to analyze the validity of existing patents, violates the

Constitution by extinguishing private property rights through a non-Article III forum without a jury.

Patent Owner has served this Notice of Appeal on the Office of the General Counsel of the USPTO, and the Petitioner.

Patent Owner has electronically filed this notice with the Patent Trial and Appeal Board, pursuant to 37 C.F.R. § 90.2(a)(1), 37 C.F.R. § 42.6(b)(1) and Federal Circuit Rule 15(a)(1).

Simultaneously herewith, Patent Owner is providing the Federal Circuit an electronic copy of the present Notice of Appeal (pursuant to 37 C.F.R. § 90.2(a)(2)(i) and Federal Circuit Rule 15(a)(1)) together with a \$500 fee (pursuant to 37 C.F.R. § 90.2(a)(2)(ii) and Federal Circuit Rule 52(a)(3)).

All copies include a copy of the Decision on Remand.

Date: September 28, 2017

Respectfully submitted,

By: /s/ Stephen Lewellyn
Stephen J. Lewellyn (Reg. No. 51,942)
Brittany J. Maxey (Reg. No. 57,621)
Maxey Law Offices, PLLC
100 Second Avenue South
Suite 401 North Tower
St. Petersburg, Florida 33701
Telephone: 727-230-4949
Facsimile: 727-230-4827
s.lewellyn@maxeyiplaw.com
b.maxey@maxeyiplaw.com
Attorneys for Patent Owner, John
D'Agostino

CERTIFICATE OF FILING

I hereby certify that, in addition to being filed electronically through the Patent Trial and Appeal Board's End to End (PTAB E2E) system, the original version of the foregoing Patent Owner's Notice of Appeal to the Federal Circuit (35 U.S.C. § 141(c)) was filed by Express Mail on this 28th day of September 2017, with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

CERTIFICATE OF FILING

I hereby certify that a true and correct copy of the foregoing Patent Owner's Notice of Appeal to the Federal Circuit (35 U.S.C. § 141(c)) was filed with the Clerk's Office of the United States Court of Appeals for the Federal Circuit through the federal courts' Case Management and Electronic Case Files (CM/ECF) system on this 28th day of September 2017.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 28th day of September 2017 a true and correct copy of the foregoing Patent Owner's Notice of Appeal to the Federal

Circuit (35 U.S.C. § 141(c)) was served by agreed-upon E-mail on the following
counsel of record for the Petitioner:

Robert Scheinfeld, Lead Counsel
Baker Botts LLP
30 Rockefeller Plaza, 44th Floor
New York, New York 10112-4498
Service Email: robert.scheinfeld@bakerbotts.com

Eliot Williams, Back-up Counsel
Baker Botts LLP
1001 Page Mill Road
Building One, Suite 200
Palo Alto, California 94304-1007
Service Email: eliot.williams@bakerbotts.com

Dated: September 28, 2017

/s/Stephen Lewellyn
Stephen J. Lewellyn
Reg. No. 51,942
Attorney for Patent Owner