

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.

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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 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

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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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