

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

In re:

Ex Parte Reexamination of U.S. Patent No. 8,036,988

For: System and Method for Performing Secure Credit Card Transactions

Reexamination Control No.: 90/012,517

Confirmation No.: 5785

Examiner: John Hotaling

APPEAL BRIEF

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Commissioner:

This Appeal Brief is filed with the Patent Trial and Appeal Board under 37 C.F.R. § 41.33 in response to the Final Rejection issued on March 27, 2014.

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1. Real Party In Interest

The owner of this patent and real party in interest is John D'Agostino.

2. Related Appeals, Interferences, and Trials

There are no related appeals or interferences. U.S. Patent No. 8,036,988 (“the ‘988 patent”) at issue in this reexamination proceeding is currently involved in:

1. *John D'Agostino v. MasterCard, Inc. et al.*, Case No. 1:13-cv-00738 (D. Del);
and
2. Petition for *inter partes* review, filed March 28, 2014, Case No. IPR2014-00543.

The ‘988 patent at issue in this reexamination proceeding was involved in:

1. Petition for covered business method review, institution denied March 7, 2013,
Case No. CBM2013-00057.

3. Status of Claims

Claims 1-38 are pending and stand rejected. The rejections of claims 1-38 are appealed.

4. Status of Amendments

No claims have been amended or canceled after the Action from which appeal is taken.

5. Summary of Claimed Subject Matter

A. Independent Claim 1.

A method of performing secure credit card purchases, said method comprising:

- a) contacting a custodial authorizing entity having custodial responsibility of account parameters of a customer's account that is used to make credit card purchases ('988 patent, 5:46-66; Fig. 1, element 12);
- b) supplying said custodial authorizing entity with at least account identification data of said customer's account ('988 patent, 5:64-6:7; Fig. 1, element 14);
- c) defining at least one payment category to include at least limiting a number of transactions to one or more merchants ('988 patent, 8:18-20; Fig. 1, element 14), said one or more merchants limitation being included in said payment category prior to any particular merchant being identified as one of said one or more merchants ('988 patent, 8:20-23; Fig. 1, element 14);
- d) designating said payment category ('988 patent, 7:43-45; 7:56-61; Fig. 1, element 14);
- e) generating a transaction code by a processing computer of said custodial authorizing entity, said transaction code reflecting at least the limits of said designated payment category to make a purchase within said designated payment category ('988 patent, 6:33-37; 7:54-61; Fig. 1, element 20);

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