

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIGHTSPEED COMMERCE INC. and
CLOVER NETWORK, LLC,
Petitioner,

v.

CLOUDOFCHANGE, LLC,
Patent Owner.

IPR2022-01143
Patent 11,226,793 B2

Before HUBERT C. LORIN, JEREMY M. PLENZLER, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

A. Background and Summary

Lightspeed Commerce Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–4, 7–28, and 31–44 of U.S. Patent No. 11,226,793 B2 (Ex. 1001, “the ’793 patent”). Paper 1 (“Pet.”).

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Patent 11,226,793 B2

CloudofChange, LLC (“Patent Owner”) file a Preliminary Response. Paper 6 (“Prelim. Resp.”). We instituted an *inter partes* review of claims 1–4, 7–28, and 31–44 of the ’793 patent on all grounds of unpatentability alleged in the Petition. Paper 8 (“Institution Decision” or “Inst. Dec.”). Clover Network, LLC was joined to this proceeding on June 8, 2023. Paper 18. This decision refers to Lightspeed Commerce Inc. and Clover Network, LLC, collectively, as “Petitioner.”

After institution of trial, Patent Owner filed a Response (Paper 12, “PO Resp.”), Petitioner filed a Reply (Paper 16, “Pet. Reply”), and Patent Owner filed a Sur-Reply (Paper 21, “PO Sur-Reply”).

An oral hearing was held on August 2, 2023, and the record includes a transcript of the hearing. Paper 25 (“Transcript” or “Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–4, 7–28, and 31–44 of the ’793 patent are unpatentable.

B. Related Matters

The parties indicate that the ’793 patent is involved in *CloudofChange, LLC v. Lightspeed POS Inc.*, 6:21-cv-01102 (W.D. Tex. Oct. 22, 2021) (“the Lightspeed Litigation”). Pet. 1 (“P[atent] O[wner]’s May 2, 2022 amended complaint in the Lightspeed Litigation alleged infringement of . . . ‘the ’793 patent’”); Paper 5, 1.

The ’793 patent is a continuation filing of U.S. Patent No. 10,083,012 B2 (“the ’012 patent”), which is continuation of U.S. Patent No. 9,400,640 B2 (“the ’640 patent”).

The '640 and '012 patents are also involved in the Lightspeed Litigation. The '640 and '012 patents were both previously involved in a lawsuit *CloudofChange, LLC v. NCR Corporation*, 6:19-cv-00513 (W.D. Tex. Aug. 30, 2019) (“the NCR Litigation”), which resulted in a jury verdict for Patent Owner, but is still pending final judgment. *See* Paper 5 (referencing the NCR Litigation).

The '640 patent is challenged in IPR2022-00779 and the '012 patent is challenged in IPR2022-00997. Trial has been instituted for both proceedings and final written decisions have been entered.

C. The '793 Patent

The '793 patent relates to “a system and a method for online, web-based point of sale (POS) building and configuration.” Ex. 1001, Abstract. According to the '793 patent, “[c]urrent practice in the field of assembling point of sale systems includes manually coding front-of-screen information,” which “contains menu selections, page selections, and general answers to business questions.” *Id.* at 1:33–37. The '793 patent explains that “in the prior art, a specialized programmer had to design the layout and data for these POS touch keys,” but “[w]ith this invention, the store operator will be able to build his POS screens online over the Internet.” *Id.* at 3:5–7, 13–14.

“In this invention, this product data and the touch key structure is stored in relational databases in the back office which is stored on the web servers 36 shown in FIG. 3.” Ex. 1001, 2:67–3:3. Figure 3 from '793 patent is reproduced below.

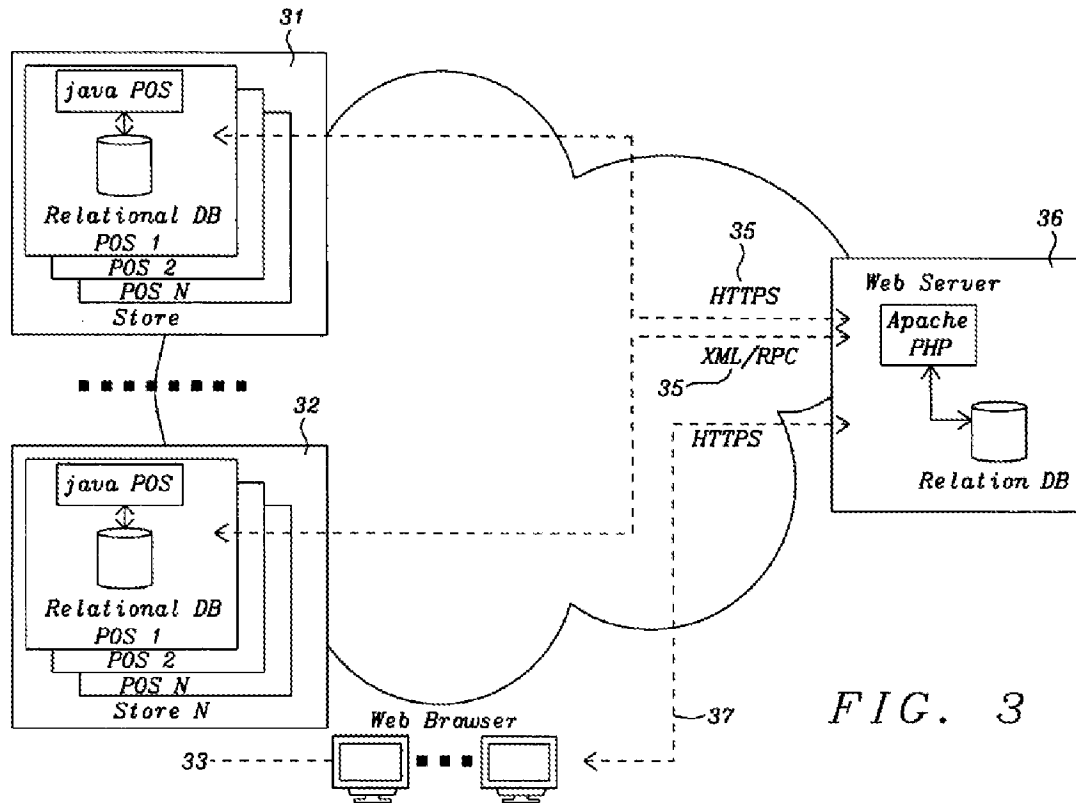


FIG. 3

“F[igure] 3 is a system diagram for web-based back office which supports point of sale terminals” (*id.* at 2:41–42) and “shows a high level diagram of this invention” (*id.* at 3:57).

The discussion of Figure 3 spans little more than one column of the ’793 patent. *See* Ex. 1001, 3:57–4:62. And that discussion lacks any specificity that would indicate that the web-based back office architecture, itself, is anything other than well-known. The Specification explains, for example:

POS 31 is in Store 1 and POS 2 (32) is in Store 2. Each POS includes personal computer hardware and software. Additional POS terminals beyond those shown, as well as additional stores beyond the two shown, are within the scope of the invention. Each POS normally operates with a hardware/software connection 35 to the Internet or Web.

Id. at 3:59–65. “[I]f the web goes down, the POS terminal continues to operate” because “[t]here is a ‘loose coupling’ of the POS to the back office (BO): the POS to BO connection is not required for the basic business functions of the POS” and “[a]ll transaction data is stored in a relational database on the hard drive in the POS.” *Id.* at 3:65–4:3.

“The POS terminals communicate via HTTP protocol (hypertext transfer protocol) 35 with Back-office BO software, which is implemented on web servers 36, which can be located anywhere in the world.” Ex. 1001, 4:36–40. The ’793 patent explains that its “POS builder system can be provided as a service or deployed within a corporation,” and notes that “[f]or example, Software as a Service (SAAS) is a software distribution model in which applications are hosted by a vendor or service provider and made available to customers over a network, typically the Internet.” *Id.* at 6:11–16.

D. Illustrative Claim

1. A web-based point of sale (POS) builder system comprising:
 - at least one server configured to:
 - communicate with one or more POS terminals over a network comprising the Internet, wherein the one or more POS terminals are configured to display one or more POS screens;
 - receive, over the network from a POS builder interface, information used for creating or modifying the one or more POS screens including creating or modifying one or more display interfaces for display on the one or more POS screens, the one or more display interfaces being associated with one or more items;
 - receive, from at least one of the one or more POS terminals over the network, further information regarding one or more POS transactions corresponding to the one or more items;

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