

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

iVENTURE CARD TRAVEL, LTD,
Petitioner,

v.

SMART DESTINATIONS, INC.,
Patent Owner.

Case CBM2016-00092 (Patent 7,765,128)
Case CBM2016-00093 (Patent 8,346,618)

Record of Oral Hearing
Held: September 8, 2017

Before THOMAS L. GIANNETTI, RAMA G. ELLURU, and
CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

Case CBM2016-00092 (Patent 7,765,128)

Case CBM2016-00093 (Patent 8,346,618)

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The above-entitled matter came on for hearing on Friday, September 8, 2017, commencing at 9:59 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 P R O C E E D I N G S

2 JUDGE GIANNETTI: Please be seated. So welcome to the Patent
3 Trial and Appeal Board. We are here on Friday morning for a final hearing
4 in two covered business method patent cases. Case CBM2016-00092
5 involving Patent 7765128 and CBM2016-00093 involving Patent 8346618.
6 The caption for both cases is the same. It's iVenture Card Travel, Ltd.,
7 versus Smart Destinations, Inc., patent owner. iVenture Card Travel, Ltd., is
8 the petitioner.

9 Let me introduce the rest of the panel. To my right is Judge Rama
10 Elluru. And on the screen to my left participating remotely from Denver is
11 Judge Christopher Kaiser.

12 So may I get your appearances, counsel?

13 Who is appearing for the petitioner first?

14 MR. CARLSON: Certainly. Steven C. Carlson from Kasowitz,
15 Benson & Torres, LLP on behalf of petitioner, iVenture.

16 JUDGE GIANNETTI: Okay, Mr. Carlson. Thank you.

17 Who's appearing for the patent owner?

18 MR. LOWRIE: Matt Lowrie of Foley & Lardner on behalf of the
19 patent owner, Smart Destinations.

20 JUDGE GIANNETTI: Okay. Thank you very much, Counsel. I
21 want to go over the ground rules here. It's a little bit different than what we
22 normally do, but I want to make sure that both parties understand before we
23 get started. Each side will have 30 minutes to present argument, and that
24 will include both patents. We will not break between the two patents. Both
25 patents will be included.

1 The petitioner will go first. And petitioner may reserve time for rebuttal.

2 Mr. Carlson, you can do that either at the beginning of your argument,
3 or if you'd prefer, you can just reserve the balance of your time. But you
4 will have 30 minutes in total, including your rebuttal time. Patent owner
5 may also have 30 minutes. You will not have rebuttal time. Because you
6 haven't -- because the patent owner has not filed any papers, any substantive
7 papers, in this case, patent owner's argument will be limited to responding to
8 arguments raised here at the hearing by the petitioner. Do you understand
9 that, Mr. Lowrie?

10 MR. LOWRIE: I do understand that, Your Honor.

11 JUDGE GIANNETTI: Okay. And I also want to mention and
12 caution the petitioner that any arguments you raise here are fair game for
13 rebuttal from the -- from the patent owner. Do you understand that?

14 MR. CARLSON: I do. Thank you.

15 JUDGE GIANNETTI: In fact, given the posture of the case, it was
16 somewhat surprising to the panel that you requested an oral argument. But I
17 want to let you know that you are opening the door, at least potentially, to
18 responsive arguments
19 from the patent owner. Do you understand that?

20 MR. CARLSON: Understood, Your Honor.

21 JUDGE GIANNETTI: Okay. Any questions before we begin, Mr.
22 Carlson?

23 MR. CARLSON: No, Your Honor.

24 JUDGE GIANNETTI: Mr. Lowrie?

25 MR. LOWRIE: No, Your Honor.

26 JUDGE GIANNETTI: All right. Mr. Carlson, you may begin when

1 you're ready. Just give me a second to put 30 minutes on the clock here.
2 Just give me a second here. Okay. So that's 30 minutes on the clock. And
3 you can begin when you are ready, Mr. Carlson.

4 MR. CARLSON: Thank you. May it please the Board, I will reserve
5 five minutes for rebuttal.

6 JUDGE GIANNETTI: Okay. Fine.

7 MR. CARLSON: The two patents at issue present matters that are
8 straight to the heart of the Board's jurisdiction. Both patents that -- in the
9 body that they are -- referred to as business models. All claims of both the
10 patents expressly recite financial activity, calculating aggregated
11 compensation or determining compensation or receiving compensation. All
12 claims in both patents directly claim financial activity. And even under the
13 Federal Circuit's more restrictive test for covered business method
14 proceedings as articulated in the recent *Secure Access* case -- because the
15 financial activity is directly in the claims of both patents, this proceeding
16 remains proper in light of the Board's jurisdiction for financial products and
17 services.

18 Both patents acknowledge that the technology behind these business
19 models that are claimed, was conventional, well known. And every aspect
20 of the components used to carry out the business models was acknowledged
21 to be known in the prior art.

22 So as to the jurisdiction of the Board to institute a covered business method
23 proceeding, we definitely have financial products and services being
24 claimed, and it is not a technological invention, rather, it's conventional
25 technology. Therefore, both of these patents are properly instituted as cover
26 business method proceedings.

1 And as to the Section 101 issue, it is an abstract concept. These are
2 business methods. These are methods for determining compensation for
3 tourist attractions based upon a flow -- an aggregate number of tourists.
4 This is conventional technology to the heart of it. It is an abstract concept.
5 And there's nothing technological that would remove this from the aspect of
6 being an abstract --

7 JUDGE ELLURU: Counsel, what do you think is the weakest part of
8 your argument with respect to both the CBM eligibility as well as the 101
9 merits?

10 MR. CARLSON: That's a tough question, Your Honor. Thank you
11 for the question. With both -- all claims claim at the heart the financial
12 activity element. With the '128 patent, every claim talks about calculating
13 aggregated compensation. And so as the Board instituted proceeding, it
14 properly -- I don't see that as a very controversial aspect that it is right to the
15 heart directed to a financial product and service. And as I noted, even under
16 the more restrictive standard by the Federal Circuit under the *Secure*
17 *Access* case, this is, at its heart, a financial product and service. And
18 regarding whether or not there was technology behind this that would make
19 it a technological innovation, every single component is listed throughout
20 the specification is acknowledged
21 as being conventional. So regarding that standard, I'm not sure I've
22 answered your question properly, but we feel that this is really not even a
23 close question.

24 JUDGE GIANNETTI: Well, let me chime in here, Counsel, and let
25 me volunteer what I think is the weakest part of your argument --

26 MR. CARLSON: Please.

1 JUDGE GIANNETTI: -- and maybe you can address that. Figure 2 of
2 -- I'm just picking one of the patents. They basically have the same
3 specification. Picking Figure 2 of the '128 patent, it shows a system of
4 hardware. For example, terminals and databases, web servers, et cetera,
5 gateways. You know, why isn't that collection of hardware -- why isn't that
6 sufficient to satisfy Section 101? I mean, the claims -- some of the claims at
7 least are directed to a system that involves hardware components. Why isn't
8 that sufficient?

9 MR. CARLSON: That's correct, Your Honor.

10 There's a system of hardware --

11 JUDGE GIANNETTI: Correct.

12 MR. CARLSON: -- at issue. We've established through numerous
13 submissions of prior art through the smart card handbook, for example, this
14 overall architecture of smart card readers, databases, gateways, smart cards,
15 it's all admitted
16 as being conventional technology.

17 JUDGE GIANNETTI: Well, but isn't it true, particularly in the
18 electronics world, systems world, that unless you're developing new pieces
19 of hardware that -- most systems are made up of off-the-shelf pieces of
20 hardware. Why does that disqualify these claims from it being patentable
21 because it uses the existing hardware?

22 MR. CARLSON: Thank you, Your Honor. And as the Federal
23 Circuit has repeatedly noted, there can be patentable inventions when that
24 hardware is used in ways, programming ways, to improve the underlying
25 technology. And the Federal Circuit very much recognized, particularly in
26 the second step of the *Alice* test, that creative use of the technology that

1 improved the underlying functionality of the technology, yes, that can be
2 patentable.

3 But here we have admitted conventional use of conventional
4 technology. And the only iota of, you know, secret sauce, if I can use that
5 type of phrase, that was claimed here was the business method itself. I
6 mean, during the prosecution, the
7 claims were rejected over the Hale patent and the smart card handbook. And
8 what was claimed and what got it over the edge and was viewed as patentable
9 was a new method of calculating compensation. It was not based on the
10 actual use of the actual time, but rather an aggregate compensation based
11 upon a collection of activity, and not done at the time at the use. And so the
12 only leap forward, if we can use that phrase, was expressly a business
13 method, not a technology method.

14 JUDGE GIANNETTI: Okay. We have your position. Thank you.

15 While we're at a pause here, what would you define here as -- and I
16 guess I'll address this question to both patents. What is the abstract idea here
17 that would disqualify this patent from -- disqualify this invention from
18 patentability? How would you articulate the abstract idea that's involved
19 here?

20 MR. CARLSON: I would say it's allowing tourists access to a variety
21 of attractions using an aggregate value of aggregate activity.

22 JUDGE GIANNETTI: So is it your contention that there is no set of
23 circumstances under which that -- claims directed to that would be
24 patentable, or are you contending that the particular claims here don't fall in
25 that category?

26 Could there ever be a claim that's directed to that idea that would be

1 patentable?

2 MR. CARLSON: I think there could be an extension of data
3 structures where this creative use of data structures and algorithms that are,
4 you know, deeper in the technology that possibly facilitate this aggregated
5 total, you know, payment. Here we don't have that. So as the claims are
6 written here, it's directly -- it's admittedly using conventional technology,
7 conventional methods, conventional components.

8 JUDGE GIANNETTI: Okay. So you would agree then that, at least
9 theoretically, it would be possible to satisfy the first *Alice* step and fail on
10 the second? Is that what you're saying?

11 MR. CARLSON: I think it's possible.

12 JUDGE GIANNETTI: In this particular case -- well, okay. Thanks. I
13 have your position on that. You can continue.

14 MR. CARLSON: So I agree, Your Honor, it's possible that the
15 abstract concept of computing aggregated compensation -- I think there
16 could be instances where, under Step 2 of the *Alice* test, the claims, if
17 properly drafted, could be patentable.

18 JUDGE GIANNETTI: But not here?

19 MR. CARLSON: But not here. And if there are no further questions
20 from the Board, I'd be -- I have no further comments at this time.

21 JUDGE GIANNETTI: Okay. Anything further,
22 Judge Elluru?

23 JUDGE ELLURU: Not from me.

24 JUDGE GIANNETTI: Judge Kaiser?

25 JUDGE KAISER: No. Not from me. Thank you.

26 JUDGE GIANNETTI: Okay. I thought we lost you for a minute.

1 All right. Thank you very much, Mr. Carlson.

2 Mr. Lowrie, give me a second to reset the timer. And you can step up
3 to the podium and I will give you the go in just a second. All right. You
4 may proceed.

5 MR. LOWRIE: Thank you. May it please the Board, I'm Matt
6 Lowrie for the patent owner. First, I'd like to thank you for permitting me
7 the opportunity to speak here today. I know this is an unusual circumstance
8 for me, as well as the Board. And I would be shocked if I used all 30
9 minutes. I thought first I'd address the comment that this is a general purpose
10 computer system, in that it's only conventional. This is not the case where
11 one -- like many 101 cases finding ineligibility where software is loaded
12 onto a general purpose computer. At the attractions at the amusement parks,
13 for example, there's special purpose hardware for reading the cards. It may
14 be a smart card. I don't know that it has to be. But it's not the situation
15 where you have a general purpose computer that's doing it.

16 So like the *SiRF Technology* case, which had GPS, there is a special
17 piece of hardware that's not generic that's an integral part of the system.

18 JUDGE GIANNETTI: Well, the problem, though, that I see in that
19 argument, Mr. Lowrie, is that the claims are directed to the system, and not
20 to any particular piece of the hardware. Can you point me in the claims
21 where a specialized piece of hardware is claimed?

22 MR. LOWRIE: All of them require receiving -- well --

23 JUDGE GIANNETTI: Well, let's take Claim 1 of the '128 patent.

24 MR. LOWRIE: Okay.

25 JUDGE GIANNETTI: Can you point me -- where in that claim is the
26 -- something that suggests that there's specialized hardware here?

1 MR. LOWRIE: Reward terminals, Your Honor.

2 JUDGE GIANNETTI: Okay.

3 MR. LOWRIE: Those terminals are not generic purpose computers.
4 They're really the only function. And if you go to one of these systems
5 actually in use, you would go and you would not go to a general purpose
6 computer with your card. You would have a separate activation mechanism
7 where it interacts and then the rest of the system goes on.

8 If I may --

9 JUDGE GIANNETTI: Aren't the reward terminals just smart card
10 readers?

11 MR. LOWRIE: Well, they're more than that. And they're not used in
12 the way that a smart card reader is used. But it's also the case that in *SiRF*
13 *Technology* the GPS device was a GPS device. This is specialized piece of
14 hardware that was not at those amusement parks before that has to be
15 installed in order for this to work.

16 JUDGE GIANNETTI: Well, here's what it says, "receive data
17 corresponding to actual use of reward terminals to access respective
18 attractions." So the function of the reward terminals is to access respective
19 attractions. Isn't that what the
20 claim says?

21 MR. LOWRIE: Yes. It does more than that. There's technology
22 associated with it, which --

23 JUDGE ELLURU: But is that claimed?

24 JUDGE GIANNETTI: Where's the claim?

25 JUDGE ELLURU: Where in the claim? Where is it in the claim
26 that's it required?

1 MR. LOWRIE: At least one product code. And, in fact, what happens
2 with the product codes is that you can, as described in the specification I
3 think in the claims -- yeah, in the claims -- where you can actually
4 dynamically change the definition of what the card can do at the attraction or
5 the network. And again, that's not something that's an ordinary smart card
6 function, which makes it more of a -- which I would say also removes it
7 from the notion of an abstract idea.

8 So just to be clear, you've got things like garages that you can get
9 access to and New York City Pass and you've got smart cards. But if you
10 simply combine those two things, you don't get what's in the claims.
11 Because it's actually a different setting where you've got somebody who's
12 setting up product definitions, dynamically changing them as in that first
13 part of the claim. I mean, it actually talks about changing the product
14 definition and then aggregating compensation.

15 JUDGE ELLURU: So it's the dynamically changing that you're
16 saying is not an abstract idea, or that it's something in addition to an abstract
17 idea?

18 MR. LOWRIE: Both of those, Your Honor. I would say under the
19 *Bascom* case and also the *Trading Technologies International* case, they talk
20 about the addition of product flexibility as removing something from being
21 an abstract idea. And in this case, it's those product definitions that allow
22 you flexibility that simply doesn't exist in any piece of prior art. And so
23 under those cases it removes a permanent abstract idea. The second part that
24 removes it from an abstract idea is the notion of aggregating the
25 compensation, which is what the Patent Office has already found to be
26 inventive. In that regard, obviousness is not challenged in this petition.

1 JUDGE GIANNETTI: But isn't aggregating compensation -- isn't that
2 an abstract idea? That's not a piece of hardware. That's something that's
3 been done in the business world for probably hundreds of years.

4 JUDGE ELLURU: And something I can do in my head. I mean,
5 even as far as the dynamic changing, I can change my mind on the fly as to
6 whether I want to let you in or not depending on how I feel at the moment.

7 MR. LOWRIE: But that would be happening at the amusement park.
8 And the product definition change is not happening at the amusement park.
9 It's happening somewhere else and being sent to the amusement parks, and
10 that is automatic. And you
11 can dynamically in realtime change the product definition here and do that
12 for all of -- say a thousand different amusement parks, museums, whatever.
13 And that type of flexibility is not something that was shown in the prior art
14 and it does remove it from the abstract idea. You don't have to do that to do
15 a City Pass.

16 JUDGE GIANNETTI: It sounds to me, Counsel, like you're making
17 an argument to rebut an obviousness case. But what we're trying to figure
18 out here is how you overcome things like statements in your specification
19 saying that this is a business model. To me, that's one of the most difficult
20 things you have in this case, is that
21 your specification reads like this a business model.

22 MR. LOWRIE: Well, I understand that, Your Honor.

23 JUDGE GIANNETTI: And so do your claims. Your claim isn't
24 directed to a -- your claim is directed to -- just take for example Claim 1 of
25 the '128, it's a "manager system." And then you go through a number of
26 limitations here. But it's really directed to a system. It's not directed to a

1 piece of hardware.

2 MR. LOWRIE: Well, it's directed to a hardware system that allows
3 something to happen. Right? I mean, there is components of it that's a
4 business method. The Supreme Court has said that that doesn't remove
5 patent eligibility. But this is a way of doing a business method that allows
6 you flexibility that didn't exist before. Which under *Bascom* and *Trading*
7 *Technologies*, it actually removes it from the abstract idea.

8 If I could also, Your Honor, address the notion of obviousness. I don't need
9 to rebut an obviousness case because it's not challenged. The examiner
10 looked at the prior art, as noted in the argument, including smart card
11 technology, including the New York City Passes -- as you can see, it's in the
12 list of disclosed references -- and found that the notion of aggregating
13 compensation as claimed to be patentable.

14 And this is more than simply -- Your Honor suggested you could do
15 this in your head and whatnot. And actually, this is another reason why it
16 removes it from the abstract idea. It's actually what one could analogize,
17 although it's not precisely the same. It's batch processing. It's actually a
18 different form of processing and it is an improvement, according to the
19 specification, because you don't have the same kind of collisions, for one,
20 because you're doing them in chunks. That's a computer improvement.
21 Again, removing it from an abstract idea -- in which the Patent Office has
22 already found to be not obvious. And then the second --

23 JUDGE KAISER: Mr. Lowrie?

24 MR. LOWRIE: Yes, Your Honor?

25 JUDGE KAISER: Can I stop you for just a second. I'm curious.
26 There is case law out there that says the way you draft the claim -- in other

1 words, putting it in terms of a system or a piece of hardware, as opposed to a
2 pure business method in terms of the way it's described in the claim, doesn't
3 matter. Right? So really the question is, what does the claim do? And I
4 guess what I'm wondering is, if I were to hire a bunch of runners or bike
5 messengers to go and collect from the attractions their paper records of who
6 came in and when they came in each day and bring them back to a central
7 repository and then do some sort of math or bookkeeping based on those
8 records, and then write checks by hand to each of those attractions on the
9 basis of that data, how is that different from what's going on in this claim?
10 Is it just that we're doing it with hardware, or is there something else that's
11 different here?

12 MR. LOWRIE: Well, I think it would be in any practical way
13 completely infeasible to do it with a set of runners. It would be impossible
14 to get a set of runners to all of the parks to change the product definitions. It
15 is true. Anything that can be done by a computer can be done by humans if
16 you have enough of them. If you put enough monkeys in front of a
17 typewriter, you end up with Shakespeare. But that doesn't mean that it
18 renders a patent ineligible, or nothing implemented on a computer would be
19 patent eligible because anything a computer does, if you have enough
20 humans, can be done by hand.

21 JUDGE GIANNETTI: Well, unless it's an improvement to the way
22 the computer operates or the way the system operates, right?

23 MR. LOWRIE: Well, and we have that here. There's two things. One
24 is this product definition, which would be an improvement over sending
25 runners, I suppose.

26 JUDGE GIANNETTI: Well, let me interrupt you just to get back to

1 Judge Kaiser's question. What is it about that that couldn't be implemented
2 by the system that he described?

3 MR. LOWRIE: It would be virtually impossible to try and think of a
4 system where you have all of these attractions. And overnight you're going
5 to say, "I'm going to change the product definition so it's no longer good on
6 Sundays. And so I'm going to send out a runner to every attraction, who's
7 going to get there before the park opens. And then if another change
8 happens that morning, we're going to send out another set
9 of runners. It's not something that could be done, other than in the sense of -

10 -

11 JUDGE GIANNETTI: You could send out an e-mail, for example,
12 right? That's one thing that you could do.

13 MR. LOWRIE: I would say that this is a substantial technological
14 improvement over using e-mails or runners.

15 JUDGE GIANNETTI: But why? Because the computers are faster,
16 they're able to do this faster and handle more data?

17 MR. LOWRIE: And the data structures -- and the data structures are
18 there that permit it, which gets to the -- was it the *Enfish* case with --

19 JUDGE GIANNETTI: Well, yes. But the *Enfish* case was -- that case
20 had detailed descriptions of the data structures. If you look at that case,
21 there was, you know, a lot of discussion in the specification of exactly how
22 those data structures were put together. The focus of that specification and
23 the focus of that decision was on the data structures. I don't see that in this
24 specification. The specification describes itself as a business model.

25 MR. LOWRIE: Well, it includes databases and it includes the product
26 definitions and the product codes and the ability to make all of those

1 changes, and that is what the claims are directed to.

2 JUDGE GIANNETTI: But not at the level of specificity of the *Enfish*
3 case. I don't think that's a good case for you, Counsel.

4 MR. LOWRIE: Well, I understand, Your Honor. I would say also in
5 the *Visual Memory, LLC* case they looked at -- you could describe it as fairly
6 simple. You've got multiple modes of accessing memory and you simply
7 apply that to multiple processors. And they said, no, it's an improvement to
8 a memory system. Here, if you simply use smart cards, you don't get any of
9 this -- this conventional smart card stuff. You don't get any of this product
10 definition stuff, which is an integral part of the hardware system that is not a
11 part of the generic idea of computing compensation, which is what has been
12 proposed today as the definition of the abstract --

13 JUDGE GIANNETTI: Your opponent has pointed out, at least in the
14 case of the '128 patent -- and what finally convinced the examiner to allow
15 the case was not really anything to do with the hardware. It had to do with
16 the way the payments were being handled. Is that right?

17 MR. LOWRIE: I would not -- it may be that that's what opposing
18 counsel said. I would not agree with that statement.

19 JUDGE GIANNETTI: Well, I mean, I read the prosecution history,
20 so I -- as I recall, there was a focus on -- look at the claim. Take a look at
21 Claim 1.

22 MR. LOWRIE: Yes. If I may, Your Honor.

23 JUDGE GIANNETTI: Okay. So in Claim 1 of the '128, there's a
24 discussion of wherein the controllers -- the very last phrase, last clause, in
25 the claim, the wherein clause. "Wherein, the controller does not compensate
26 the attractions based upon the actual use of the reward terminals at the time

1 of the actual use of the reward terminal via a card." You have a negative
2 limitation there. Isn't that what persuaded the examiner to allow this case?

3 MR. LOWRIE: That is the limitation, the aggregated compensation.

4 JUDGE GIANNETTI: What does that have to do with hardware?

5 That's a description of how the payments are being handled in this business
6 model?

7 MR. LOWRIE: No. Actually, it's a description of the hardware as
8 well. Because what's happening is, that's referring to the notion of being
9 able to batch process and send all of the transactions, for example, at the
10 end of the day before compensation is determined, and rather than doing it
11 as the transactions are happening. And so it has a hardware component. It is
12 how the system is set up. It gets back to the old *Alappat* days, I suppose,
13 when if you program something, it's something different. But this is a
14 different use of the system.

15 JUDGE GIANNETTI: Well, I'm not sure that *Alappat* is your best
16 case either.

17 MR. LOWRIE: Well, I mean, that's long ago. I meant to analogize,
18 not suggest --

19 JUDGE ELLURU: What about different use? So, I mean, you're
20 saying that the hardware was conventional, but this is a different use of that
21 hardware?

22 MR. LOWRIE: So the '128 patent is directed to the server side. The
23 other one is directed to the award terminal, although both have both. And so
24 if we're talking about the controller, that would probably be on the server
25 side and that probably would be a general purpose computer. When I was
26 referring earlier to the specialty hardware, that's the reward terminal, which

1 is a special purpose piece of hardware that's reflected in the claim that's
2 sitting there and it's -- in terms of the aggregation, reflected in the reward
3 terminal because you don't have to submit things immediately. You can
4 batch process them at night, for example, which is referred to in the
5 specification.

6 Is it all right if I could just have a moment to check my notes, Your
7 Honor?

8 JUDGE GIANNETTI: That's fine.

9 MR. LOWRIE: I have nothing further, if the Board has nothing
10 further for me.

11 JUDGE GIANNETTI: Anything further, Judge Elluru?

12 JUDGE ELLURU: Not here.

13 JUDGE GIANNETTI: Judge Kaiser?

14 JUDGE KAISER: No, thank you.

15 JUDGE GIANNETTI: All right. I don't have anything further.
16 Thank you very much, Mr. Lowrie.

17 Mr. Carlson, anything further?

18 MR. CARLSON: Just a few remarks, Your Honor.

19 JUDGE GIANNETTI: All right.

20 MR. CARLSON: Thank you. The opposing counsel raised the
21 question of whether or not a general purpose computer was used at the
22 amusement parks, et cetera. It was not a general purpose computer. It was a
23 conventional technology. And smart card readers are admitted throughout
24 the specification as being conventional. So even if you say the terminal was
25 not a general purpose computer, that's not the standard. The standard is,
26 was it conventional? And throughout the body of the specification, it's

1 admitted that these were conventional technologies. And as for the
2 programing on the back end, we have significant prior art saying that the
3 server side, management of product codes, et cetera, that was all well-known
4 conventional technology. There's no technological solution provided that
5 somehow elevates us to a (unintelligible) concept.

6 Rather, as the Board noted, the patentable step forward that was approved by
7 the examiner was a business model of not compensating at the time based on
8 actual use, but rather an aggregated compensation. And as we've noted in
9 the prior art, compensating based on aggregated use was well known.

10 JUDGE GIANNETTI: That's the check writing in Judge Kaiser's
11 model, correct?

12 MR. CARLSON: Correct.

13 JUDGE GIANNETTI: Okay. Thank you, Counsel. Okay. Thank
14 you for your presentation, Counsel. We will take your case under
15 submission and this hearing is adjourned. Thank you.

16 (Whereupon, the PTAB hearing was concluded at 10:31 a.m.)

Case CBM2016-00092 (Patent 7,765,128)

Case CBM2016-00093 (Patent 8,346,618)

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