

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASKELADDEN, L.L.C.,

Petitioner,

v.

LIBERTY PEAK VENTURES, LLC,

Patent Owner.

Case No.: IPR2023-00421

U.S. Patent No. 7,837,100

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I. INTRODUCTION

Oh, a word is a gem, or a stone, or a song,
Or a flame, or a two-edged sword;
Or a rose in bloom, or a sweet perfume,
Or a drop of gall is a word.

“The Word,” Ella Wheeler Wilcox (1850 – 1919).

Be careful of words,
even the miraculous ones.

. . .

Once broken they are impossible
things to repair.

“Words,” Anne Sexton (1928-1974).

Just as for poets such as Wilcox and Sexton, when it comes to patents, words, especially those found in the claims, matter. *See, e.g.,* Giles S. Rich, *The Extent of the Protection and Interpretation of Claims-American Perspectives*, 21 Int’l Rev. Indus. Prop. & Copyright L., 497, 499 (1990) (“[T]he name of the game is the claim.”). In the case of claims 1 and 15 of U.S. Patent 7,837,100 (the “’100 patent”), the words “authenticating . . . a transaction requested by a debit card *against at least one of a demand deposit account associated with the debit card or an overdraft account associated with the debit card*” matter. For notwithstanding Petitioner’s attempt to show otherwise, Gopinathan fails to teach such authenticating and therefore fails to anticipate these claims.

Gopinathan describes a fraud detection system in which transactions against “credit cards” are assessed for possible fraud. But neither a “credit card” nor the account it represents is a demand deposit account or an overdraft account. Instead, it is a separate type of account. And, since the only fraud assessment performed by the fraud detection system of Gopinathan is against that account, in Gopinathan there is no authenticating against either of a demand deposit account or an overdraft account, and certainly not against such an account associated with *a debit card*. For similar reasons, there is no updating of information regarding the demand deposit account or the overdraft account.

Furthermore, Petitioner’s allegations of unpatentability over the combination of Gopinathan and Hirka also fail. When examined carefully, each of Gopinathan and Hirka describe assessing attempted transactions against a cardholder’s credit limit. In other words, neither contributes any meaningful teachings to the other in terms of the actual accounts being authenticated. So, not only would a person of ordinary skill in the art have no reason to make such a combination at all, even if such a combination were made at least the requirements of independent claims 1 and 15 concerning authenticating a transaction against a demand deposit account or an overdraft account associated with a debit card would not be met.

II. THE BOARD SHOULD CONFIRM THE PATENTABILITY OF CLAIMS 1 AND 15 OVER GOPINATHAN, WHICH FAILS TO TEACH OR SUGGEST AUTHENTICATING A TRANSACTION REQUESTED BY A DEBIT CARD AGAINST DEMAND DEPOSIT ACCOUNT OR AN OVERDRAFT ACCOUNT ASSOCIATED WITH THE DEBIT CARD, AND UPDATING SUCH AN ACCOUNT.

A petition must be judged as it is written. The Board may not overlook flaws in the petition or reformulate its challenges to enhance their suitability. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018) (“[I]t’s the petitioner, not the Director, who gets to define the contours of the proceeding.”); *see also id.* (“[T]he petitioner is master of its complaint . . .”); *see also id.* at 1353 (forbidding the Board from “curat[ing]” the petition). As explained below, the petition fails to demonstrate that claims 1 and 15 are anticipated by Gopinathan.

A. Claim 1 Requires Authentication Against a Demand Deposit Account or an Overdraft Account Associated With a Debit Card.

Claim 1 of the ’100 patent recites,

1. A method comprising: authenticating, by a processing device, a transaction requested by a debit card against at least one of a demand deposit account associated with the debit card or an overdraft account associated with the debit card, wherein the authentication includes fraud

assessment, and wherein the fraud assessment includes communication with data sources via a network; and updating, by the processing device, information regarding at least one of the demand deposit account and the overdraft account based on the transaction.

Ex. 1001 at 12:63 – 13:6. The specification explains the first step in the recited method:

[F]or each transaction, fund availability may be verified, for example using authentication system 104. In one example, this may be accomplished using data extracted from online banking services of the customer's DDA bank 104. . . . [P]urchases transacted on the debit card 110 are interrogated against the balance of the linked DDA.

Id. at 7:12-21.

In one example, transactions are processed and authorized through CAS. The CAS cross references the debit card account against the card member's DDA. Similar to a paper check transaction, the authorization process may call a third-party vendor (e.g., eFunds or First Data Corporation of Greenwood Village, Colo.) to validate that the DDA is in good standing. Once the DDA is verified, the transaction is authorized by the CAS after which the authorization code is sent back to the merchant BAU.

Id. at 8:5-12.

So too is the reason for authenticating against the demand deposit account or the overdraft account associated with the debit card explained:

[A]t the end of each business day, purchases made with the debit card 110 are deducted from the customer's specified DDA via the ACH.

Id. at 7:5-7. In other words, the method recited in claim 1 involves authenticating a transaction against a demand deposit account or an overdraft account associated with a debit card because, at the end of the day, it is funds from the demand deposit account or an overdraft account that will be used to satisfy the transaction.

In *inter partes* reviews such as this one, the Board applies the same claim construction standard used to construe a claim in a civil action under 35 U.S.C. § 282(b). *Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board*, 83 Fed. Reg. 51,340 (Oct. 11, 2018). Accordingly, the claims are to be construed consistent with their plain and ordinary meaning as understood by a person of ordinary skill in the art as considered in the context in which the terms of the claims are used. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-17 (Fed. Cir. 2005); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576 (Fed. Cir. 1996); *see also ACTV, Inc. v. Walt Disney Co.*, 346 F.3d

1082, 1088 (Fed. Cir. 2003). “The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Phillips*, 415 F.3d at 1313.

The “ordinary and customary meaning” of the authenticating step of claim 1, especially in light of the teachings of the specification, is that the recited method requires authenticating a transaction against a demand deposit account or an overdraft account associated with a debit card. Since, at the end of the day, any transaction requested by the debit card is going to be settled using funds from the demand deposit account or overdraft account associated with that debit card, Ex. 1001 at 7:5-7, it only makes sense, a person of ordinary skill in the art would readily understand, that it is the demand deposit account or overdraft account associated with the debit card that needs to be (and is, according to claim 1) authenticated. *Id.* at 3:58-59 (“Purchases transacted on the debit card will be interrogated against the balance of the linked DDA.”), *and see id.* at 7:20-21, 8:10-12 ([T]he authorization process may call a third-party vendor . . . to validate that the DDA is in good standing.).

B. A Demand Deposit Account is a Bank Account, Such as a Checking Account.

As noted above, claim 1 recites a “demand deposit account” and identifies that demand deposit account as one of the accounts against which a transaction requested by a debit card may be authenticated. Ex. 1001 at 12:63 – 13:6. A “demand deposit account” is a bank account from which funds can be withdrawn, typically at any time without advance notice. 12 C.F.R. § 204.2. Examples include consumer checking accounts. *See, e.g.*, Ex. 1001 at 2:39-40; Ex. 1009 at 3:25.

C. An Overdraft Account is an Account Used to Satisfy a Transaction when a DDA has Insufficient Funds to Do So.

As noted above, claim 1 recites an “overdraft account” and identifies that overdraft account as another of the accounts against which a transaction requested by a debit card may be authenticated. Ex. 1001 at 12:63 – 13:6. An “overdraft” occurs when there are insufficient funds to cover a transaction. In the context of the ’100 patent, an “overdraft account” is an account that may be used to provide funds to satisfy a transaction in the event a demand deposit account has insufficient funds for a debit card transaction; examples include a credit or charge account. *Id.* at 7:29-33.

D. Gopinathan Fails to Teach the Authentication Recited in Claim 1.

Gopinathan describes “an automated fraud detection system” that “uses predictive modeling to perform pattern recognition and classification in order to isolate transactions having high probabilities of fraud.” Ex. 1010 at 1:32-35, *and see id.* at 2:41-46. The fraud detection system operates by analyzing information concerning a current transaction and determining a “fraud score.” *Id.* at 3:51-52, 4:53-58, 24:33-40. If the fraud score exceeds a threshold, the transaction is flagged. *Id.* at 24:40-43.

Gopinathan’s fraud detection system is directed to “credit cards.” *Id.* at Abst., 1:29-35; *and see* Pet. at 12; Ex. 1003 at ¶ 190. A “credit card” is a device that is used to purchase goods or services “on credit;” that is, with the ability to defer actual payment (to a creditor) therefore, for a period of time. *See* 12 C.F.R. § 1002.2(j)-(k). It is not a demand deposit account, nor is it an overdraft account. *See, e.g.*, 12 C.F.R. § 226.2(a)(15)(ii) (noting that an unsecured credit card account is ***not*** “[a]n overdraft line of credit that is accessed by a debit card or an account number”). Instead, it is a separate type of account.

Nor is the “charge card” identified by Petitioner’s declarant as being equivalent to a debit card, *see e.g.*, Ex. 1003 at ¶ 101, etc., a demand deposit account or an overdraft account. To that end, a charge card is not, and a

person of ordinary skill in the art would not equate it to, a debit card.

Instead, a “charge card” is a credit card with an account that must be paid in full each month. *See, e.g.*, 15 U.S.C. § 1637(c)(4).

According to Gopinathan, in assessing a transaction the fraud detection system may examine information such as “available credit (or balance)” and/or “credit line.” Ex. 1010 at 24:44-49. The “available credit (or balance)” refers to the available credit or balance of the credit card account that is being used for the transaction, while the “credit line” is simply the maximum amount that may be charged against the credit card account. *See* Ex. 1003 at ¶ 190 (Petitioner’s declarant confirming these parameters are associated with the credit card account). Simply put, neither the “available credit (or balance)” nor the “credit line” is a demand deposit account or an overdraft account. Instead, both parameters are attributes of the credit card account against which the fraud detection analysis is being done. Thus, while Gopinathan may describe performing a fraud detection analysis against a credit card account, Gopinathan does ***not*** teach performing such an analysis against a demand deposit account or an overdraft account associated with a debit card, as required by claim 1.

E. Gopinathan Does Not Anticipate Claim 1.

Petitioner’s Ground 1 challenges claim 1 as being anticipated by Gopinathan under 35 U.S.C. § 102(b). Pet. at 5. Anticipation requires that a prior art reference set forth “each and every element” of a claim “as set forth in the claim.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987); *and see Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2019) (anticipation not only requires that each element of a claim be present in a prior art reference, but also the “arrangement or combination” of those elements). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

As demonstrated above, however, Gopinathan does *not* teach performing authenticating a transaction against a demand deposit account or an overdraft account associated with a debit card, as required by claim 1. Even assuming for sake of argument that performing a fraud detection, as described by Gopinathan is somehow “authenticating,” as required by the claim, Gopinathan’s fraud detection concerns a *credit card account* being used for a transaction, not a debit card account, and certainly not a demand deposit account or an overdraft account associated with a debit card. Accordingly, Gopinathan does not anticipate claim 1.

F. Additionally, Gopinathan Does Not Teach Updating Information Regarding the Demand Deposit Account or the Overdraft Account.

In addition to the above, claim 1 is not anticipated by Gopinathan because Gopinathan does not teach “updating . . . information regarding at least one of the demand deposit account and the overdraft account based on the transaction,” as required by claim 1. According to the Petition, Gopinathan teaches updating a customer profile database with transaction data. Pet. at 36 (referencing Ex. 1010 at 25:58-60 and Fig. 16). Petitioner’s declarant testifies that this means accounts associated with a “charge card” are updated. Ex. 1003 at ¶ 199. As noted above, neither credit cards nor charge cards, the subjects with which Gopinathan is concerned, are demand deposit accounts nor overdraft accounts. Hence, taking Petitioner’s declarant at his word, if Gopinathan teaches updating the accounts associated with a charge card (or credit card), then Gopinathan cannot be read as teaching updating a demand deposit account or an overdraft account associated with a debit card, as required by claim 1, because neither the charge card nor the credit card is such an account. Because such a teaching is not present, claim 1 is not anticipated by Gopinathan.

G. Gopinathan Does Not Anticipate Claim 15.

Petitioner's Ground 1 further challenges claim 15 as being anticipated by Gopinathan. Pet. at 5. Claim 15 recites, in part, "*authenticating, through authorizing including fraud assessment, a transaction requested by a debit card against at least one of a demand deposit account that has been associated with the debit card or an overdraft account that has been associated with the debit card.*" Ex. 1001 at 14:31-35 (emphasis added). As discussed above, Gopinathan fails to teach any authenticating against a demand deposit account or an overdraft account that has been associated with a debit card.

Likewise, claim 15 recites, "updating information regarding at least one of the demand deposit account and the overdraft account based on the transaction." For the same reasons as discussed with respect to claim 1, Gopinathan fails to teach such updating. Even according to Petitioner's declarant, Gopinathan describes updating accounts associated with a charge card or credit card, neither of which is a demand deposit account or an overdraft account associated with a debit card, as required by the claim.

Accordingly, for the same reasons as set forth with respect to claim 1, claim 15 is not anticipated by Gopinathan.

III. THE BOARD SHOULD CONFIRM THE PATENTABILITY OF THE CLAIMS OVER GOPINATHAN AND HIRKA.

The challenges set forth as Ground 2 in the petition rely on conclusions of obviousness. Pet. at 5. Accordingly, the petition must include “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). The challenger must supply the factual basis for the challenge and “may not resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.” *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). Additionally, in cases such as the present, where the obviousness challenges involve a modification or combination of teachings, the Petitioner must also establish that one skilled in the art would have made such a combination, *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1367 (Fed. Cir. 2012) (“[W]hether there is a reason to combine prior art references is a question of fact.”); *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1337 (Fed. Cir. 2016) (“Whether a skilled artisan would be motivated to make a combination includes whether he would select particular references in order to combine their elements.”), and would have had a reasonable expectation of success in doing so. *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367-68 (Fed. Cir. 2016).

A. A POSITA Would Not Combine the Teachings of Gopinathan and Hirka.

Ground 2 of the petition alleges that claims 1-17 are obvious under 35 U.S.C. § 103 in view of the combined teachings of Gopinathan and Hirka. Pet. at 5. The allegation is that a person of ordinary skill in the art would have been motivated to use Gopinathan's "techniques and principles" of transaction fraud detection with debit cards because Hirka states that people use many forms of cards, including credit cards and debit cards and the person of ordinary skill in the art "would have found it easy to adapt the transaction authorization system to concern debit cards." *Id.* at 25.

In Hirka, an authorization server determines whether a transaction may be authorized according to a cardholder's spending limit or "open to buy" amount. Ex. 1009 at p. 8, ll. 1-6. This is akin to a credit limit for the cardholder and is independent of the actual amount held in any linked demand deposit account *Id.* at p. 3, ll. 4. Thus, if anything, Hirka teaches a person of ordinary skill in the art to assess attempted transactions against a cardholder's credit limit.

But, as explained above, Gopinathan already teaches that in assessing a transaction, the fraud detection system may examine information such as "available credit (or balance)" and/or "credit line." Ex. 1010 at 24:44-49. In

other words, the teachings of Hirka add nothing to the teachings already present in Gopinathan; hence, a person of ordinary skill in the art would have no reason to combine these teachings. Mere similarity of references such as Gopinathan and Hirka does not provide such a motivation, because it does not provide a reason for a person of ordinary skill in the art to modify the teachings of Gopinathan. *See, e.g., William Wesley Carnes, Sr., Inc. v. Seaboard Int'l Inc.*, IPR2019-00133, Paper No. 10, slip op. at 17-18 (PTAB May 8, 2019). Hence, the Board should confirm the patentability of claims 1-17 over Gopinathan and Hirka.

B. The Combination of Gopinathan and Hirka Does Not Suggest the Subject Matter of Independent Claims 1 and 15.

Furthermore, even if a person of ordinary skill in the art would have combined the teachings of Gopinathan and Hirka, that combination still would not teach or suggest authenticating a transaction against a demand deposit account or an overdraft account associated with a debit card, as required by independent claims 1 and 15. As explained above, both Gopinathan and Hirka describe assessing information such as available credit, and not authenticating against a demand deposit account or an overdraft account that has been associated with a debit card. Hence, the combination of Gopinathan and Hirka still does not suggest authenticating a

transaction against a demand deposit account or an overdraft account associated with a debit card, as recited in independent claims 1 and 15. Instead, at best, the combination suggests only authenticating a transaction against an available credit limit. Accordingly, neither claim 1 nor claim 15 is obvious in view of the combined teachings of these references. *CFMT, Inc. v. Yieldup Int'l. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (obviousness requires a suggestion of all limitations in a claim) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

C. The Dependent Claims are Patentable Over Gopinathan and Hirka for the Same Reasons as their Respective Independent Claims.

Claims 2-5 depend from claim 1 and claims 16-17 depend from claim 15. These claims are patentable over Gopinathan and Hirka for at least the same reasons as their respective independent claims, as noted above.

Hartness Int'l. Inc. v. Simplimatic Engineering Co., 819 F.2d 1100 (Fed. Cir. 1987) (a claim that depends from a nonobvious independent claim is nonobvious because it contains all of the limitations of that independent claim plus a further limitation).

IV. CONCLUSION

For at least the foregoing reasons, the Board should confirm the patentability of the challenged claims. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (“In an [inter partes review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”) (citing 35 U.S.C. § 312(a)(3) (requiring inter partes review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)); *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (the burden of persuasion never shifts to the Patent Owner); *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) (a petitioner cannot satisfy its burden of proving obviousness by employing “mere conclusory statements”).

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WORD-COUNT CERTIFICATE

I certify that the foregoing document complies with the type-volume limitation of 37 C.F.R. § 42.24(a) and (b) and contains 3,558 words (including words in drawings created by the Patent Owner or as annotations added by the Patent Owner to images reproduced in this document) based on the word count indicated by Microsoft® Word for Mac v. 16.75, excluding those portions exempted by the rule.

/Tarek N. Fahmi/

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing:

PATENT OWNER'S RESPONSE

and its accompanying exhibits were served on October 10, 2023, by filing this document through the PTAB E2E System as well as by delivering a copy via email directed to the attorneys of record for the Petitioner at the following addresses:

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The parties have agreed to electronic service in this proceeding.

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