

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PAYPAL HOLDINGS, INC., AND PAYPAL, INC.
Petitioners,

v.

FINTIV, INC.
Patent Owner.

Case No. IPR2023-00744
U.S. Patent No. 8,538,845

**PETITIONERS' REPLY
TO PATENT OWNER'S RESPONSE**

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TABLE OF ABBREVIATIONS AND CONVENTIONS

Petitioners	PAYPAL HOLDINGS, INC. AND PAYPAL, INC. ("PayPal")
Patent Owner	FINTIV, INC. ("Fintiv")
'845 patent	U.S. Patent No. 8,538,845 (the patent being challenged herein)
Challenged Claims	Claims 1-3 and 5-7
POSA	Person of Ordinary Skill in the Art
FICs	Plaintiff's February 17, 2023 Final Infringement Contentions (Ex-1011)
POR	Patent Owner Response
ID	Institution Decision
Pet.	Petition
Johnson	Fintiv expert Mr. Kai Johnson

PETITIONERS' EXHIBIT LIST

Ex- No.	Brief Description
1001	U.S. Patent No. 8,538,845
1002	File History of U.S. Patent No. 8,538,845
1003	Declaration of Dr. Sandeep Chatterjee
1004	<i>Curriculum Vitae</i> of Dr. Sandeep Chatterjee
1005	US Publication No. 2007/0255620 ("Tumminaro")
1006	US Publication No. 2006/0253335 ("Keena")
1007	U.S. Publication No. 2011/0137789 ("Kortina")
1008	US Publication No. 2008/0270246 ("Chen")
1009	Original Complaint for Patent Infringement in <i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.)
1010	Proof of Service of Complaint for Patent Infringement in <i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.)
1011	Fintiv's Final Infringement Contentions Claim Chart for U.S. Patent No. 8,538,845 in <i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.) ("FICs")
1012	Final Claim Constructions of the Court in <i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.)
1013	"Social Payment Startup Venmo Raised \$1.2 Million And Has A New iPhone App," published September 16, 2010, available at https://techcrunch.com/2010/09/16/venmo-1-2-million-iphone/
1014	Plaintiff Fintiv, Inc.'s Proposed Terms for Construction, 6:22-cv-00288-ADA (W.D. Tex.)

Ex- No.	Brief Description
1015	“Green Dot and Chase Paymentech Offer Merchants an Alternative Cash Payment Solution,” published October 2007, available at https://www.digitalcommerce360.com/2007/10/18/green-dot-and-chase-paymentech-offer-merchants-an-alternative-ca/
1016	“PayPal Launches Revamped iPhone App, Teams With Bump For Phone-Tapping Money Transfers,” published March 2010, available at https://techcrunch.com/2010/03/15/paypal-iphone-app-bump
1017	Green Dot Money Pak “Using MoneyPak,” available at https://web.archive.org/web/20110129061302/https://www.moneypak.com/
1018	Green Dot Money Pak “How Adding Funds to PayPal Works,” available at https://web.archive.org/web/20111009200217/https://www.moneypak.com/PayPal/Index.aspx
1019	Office of Foreign Assets Control (OFAC) – Sanctions Programs and Information, available at https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information
1020	Prior et al., “BANKING THE UNBANKED USING PREPAID PLATFORMS AND MOBILE TELEPHONES IN THE UNITED STATES, Working Paper WP-839” IESE Business School, University of Navarra, January 2010.
1021	“Mobile Money for the Unbanked” produced as PAYPAL-FINTIV00004567
1022	2009 MIT Sloan article, “The Economics of M-PESA.” Produced as PAYPAL-FINTIV000004407
1023	PAYPAL-FINTIV000006705: “PayPal Application Available on Apple App Store at Launch,” July 10, 2008, available at:

Ex- No.	Brief Description
	https://newsroom.ie.paypal-corp.com/2008-07-10-PayPal-Application-Available-on-Apple-App-Store-at-Launch
1024	Bànegns et al., Mobile Banking – Financial Services for the Unbanked?, The Swedish Program for ICT in Developing Regions (SPIDER), 2008, produced as PAYPAL-FINTIV000004353
1025	Baptista et al., Unleashing the Power of Convergence to Advance Mobile Money Ecosystems, Mobile Money Summit 2010, International Finance Corporation (IFC) and Harvard Kennedy School, 2010, produced as PAYPAL-FINTIV000004435
1026	McGrath, Mobile Money for the Unbanked 101, GSMA, produced as PAYPAL-FINTIV000004507
1027	File History for U.S. Provisional Patent Application No. 61/522,099
1028	Fintiv's March 8, 2023 Response and Objections to Defendant's Interrogatory No. 8
1029	<i>Fintiv, Inc., v. Apple Inc.</i> , Case No. 1:21-cv-00896-ADA, Dkt. 441 (W.D. Tex., July 5, 2022)
1030	PAYPAL-FINTIV000004485
1031	PAYPAL-FINTIV000004691
1032	Fintiv's Second Amended Complaint, Dkt. 71, in <i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.) (SEALED)
1033	Fintiv's Opposition to PayPal's 12(c) Motion for Invalidity of the '845 Patent under 35 U.S.C. § 101, Dkt. 72, <i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.)

Ex- No.	Brief Description
1034	Transcript of Proceedings Held in <i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.) on May 10, 2023
1035	November 17, 2022 Deposition Tr. Of Kai Johnson in <i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.) (Johnson Deposition Exhibit 10)
1036	Corrected Declaration of Kai Johnson in Support of Fintiv's Claim Construction Brief (<i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.)), (Johnson Deposition Exhibit 9).
1037	Transcript of March 7, 2024 Deposition of Kai Johnson
1038	Plaintiff Fintiv Inc,'s Responsive Claim Construction Brief (<i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.)), Dkt. 38)
1039	Plaintiff Fintiv Inc,'s Sur-Reply Claim Construction Brief (<i>Fintiv, Inc. v. PayPal Holdings, Inc.</i> , 6:22-cv-00288-ADA (W.D. Tex.)), Dkt. 52)
1040	U.S. Patent No. 9,208,488
1041	Johnson Deposition Exhibit 6
1042	Johnson Deposition Exhibit 7
1043	"Walmart MoneyCard Visa Prepaid Card – Reloadable", retrieved from: https://web.archive.org/web/20110106224918/https://www.walmartmoneycard.com/walmart/about-our-products (Johnson Deposition Exhibit 4)
1044	15 U.S.C. § 6827
1045	March 8, 2024 e-mail from Petitioner counsel to Patent Owner counsel

Ex- No.	Brief Description
1046	Deposition Copy of Ex-1015 (Johnson Deposition Exhibit 8)
1047	“Nonbank E-Money Issuers: regulatory Approaches to Protecting Customer Funds.” Tarazi, M. et al, CGAP (“Consultative Group to Assist the Poor”), July 2010. Retrieved from: https://www.cgap.org/sites/default/files/CGAP-Focus-Note-Nonbank-E-Money-Issuers-Regulatory-Approaches-to-Protecting-Customer-Funds-Jul-2010.pdf
1048	Merriam Webster’s Collegiate Dictionary, Eleventh Edition (2003), Definition of “specify”
1049	“Fintech: Financial Technology Research Guide,” Library of Congress. Retrieved from: https://guides.loc.gov/fintech/21st-century/unbanked-underbanked

I. INTRODUCTION

Fintiv emphasizes it is not articulating a construction for “unbanked subscriber,” instead characterizing its positions as “analysis” of the Board and PayPal’s constructions. The result of this “analysis” makes abundantly clear why Fintiv goes to such lengths to avoid formally proposing a construction: Fintiv’s interpretation renders the term meaningless, foreclosing *any* participant of the claimed system from being “unbanked.”

Whether Fintiv’s position is an “interpretation” of a construction, or an implicit construction, it should be rejected. Fintiv argues the “unbanked users” in the Tumminaro reference are actually banked because Tumminaro’s system holds user funds in pooled accounts at a partner bank. But *every* embodiment of the ’845 patent holds subscriber funds in a partner bank, and are thus excluded under Fintiv’s interpretation. Furthermore, Fintiv took the exact opposite position in district court claim construction and when arguing to preserve the subject matter eligibility of the ’845 claims, and is judicially estopped from its argument here.

Fintiv’s other claim construction arguments fare no better. Under the Board’s correct constructions, all claims should be found unpatentable.

II. FINTIV’S DISTRICT COURT REPRESENTATIONS

A. §101 Opposition

Five days *after* PayPal filed this IPR, Fintiv opposed PayPal’s §101 challenge of the ’845 patent. Exs-1032-1033. Fintiv stated that unbanked subscribers are those

that do not have or have access to “*traditional bank accounts*” or “*conventional bank accounts*,” and that “[t]raditional financial services prior to the ’845 Patent required participants to have *conventional bank accounts*.” Ex-1032, ¶17.¹ Fintiv provided examples of transactions requiring “conventional bank accounts” such as checks, ACH, and debit card transactions. *Id.*

Fintiv continued, the “’845 Patent thereby provides an alternative banking method to *traditional bank accounts* and a technical solution to meet the financial needs of individuals without ready access to a bank account.” *Id.* ¶18.

Fintiv alleged the claimed invention enabled “a new way to conduct transactions on a mobile device without needing access to a *traditional bank account*.” Ex-1033, p.15. *Id.*, p.13 (“’845 Patent claims teach a novel and inventive technology... to conduct... monetary transactions ... *without having to use a bank account or the traditional banking systems*.”), p.16 (“*bank account[s] or the traditional banking systems*.”), p.17 (“’845 Patent claims cover ... techniques to ... conduct monetary transactions ... *without having to use a bank account or the traditional banking systems*.”); Ex-1032, ¶21 (“the ’845 Patent enables subscribers to perform transactions... in situations where *conventional* banking and financial services are inconvenient or not readily available.”).

¹ All emphases added.

Fintiv also alleged “*the claimed mobile wallet can have multiple accounts, including a ‘mobile wallet balance,’ or accounts connected to credit cards, debit cards, or bank accounts.*” *Id.*, ¶20; *id.* (“the *claimed invention* can be used to: ... add[] a *bank or credit union account* to a mobile wallet... add[] a *debit card account* to a mobile wallet.”). Fintiv identified the ability to make transfers from credit card to bank accounts as one “technical improvement” claimed by the ’845 Patent. Ex-1033, p.2. The court was persuaded by Fintiv’s arguments, and denied PayPal’s motion. Ex-1034, 67:1-3.

B. Fintiv’s District Court Claim Construction Positions

1. “unbanked subscriber”

Fintiv argued “unbanked subscriber” should be given its “plain and ordinary meaning.” Ex-1038, p.10. Fintiv argued that “unbanked subscriber” *includes* users who *have bank accounts*. *Id.* (“...’845 Patent makes it clear that the term ‘unbanked subscriber’ does not exclude a user that has a bank account.”); Ex-1036, ¶47 (“the ’845 specification... indicates that an unbaked [sic] subscriber *may have a bank account.*”); Ex-1039, p.10. *See also* Ex-1011, p.11 (accusing Venmo deposit via *bank account*).

Fintiv’s district court expert (who is also Fintiv’s expert here) testified that “in context of the claims and the specifications ... it’s clear that even *an unbanked subscriber may have a bank account and may use a bank account with the*

services.” Ex-1035, 279:11-19; *see also id.* at 287:9-19 (agreeing that “a *user that uses a bank account* to deposit a specified amount of funds into its mobile wallet *satisfies the limitation unbanked subscriber* in claim 1 of the ’845 patent”), 278-13-279:9, 279:9-280:5, 283:1-9. The Court adopted Fintiv’s plain and ordinary meaning construction for the term. Ex-1012, p.2.

2. “mobile wallet”

Fintiv argued that there is no reason to limit “mobile wallet” to a stored value or prepaid access account. Ex-1038, pp.4-5 (“PayPal’s proposed construction that imports unnecessary additional limitations based on the type of account limitations, *i.e.*, ‘stored value or prepaid access accounts.’”) The court construed “mobile wallet” to include both stored value and prepaid access accounts. Ex-1012, p.1.

III. THE BOARD SHOULD REJECT FINTIV’S PTAB CONSTRUCTIONS

Fintiv argues that Tumminaro fails to disclose three claim elements: (1) “unbanked subscriber” (§§IV-VII); (2) “[specified/selected] payment method” (§VIII); and (3) both a “limit check and velocity check” in claim 1 (§IX). Fintiv also implies that Tumminaro does not disclose a “mobile wallet” (§II). Each of Fintiv’s arguments is premised on an incorrect claim construction.

A. “Unbanked Subscriber” (All Claims)

Central to Fintiv’s Response is the construction of “unbanked subscriber.” Both arguments (1) and (2) above rely on Fintiv’s improper construction, which

directly contradicts positions Fintiv took to preserve the subject matter eligibility of the '845 patent, and its district court claim construction positions.

1. Fintiv is estopped from arguing “unbanked” does not refer to those without “*traditional*” bank accounts

The Board correctly² determined that Tumminaro’s “unbanked users” are “unbanked,” because those users do not have access to a *traditional* bank account. ID, pp.24-25. Fintiv contends the Board erred in distinguishing between “traditional” bank accounts and the pooled accounts of Tumminaro, and that the term “unbanked subscriber” prohibits a user from having access to *any* account held at a bank. This argument directly contradicts positions Fintiv took to successfully persuade the district court to deny PayPal’s §101 motion challenging the '845 patent, and Fintiv is judicially estopped from taking this inconsistent position.

As discussed in II.A, Fintiv represented that the term “unbanked subscriber” refers to subscribers that do not have or have access to “*traditional bank accounts.*” Fintiv argued that “[t]*raditional financial services* prior to the '845 Patent required participants to have *conventional bank accounts,*” and “where consumers are unable or unwilling to use the conventional banking services ... they are often excluded from making transactions other than using cash.” Ex-1032, ¶17. Fintiv

² PayPal is amenable to the ID’s construction. Any differences between “bank”/“credit union” and “financial institution” accounts are immaterial to the proposed Grounds.

explained that this inability to use conventional banking “prevents some of the poorest and most vulnerable”—*i.e.*, the unbanked—“from having access to the banking system,” and that “the ’845 Patent thereby provides an alternative banking method to *traditional bank accounts*.” Ex-1032, ¶18. Indeed, Fintiv characterized the invention as “a new way to conduct transactions... without needing access to a *traditional bank account*.” Ex-1033, p.15. Fintiv thus espoused the same interpretation of “unbanked subscriber” that it now criticizes the Board for applying.

Additionally, Fintiv’s construction of “unbanked subscriber” directly contradicts its district court claim constructions. As discussed in II.B.1, Fintiv unequivocally argued that “*unbanked subscribers*” *may have a bank account*. Johnson went even further, testifying that unbanked subscribers may not only *have* a bank account, but may *use it with the* service. Ex-1035 at 279:11-19, 278-13-279:9, 279:9-280:5, 283:1-9, 287:9-19. Ironically, here he testified that a user who has a bank account ceases to be “unbanked” when he links and uses it with the system. Ex-1037, 249:12-250:1. Johnson was unable to reconcile³ his prior testimony and his current position. Ex-1037, 250:3-262:16.

Fintiv persuaded the court to both deny PayPal’s motion and adopt a plain and ordinary meaning of “unbanked subscriber.” Consequently, Fintiv is judicially

³ Johnson stonewalled when asked about his prior “unbanked subscriber” testimony. Ex-1037, 252:8-262:11, Ex-1045.

estopped from advancing an inconsistent position here. *Organic Seed Growers & Trade Ass'n v. Monsanto Co.*, 718 F.3d 1350, 1358 (Fed. Cir. 2013) (“a party who successfully argues one position is estopped from later adopting a contrary position in a case involving the same patent.”); *Oleksy v. Gen. Elec. Co.*, 2015 WL 5714208, *5 (N.D. Ill. Sept. 29, 2015) (patentee estopped from construction inconsistent with eligibility arguments) *aff'd*, 2016 WL 9447164.

Even if estoppel is inapplicable, that Fintiv took directly contrary positions on “unbanked subscriber” on two separate occasions demonstrates that its interpretation is incorrect, and that its expert declarant is not credible.⁴

2. Fintiv’s PTAB construction excludes every embodiment of the ’845 patent

Fintiv’s construction of “unbanked subscriber” should be rejected because it excludes every embodiment of the ’845 specification. Such constructions are “rarely, if ever correct and would require *highly persuasive* evidentiary support.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996); *Allergan Sales, LLC v. Lupin Ltd.*, 2013 WL 4519609, **4-5 (E.D. Tex. Aug. 21, 2013) (rejecting construction that “would thus exclude the preferred (and arguably sole embodiment) of the invention.”).

⁴ Johnson’s testimony is rife with additional contradictions. *Cf., e.g.*, Ex-1001, 24:4-6 and Ex-1037, 180:2-6, 181:6-18 (stating specification is not internally consistent.”)

Though Fintiv argues that unbanked subscribers cannot have access to “pooled accounts” held at a partner bank, all mFS subscribers in the ’845 patent ***have access to funds held in master accounts at a partner bank***. Pet., p.7; Ex-1003, ¶65; Ex-1001, 11:56-12:21, 11:17-23, 16:14-38, 17:9-27, 10:17-26. The mFS includes a partner bank. Ex-1001, 11:9-16 (“Each program⁵ includes a... ***partner bank***.”). “The partner bank is responsible for ***holding mFS program master accounts that hold the funds for all mFS services and transactions***.” *Id.* at 11:56-59. Fintiv admits these “mFS program master accounts” at the partner bank are bank accounts that “hold the funds for ***all*** mFS services and transactions.” Ex-1037, 39:3-11.⁶

The “partner bank may elect to maintain a separate bank account for each subscriber ... or a single master account ... that contains the funds for all of the subscriber mobile wallet” accounts. Ex-1001 at 12:5-8, 11:20-26; Ex-1037, 85:13-25. Fintiv admitted that both implementations (*i.e.*, separate bank accounts and pooled accounts) render subscribers “banked,” and are outside the scope of the claims. Ex-1037, 86:18-25, 88:8-15, 89:16-25, 92:21-93:8.

Thus, Fintiv’s interpretation of “unbanked subscriber” leads to the absurd result where ***every*** embodiment of the ’845 patent is excluded.

⁵ The ’845 patent uses the terms “mFS,” “mFS platform,” and “mFS program” synonymously. Ex-1001, 6:4-7, 9:14-17, 6:13-14. (“Agents are representatives of the mFS transaction system or ‘program’.”)

⁶ Johnson could not identify any embodiments lacking a partner bank. Ex-1037, 36:6-37:24.

3. The Board did not err in its construction of “unbanked subscriber”

Fintiv argues the Board erred by introducing the qualifier “traditional” in its analysis of “unbanked subscriber.” (POR, pp.19-20). Fintiv is wrong for three reasons.

First, Fintiv ignores its admissions before the district court, which reveal that Fintiv—as recently as five days *after* the Petition was filed—*agreed* with the Board’s interpretation. As discussed in II.A, Fintiv provided an exemplary list of transactions requiring traditional or “conventional bank accounts”, explained that the ’845 patent provides “new way to conduct transactions on a mobile device without needing access to a traditional bank account,” and that the claims provide “an alternative banking method to traditional bank accounts.” The Board was free to rely on party admissions to interpret the lexicographic definition of “unbanked subscriber.” *Gillette Co. v. Energizer Holdings, Inc.*, 405 F.3d 1367, 1374 (Fed. Cir. 2005) (holding a party’s “blatant admission ... before the EPO” clearly supported the Court’s construction.)

Second, “a construction that excludes *all* disclosed embodiments... is especially disfavored.” *Kaneka Corp. v. Xiamen Kingdomway Grp. Co.*, 790 F.3d 1298, 1304 (Fed. Cir. 2015); *Nelcor Puritan Bennett, Inc. v. Masimo Corp.*, 402 F.3d 1364, 1368 (Fed. Cir. 2005) (“[a] construction ... placing all the embodiments of the invention outside the scope of the claims is *powerful evidence* that the ...

construction is incorrect.”). Here, Fintiv’s contrived interpretation of “unbanked subscriber” as a subscriber who cannot have “access to” funds held at a partner bank excludes all embodiments. *See* III.A.2. And even if most (rather than all) embodiments are excluded by Fintiv’s interpretation, the result is no different. Fintiv provides no support whatsoever—much less “highly persuasive evidentiary support”—justifying the exclusion of any disclosed embodiment.⁷

Third, Fintiv misstates *Martek*’s holding, which does not hold that extrinsic evidence can never be consulted where there is lexicography. *Martek* simply determined that the construction limiting “animal” to “non-human” animals was incorrect because the specification defined “animal” as “any member of the kingdom Animalia,” it was **undisputed** that Animalia includes humans, and the specification did not clearly disavow humans. *Id.* at 1380-81. Here, there is a dispute—albeit manufactured by Fintiv—over the meaning of “have access to a bank account or credit union account” **within** the definition of “unbanked subscriber.”

Furthermore, there is no blanket prohibition on consulting extrinsic evidence when the inventor acts as a lexicographer. *See, e.g., Nestle USA, Inc. v. Steuben Foods, Inc.*, 686 F. App’x 917, 919 (Fed. Cir. 2017) (considering extrinsic evidence

⁷ *Sinorgchem* is also distinguishable. There, after considering the entire specification, the court found that “vague language” used elsewhere cannot “override ... express definitional language.” 511 F.3d 1132, 1138 (Fed. Cir. 2007). Such is not the case here; the specification unambiguously describes that all subscribers’ funds are held at a partner bank.

to ascertain scope of phrase within lexicographic definition); *Baxter Healthcare Corp. v. Mylan Lab 'ys Ltd.*, 346 F. Supp. 3d 643, 655-656 (D.N.J. 2016) (relying on specification and extrinsic evidence to define word within lexicographic definition).

Fourth, extrinsic evidence makes clear that the unbanked lack access to traditional bank accounts (*viz.*, checking/savings accounts⁸) but may access funds held at partner banks through mobile wallets. *See, e.g.*, Ex-1031, p.1 (“People who do not use mainstream financial services, **such as checking or savings accounts** ... are considered **unbanked**.”); Ex-1022, at 6 (“M-PESA has been adopted by ... [the] **unbanked**”), 10 (“The cash collected by M-PESA in exchange for e-float **is deposited in bank accounts held by Safaricom**.”); Ex-1025 at 4 (“**Unbanked**: Customers...**who do not have bank accounts or transaction accounts at formal financial institutions**.”), 27 (“YellowPepper has partnered with **Banco Pichincha** and Porta to offer “Pichincha – MONY,” an m-wallet tied to a pre-paid account, to provide similar services to **unbanked customers**”), Ex-1020, pp.2.

Finally, Fintiv inconsistently applies its own interpretation: although Johnson admits gift cards provide the holder access to funds held in the sponsor’s bank account⁹, he contends those holders are still unbanked based on another unsupported

⁸ *See e.g.*, Ex-1049 (“An ‘unbanked’ person is someone who does not have a checking or savings account”).

⁹ Ex-1037, 106:8-15, 107:25-108:5.

requirement: that the gift/debit card must be “reloadable.” *Id.*, 107:19-23, 111:23-25, 135:9-13. Per Fintiv, a MoneyPak (Ex-1046) or MoneyCard (Ex-1043)¹⁰ holder is “banked”—despite the fact cards of this type are designed to serve the *unbanked*. Ex-1037, 239:12-240:18; Ex-1020, pp.9-10 (“open-loop prepaid cards are... equivalent of online debit cards for unbanked customers.”) Fintiv also considers individuals that are undisputedly “unbanked”—such as undocumented immigrants—“banked” if they may access *another person’s* bank account. Ex-1037, 142:22-143:5. Fintiv’s arbitrary exclusions to its own definition, and the absurd results of applying it, demonstrate that it is incorrect.

Fintiv’s own admissions, the specification, and extrinsic evidence all support the Board’s construction.

B. “[Specified/Selected] Payment Method” (Claim 5)

Fintiv’s arguments on this term again amount to incorrect claim constructions. Fintiv argues that: (1) claim 5 requires *the user* to specify one of multiple payment methods; and (2) applying its construction of “unbanked,” access to pooled accounts or prepaid debit accounts renders users “banked.” (POR, pp.41-44.) Both are incorrect.

¹⁰ Both are reloadable and store funds in a partner bank (Ex-1037, 122:2-124:24, 237:22-24; Ex-1043, p.2 (“This Card is issued by GE Money Bank”).)

1. Claim 5 does not require *the subscriber* to select a payment method

Fintiv erroneously argues that “[specified/selected] payment method” requires the “*unbanked subscriber to specify/select* a payment method from the mobile wallet.” POR, p.41; Ex-1037, 194:21-195:5. Claim 5 merely requires “*receiving* subscriber communication... *indicating*... a specified payment method.” “[Selected/specified]” are simply words characterizing the payment method, not an additional method step. *See, e.g., Uniloc 2017 LLC v. Netflix, Inc.*, 2022 WL 17688150, at *6 (Fed. Cir. Dec. 15, 2022) (“coding ... by using *a selected known coding technique*” does not require “a separate step of selecting which ‘known coding technique’ to use.”); *Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015) (In “pre-processing parameters being provided to said client device,” the phrase “‘being provided to’ is not used as a verb... but instead ... conveys information about the ‘pre-processing parameters.’”) Accordingly, there is no requirement that *a subscriber* must actively specify/select a payment method.

2. Claim 5 does not require multiple payment methods

Fintiv argues “[specified/selected] payment method” require there “to be *more than one potential payment method available for selection* in the unbanked subscriber’s mobile wallet.” POR, p.41. But there is no express requirement in the claims that an unbanked subscriber have a plurality of potential payment methods.

Fintiv knew how to claim multiple potential communication channels in claim 5, but chose not to use similar language when describing payment methods. Ex-1001, 30:44-45 (“... receiving a communication ... over one of ***a plurality of channels.***”) It would be improper to rewrite “[specified/selected] payment method” to “one of a plurality of payment methods”, when the applicant knew how to use such clear language, but chose not to. *Takeda Pharm. Co. v. Zydus Pharms. USA, Inc.*, 743 F.3d 1359, 1365 (Fed. Cir. 2014) (holding claim showed “inventors knew how to express ambiguity” for other limitations, but chose not to for limitation in question, and declined to “rewrite the claim in that way.”)

Fintiv’s construction is also contrary to the specification. Fintiv identifies two payment methods available to unbanked subscribers: “a stored value account from the platform,” and an additional “stored value account from a third-party.” POR at 39-40. Fintiv’s construction excludes embodiments where the system supports only the ***default*** eMoney stored value account provided by the system. Ex-1037, 198:23-200:6, 201:15-24. “[C]aselaw counsels against interpreting the claims in a way that would omit a disclosed embodiment absent clear evidence to the contrary.” *Apple Inc. v. Corephotonics, Ltd.*, 81 F.4th 1353, 1359 (Fed. Cir. 2023). Here, Fintiv fails to provide clear evidence why these embodiments should be excluded. Additionally, ***other*** Fintiv patents expressly claim the ability to use a third-party mobile wallet, undermining its argument that “[specified/selected] payment method” implicitly

requires that same capability. Ex-1040 at 24:3-5 (“perform a transaction ... using a third party mobile wallet.”).

Finally, Fintiv’s supports its erroneous construction with cherry-picked non-contemporaneous dictionary definitions of “select.” POR, p.41. But Fintiv omits definitions for “specify,” which merely means “to name or state explicitly or in detail.” Ex-1048.

3. Fintiv is estopped from arguing the “specified payment method” cannot include credit or debit cards

Fintiv imports its erroneous construction of “unbanked subscriber” into its construction of “specified payment method.” Fintiv admits that every claim requires an “unbanked subscriber.” Ex-1037, 28:21-24. Fintiv argues that a user who has added debit and credit cards is “banked,” and thus outside the scope of the claims. But as discussed in II.B.1, Fintiv argued that the claims encompass a system where *unbanked* subscribers may add credit and debit cards to their mobile wallets. Ex-1032, ¶20 (“*the claimed mobile wallet can have multiple accounts*, including... accounts connected to *credit cards, debit cards, or bank accounts*.”); Ex-1033, p.2 (““the *claimed invention* can be used to: ... add[] a *bank or credit union account* to a mobile wallet... add[] a *debit card account* to a mobile wallet,” ¹¹) Fintiv is estopped from disavowing its statements to the court regarding the scope of the

¹¹ Johnson directly contradicted these statements. Ex-1037, 137:12-18, 134:11-135:8.

claims. And to the extent that estoppel does not apply, these admissions demonstrate that Fintiv's construction is incorrect.

C. “Limit Check” (Claim 1)

1. Claim 1 does not require performing both a limit check and a velocity check

Relying on *SuperGuide*, 358 F.3d 870 (Fed. Cir. 2004), Fintiv argues that claim 1 requires performing ***both*** a limit check ***and*** a velocity check. POR, pp.46-47. *SuperGuide* is inapplicable when the items following “at least one of” are not categories containing many possible values. *Apple, Inc. v. Evolved Wireless LLC*, 2017 WL 6543970, at *4 (P.T.A.B. Dec. 20, 2017). Here, “a velocity check” and a “limit check” are undisputedly not categories containing many possible values: Fintiv admitted that “[t]he ’845 Patent refers to ‘a limit check’ ***in the singular and never refers to multiple limit checks.***” POR, 52, Ex-2007, ¶143. Similarly, ’845 patent Figure 3, which depicts the claimed deposit transaction, includes only a ***single*** velocity check, and Fintiv was unable to identify anywhere multiple velocity checks during a deposit is described. Ex-1037, 176:9-19.

SuperGuide is also inapplicable because the ’845 “specification teaches embodiments that do not require each category of the enumerated set.” *Power-One, Inc. v. Artesyn Techs., Inc.*, 2007 WL 896093, at *14 (E.D. Tex. Mar. 22, 2007). During a deposit by an unbanked subscriber, the “monetary transaction system may ... perform a limit check... ***and/or*** a velocity check.” Ex-1001, 15:60-65. Fintiv

admitted that this means the system may perform *only* a limit check, or *only* a velocity check. Ex-1037, 171:10-172:7, 173:13-22. Fintiv provides no justification for excluding two of three disclosed embodiments. *Id.*, 175:2-16.

2. Fintiv's interpretation is nonsensical

Fintiv argues that an “agent counting cash is not the same as a limit check.” POR, p.49. Tellingly, Fintiv provides no explanation of what it means for a “limit check” to “determine[] whether sufficient funds are available to make the deposit amount.” The examples Fintiv cites (POR, p.48) merely parrot the claim language (Ex-1001 at 15:61-62) or state that a “transaction limit” can be placed on user accounts, divorced from the context of a deposit as required by claim 1 (*id.* at 29:16).

During deposition, Johnson conjured a new interpretation: the system could place a *maximum limit* on an account balance; checking whether a deposit would cause the balance to exceed this threshold satisfies “the limit check determining whether sufficient funds are available to make the deposit amount.” Ex-1037, 187:7-23. This interpretation—found nowhere in his declaration, POR, or the patent—is facially untenable. The claim requires determining whether sufficient funds are available to *make* the deposit amount—not whether a maximum balance will be exceeded. And the specification is silent on this type of check. *Id.*, 187:7-23, 188:7-9, 189:6-8. Fintiv's illogical and unsupported interpretation should be rejected.

D. “Mobile Wallet” (All Claims)

Fintiv improperly construes “mobile wallet” to be limited to a stored value account holding eMoney/“scrip”. Ex-1037, 114:14-17, 118:5-15, 120:24-121:1; POR, pp.2-4; Ex-2007 ¶¶32-35.

Fintiv’s construction contradicts the district court’s construction (“[a] stored value account *or prepaid access account (PPA).*”) Ex-1012, p.1; Ex-1037, 117:19-118:4. Fintiv did not argue that “mobile wallet” had a special meaning for the ’845 patent, or that “unbanked subscribers” could only use stored value accounts and not PPAs. As discussed in II.B.2, Fintiv argued that “mobile wallet” should be *even broader* to encompass payment methods other than stored value accounts and PPAs, such as bank accounts.

Further, nothing in the claims requires the transfer of “stored value,” “eMoney” or “scrip.” Ex-1037, 113:11-114:5, 119:17-120:10. Instead, the claims refer to transferring legal tender (“funds,” “money”). Ex-1001, 29:58-60, 31:30-32, 32:2-5, 32:32-34. Similarly, the specification never mentions “scrip”, nor does it limit “mobile wallets” for unbanked subscribers to “stored value accounts” containing eMoney. Rather, the specification describes “depositing/withdrawing/transferring *funds*”—*i.e.*, *legal tender*—“through a mobile wallet.” Ex-1005, 1:55-57, 3:56-60 (same).

Regardless, eMoney is merely the electronic representation of real currency in the mFS. Ex-1001 at 10:30-32 (“This value can be in the form of real currency or the *electronic representation referred to herein as eMoney.*”)¹² The ’845 patent does not contemplate creating eMoney untethered from real currency. Ex-1037, 83:7-84:25.¹³ Fintiv attempts to divorce “eMoney” balances from legal tender by omitting portions of Figures 12B and 13. Ex.1037 at 55:6-13, 65:14-66:4. The omitted portions show that deposited cash is transferred to a mFS master bank account; likewise, cash for withdrawal originates from a master bank account. Ex-1001, 22:21-30 (“The agent company’s bank...performs an automated sweep ... of recent deposits from the agent company’s bank account into the mFS platform’s *master bank account.*”), 22:51-54 (“The mFS master bank performs an automated sweep ... of the mFS platform’s *master bank account* to reflect the recent withdrawal request from the agent company.”); Ex-1037, 71:6-11, 71:20-72:7. Johnson ultimately admitted that, for each unit of eMoney maintained in the mFS, a

¹² Johnson also directly contradicted the patent. Ex-1037, 76:17-77:1 (“Your question is, is eMoney specifically the representation of real currency? *And the answer is no.*”)

¹³ Johnson’s testimony that eMoney is not an FDIC insured deposit (Ex-1037, 275:4-276:5) runs afoul of U.S. law. Ex-1047, 15 (“The United States, for example, expressly characterizes the funds underlying stored-value cards as ‘deposits’ covered by deposit insurance as long as such funds are placed in an insured institution (FDIC 2008).”).

corresponding dollar amount of legal tender is stored in a partner bank account or agent cash register. Ex-1037, 61:11-24, 74:7-20, 79:13-19.

IV. Under the Proper Constructions, the Challenged Claims are Invalid

A. Ground 1

1. Tumminaro discloses an “unbanked subscriber” under the Board’s construction

Fintiv does not dispute that Tumminaro’s “unbanked users” do not have or have access to a traditional bank account (*e.g.* a conventional checking or savings account). Rather, Fintiv erroneously argues that access to funds in *pooled accounts* renders Tumminaro’s users “banked.” Fintiv also repeatedly mischaracterizes Tumminaro.

Fintiv argues that Tumminaro’s subscribers must load and unload from external accounts. POR, p.35. But there is no requirement that the users of Tumminaro have external bank accounts. Ex-1037, 153:9-154:2.

Fintiv incorrectly argues that a prepaid debit account necessarily requires an *individual* bank account. POR, p.36. First, there is no evidence in Tumminaro that an individual account for a carded user is a “traditional” bank account other than Fintiv’s say-so. Indeed, Tumminaro states that in particular embodiments registering for the service differs from opening “any other bank account” in that “there is no minimum account balance so even individuals who *do not qualify* for a checking or savings account at a bank may participate” (i.e. the unbanked). Ex-

1005, [0591]. Additionally, Tumminaro discloses the use of “pooled prepaid debit accounts.” *Id.*, [0603] (“Rather than maintain a separate prepaid debit account for each account holder, the present embodiment utilizes a ***pooled prepaid debit account*** 5300.”), [0591] (“If funds ***for all account holders*** are held in the pooled account... the new account holder has full and immediate access to the funds.”); Ex-1037, 149:11-17. Thus, carded users may still have their funds held in a pooled account. Ex-1005, [0198]; Ex-1037, 153:25-154:2. This pooled prepaid debit account is also not a traditional bank account.

Fintiv is also wrong that users of Tumminaro must source funds via “banked” methods (POR pp.36-37); Fintiv ignores cash and check deposits, and receiving funds from another user, as methods to get money into the Tumminaro system. Ex-1037, 225:11-226:12; Ex-1005, [0604], [0196], [0174].

Fintiv is also incorrect that no-card users may withdraw from bank branches (POR, p.37); Johnson admitted that the paragraph he cites is irrelevant to no-card users, and there is no disclosure of “cardless ATM” in Tumminaro. Ex-1005, [0254]; Ex-1037, 215:18-216:21, 206:23-25.

Fintiv also asserts—without support—that direct deposits require bank accounts (Ex-1037, 219:22-220:18), but ignores that the ’845 patent states that direct deposit can be performed for the unbanked (Ex-1001, 21:6-41).

Fintiv also attempts to characterize having a share of funds in a pooled account as “having an account.” POR, p.39. But Fintiv’s expert explained that “having an account” means to have a bank account in the user’s *name*. Ex-1037, 137:20-24. While the Tumminaro system tracks the amount of funds for a particular user held in the pooled account—as does the ’845 patent¹⁴—there is no evidence, in paragraph 0041 or elsewhere, that the pooled account is in the user’s *name*. Fintiv also argues that Tumminaro’s pooled/prepaid debit accounts are not “temporary.” POR, p.45. But this misses the Board’s point that Tumminaro describes *creating* accounts for “unbanked users” who do not have a *preexisting* account to interact with Tumminaro’s payment system. Ex-1005, [0447].

Applying the correct construction (*see* III.A)—consistent with Fintiv’s statements to the court—there can be no dispute Tumminaro discloses an “unbanked subscriber.”

2. Tumminaro discloses an “unbanked subscriber” under Petitioner’s construction

Fintiv additionally argues that the operator of Tumminaro is itself a financial institution. POR, pp.26-28. While the Board need not reach this question, Fintiv is incorrect. First, Fintiv’s expansion of “financial institution” using irrelevant regulations absent from the intrinsic record should be rejected. Ex-1037, 160:12-18.

¹⁴ Ex-1001, 9:28-32, 10:17-20, 10:35-39, 11:23-26, 11:36-38, 11:61-65, 12:9-11.

15 U.S.C. §6827 relates to privacy of financial information. Ex-1037, 164:2-165:17; Ex-1041; Ex-1042. Johnson could not even say that a POSA *would* look to this statute to define financial institution, only that it was *possible*. Ex-1037, 166:5-168:21.¹⁵

Johnson admitted that his opinion that the pooled accounts are held “internally by the closed loop system itself” (POR, p.23, Ex-2007, ¶65) and that Tumminaro’s operator issues debit cards (POR, p.29) apply *only when* the system operator *itself is a bank*. Ex-1037, 230:3-6, 232:9-12, 235:3-9. But this is just one embodiment; typically the operator is not a bank, but partners with one. Ex-1005, [0606] (“The system operator *may be* a bank.”), [0516], [0262], [0412], [0192]. Indeed, Tumminaro distinguishes between pooled and financial institution accounts. Ex-1005, [0041] (“... clients may not have an account in the pooled account, but *instead* have an account at a financial institution.”) And debit cards in Tumminaro are issued through bank partner. *Id.* [0412]. Finally, though Fintiv argues ATM capability makes Tumminaro a financial institution, Fintiv admitted ATM access is optional in

¹⁵ The ID adopted PayPal’s level of skill, which lacks “knowledge of *regulations*.” ID, p.14; Ex-2007, ¶29. Johnson could not identify any regulations relevant to the ’845 patent. Ex-1037, 22:20-23:17. Nor does he meet his own POSA definition. *Id.*, 18:22-19:24, 20:11-19, 161:23-24, 162:2-4, 162:18-25, 163:23-24. Indeed, Johnson testified that credit card operators and credit reporting agencies “specifically included” as financial institutions in §6827 are *not* financial institutions. Ex-1044; Ex-1037, 155:16-156:9.

Tumminaro. Ex-1037, 227:14-228:1, 228:15-19; Ex-1005, [0261]. Fintiv's manufactured distinctions are based on unsupported assumptions.

3. Tumminaro discloses a “[specified/selected] payment method”

Fintiv's “specified payment method” arguments are premised on incorrect constructions. Even assuming that two or more potential payment methods are required, the Board correctly acknowledged that Tumminaro's unbanked users may access a pooled account or a prepaid debit account. ID, pp.27-28. Fintiv repeats its argument that pooled accounts are bank accounts, and that prepaid debit accounts render a user banked, as addressed above. *See* III.A1, 1IV.A.1.

Fintiv argues that Tumminaro fails to disclose “specifying” a payment method because there is never an “opportunity” in Tumminaro to do so. Ex-2007, ¶¶101-121. But Johnson admitted that the payment method does not need to be “specified” or “selected” at the same time a transaction is requested by a user, but can instead be made by virtue of not changing a default payment method. Ex-1037, 195:6-15. Tumminaro also discloses that a user can change the source of funds in their mobile wallet. Ex-1003, ¶¶157, 178-180.

4. Tumminaro discloses stored value accounts

Even if “mobile wallet” is limited to a stored value account, Tumminaro also describes using “stored value accounts.” Ex-1005 at ¶143 (“using their mobile devices to access an account such as... [a] *stored value account without a card*

associated with it.”) Fintiv’s expert confirmed that this reference relates to a no-card user, *i.e.*, “unbanked user.” Ex-1037, 243:3-24.

B. Ground 2: Tumminaro Discloses or Renders Obvious Selecting Multiple Payment Options

Fintiv does not address whether Tumminaro renders the “[specified/selected] payment method” obvious.¹⁶ Instead, Fintiv simply argues that Tumminaro does not recite a “gift card.” POR, p.43. But a POSA would have known of gift cards at the time of invention. Ex-1037, 238:25-239:5. Various gift cards, including reloadable, were available before the invention. Exs-1017-1018, Ex-1043. Fintiv also provides no evidence of secondary indicia. Ex-1037, 26:6-10. Dr. Chatterjee’s obviousness opinion is therefore un rebutted.

C. Ground 3: Tumminaro and Keena Renders Obvious a Limit Check and a Velocity Check

Even if both limit and velocity checks are required, this limitation is satisfied. Fintiv argues that an agent counting money cannot be a limit check “on the unbanked subscriber’s mobile wallet account,” but disregards the limitation, “wherein the limit check determines whether sufficient funds are available to *make* the deposit.” Because the limit check is performed on funds deposited by an unbanked subscriber

¹⁶ Johnson’s attempt to retroactively shoe-horn a “teaching away” opinion into his declaration (Ex-1037, 207:18-211:24) is improper. And he ignores that Tumminaro discloses real-time selection between multiple payment methods and characterizes it as “advantageous.” ID, p.32; Ex-1003, ¶¶181, 143; Ex-1005, [0242].

into his mobile wallet *account* (*i.e.*, by the load agent counting the cash), it is necessarily performed on that user's mobile wallet account.

Finally, Fintiv does not rebut the obviousness of implementing both a limit and velocity check. Johnson confirmed he did not opine on the obviousness of Ground 3. Ex-1037, 222:3-8. Tumminaro describes limit and velocity checks. Pet., pp.45-47. Fintiv complains that claim 1 is directed to a deposit rather than a transfer, but Tumminaro's checks are applicable to all transactions. For example, "setting a per transaction limit" during a deposit is setting a maximum amount that is possible per deposit. Ex-1005, [0598], *see also* [0298] ("examples on limits of an account are how many transactions a day a user may perform ["velocity check"] or amount of money that may be transferred in a transaction ["limit check"]."). Johnson confirmed that others were performing precisely the type of deposit limit checks that allegedly satisfy this limitation. Ex-1037, 188:10-25.

The Board should find all claims unpatentable.

Dated: April 4, 2024

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CERTIFICATE OF COMPLIANCE

This Petition complies with the word count limits set forth in 37 C.F.R. § 42.24(c)(1), because this Petition contains 5,595 words, excluding the parts of the Petition exempted by 37 C.F.R. § 42.24(a)(1), determined using the word count provided by Microsoft Word, which was used to prepare this Petition.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 4th day of April, 2024,
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