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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PAYPAL HOLDINGS, INC. and PAYPAL, INC.,
Petitioner,

v.

FINTIV, INC.,
Patent Owner.

IPR2023-00744
Patent 8,538,845 B2

Record of Oral Hearing
Held: July 18, 2024

Before KRISTEN L. DROESCH, MICHAEL R. ZECHER, GEORGE R. HOSKINS, and *Administrative Patent Judges*.

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The above-entitled matter came on for hearing on July 18, 2024, commencing at 1:00 p.m., via video teleconference.

P R O C E E D I N G S

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JUDGE ZECHER: Okay. Good afternoon. My name is Judge Zecher. I'm here with my colleagues, Judge Droesch and Judge Hoskins. This is a hearing for IPR2023-00744. The claims at issue are Claims 1 through 3 and 5 through 7 of U.S. Patent No. 8,538,845. Let's go ahead and start the hearing by taking a roll call to see who's online for the parties. Let's start with Petitioner, PayPal Holdings Inc., and PayPal Inc.

MR. KANG: Good morning, Your Honors. This is Rob Kang, lead counsel for Petitioner, and with me is Chris Gresalfi, backup counsel. And then joining us remotely is Travis Jensen, also backup counsel for Petitioner.

JUDGE ZECHER: Thank you, Mr. Kang. Who's here for Patent Owner, Fintiv, Inc.?

MR. GOLUB: This is Dan Golub, for the Patent Owner, and I'm joined by my colleague, Brandon Theiss.

JUDGE ZECHER: Thank you, Mr. Golub. So, I just want to run through really quickly the parameters of this hearing. We issued a paper governing how this hearing is going to be conducted. That was paper 20. We gave each party 60 minutes to present their case in chief. We do recognize that PayPal has come in with a LEAP practitioner, so they're going to get an extra 15 minutes. So, PayPal will have 75 minutes to divide as they see fit for their case in chief, and Fintiv will have 60 minutes. PayPal will go first because they carry the burden of persuasion. They can reserve some time for rebuttal, after which Fintiv will present their case in

chief, and they can reserve some time for sur-rebuttal.

One procedural matter I want to handle really quick before I turn the party -- the floor over to PayPal and Mr. Kang. We sent an email to the parties earlier this week about Exhibit 1032. It was filed as "Parties and Board" only. There was no corresponding motion to seal or protective order filed in this case. We gave you an option to do that or file a redacted version of Exhibit 1032 that removes any business confidential information. I haven't seen that redacted version filed yet. I assume that's forthcoming, but I do want to confirm with both parties that we won't be discussing any business confidential information today because if we do, we have to close the hearing. So, let me start with Mr. Kang.

MR. KANG: That's correct. Exhibit 1032 will be forthcoming and there will not be any CBI discussed here. I believe we were waiting for the exhibit to be stricken from the record before refiling, but we can file that at any time.

JUDGE ZECHER: Well, just so you know, we're going to keep it in the record until you file the revised version just so we can do a quick comparison because if we expunge it, we won't be able to see it. So, please don't wait for us to expunge it. Please file that redacted version first, and then once it's been filed, we'll go ahead and expunge the original version that was filed that wasn't redacted.

MR. KANG: Understood. Thank you, Your Honor.

JUDGE ZECHER: Yeah. Mr. Golub, is that your understanding as well?

MR. GOLUB: Yes, it is.

JUDGE ZECHER: Okay. Great. Thank you. All right. So, let's get started. Mr. Kang, the floor is yours. How much time would you like to reserve for rebuttal?

MR. KANG: I would like to reserve 15 minutes. And if Your Honors will allow it, I'd like to present first for 50 minutes and then have Fintiv do its rebuttal, I'm sorry, its presentation. Before, I don't want to take up any of our LEAP practitioner, Chris Gresalfi, time is 15 minutes. So, I was thinking we could break it into two separate kind of sessions, if that suits you.

JUDGE ZECHER: Okay. So, let me just understand. You said you want to reserve 15 minutes for rebuttal. Does that mean you're going to spend 60 -- you're going to divide up your time, and Mr. Gresalfi's time in that 60 minutes, is that what you're going to do?

MR. KANG: No. I would like to present for 45 minutes with 15 minutes for rebuttal and then have Mr. Gresalfi present. I believe he's at 10 minutes with five minutes for rebuttal.

JUDGE ZECHER: I guess I'm confused. You have a case in chief and you have rebuttal. You don't have four parts here. So, however, you want to divide it up in your case in chief and your rebuttal is fine, but we're not going to let you present, then have a rebuttal, then have him present, and then have another rebuttal.

MR. KANG: Understood. Then we'll just continuously present for is it 55 minutes, and then reserve the remaining for rebuttal.

JUDGE ZECHER: Okay. I'm going to go ahead and reserve 20 minutes for rebuttal. I think that's the math there. Does that sound right?

MR. KANG: Yes.

JUDGE ZECHER: Okay. Give me one second. Thank you. Okay, you can begin when you're ready.

MR. KANG: I'd like to share my screen. Can everyone see my screen?

JUDGE ZECHER: Yes.

MR. KANG: All right. Good afternoon and may it please the Board. My name is Robert Kang, lead counsel for Petitioner. This morning, I'd like to begin with an overview of the Tumminaro reference and then I will be addressing the unbanked subscriber term that pervades this entire proceeding, as well as the specified payment term, and some of the criticisms Fintiv has levied against the Tumminaro reference. And Mr. Gresalfi will be handling the at least one or more of a velocity check and limit check terms.

Now, starting with slide 5 of our demonstrators, what I've done here is I've put Figure 2 of the '845 Patent on the left and Figure 3 of Tumminaro on the right. And both of these Patents, or both of these -- I'm sorry -- describe a monetary transaction system or a mobile wallet payment system. And what they allow is for users who can be banked or unbanked to interact with the system through a mobile phone to connect to infrastructure that connects them to financial institutions to execute financial transactions. Now if we go to slide 6, the critical part of this is that the system of Tumminaro can perform every function described in the '845 Patent. Here we've put up column 3, lines 51 to 62 of the '845 Patent that talks about the various different tasks that can be performed with the monetary transaction

system. And so, the key is everything that is disclosed here is also disclosed in Tumminaro. The ’845 Patent talks about adding a bank or credit union account to a mobile wallet, adding a debit or credit card account to a mobile wallet, or depositing or withdrawing funds from that mobile wallet. And Tumminaro at paragraph 36 also talks about the needs satisfied by its mobile payment platform. Talks about the need for electronic instruments to be able to be linked to existing financial instruments such as credit and bank accounts, and the need to be able to unload and load or withdraw and deposit from those financial instruments. The '845 Patent also talks about paying bills from a mobile wallet or topping up a prepaid mobile account through that mobile wallet. And Tumminaro are similarly at paragraph 187 talks about the ability for account holders to pay their bills or top off minutes via their service account. The '845 Patent talks about transferring funds through a mobile wallet nationally or internationally. And likewise, Tumminaro at paragraph 440 says the account holder may move money in seconds around the world or across the room. The '845 Patent says one of the tasks it can perform is making in-store purchases using a mobile wallet. And Tumminaro at paragraph 34 says financial transactions may be conducted on person-to-person, P2P, or person-to-merchant, P2M basis.

And finally, the '845 Patent talks about the ability to add a stored value account to the mobile wallet. And Tumminaro also talks about using these accounts. It talks about, it states in paragraph 143 that the account may also be a stored value account without a card associated with it. And so, the net net of this slide, and I hope what you've gathered from Patent Owner's briefing, is that there is no technical or functional capability in the

claims that Tumminaro fails to disclose. Rather, the dispute between the parties is purely semantic. Whether the unbanked users described in Tumminaro satisfy the way that Patent Owner is interpreting the Board's construction.

JUDGE ZECHER: Mr. Kang, this is Judge Zecher. If you don't mind, I'm going to stop you here. We're having some connection issues with Judge Droesch. So, if you just -- can we pause for a second to get her back online here?

JUDGE DROESCH: This is Judge Droesch. I just got reconnected. I'm listening by phone and I'm going to try to get my video back up.

JUDGE ZECHER: Okay. Judge Droesch, are you okay with proceeding with Mr. Kang's presentation?

JUDGE DROESCH: I am, as long as the parties are okay with that.

MR. KANG: That's fine.

JUDGE ZECHER: Is that all right with you?

MR. KANG: Yes, that's fine, Your Honor.

JUDGE ZECHER: Yeah, Mr. Golub, okay with you.

MR. GOLUB: Yes, sir.

JUDGE ZECHER: All right. Mr. Kang, you can proceed. Thank you.

MR. KANG: And so, if we turn to our slide, PDX-9, this reproduces Paragraph 447 of Tumminaro. And it's helpful to analyze the way Tumminaro describes its unbanked users. Paragraph 447 says a stand-

alone closed loop payment system of the present invention is designed to integrate with a companion bank account. Now, this account can be a pre-existing account, or for unbanked users, you can create account or the money for the unbanked user can be held in a pooled account with a partner bank. So, what Tumminaro is emphasizing between the unbanked user and other users is that unbanked users lack these pre-existing accounts such as traditional savings accounts. Tumminaro doesn't say that by signing up for the service and using an account that Tumminaro creates for them, or the pooled account that the unbanked user is no longer unbanked.

Now, Fintiv's interpretation of unbanked precludes users with funds stored in a pooled bank account. If we go to slide 8, to preview why this is so problematic, what we've done is we've put up a portion of the '845 Patent, column 11, lines 56 to columns 12, 11, with that paragraph from Tumminaro that we just looked at. And to preview why this is so problematic, the '845 Patent describes the exact same arrangement as Tumminaro. They talk about using pooled accounts to store the funds or the money for multiple users. And so, we'll get to this in greater detail, but the unbanked subscribers in the '845 Patent also have access to funds, these MFS Program Master Accounts at a partner bank.

Now, turning to our slide 25, this is the claim of the '845 Patent, and Fintiv does not challenge that nearly all of these limitations, all the ones with green check marks, are taught by Tumminaro. Fintiv really only has two claim construction arguments. The first is the Unbanked Subscriber argument that I just outlined, and the second is the Specified Payment Method. They're construing the term Specified Payment Method that one

word specified means that there are three requirements. The user has to select from a payment method, the user has to select from multiple payment methods, and those payment methods, kind of circularly referencing their argument on unbanked, cannot render the user banked. And both of these constructions are incorrect.

Turning to slide 28, let's look at what the specification of the '845 Patent says about unbanked. And we agree that the specification is unambiguous. They say that an unbanked subscriber is a subscriber that does not have or does not have access to a bank account or credit union account. And this is unambiguous, but it has to be read in the context of the specification, as all claim constructions must. The dispute here is manufactured by Fintiv. They're interpreting this line literally in a manner that is completely inconsistent with the specification.

JUDGE ZECHER: Mr. Kang, this is Judge Zecher. So, just to double down on this, you agree that the specification has a lexicographic definition for unbanked subscriber?

MR. KANG: Your Honor, we're fine with the Board's construction. I think there's not much daylight between our proposed construction and the Board's construction. I think we can agree that there is a definition here in the specification.

JUDGE ZECHER: Okay. So, my understanding in reading the briefs here, if I'm looking at this definition here in column 12, I believe it's line 25 through 27, is what constitutes a bank account. And my understanding is Patent Owner says it's any bank account whatsoever. And I think that you may be getting into this, but in the context of what we did in

our preliminary analysis in the DI, is we said it wasn't -- it's-- basically it needs to be a traditional bank account. So, it was untraditional, maybe something that wasn't a checking and savings account, much like the pooled accounts in Tumminaro, that would qualify. Does that distill down what you understand to be the dispute here based on this definition?

MR. KANG: Yeah. I think that that is an accurate description of the dispute. I think, as I'll get into in the presentation, Fintiv's interpretation, taking this literally to extend to all bank accounts is just not supported by the specification. And this -- it's important to note, you know, Fintiv has never taken an actual position in this proceeding. What they're saying is interpreting the Board's construction. And so, that contradicts both their plain and ordinary meaning construction that they've pursued in District Court. And they've never actually even taking a position that lexicography applies. And so, I'll get into some of the contradictions that are later in my presentation, but as a long-winded answer, yes, I think you've distilled the question correctly, Your Honor.

JUDGE ZECHER: All right. Thank you.

MR. KANG: Turning back to slide 29, basically what Fintiv is asking the Board to do is look at this sentence, you know, does it not have or have access to a bank or credit union account completely in a vacuum? Their brief argues that essentially where there's expressed lexicography, you can't look at anything else. You have to go by the statement in the literal use of the sentence without intrinsic evidence, extrinsic evidence, or statements by the Patentee. And we've gone through all these cases in the briefing. I won't rehash them here, but the important thing to note is that there is zero

authority that when the Patentee defines a term in the specification, you cannot look to other portions of the specification. There's no case law, there's no authority that says you can only constrain your analysis to the literal words of that state -- the definitional statement. And this is important because if you turn to our slide 43, as we've previewed, the invention of the '845 Patent also describes keeping all funds in a partner bank account. At columns 11, lines 9 through 16, the Patent describes the different components of the mFS program or mFS platform. And the highlighted sentence is critical. They say, each program includes a program owner and operator, a program platform, a partner wireless services provider or MNO, and a partner bank. And we asked Mr. Johnson, can you identify any embodiment in the specification that does not include a partner bank? And he said, no, he couldn't identify it at that point. And now the specification also explains that the partner bank is responsible for holding the mFS Program Master Accounts that hold the funds for all mFS services and transactions. So, all of the funds in the system are held in these partner banks.

If we go to the next slide, PDX-44, there's another definition of the mFS Program Master Account. That's column 11, lines 17 to 19 of the '845 Patent. It reads, the term mFS Program Master Account refers to a bank account maintained by the mFS program partner bank to provide funds and float for the operation of the platform. And basically, the ’845 Patent explains at column 12, lines 3 through 11, the partner bank has two options. It can either elect to maintain a separate bank account for each subscriber and/or agent branch, or a single master account may be established that

contains the funds for all of the subscriber mobile wallet and agent branch accounts. And when we asked Mr. Johnson for each of these options, does having access to either an account that's created or the master account render the user banked? And he said, yes. And so, when you look at slide 45 --

JUDGE ZECHER: Mr. Kang, this is Judge Zecher. When you're going through these citations, what struck me is, is there some sort of temporal requirement when we're talking about a subscriber to the system? In other words, can they come into the system unbanked, meaning they don't have a bank account, and then the system, in order to allow this unbanked user to interact with it, creates some sort of account, as you're suggesting here, I think it would be an MS program partner master account for that unbanked user to then use to, let's say, deposit and withdraw their funds so that they can interact with the payment system. You see what I'm getting at? Is there any sort of temporal requirement when we need to consider when we're talking about the unbanked user?

MR. KANG: Yes. Your Honor, I think you're exactly right. The user, at the time he subscribes for a system, can either have a bank account or not have a bank account. And the people who do not have a bank account at the time they subscribe to the system or they sign up to the system are unbanked. They do not become banked because the system, whether it's the mFS system or Tumminaro, creates some place to hold their funds at a bank to interact with the system. And so, I think you're absolutely right. There is a temporal requirement. And that happens to kind of overlap or be co-extensive with the kind of traditional bank accounts someone could have at the time they sign up for their system. They were talking about checking

and savings accounts primarily.

JUDGE ZECHER: Okay. Thank you.

MR. KANG: And so, I think the important point to make here is if you apply Fintiv's interpretation that it doesn't matter, any bank account renders you banked, there could never be an unbanked subscriber because when you sign up for the system, you now have access to your share of funds in the mFS Program Master Account. Therefore, the claims are simply nonsensical in the way that Fintiv is interpreting these claims.

Now, going back to slide 45, the Federal Circuit has held that where you interpret the claims to exclude a preferred embodiment and indeed the only embodiment as we have here, such an interpretation is rarely if ever correct and would require highly persuasive evidentiary support. And Fintiv has not given any at all. This is not like a situation as in *Sinorgchem* where there were 21 different embodiments and example number 10 did not meet the express lexicographic definition. Here, Fintiv's interpretation is excluding every single embodiment and rendering the term unbanked subscriber nonsensical. Now, Fintiv's response to this is a new argument that they raised in their sur-reply, and they resort to simply mischaracterizing the specification. What they say is that the bank account at the partner bank is the agent company's bank account and then they create a strawman that says all of these citations that we just looked at regarding the Program Master Accounts, none of those demonstrate that the unbanked subscriber can access the agent company's bank account. Well, that's simply provably false. The agent company bank is separate from the mFS Program Master Account. If you look at some of the citations, column 11, lines 17 to

26 makes it clear that a single master account may be established that contains the funds for all of the subscriber mobile wallet and agent branch accounts. And column 12, lines 3 through 11 says, the master account can include sub-accounts for each of the agent branches and subscriber mobile wallets. So, you know that whatever is in the mFS program, it's not just the agent company bank accounts.

And turning to our slide 49, the figures make this clear as well. Just not the part of the figures that Fintiv showed you. What we have here on the left side is Fintiv's combined figure which purports to combine Figures 3 and 12B of the '845 Patent. And we've reproduced the actual Figure 12B of the '845 pattern on the right. And you can see what Fintiv did when they created this combined figure is omit half of Figure 12b. They only included the portion highlighted in yellow. And the figure itself shows that once a deposit is made and the money makes it to the agent company's bank account, the omitted portion shows that there's an automated sweep 1209 from the agent company bank account to the M wallet owner master bank account. And so, right off the bat you know that their premise -- the premise of their argument that they raised in their Sur-reply that the partner bank account is the agent company bank account, that's false. And then the other thing this tells you, I'm sorry, is that the money associated to a customer held in that customer's account is not in the agent company bank account. It's in the mFS platform master account. Here, at column 22, lines 21 to 32 the Figure 12B shows that once the cash has been deposited into the bank account 1206, that's the agent company bank account, is transferred to an mFS platform master account. And essentially the agent company's bank

facilitates the physical cash deposit into the agent company's bank account but then performs that automated sweep that was referencing 1209 of recent deposits from the agent company's bank account into the mFS platform's master bank account. And so, it's very clear from both the figures and the specification that the fundamental premise of Fintiv's argument that the partner bank account is the agent company bank account, that is simply false. And Fintiv did the same kind of cropping of figures in .. They essentially said that no they cut off the majority of Figure 13 only to show that the cash was appeared to originate from the agent company bank account rather than this M wallet owner master bank account. Whereas the figure, when you look at Figure 13 on the left, there's the automated sweep 1304 that takes money from the M wallet owner master bank account to the agent company bank account. And when I asked Mr. Johnson about this, I asked him very clearly, what this says is that there will be dollars transferred from an mFS master, I'm sorry, master mFS account to the agent company bank account. Yes? And he answered, yes, and that transfers performed by automated sweep 1304. Correct? Yes. And so, Mr. Johnson didn't stop me and say, no, no, no, those are the same account. You're wrong. There's no transfer between them because the agent company bank account is the partner bank account. He made it very clear that the spec and the figures support that there are different accounts and money is moving from the mFS master program account to the agent company bank account.

And so, at bottom, Fintiv provides no justification whatsoever, much less highly persuasive evidence that's required to adopt its interpretation of unbanked that would exclude all embodiments of the '845

Patent.

Now, turning to slide 30, Fintiv's criticism of the Board's Institution Decision is that there's nothing in the record that suggests there's any difference between the bank accounts used in the '845 Patent or the '845 Patent and, quote, unquote, traditional bank accounts. And here it helps to look at what Fintiv wrote in opposing our motion to invalidate these claims under 101. And that's at Exhibit 1033 at page 14. They tried to distinguish this case from other cases and said this case is similar to *IOENGINE v. PayPal Holdings*, where the court distinguished this case universal and found that when the claims provide for, I'm skipping ahead, a new type of interface that makes a computer function more accessible, the Federal Circuit has found the claims patent eligible. And the key is the highlighted portion. They say, this case is the latter, with a new way to conduct transactions on a mobile device without needing access to a traditional bank account. And so, what Fintiv was doing here is they're contrasting their invention and what was required previously, access to a traditional bank account.

The next slide exemplifies this as well. This is their Second Amended Complaint they filed concurrently with their Opposition, Exhibit 1032. They write that 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. And they're talking about the unbanked there. They're saying that whatever banking method we're using, this is an alternative banking method in our ’845 Patent to traditional bank accounts. And so, Fintiv essentially once

espoused the very position it criticizes the Board for adopting. And Fintiv never addresses these two statements in its Sur-reply.

What they do is, and I'm turning to slide 33, they say -- they mischaracterized their -- they cabin their statements to a different part of their brief. They say the Patent Owner's point was that the claims did not extend to conventional activities like traditional financial services. But if you look at the statements in their Second Amended Complaint that talk about traditional financial services, Fintiv ignores everything that follows. Traditional financial services prior to the '845 Patent required participants to have conventional bank accounts. And they delineate these traditional financial services from the invention. They say checks are drawn against conventional accounts held by banks. ACH transfers are sent from and received by conventional accounts held by banks. Debit card transactions are settled using conventional accounts held by banks. And ATM transactions make deposits or withdrawals using conventional accounts held by banks. And they're talking here about the unbanked. The last two sentences makes this clear. In cases where consumers are unable or unwilling to use conventional banking services, they're often excluded from making transactions other than using cash. This in turn prevents some of the poorest and most vulnerable from having access to the banking system. And so, taking all of this together, what they're saying is, whatever the invention provides an alternative to these traditional bank accounts, there is a difference between the bank accounts utilized by the invention in the '845 Patent and traditional bank accounts.

JUDGE ZECHER: Mr. Kang, this is Judge Zecher. I guess the

first thing I want to ask about this in particular, you're probably getting into this, I think you're going to say judicial estoppel applies. I'm not sure if that's the case more so than it could be just inconsistent statements. But as far as traditional bank accounts or conventional bank accounts, what do you think those are? Are those just checking and savings accounts? Is that your understanding?

MR. KANG: I think we don't have to get into the precise contours of what where conventional or traditional banking accounts stops or starts. But I think there are some that are clearly traditional bank accounts with like checking and savings, as you mentioned. And then on the other spectrum, the pooled accounts are the shared accounts, the mFS Program Master Accounts are not traditional bank accounts. And so, there may be some gray area that requires kind of factual inquiries. But yes, we know for a fact that I don't think Fintiv would contest that checking and savings accounts are traditional or conventional banking accounts.

JUDGE ZECHER: Okay. Thank you.

MR. KANG: Now, if we could go ahead, I'll turn to slide 41. And this is not the first inconsistent statement that Fintiv has made with the respect to this term unbanked subscriber. Even the District Court --

JUDGE HOSKINS: Mr. Kang? This is Judge Hoskins. I apologize. I was on mute. I tried to stop you from going forward before asking you a question. So, my question is, with respect to traditional bank accounts, what is it that tells us that the pooled accounts are not traditional bank accounts, if I got your position correct on that?

MR. KANG: Well, so it's the pooled accounts, one were not pre-

existing accounts. Tumminaro makes this distinction between pre-existing accounts and the pool of accounts that they create or they use to store the subscriber funds. In the context of the '845 Patent, if you consider the mFS platform accounts, traditional bank accounts that are excluded by Fintiv's interpretation, then it's impossible to have an unbanked subscriber. Simply having access to those funds in the mFS Program Master Accounts renders you banked. And so, the term unbanked subscriber then becomes meaningless.

JUDGE HOSKINS: So, are you saying that the pooled accounts didn't exist before? Well, I guess pooled accounts existed. I understand the timing aspect in the prior art, in Tumminaro, the pooled accounts there are not created until somebody signs up. I get that. But pooled accounts is a generic type of account. And what I'm worried about is pooled accounts is a generic type of account and whether that is a traditional bank account. And I'm wondering if you have evidence to tell us that pooled accounts are not traditional bank accounts.

MR. KANG: I think the evidence within Tumminaro is that they distinguish unbanked subscribers from people who have pre-existing bank accounts. So, the pooled -- so, you have to have a bank account to be a bank subscriber in Tumminaro. The pooled account exists and you don't get a share of that account or you don't get to access that account until you sign up for the system. And so, there's this temporal aspect that whether you're banked or not is kind of a judge of the time that you subscribe to this system.

JUDGE HOSKINS: Okay. Thank you.

MR. KANG: Now, turning to -- I'm sorry, Fintiv has also taken

contradictory positions on the scope of unbanked subscriber in the District Court. Fintiv took a broad interpretation for the purposes of infringement. I asked Mr. Johnson, the same expert they're using here, what does the term unbanked add to the term subscriber? And he says, I think if you read this term in the context of the claims and the specification where it's clear that even an unbanked subscriber may have a bank account and may use a bank account with the services. And he said the same thing a few questions later. He said that it's clear from the way the term is used that there are particular use cases that refer to even unbanked subscribers performing operations with bank accounts. And so, we think that estoppel applies here. There is no question that they convinced that the Board, or I'm sorry, they convinced the District Court to adopt the plain and ordinary meaning and reject or deny our motion on 101. That's clearly an inconsistent position.

And finally, there's no doubt Fintiv would derive an unfair advantage from -- if they're not estopped. What they, as I mentioned in my previous answer to Judge Zecher is that they don't propose a construction here. They never take a position on construction and they never take a position on whether lexicography applies. They want to go back to these constructions if PayPal's not successful here and go back to the plain and ordinary meaning where they say an unbanked user can have a bank account and use a bank account with the system. And so, validity and infringement should be based on the same standard, and I think it would -- estoppel is entirely appropriate here in this situation.

JUDGE ZECHER: Mr. Kang, this is Judge Zecher. Can you go back to slide 41 where it talks about this testimony from -- so, I guess I do

have a question. Let's say we rely on some of this testimony here that says an unbanked subscriber may have a bank account. Is it the case that, let's say I'm subscribing to the transaction system of the '845 Patent, and let's say I do have a bank account, let's say I have a checking account, but I don't tell the system. I just want to sign up. I don't want to link my checking account to this system. What does that make me? Does that make me banked or unbanked?

MR. KANG: So, they tried to thread the needle here a little bit. I think that makes you banked, but Mr. Johnson actually testified that as soon as you use the account with the system, then you would become banked from the perspective of the system.

JUDGE ZECHER: Wait, I think maybe I misunderstood you. Are you saying if the system doesn't know I have a bank account, wouldn't I be unbanked to the system, but as soon as I make them aware of that bank account, then I become a banked subscriber?

MR. KANG: That's Mr. Johnson's interpretation. I think that this is not anywhere in the specification. That's just kind of his own interpretation. I think it's inconsistent with the way that they're interpreting what they call the the Board -- or is the lexicographic definition.

JUDGE ZECHER: Okay. Thank you.

MR. KANG: So, I wanted to address very briefly the extrinsic evidence. Now, again, Fintiv wants you to ignore all of the extrinsic evidence in this case with respect to unbanked. And they say that once there's a lexicographic definition, it's never appropriate to address the extrinsic evidence. But that's simply not the case. They incorrectly say that

in *Nestle* and *Baxter*, the definition in the specification was neither clear nor precise. But that's not what the court held. The court in *Nestle* found that the term aseptic was expressly defined as FDA level of aseptic and then consulted extrinsic evidence to ascertain the FDA level of aseptic. And in *Baxter HealthCare*, the court found that there was clear lexicography that there was a sterile composition as a composition that has been brought to a state of sterility and then used extrinsic evidence to define a state of sterility. So, it's entirely appropriate for the court to -- or for the Board to rely on extrinsic evidence here.

Now, the Board's construction is supported by Dr. Chatterjee's testimony as well as the evidence he cited therein. He said that extrinsic evidence consistently refers to the unbanked as individuals that cannot get accounts at traditional financial institutions. And those are traditional bank accounts. Fintiv is trying to create this artificial distinction between accounts at traditional financial institutions and traditional bank accounts. If we look at Exhibit 1031 and 1049, the unbanked are those without checking and savings accounts. That's clear that those qualify someone as, when you have a checking or savings account, now you become banked. And Fintiv's only critique of these two pieces of evidence is that they're too new, but they don't give any explanation why these definitions don't apply or why the definition of unbanked would have gotten broader as time progressed. And the important key to the extrinsic evidence is that it shows that you can subscribe to a mobile wallet which keeps your funds in a bank account and still be considered unbanked. You don't become banked simply because you sign up for the service. Here at Exhibit 1022, they talk about a mobile wallet

M-PESA for the unbanked. And they explained that the cash collected by M-PESA in exchange for eFlow is deposited in bank accounts held by Safaricom and the Commercial Bank of Africa. And so, when Fintiv says that the extrinsic evidence doesn't suggest that within a traditional financial institution, there are traditional and non-traditional bank accounts, that's clearly and unambiguously contradicted by this extrinsic evidence.

If you look at paragraph 64, it talks about bank customers using an M-banking service tied to their bank accounts. And then a company called Yellow Pepper partnering with a bank to offer an M-wallet tied to a prepaid non-traditional account to provide similar services to unbanked customers. And applying Fintiv's construction even to something as simple as a gift card results in nonsensical results. There -- here we have something called a Walmart money card and it's issued -- your funds are held in a bank, and the advertisement on Exhibit 1043 says you don't need a credit check, you don't need a bank account, but under Fintiv's interpretation this renders a user banked. If you look at Mr. Johnson's depo testimony at 111, lines 14 to 25 based -- he said that yeah if you have a Visa prepaid debit card that doesn't render you banked, but as soon as that visa prepaid debit card is reloadable that renders you banked.

Fintiv's construction is simply arbitrary, and in light of all the evidence that on or the extrinsic evidence and the understanding of the unbanked, Fintiv's construction results -- leads to absurd results. Everyone considers illegal or undocumented immigrants unbanked when they cannot get a credit or a bank account. But Mr. Johnson testified, if you're an undocumented, illegal immigrant, have no social security number, I can't

open up a bank account in my name, but a relative gives me an ATM card. Am I now banked? And he said, yes, that would render you banked.

Now, to sum up, Fintiv wants you to interpret the definitional statement and the specification in a vacuum. They want you to ignore their statements at the District Court. They want you to ignore the extrinsic evidence. But what they can't do is ignore the specification. And they have to mischaracterize the specification to get around that argument. But when you look at the specification, all of the funds for unbanked users are kept in mFS Program Master Accounts. And they've basically made their interpretation renders the term unbanked subscriber totally meaningless.

And I'd like to turn to the term specified payment method. Now, the specified payment method occurs in Claim 5 in the receiving, validating, and performing steps. And as I said, Fintiv makes three arguments here. First, that specified means user specified. Second, that the user needs to be able to select from two different payment sources. And third, both of those payment sources cannot render the user banked under their construction. Now --

JUDGE ZECHER: Mr. Kang, just a friendly reminder to reference the slide number so it's clear for the transcript. Thank you.

MR. KANG: I apologize. Thank you. This is PDX-74. Now, if we turn to slide 79, there's no express requirement in Claim 5 for user selection. All Claim 5 requires is the reception of a subscriber communication. And then there's limitations describing what that communication indicates. That indicates that an unbanked subscriber desires to transfer a specified amount of funds to a specified recipient using

a specified payment method. And if I turn to slide 80, there's nothing in the specification that requires a user selection either. If you look at column 20, lines 7 through 15, this essentially parrots the claims. It says a subscriber communication indicates that an unbanked subscriber desires to purchase an item or specify the amount of funds using a specified payment method. So, there's no express step of selecting a payment method, much less from one of two unbanked payment methods in either the claims or the specification.

Now, turning to slide 81, *Uniloc* is directly on point here. In *Uniloc*, there was a limitation for using a selected known coding technique. And the Federal Circuit determined that selected is not a step in the claim method, but it's just a phrase that characterizes the claimed use of a known coding technique. The known coding technique must have been selected at some point, just not as part of the claimed method. And that's the same situation that we have here.

Now, turning to slide 83, Fintiv's argument is that that you need two stored value accounts because you need two payment methods and neither of those payment methods can render the user banked under their interpretation. And so, again, what they have to do is combine multiple embodiments here to reach the support for this construction. The specification describes being able to use one stored value account, that's the default eMoney account provided by the mFS platform, and then to add a third-party stored value account, such as, for example, something might be like Google Wallet. And what they're saying is that this single word specified in the claims means that you have to have an embodiment that combines both of these. You have to have both the first-party, third wallet,

I'm sorry, first-party stored value account and the third-party stored value account. And there's just no justification for limiting the claims in this way. This would read out basically the default embodiment of the invention where you just have the first-party eMoney stored value account.

Now, additionally, Fintiv knew how the claim was using, selecting, or using one of a plurality or indicating multiple options, but they didn't with respect to this claim. When we were talking about the communication channels, they say receiving a subscriber communication, this is slide 84, over one of a plurality of channels, but they didn't use that language when they're talking about the specified payment method. So, it'd be improper to rewrite the claim to require selection from a plurality when they knew how to use that language but didn't. And now, Fintiv's criticism of the Tumminaro reference is that the payment method could not render a user banked. So, one of the payment methods Tumminaro allows a selection from a prepaid debit card, and they say that renders the user banked. But Fintiv, again in its 101 Motion said that the mobile wallet can use debit accounts. This is Exhibit 1032 at paragraphs 20 and 22 and slide 75 shows this. They said that a person can conduct person -- or a user can conduct person to person transactions through the mobile wallet or other funding sources such as debit cards.

Now, at slide 76 this is paragraph -- or sorry, this is from the sur-reply, and Fintiv argues that no, no, no, when we made those statements at the District Court we were referring only to the specified recipient not the specified sender. So, the specified recipient can have debit cards, but the sender cannot. And again, that's simply contradicted by their statements in

their Second Amended Complaint. This is slide 77, we've excerpted Exhibit 1032. They said that the claimed invention and remember that claims of the '845 Patent all require an unbanked subscriber. They say it makes it technically possible to conduct direct person-to-person transactions through the mobile wallet or other funding sources such as debit cards. And they cite column 25, lines 19–41, and characterize it as person-to-person transfers using funds from debit cards. And so, Fintiv's argument here about its 101 Opposition being limited to the specified recipient is simply false. They explicitly identified person-to-person transfers using funds from debit cards, meaning that the sender, not the recipient, use those funds as functionality enabled by the invention.

Now, turning to the details of Tumminaro at slide 87, we put forth two grounds of invalidity. Ground 1 was anticipation, and Ground 2 was obviousness in this in view of Tumminaro and Keena. Now, this is paragraph 242 of Tumminaro, where it says that the mobile devices associated to one or more banking accounts, which can include free paid or pooled accounts, and advantageously the account holder can select an account from which funds are obtained to make a purchase in real time. And I'm sorry, Ground 2 was just obviousness based on Tumminaro alone.

And turning to slide 88, I'm sorry. This is Dr. Chatterjee's obviousness opinion for the specified payment method limitation based off Tumminaro alone. And he writes in paragraph 181, a person of ordinary skill in the art would have been motivated to permit a payer to specify a particular funding source, such as another prepaid debit card or gift card. And the point here is that Fintiv never addressed the obviousness of Ground

2. Their only argument is with respect to Ground 1. So, this this opinion by Dr. Chatterjee at PDX-88, paragraph 181 of his Declaration is unrebutted. They never say why it would not be obvious to modify Tumminaro to allow this selection. If you look at PDX-89, this is the Patent Owner response at page 43. All they do is rebut Ground 1. They say that this is an unsupported assertion. And they're citing back to Exhibit 1003, Dr. Chatterjee's Declaration at paragraph 157. So, that's his anticipation Ground 1 opinion. They have no rebuttal to obviousness under Tumminaro. And all they say is that the term gift card does not appear anywhere in Tumminaro. But Mr. Johnson admitted that gift cards were known four years before the priority date of this Patent. He admitted that both gift cards were known in 2007 as well as reloadable gift cards were known in 2007.

Now, with my remaining time, I'd like to discuss one point that Fintiv makes in its Sur-reply about ATM access.

JUDGE ZECHER: Mr. Kang, just want to give you a heads up that you about 10 minutes left in your case in chief. All right?

MR. KANG: Okay. I will rest and reserve my time for rebuttal and let Mr. Gresalfi present.

JUDGE ZECHER: All right. Thank you.

MR. GRESALFI: Good afternoon. May it please the Board. My name is Chris Gresalfi for Petitioner, and I'll be discussing the one or more of a velocity check and limit check term.

So, with respect to Claim 5, the only thing that Fintiv is contesting here is Tumminaro's disclosure of an unbanked subscriber, which my colleague has discussed in great detail, which is shown in red in PDX-94,

and the prior arts disclosure of performing a limit check, which is shown in brown in PDX-94.

So, Claim 1 is directed to a method for depositing funds at an agent branch through a mobile wallet, which is shown in PDX-95. The method includes the step of performing one or more of a limit check and a velocity check. PayPal contends that this claim language only requires performing either a limit check or either/or a velocity check. Relying in the Federal Circuit's holding in *Superguide*, Fintiv's position is that performing one or more of a limit check and a velocity check means performing at least one limit check and at least one velocity check.

Now, the court in *Superguide* found that the phrase, at least one of, which precedes a list of categories of criteria that are separated by the word and should be read conjunctively. Notably, in *Superguide*, every disclosed embodiment taught that the user must choose a value for the designated category. And those are the categories that were in the list preceding the at least one of language. Now, *Superguide* is not a hard, fast rule, and it does not apply in this case.

Now, turning to PDX-101, one reason *Superguide* does not apply is that Fintiv has admitted that the specification only refers to a single limit check. They admitted this in their POR. And as I described before, Fintiv's interpretation of Claim 1 would require performing one or more limit check and one or more velocity check. But because Fintiv admits that only one limit check is ever performed, the at least one of language is rendered superfluous because only one limit check can be performed.

Now, another reason that *Superguide* does not apply comes from

Power-One v. Artesyn Techs. case, which is shown in PDX-96. Now, in this case, the District Court held that when the specification features embodiments that do not require each category of the enumerated set, and that's the enumerated set that precedes the at least one of language, that *Superguide* does not apply. And that's exactly what happens in the '845 Patent as shown in PDX-97. So, in Figure 3 of the '845 Patent, that figure describes a deposit transaction. And at step 340 of Figure 3, the specification describes, and this is shown in PDX-97, that the monetary transaction system performs a limit check and/or a velocity check. Mr. Johnson, Fintiv's expert, confirms that what this paragraph of the specification means is that just a limit check could be performed during a deposit transaction, and just a velocity check could be performed during a transaction. And again, in PDX-98, when Mr. Johnson was asked, well, in Figure 3 as a whole, only shows that you could perform just a limit check. And Figure 3 as a whole shows that you can perform just a velocity check. And because the '845 specification teaches an embodiment where only a limit check is performed during a deposit transaction, and an embodiment where only a velocity check is performed during a deposit transaction, *Superguide* does not apply. And this is exactly what *Power-One* says. Now, importantly, Fintiv does not meaningfully address *Power-One*'s holding in its sur-reply. Instead, in footnote 9 of its sur-reply, Fintiv mischaracterizes the basis of the *Power-One* holding. And it ignores that the basis of the holding in *Power-One* was that the specification disclosed embodiments where the categories following the at least one of language did not need to be performed. And another reason that *Superguide* is inapplicable comes

from the Federal Circuit's holding an *Apple* versus, sorry, the PTAB's holding in *Apple v. Evolved Wireless*. And there the PTAB said that *Superguide* is not a per se rule. And *Superguide* is inapplicable when the listed items following at least one of are not categories containing many possible values.

Now, turning to PDX-100, the specification perhaps describes different types of velocity checks. For example, whether the user has exceeded a specified number of hourly, daily, or weekly transactions. But with respect to a limit check, the specification only describes one type of limit check, and that's to determine whether sufficient funds are available. In Fintiv's Sur-reply, it points to column 29 of the '845 specification where it discusses fully configurable transaction limits. But this sentence has nothing to do with a limit check performed during a deposit transaction, and certainly does not delineate different types of limit checks performed during a deposit transaction. That would cause the limit check recited in Claim 1 to be a category of criteria with many possible values. And so, for this independent reason, *Superguide* does also not apply.

Now, I will turn to -- turning to PDX-103. Now, I will turn to Tumminaro's disclosure of a limit check and the parties' interpretation of what a limit check is in the context of Claim 1. But to the extent that the Board agrees that the at least one of a limit check and velocity check terms should be read disjunctively, the Board does not actually have to address the parties' interpretations of what a limit check means. And that's because Fintiv does not dispute that Tumminaro's disclosure of velocity checks does not satisfy Claim 1. And --

JUDGE ZECHER: Mr. Gresalfi, this is a Judge Zecher. So, are you basically saying that even if we were to read this claim as requiring at least one limit check and one velocity check, you've mapped it in a way that suggests that Tumminaro would account for both. Is that correct?

MR. GRESALFI: That's correct. But the point I was trying to make was if you do agree that *Superguide* does not apply, that you don't have to reach the question of what performing a limit check in the context of Claim 1 means.

JUDGE ZECHER: Can I ask some follow-up question really quick. I know Patent Owner made a lot of arguments regarding this, but the claim says performing one or more of a limit check, leaving out the velocity check for this paraphrasing, on the unbanked subscribers mobile wallet account. What does it mean to perform it on the mobile wallet account itself?

MR. GRESALFI: Well, if you're counting an agent physically counting cash during a deposit transaction and then depositing that into an unbanked subscriber's mobile wallet account would be performing a limit check on the unbanked subscriber's mobile wallet account. You know, we think that's one interpretation of the claim.

JUDGE HOSKINS: So, this is Judge Hoskins. Help me understand how that's a limit check on the account. Focusing on the word limit.

MR. GRESALFI: Right. So, the claim defines what the limit check is. The limit check determines whether sufficient funds are available to make that deposit amount. So, the agent physically counting cash is

ensuring that the subscriber has given sufficient funds in order to make the amount that the subscriber wishes to deposit into their account.

JUDGE HOSKINS: What's the limit in that? What's the limit in that regard? Because as I understand Claim 1, we're depositing money into the mobile wallet account. Is that right?

MR. GRESALFI: That's right.

JUDGE HOSKINS: I'm struggling with this from two perspectives. One is claim construction, and then one is application to the prior art. From a claim construction standpoint, I'm struggling with, if we're depositing money into the mobile wallet account, why are we performing a limit check on the mobile wallet account? I kind of don't understand a little bit what that means. Can you help me with that?

MR. GRESALFI: Sure. So, I mean, we think in the context of Claim 1, the only thing it really could mean would be, you know, because the limit check is defined as determining whether sufficient funds are available to make the deposit amount. I mean, counting cash is counting cash to determine the amount of cash that you have is the amount that you wish to deposit that would satisfy that language.

JUDGE HOSKINS: Do you have any intrinsic evidence for that to help us along those lines?

MR. GRESALFI: So, in Figure 7 of the provisional application, which is shown on PDX-103, and also cited in the institution decision. So, step 3 of that figure shows the agent counting cash, which is showing that an agent counting cash is part of the deposit method.

JUDGE ZECHER: Mr. Gresalfi, this is Judge Zecher. I just want

to let you know you're eating into your rebuttal time. But I do want to point out a few things, and I know we're getting into the provisional application disclosure here, but what about the specification of the '845 Patent? I did a word search of where limit check appears. I think you pointed out at least in one of your slides, it's in column 15, roughly lines 61 through 65. It's also in column 16. In each case, it just talks about determining whether sufficient funds are available. Do we have any other discussion of limit check that highlights its boundaries here because I didn't see it?

MR. GRESALFI: Yeah, we -- there's no other disclosure in the context of the deposit transaction in the specification.

JUDGE ZECHER: In other words, there's nothing that directly implicates what a limit check would be in the context of a deposit or withdrawal, right?

MR. GRESALFI: That's right.

JUDGE ZECHER: Okay. And sorry, Judge Hoskins, I know you had another question, so I didn't want to --

JUDGE HOSKINS: Actually, no, actually, I said I was done with my question, so thank you.

JUDGE ZECHER: Okay. Well, good. Yeah, and you're three minutes into your rebuttal. You can continue. We'll just take some time off your rebuttal. So, it's your choice.

MR. GRESALFI: Sure, I'll continue. I'll be brief. So, turning that PDX-104, so for the first time during the deposition of Mr. Johnson, he conjured up what he thinks another example of performing a limit check is in the context of Claim 1. And that's determining whether a user's mobile

wallet account exceeds a limit after the deposit has been made. Notably, there's no support for this interpretation in the specification. Fintiv did not bring this interpretation up until its sur-reply. So, this interpretation is totally at odds with the way the claim defines limit check, which is whether sufficient funds are available to make the deposit amount.

And finally, just because Mr. Johnson could conjure up one unsupported example of what a limit check means in the context of Claim 1, that does not mean that PayPal's example is incorrect.

And finally, with respect to obviousness, PayPal set forth in the Declaration of Dr. Chatterjee, and in its Petition, that Tumminaro renders obviousness -- renders obvious the performance of a limit check and a velocity check. Fintiv argues that PayPal does not address the claim checks for a deposit transaction, but Fintiv is ignoring the arguments that PayPal made and Dr. Chatterjee's opinions. For example, as shown in paragraph 163 in PDX-106, and that's 163 of Exhibit 1003, Dr. Chatterjee relied on Tumminaro's disclosure of user-specified limits, which were not restricted to transfers, and that includes, for example, specifying the maximum amount of transactions and the maximum number of transactions that he performs.

Thank you. That's all I have.

JUDGE ZECHER: All right. Thank you, Mr. Gresalfi. I have you eating six minutes out of your rebuttal time. So, I have you as 14 minutes left for rebuttal. We'll turn the floor over to Fintiv, Patent Owner, Mr. Golub, I believe. Is that correct? Are you presenting?

MR. GOLUB: Yes, Your Honor. This is Dan Golub. I am going to present on the unbanked subscriber limitation, and my colleague, Mr.

Theiss, is going to present on the other two limitations. We would like to spend 40 minutes in our case-in-chief together, and 20 minutes, say, 20 minutes for rebuttal.

JUDGE ZECHER: Okay. That sounds fine with me. So, I have you down as 20 minutes for sur-rebuttal, and you can begin when you're ready.

MR. GOLUB: There's no dispute that the '845 Patent explicitly defines unbanked subscriber at column 12, lines 25 to 27. The petitioner acknowledges this. Mr. Kang acknowledged it, and as the Board found in the institution decision, the specification sets forth an explicit definition with reasonable clarity, deliberateness, and precision.

JUDGE ZECHER: Mr. Golub, this is Judge Zecher. I know what Mr. Kang said, but I just want to make sure I understand what you're saying. Do you agree that this is an explicit definition of unbanked subscriber in the spec, because I don't think I saw your papers take that affirmative position?

MR. GOLUB: Yes, we do.

JUDGE ZECHER: Okay. Thank you.

MR. GOLUB: And it is consistent with the position that we took in the District Court. In the District Court, we took the position that unbanked subscribers should be construed in light of its plain and ordinary meaning in light of the specification. And the specification provides an explicit definition for the term. So, the two are one and the same. We are taking the same position here that we took in the District Court.

The Petitioner doesn't dispute that the definition in the specification is clear and precise. In footnote 5 in the Reply, they seem to

say that there's a dispute over the meaning of the phrase have access to a bank account or credit union account, but Petitioner doesn't identify any aspect of the quoted phrase that's ambiguous. Next slide. In the institution decision, once the Board found, as it did, that the specification set forth an express definition with reasonable clarity, deliberateness, and precision, it should not have searched for further meaning of the term or relied on extrinsic evidence to alter the express definition. Next slide.

I'd like to talk about three of the cases that we talked about in the Patent Owner Response.

MR. ZECHER: Well, Mr. Golub, how did we alter the express definition? I'm curious because I know in the context of applying that definition to the mapping that Petitioner provided us in the Petition against the Tumminaro reference, we explained how it applied, but I'm struggling to understand how we altered it.

MR. GOLUB: The Board altered the express definition by inserting the word traditional before bank account. When the Board applies a construction, it can't change that construction between, you know, the point when it construes the term and then change that construction when it's applying it to the prior art. The construction is one construction that needs to work basically throughout the analysis. And in this analysis, the Board, when it applied the construction, inserted the term traditional before bank account, and that term is not in the express definition.

JUDGE ZECHER: Okay. So, I think we're at a place of at least understanding that we all agree there's an explicit definition. I understood PayPal to agree with that, I understood you to agree with that. I think where

the dispute lies, as I understand it, is what qualifies as a bank account. Why isn't it permissible, at least for us or for PayPal, or even for you to tell us what is the contour of a bank account within the context of that definition?

MR. GOLUB: Well, I think the Federal Circuit's decision in *Martek Biosciences* really answers that question. In that case, the specification defined animal as any member of the kingdom animalia. And what the District Court did was, in the lexicographic definition, before the word member, they, for all intents and purposes, inserted the phrase nonhuman. They altered the express definition of animal is any member of the kingdom animalia, and when they applied it, they said no, animal is any nonhuman member of the kingdom animalia. And the Federal Circuit found that that was error and reversed. And just as it was error in *Martek* to limit the explicit definition of animals to nonhumans, it would be error in this case to limit the definition of unbanked subscribers to those lacking traditional bank accounts. In each case, a qualifier not present in the explicit definition is being added, which is error.

JUDGE ZECHER: Okay. Mr. Golub, this is Judge Zecher. I understand your position here, but I guess what I'm struggling with is this whole notion that, first of all, trying to figure out what the contours of this bank account is within the context of the definition. But the fact that you've used the exact same wording in your Opposition to the 101 in District Court, as well as in some of your claim construction briefs, can you explain that because you use traditional bank accounts basically to describe your invention?

MR. GOLUB: We said that our invention is different from

traditional bank accounts. The fact that it is different than traditional bank accounts doesn't mean that it's also different from non-traditional bank accounts. The two are not inconsistent. Nothing about our '845 Patent excluding pooled bank accounts affects one iota, the 101 positions we took. We used the word conventional in our 101 responses because the petitioner was arguing that the '845 Patent was simply claiming conventional activities. And that is basically the reason that the term was used. It wasn't used to define the contours of unbanked subscriber. When it came to defining the contours of the unbanked subscriber, we went over our position, which is the same position we're taking here, which is that unbanked subscriber means exactly the lexicographic definition set forth in column 12 of the specification. And I guess, Your Honor, I don't think the word bank account needs construction. It's clear on its face what is and isn't a bank account. And there's no dispute that Tumminaro's pooled account is a bank account. There's nothing in the intrinsic record that talks about traditional bank accounts or non-traditional bank accounts or conventional bank accounts or not any conventional bank accounts. The only discussion in the specification is of a bank account.

JUDGE ZECHER: Well, let me push back there a little, Mr. Golub, and I looked into this, right, because I know you guys made a lot of hay over the word traditional that was used in the Institution Decision. Of course, I did not find that word in the spec, so I agree with you it's not there. But in column 21 of your specification, it talks about this the processes they use for normal checking or savings bank accounts. And I guess I was struggling to understand what the -- if there was a difference between a

traditional bank account and normal checking and savings bank account.

MR. GOLUB: With respect to the term traditional, Your Honor, there is no testimony in the record of what that term means. After the Board issued the Iinstitution Decision where it introduced this term traditional, the Petitioner could have put in an expert declaration that got behind that phrase. They did not. There is no testimony from the Petitioner about what is or isn't a traditional bank account. And Patent Owner's expert has testified that there is no clear meaning for what is or isn't a traditional bank account that those terms really don't have a specific clear meaning. The reference to normal bank account that's made is not part of the definition of unbanked subscriber. I mean, if the Patentee had wanted to limit the definition of unbanked subscriber to ones having normal bank account, it knew the word. It could have used it, but it didn't. And the term bank account is not ambiguous.

JUDGE ZECHER: Just so I'm clear, Mr. Golub, your position is that the term bank account in the context of this explicit definition includes any and all bank accounts. Is that correct?

MR. GOLUB: Correct.

JUDGE ZECHER: So, how does an unbanked subscriber engage with your monetary system without what we are now calling any and all bank accounts?

MR. GOLUB: Okay. Could you pull up slide 49 of the Petitioners? So, this is Petitioner's slide, and it shows an unbanked subscriber making a deposit. And on the left side, you can see the subscriber hands some cash, that's the dollar sign C, to an agent, that's the red box 302,

to make a deposit. The agent puts the money in basically their cash register, and the eMoney balance, that's something akin to script or credits associated with the unbanked subscriber go up. The agent then takes that money and deposits it in the agent company bank account. That's 1206. Now, the agent company bank account is the bank account of the agent company. The unbanked subscriber, it's not their account. They can't make deposits to that account. They can't make withdrawals on that account. That account is not in their name. And then, in some embodiments, money from the agent company bank account is transferred to the mWallet Owner Master Bank Account. That's 1208. Again, that's the MFS master money account. It's not an account that a subscriber can access. It's not in the subscriber's name. So, in this picture, the subscriber, the unbanked subscriber has no bank account. All that they have is an eMoney balance, basically script, credit in connection with their MFS account, no bank account. Does that answer your question, Your Honor?

JUDGE ZECHER: Well, I guess I'm having trouble reconciling that with the description in the spec at column 11 that talks about how the MFS Program Master Accounts that hold the funds for all mFS services and transactions. So, you're saying that this script or eMoney that the unbanked user is using is not at all held in that account, is what you're saying?

MR. GOLUB: That's right. It's not. What's happening --

JUDGE ZECHER: How do you reconcile that with the disclosure in column 11?

MR. GOLUB: One second, Your Honor, to get there.

JUDGE ZECHER: I'll just be very specific. It's column 11, starts

about line 56, runs to about line 59.

MR. GOLUB: The one that starts out, the term partner bank?

JUDGE ZECHER: Yes.

MR. GOLUB: Okay. And the phrase, the partner bank is responsible for holding the MFS Program Master Accounts that hold the funds for all MFS subscribers? Is that the passage we're talking about?

JUDGE ZECHER: That's the passage we're talking about, yes.

MR. GOLUB: Right. So, the money that the subscriber gave to the agent is in the agent company bank account or the mFS master account. It's held there. But the unbanked subscriber doesn't have access to that account. It's not an account in their name. They can't go to a bank, the agent company, or the bank that the agent company bank account is in, to make a withdrawal. They don't have access to it.

JUDGE HOSKINS: So, why did they -- this is Judge Hoskins. So, why did they deposit money into it?

MR. GOLUB: They deposit money so that they can get these E credits that they can then use at other merchants. When they go, first of all, they can exchange these eMoney credits with other subscribers on the platform. And they can go to a merchant and basically use their eMoney credit, and when they do that the platform will transfer money from the agent company bank account, or the mFS master account, to the merchant as part of the settlement of the transaction. But what's happening is that the subscriber is redeeming their eCredits. And when they do that, the agent company is then forwarding the agent's money to the merchant. But this is not a situation where the subscriber has access to that agent company bank

account. They cannot make a withdrawal from that account. If they want money out of that, if we go to the next slide, theirs -- oh, I'm sorry. Maybe it was the one with the withdrawal. Well, I'm having trouble locating. But the withdrawal operates just in the converse way. In other words, when the unbanked subscriber wants to make a withdrawal, they don't go to the agent company bank account to make that withdrawal. They go back to the red box, the agent, who is basically handing them cash out of their cash register and then, on their own, if they need to, pulling cash out of the agent administrator bank account. The thing that's important here is that the unbanked subscriber never has to basically register with a bank. They don't have to give their Social Security number or all of those things that you would normally do to open a bank account because they are not interfacing themselves with the bank. They're only interfacing with the agent branch.

JUDGE ZECHER: Mr. Golub, can I ask a follow-up question? I understand your explanation about these eMoney credits and what the unbanked subscribers purportedly getting in return for the cash, but I guess I'm struggling to understand where that is in the claim. I'm looking at the claims, the best we get is “funds,” a very generic term. There's no discussion about script or eMoney credit in the claims. Are you arguing that script or eMoney is what these claims are limited to?

MR. GOLUB: So, the claims refer to an unbanked subscriber. And the claims are limited to an unbanked subscriber as defined in the lexicographic definition. And in interpreting that definition or understanding it, you asked, how could it be that an unbanked subscriber in the '845 Patent doesn't have a bank account? And I explained how the

specification shows that to be the case. The point is that the specification enables the system where an unbanked subscriber can interact with the system without having or having access to a bank account. That's what the claim requires.

JUDGE HOSKINS: And this is Judge Hoskins again. And that's both before and after they subscribe, because one of the things that the Petitioner walked us through was kind of a temporal limitation of this. Yes, they're unbanked when they approach the system, the subscriber does, but then when they, they might get an account as part of subscribing to the system. And your position would be that cannot be a bank account given the lexicographic definition in the spec. Is that right?

MR. GOLUB: It's right, but I guess I would put something else on it, which is that the '845 Patent contemplates that an unbanked subscriber could transition to being a bank subscriber. For example, it contemplates that an unbanked subscriber could add a bank account to their mobile wallet account. So, after they opened their mobile wallet account as an unbanked subscriber, if they were to open a bank account, and that was linked to the mFS, their mFS mobile wallet, they would be banked. So, if we look at, I think it's column 22 of the Patent, Judge Hoskins. Give me one second. Column 22, lines 65 to 67, at that point in the specification, the inventors say attention will now be turned to embodiments in which subscribers have bank accounts associated with their mobile wallets. So, the '845 Patent is contemplating that there can be unbanked subscribers who don't have a bank account. There can be bank subscribers on the platform who do have a bank account.

JUDGE HOSKINS: Okay. So, then just one final question. I'm getting a little bit ahead of ourselves, perhaps, on this thing. Can you explain to me why paragraph 447 in Tumminaro does not disclose the unbanked subscriber that's claimed here?

MR. GOLUB: I'm getting to it, Your Honor. Wait, paragraph 247 --

JUDGE HOSKINS: Sorry, paragraph 447.

MR. GOLUB: I'm sorry.

JUDGE HOSKINS: No worries.

MR. GOLUB: All right. The standalone closed loop payment system of the present invention is designed to integrate with a companion bank account. This can be a pre-existing account, or for unbanked users accounts can be created or held in a pooled bank account. So, Judge Hoskins, in Tumminaro the money for the subscribers, the so-called unbanked subscribers, is held in the pooled bank account at a bank. And unlike the agent company bank account that an unbanked subscriber in the '845 Patent has no access to, the pooled account in Tumminaro is an account that the subscriber does have direct access to. In some embodiments, they can use an ATM to take the money out. In other embodiments, they can simply go to a branch of the bank in which the pooled account is held. And on this point, Judge Hoskins, I think it might be worth looking at.

JUDGE HOSKINS: Well, before you do that, so I think you said before that, if I heard you correctly, maybe I did not, but I thought that you said that a person can become -- we can have a transition from an unbanked user to a banked user. And --

MR. GOLUB: In the context of this, yes. In the specification, you can, but clearly at that point, that user is outside the scope of the claim.

JUDGE HOSKINS: Well, isn't this user in Tumminaro inside the scope of the claim, in the sense that they were unbanked before that transition occurred? And you're telling us that the ’845 Patent allows for that transition to occur? This is my struggle.

MR. GOLUB: The account holder in Tumminaro, the so-called no-card user, from the moment they bring money to the platform, it goes in the pooled account. So, there is no analogy in Tumminaro to the eMoney credits in the '845 Patent. If I'm a Tumminaro no-card subscriber, and I put my money in, from day one it is in a pooled bank account that I, as the subscriber, can directly access to take money out. That is completely different from the '845 Patent where the unbanked subscriber cannot access the agent company bank account. Are you still struggling with that, or did I answer your question? Because I want to make sure I get this right. It's a very important --

JUDGE HOSKINS: Thank you for answering the -- I -- thank you for your answer.

MR. GOLUB: Okay. I think the one thing that I would say about paragraph 447 is, I think in Tumminaro once a user is part of the system and they have money in the pooled account, Tumminaro contemplates that they will then later transition where they can to another level of subscriber, an advanced level, in which case their money will move from the pooled account to an individual bank account for them. So, in Tumminaro at the beginning, the money is in the pooled bank account and for advanced users,

it moves from there to individual bank accounts.

Can we go back to our slides. Let's just stay here. So, I mentioned that I wanted to talk about three Federal Circuit decisions. *Martek* was the first one. I talked about that *Sinorgchem*, which we talk about on page 20, is the next one. In that case, the Federal Circuit found that other language in the specification can't override express definitional language. And in that case, the express definition included a limitation of up to four percent H2O, and there were -- there was another passage in the specification that said that perhaps you could vary the amount of H2O based on the amounts of other materials in the mixture. And the Federal Circuit said, no, that language like that can't override express definitional language.

And I'd like to talk for a second just about the two decisions that the Petitioner cited here. The *Nestle* case, the question was we were looking at a definition that said aseptic means the FDA level of aseptic. And on its face, no one knows what the FDA level of aseptic means. You have to look to the regulations to figure that out. That's not this case. In this case, the term bank account is clear. You don't need to look to regulations to know that a pooled bank account is a bank account. And in the *Baxter* case, similarly, the definition included the phrase state of sterility, which the court found to be ambiguous. But here, again, bank account is not ambiguous. And it would include pooled bank account.

Can you go to slide 6? There's been some discussion about whether or not our construction excludes all of the embodiments in the specification. It does not. But it's also clear that there's no requirement that the claims cover every embodiment in the limitation. And that's especially

true in a case like this where the specification clearly differentiates between banked and unbanked subscribers. So, for example, at column 1, lines 51 to 53, the subscriber may have access to a bank account or may be an unbanked subscriber. And then that same phrase is repeated several times. And then later on column 22, lines 65 to 67, attention will now be turned to embodiments in which subscribers have bank accounts associated with their mobile wallets. So, the specification clearly delineates the two. And Patent Owner cited three cases, making it crystal clear the claims need not cover every embodiment, *August Tech*, *TIP Systems*, *Pacing Technologies*. All of these were cited in the Patent Owner response, and none of them were addressed in the reply.

I'd like to go to their slide 61 for a second. Now, Judge Hoskins, you asked whether pooled accounts were traditional accounts. How could you know that? Basically, you asked my friend on the other side that. And the other side's slide here, which is looking at what they say is part of the extrinsic evidence, if you look at the bottom, the highlighting section on the bottom, the one that starts out prepaid cards, the third line, it says, some are pooled accounts. So, pooled accounts were certainly not new at the time of the '845 Patent. They existed in -- clearly, this reference was talking about them, Exhibit 1020, as was Tumminaro. So, to conclude that one was traditional and one wasn't -- seems like there's no evidence to do that. There's no testimony from Petitioner's expert that says that pooled accounts are not traditional accounts. And without that evidentiary link there's not a basis upon which the Board could conclude that pooled accounts are somehow not traditional, even if the word traditional was read into the

claim.

JUDGE HOSKINS: So, you were just walking us through Petitioner's slide 61. I'm not -- perhaps you said that, but if not, I just want to put it in the record. Sorry.

MR. GOLUB: I might have missed it, Your Honor. Thank you. While we're on Petitioner's slides, you know, I want to walk through some of the slides that include their extrinsic evidence. Let's go to slide 58 and just point out that these references do not use the phrase traditional to describe bank accounts. So, here, this is Exhibit 1024, slide 58. It doesn't use the word traditional to modify bank account. Let's look at the next slide, slide 59. This is talking about formal financial institutions. There's no reference here to traditional bank accounts. Let's look at the next slide. Here, there's no -- this is slide 60. The quoted language doesn't refer to unbanked persons in the context of traditional bank accounts here. There's no mention of the word traditional. Let's look at slide 62. We looked at 61. Again --

JUDGE ZECHER: Can we go back to 61, please?

MR. GOLUB: Yes.

JUDGE ZECHER: Thank you. There is a mention of traditional bank accounts there at the very bottom. What do you make of that?

MR. GOLUB: So, the quoted language at the bottom equates prepaid cards with traditional bank accounts. It doesn't equate an unbanked subscriber to one who lacks access to a traditional bank account. In fact, the quote at the top states that customers using prepaid cards do not need a bank account. It doesn't qualify the bank account as traditional or not traditional. So, I don't see anything in this slide that would link traditional bank accounts

to the unbanked subscribers.

Can we look at slide 62? We looked at this one. Again, it mentions the formal banking system. It doesn't say anything about traditional banking or traditional bank account. Let's go to slide 65. Again, here it's talking about traditional banks. Tumminaro has its money in traditional banks. There's nothing here talking about traditional bank accounts.

Let's look at the next slide, 66. Again, it doesn't talk about traditional bank accounts. It's not here. And slide 67. These slides are from 2019 and 2017. You can't use documents dated six years after the '845 Patent as extrinsic evidence for what it means. There is such a paucity of even extrinsic evidence in the record about what or is not a traditional bank account, that there is not substantial evidence about what it is or isn't, and whether or not Tumminaro's pooled account is or isn't one to find for the Petitioner here. It's their burden to show this and most of what you heard in my friend's argument was attorney argument because the Petitioner's expert did not submit a declaration after the Institution Decision that got behind the Board's construction limiting unbanked to a traditional bank account.

JUDGE ZECHER: Mr. Golub, I just want to give you a heads up, your five minutes left in your case in chief before you start getting into your sur-rebuttal.

MR. GOLUB: Thank you, Your Honor. I'm going to turn it over to my colleague then.

JUDGE ZECHER: Great.

MR. THEISS: Thank you, Your Honor. So, I'm going to start my

presentation on slide 15 of Patent Owner's demonstratives. So, there was a discussion about whether or not *Superguide* applies in this case, and I would direct the Court to *SIMO Holdings*, which we cite to in our papers. *SIMO* actually refers to *Superguide* as canon, not just black letter law, as canon law, specifically when it relates to the issue of at least one followed by the conjunctive. And in here, the claims clearly have and. So, it's a velocity check and a limit check. The Petition states that the claim requires at least one of a limit check and a velocity check. Well, that is exactly the opposite of what is the holding in *Superguide* as reinforced and restated as canon in *SIMO*. The Petitioner cites to the Eastern District of Texas decision of *Power-One Inc.*, which is a Magistrate Judge decision, and specifically tried to address why our arguments why *Power-One* doesn't apply based on something that was unclear to me. In *Power-One*, specifically in the claims, you had alternatives that were contradictory. It was turned on and turn off. This way the system was set up, you could either do one or the other. It was physically impossible to both turn something on and turn something off. That isn't the case that we have here with the velocity and the limit check. In the case of the velocity and the limit check that is recited in our claims, you have a limit check, which the '845 Patent makes very clear is a class of types of checks that can be performed. And then you have a velocity check, which represents another class of types of checks that may be performed.

JUDGE ZECHER: Mr. Theiss, can we just focus in on the limit check? What are the contours of that in light of the specification? What does that require?

MR. THEISS: Just let me get to my slide on that for one second,

Your Honor. So, I think, I'm sorry, the contours of a limit check, there is a difference between Claim 1 and Claim 5 because they recite different language which Petitioner has never addressed and was noted in the Institution Decision that Petitioner never addressed. But going back to the, I'm looking at slide 19, we are going to our provisional and we have the step three, which is the alleged limit check that Petitioner says is counting of the cash. I'll note that step three occurs before step four where the agent enters the deposit amount, the customer phone number, and their agent ID and pin into the platform. So, the counting of the cash happens actually before the information about the consumer is even known. However, what are the contours of the limit check are as Mr. Johnson explains, it is a comparison of whether or not in the case of the limit check related to the mFS account, it's whether or not there's enough room, enough space in that subscriber's account to perform the transaction. As Mr. Johnson explains, in the case of Google, there's a $10,000 maximum. You cannot physically have more than $10,000 in your account. And the reason why someone like Google would want to be in a position like that is they don't want to be regulated like a bank. There's a lot of regulatory requirements for when you do transfers above a $10,000 limit. So, to avoid that, companies like Google will not allow you to have more than $10,000 in your account to stop that possibility from happening. You can't transfer more than $10,000 if you don't have more than $10,000 in your account.

JUDGE ZECHER: Mr. Theiss, I think I understand what you think a limit check isn't, not counting cash. But I'm trying to understand what it is in light of the spec. Here in this provisional application, they just

use the word limit check. It doesn't really delineate the scope of what it means. What about in light of the specification in '845 Patent? What is a limit check entail? Because I don't think there's an example about a deposit limit from Google Wallet in there. I know there isn't.

MR. THEISS: No, there's not, Your Honor. Google Wallet comes much, much later on. So, it is a check to make sure this is described, I believe, in the last paragraph of the ’845 Patent where it is discussing the various types of checks that can be performed relative to complying with the government regulations, the ASML requirements, for example.

JUDGE ZECHER: So, this last paragraph talks about transaction limits that can be placed on user accounts, but it doesn't -- allows maximum flexibility to restrict high-risk use cases. So, it doesn't really put a limit on it. It doesn't tell me what that is. I mean, where I get -- the most I get out of limit check, and I'm just going to direct you to it because I would like to get your thoughts on it, is in column 15, line 61, to perform a limit check parentheses to determine whether sufficient funds are available, closed parentheses. It's also in column 16, line 54, to perform one or more of a limit check parentheses to verify sufficient funds. Other than that, we don't get an explanation as to what a limit check means. So, I'm trying to understand what it means in light of this ’845 Patent. Is there any other kind of discussion or crystallization you can point us to on this issue that would help us determine its scope?

MR. THEISS: Yes. What I was trying to cite to before is paragraphs -- column 29, lines 8 through 19, where it's discussing the transaction limits of being fully configurable. However, as you're relating to

the sections that you just cited to, again, the claim itself has those modifiers. If you look at the difference between Claim 1 and Claim 5, as to what the limit check is being applied to -- give me one second to get to the proper slide on the issue. So, I'm moving to slide 22, where we have the difference between Claim 1 and Claim 5. On the left, we have Claim 1, which is performing one or more of a limit check and a velocity check on the unbanked subscriber's mobile wallet account. That is Claim 1, that if we look at Claim 5, performing at least one of a limit check and a velocity check on the selected payment method. So, Your Honor, I think the claim itself is instructive as to what the limit check is being performed on. In the case of one, it is on the unbanked mobile subscriber wallet account, which is consistent with what we just discussed with regarding the section you directed me to, Your Honor, where we're making sure that the mobile -- the subscriber's mobile wallet account can accommodate as space to accommodate that type of transaction. Similarly, in Claim 5, we have a different requirement where we need to perform a check to make sure that the subscriber is able to perform the transaction, where the check is instead being performed on the selected payment type, where the selected payment type is what is received prior to performing the transaction. Does that address your question, Your Honor?

JUDGE ZECHER: Yes. Thank you for answering. You are four minutes into your sur-rebuttal, just to let you know. You can, of course, continue and use more time.

MR. THEISS: I'm going to continue for about 5 more minutes, Your Honor, if (INDISCERNIBLE).

JUDGE ZECHER: Yes, please proceed.

MR. THEISS: Great. So, as I'm moving to slide 23, the Institution Decision denoted -- noted that there is a difference between Claim 1 and Claim 5 and asked the Petitioner to further develop the record as to this contrast, Petitioner never get, you can see their attempts from the reply at 25 through 26 on slide 23. As it relates to selecting, I wish I had a little bit more time to go into this a bit more, specifically related to the two cases that Petitioner cites. The main difference here, particularly as it relates to *Uniloc*, is that in *Uniloc* there was never a receiving step. There was never a receiving of the coding method. In this case, there's a specific receiving of the specified payment type in Claim 5. It just is not there in *Uniloc*, and the first time we get this idea that the user doesn't have to specify something is in the attorney argument in the Petitioner's reply, where it could be a default payment. Well, the default payment doesn't need to be received because it's, well, the default. And further, you don't need to do any sort of additional checks on it because it's the default, because it's always the same one. There is no selection, which is very different than in the *Uniloc* case, where it was just a value that was selected at some prior time before we got to -- got there.

So, Your Honor, in the interest of time, I will stop there unless there's any further questions.

JUDGE ZECHER: I don't have any additional questions. Judge Hoskins or Droesch, any more questions from you? No, I'm seeing heads shaking. Okay. Looks like, let me just check my -- you've eaten into about six minutes of your rebuttal time. So, I have -- or sur-rebuttal time. I have you at 14 minutes left. Which is actually the same amount I have left for

rebuttal for PayPal. So, we'll turn the floor back over to Mr. Kang.

JUDGE HOSKINS: But Judge Zecher, I think they -- didn't reserve 20 minutes for their sur-rebuttal?

JUDGE ZECHER: They did. Did I do the math wrong?

JUDGE HOSKINS: I think they have -- oh, I'm sorry. I did it wrong. I apologize. Thank you.

JUDGE ZECHER: Okay. So, all right. Thanks for double checking me. Mr. Kang, I have you at 14 minutes left for rebuttal. Please proceed.

MR. KANG: And, Your Honor, could I trouble the court for a quick five minute bio break?

JUDGE ZECHER: Certainly, yes. It has been roughly two hours, so I can understand that people may need to go to the bathroom. Let's put a pause on it for five minutes. In fact, let's just make it a round number. Let's everybody come back at 3:00, please, 3:00 Eastern. I don't know where you are, but 3:00 Eastern. All right. Thank you.

COURT REPORTER: Okay. We're going off record. The time is 10:54 p.m.

JUDGE ZECHER: This is Judge Zecher. I'm back online with my colleagues, Judge Hoskins, and Judge Droesch. Let's just confirm that counsel is still on the line. Let's start with Petitioner, PayPal.

MR. KANG: Thank you, Your Honor, still here.

JUDGE ZECHER: And Patent Owner, Fintiv?

MR. GOLUB: Yes, we're still here.

JUDGE ZECHER: All right. Great. Let's continue with the

rebuttal and the sur-rebuttal. As I indicated before we took our quick bathroom break, Mr. Kang has 14 minutes left for rebuttal. You can go ahead and begin when you're ready.

MR. KANG: Thank you, Your Honor. I'd like to start with our demonstrative slide 46. Now, from Fintiv's argument, it appears they've abandoned this interpretation that the bank account at the partner bank is the aging company's bank account. Now they recognize that there is something called an mFS Program Master Bank Account. And they didn't really have any rebuttal to the parts of the specification that you point them to. This is at slide 43. I'm sorry. That the, I'm sorry, this is at slide 43, column 11, lines 56 to 59, that the partner bank holds the mFS Program Master Account that holds the funds for all mFS services and transactions. And if you turn to slide 44 at 12, column 12, lines 3 through 11, that the master account may be established that contains the funds for all the subscriber mobile wallet and agent branch accounts. And so, these are funds that we're talking about. There's actual dollar value that corresponds to eMoney. Now, what Fintiv is trying to, and this is exemplified, I'm sorry, if you go to our slide 49. When the subscriber brings cash in, it's denoted by a dollar sign C, and that cash makes it through the system all the way to the mWallet owner master bank account. That's the mFS master owner bank account, dollar sign C, that amount of cash makes it to the mFS Program Master Account. And then the agent company gives the eMoney balance, their eMoney balance increases. And so, the money that is deposited from the, I'm sorry, from the unbanked subscriber, ultimately is reflected, I'm sorry, in 303 with their subscriber balance being increased by amount E. And that dollar sign E represents the

EMoney that represents the amount of cash they got. So, this idea that Fintiv is trying to put up that they have script or this kind of money, this electronic currency that's totally untethered from actual funds is simply incorrect.

If you look at slide 119.

JUDGE ZECHER: Mr. Kang, I asked Mr. Golub the same question. I didn't see any eMoney or script in the claim. Can you confirm that?

MR. KANG: That's absolutely correct. And I'll direct you to our slide 117, where during the briefing in their Patent Owner response, Fintiv appeared to construe the term mobile wallet to be limited to eMoney. And we asked Mr. Johnson that. We said, you're interpreting the claims to require transferring stored value, fair? And he said, the way I'd read claims in relation to unbanked subscribers is that the transfer is of eMoney. And so, you're limiting Claim 5 to transferring eMoney, fair? And he said, correct. Now, Fintiv appears to have abandoned this argument in their sur-reply and on the presentation, but you're absolutely correct, Your Honor. The claims don't mention eMoney or script or stored value. They talk about, they recite transferring money and funds.

Now, turning back to slide 119, the ’845 Patent describes at column 10, line 30 to 32, that when you -- the program, as people conduct transactions, value is transferred from one account to the next as payment for services rendered or goods purchased. This value can be in the form of real currency or the electronic representation referred to herein as eMoney. And when we asked Mr. Johnson the exact same question, do you agree with the

statement that eMoney is the electronic representation of real currency? He said no. And so, you see the disconnect here between what Fintiv is trying to present and what the ’845 Patent says. The unbanked and, in fact, all subscribers in the '845 Patent unequivocally have access to funds that are kept in the mFS Program Master Account. And that is the exact same arrangement as in Tumminaro. And for further support, I'd like you to take a look at Claim 4, which is not challenged in this petition, but which relates to a withdrawal. And the claim limitation at column 30, lines 40 to 50, says you receive the communication from the unbanked subscriber, and the communication indicates that the unbanked subscriber desires to withdraw a specified amount of funds from its mobile wallet account at the agent branch. And so, they 100 percent have access to funds stored at the mFS Program Master Account. The fact that the agent branch is there to facilitate the withdrawal of cash doesn't change that fact.

Now, turning to some of the discussion in Tumminaro, I'll go back to my slide presentation, sorry. Now, if I go to slide 112, counsel for Fintiv admitted that in Tumminaro ATM access is not required. Now, he said in some embodiments, you may not have ATM access. And so, this is what Tumminaro says a paragraph 261. This is our slide 112. Other services may include ATM network load and unload such as through the Nice Plus or Star ATM system, and this is a permissive may not all implementations of Tumminaro require ATM access. And we asked Mr. Johnson, is it a fair interpretation of paragraph 261 that not all embodiments of Tumminaro include network load and unload, and he said that's possible. He agrees with Fintiv's counsel.

And so, additionally, Tumminaro breaks its users into different classes, one of which is no card users that we primarily point to as examples of unbanked subscribers. And no card users do not have ATM access. They can't. They don't have a card to access them. Mr. Johnson starts conjuring up other parts of the specification that he says represents cardless ATMs, but cardless ATMs are not in Tumminaro. And the portions of Tumminaro that Mr. Johnson points to as people being able to walk to a bank to take out money, that refers to unenrolled users. Those are people who are not even part of the Tumminaro system. And this is all in our reply brief, and I can get you the citations shortly.

And so finally, even if you accept Fintiv's argument that what counts as having access to a bank account is the ability to add funds or deposit or withdraw funds or take out money, as what it means to have access to a bank account, Tumminaro discloses another class of users called the enrolled state, that's the most basic state where they have just entered basic information such as a confirm (INDISCERNIBLE). And in this state, the user may receive and request money. To add or withdraw money, they have to move up one level to the verified states. And those are paragraph 276 of Tumminaro talking about the enrolled state, and 277 talking about the verified state on our PDX slide 11. And so, sticking with the enrolled state these users can send, may request, and receive money, so that means they can send each other money in the same way that's required by Claim 5. So, even if you buy Fintiv's argument here that, oh they have access to the pooled account because they can withdraw or deposit money. That's not true for these enrolled users.

Now, I'd like to turn to some of the extrinsic evidence that in actuality we didn't present these slides that Fintiv presented to you. But turning to our slide 61. Essentially what Fintiv is doing is going through the extrinsic evidence and looking for the phrase or the string traditional bank accounts, and they say aha, reading this stuff, none of these include traditional bank accounts so you have no support for that. But as I mentioned, Fintiv is creating this distinction between accounts at traditional or formal institutions, and traditional bank accounts. And when you look at this slide in particular PDX-61, Exhibit 1020. If you read this in context this is exactly talking about the difference between pooled accounts and traditional bank accounts. This article is called banking the unbanked using prepaid platforms. And what it says at the top is it says prepaid platforms have features that make them useful for developing low cost payment systems, and customers using prepaid systems do not need bank accounts, debit cards, or credit cards. Those are the unbanked. And they say prepaid in the next call-out it says prepaid cards use accounts to manage funds in real time. So, the accounts are held as single concentrator account. Some are pooled accounts and some are actual bank accounts. And they (INDISCERNIBLE) the functionality -- and they say that like regular debit or credit cards. These prepaid cards have point-of-sale and ATM functionality, and they have the additional feature of being reloadable. And they explain that is why the functionality of prepaid cards closely resembles that of traditional bank accounts. And so, what they're doing is they're saying, yes there are these features out here too -- or these cards out here and they have -- they're designed for the unbanked. And they actually hold

funds in bank accounts and they offer an alternative to prepaid, I'm sorry, alternative to treat traditional bank accounts. And as you recall, that's exactly what Fintiv said when it was trying to preserve the validity or the enforce -- I'm sorry, the eligibility of its Patents. What they said was, this case allows -- is a new way to conduct transactions on a mobile device without needing access to a traditional bank account.

The '845 Patent provides an alternative banking method to traditional bank accounts to meet the financial needs of individuals without ready access to a bank account. That is the unbanked. If you look at what they're saying, they've cabined their analysis so tightly to say that, no, you can only look at that one-sided passage and you can only look at the intrinsic record. This is PDX-32. And they say there's nothing in the intrinsic record that distinguishes between traditional and other bank accounts. One, that's false. We've explained to you how the way they're interpreting the definition in the ’845 Patent excludes all of the embodiments of the specification. But two, all you have to do is look at their statements to the District Court where they did the exact same thing. They distinguished between traditional bank accounts and the accounts that are used in their invention.

Now, Your Honor is asking --

JUDGE ZECHER: Mr. Kang, just letting you know, you have about a minute and a half left before your rebuttal runs out.

MR. KANG: Now, Your Honor asked me about the interpretation that Mr. Johnson put forth in his IPR deposition that, oh, you could have a bank account and still be unbanked to the system. But the moment you use a

bank account with the system, now you become banked. And that's PDX-40. He said that in his deposition at page 249, 21 to 251. But again, this exactly contradicts what he said at the District Court to the word. I asked him, it's your opinion that an unbanked subscriber is 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. And he said, yes. And so, Fintiv's trying to talk out both sides of its mouth here. In the District Court, he's saying an unbanked subscriber can have a bank account and use it with the system. And here they're saying, you cannot have a bank account full stop. And so, all of these statements weigh against adopting Fintiv's interpretation of the Board's construction. Thank you, Your Honors.

JUDGE ZECHER: Thank you, Mr. Kang. We'll turn the floor back over to Fintiv. You have 14 minutes left for your sur-rebuttal. You can proceed when you're ready.

MR. GOLUB: Thank you, Your Honor. We're just going to put up the slide for a second. So, I'd like to address some of the points that Mr. Kang made. But as an overall point, Mr. Kang's opinions about how the '845 Patent works or doesn't work are just that. They are his opinions. They are not backed up by the declaration or any declaration from Petitioner. There is no evidence from the Petitioner's expert that says that unbanked subscribers in the '845 Patent have access to the agent bank account, or that they have access to the master funds account. They don't. Mr. Kang tried to make the argument that no card subscribers in Tumminaro don't have access to a bank account. Again, that's just his opinion. There is no expert

testimony from the Petitioner to back that up. By contrast, Patent Owner's expert has testified that all of Tumminaro's no card subscribers have or have access to a bank account. That's Exhibit 2007, paragraphs 79 and 82 to 88.

Now, I think that I want to close with two things. One is the '845 Patent has an express definition. We all agree on that. We all agree that it's not ambiguous. And under the case law, once there is a clear lexicographic definition, it cannot be altered.

The last point I want to make is to contrast the language in the '845 Patent that makes it clear that only the agent administrator has access to the agent administrator bank account. And that's at paragraph -- column 22, lines 19 to 22. After the agent bank account has been set up, the agent administrator can make deposits into the account. And column 22, 46 to 48. When the money is in the agent company bank account, the agent administrator can withdraw the cash. There is nothing that the Petitioner has pointed to in the intrinsic record or from their expert that says that a subscriber can access the agent administrator account. I'd like to contrast that with some of the passages in Tumminaro. Let's look at Tumminaro, paragraph 41. It discloses the interface where, quote, users can access their money at a bank connected to the system. It refers to their money, money that belongs to the users, and it refers to deposits that are in a bank that the users can access. Same paragraph 41, Tumminaro says that a number of the clients accessing the system through the consumer interface have an account in the pooled account. Paragraph 197, account holders may withdraw some or all of their available funds from the pooled account. Paragraph 254, the user may withdraw funds from a designated ATM or other facility associated

with the financial institution that manages the pooled funds. Patent Owner's expert has testified that the reference to another facility that manages the pooled funds corresponds, for example, to a bank branch that a user could walk into to withdraw the money from the bank that holds the pooled account. Now, that testimony is not contradicted. Mr. Kang mocked that testimony as conjured, but the fact of the matter is his expert could have, but did not, rebut that testimony. So, it is the only testimony and it stands uncontradicted.

Thank you. I have nothing further.

JUDGE ZECHER: Mr. Golub, I do have one last question. And I think this is what I know I'm struggling with. I think my other panel members are struggling with as well. Your claim clearly calls for an unbanked subscriber. And Tumminaro uses that word twice in its description. Paragraph 36 and paragraph 447 both talk about an unbanked consumer. In fact, 36 says there's a need for an electronic payments to be accessible to banked and unbanked consumers. Why is that unbanked consumer in Tumminaro different from your unbanked subscriber in your claims?

MR. GOLUB: Because the consumer in Tumminaro, as soon as they sign up with the system, have money in a pooled bank account that they can access. So, it's true that Tumminaro uses the phrase unbanked, but the fact is that we have a lexicographic definition in the '845 Patent that controls the meaning of that term. It can't be construed through the eyes of what Tumminaro says. Under the Federal Circuit cases, that lexicographic definition of holds even if it's in conflict with the conventional meaning of

the term. So, Tumminaro may be using that term in its own way, but there's no evidence that Tumminaro is using unbanked in the way that it is defined in the '845 Patent.

JUDGE ZECHER: Okay. Thank you. So, that concludes the oral hearing for today. We thank the parties for their presentation and their willingness to answer our questions. This case has been submitted. We will issue a final written decision before the one year statutory deadline. I'd like to ask the parties to stay on the line in case the court reporter has any questions about spellings or experts or references. But other than that, thank you and have a good day.

MR. GOLUB: You too. Thank you.

(Whereupon the above-entitled matter went off the record at 3:22 p.m.)

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