

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASKELADDEN, L.L.C.,
Petitioner,

v.

OHVA, INC.,
Patent Owner.

IPR2023-00921
Patent 9,679,286 B2

Record of Oral Hearing
Held: December 13, 2024

Before JOSIAH C. COCKS, AMEE A. SHAH, and
JASON W. MELVIN, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

JONATHAN R. BOWSER, ESQ.
JOSEPH MATAL, ESQ.
MATTHEW BECK, ESQ.
Haynes and Boone, LLP
800 17th Street, NW
Suite 500
Washington, D.C. 20006
(202) 654-4500
jon.bowser.ipr@haynesboone.com
joseph.matal.ipr@haynesboone.com
matthew.beck.ipr@haynesboone.com

ON BEHALF OF THE PATENT OWNER:

ISAAC RABICOFF, ESQ.
Rabicoff Law LLC
4311 N Ravenswood Ave
Suite 315
Chicago, IL 60613
(773) 669-4590
isaac@rabilaw.com

The above-entitled matter came on for hearing Monday, December 13, 2024, commencing at 1:00 p.m. EST, via Video-conference.

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

1:00 p.m.

JUDGE SHAH: Thank you, it's exactly 1:00, so good afternoon, everyone.

I just want to make sure we are all here for IPR2023-00921 challenging the patentability of the claims for Patent 9,679,286.

Is that -- everyone agree? Great.

JUDGE SHAH: I am Judge Amee Shah.

And appearing with me today are Judge Josiah Cocks and Judge Jason Melvin.

I have some introductory matters to address and some administrative issues, so bear with me.

We're going to get started with appearances for those who will be arguing today, including LEAP practitioners.

If anyone else is attending remotely with you today, but will not be speaking, please identify them as well.

For example, if your client is attending, please state so.

Following the hearing, please confer with the court reporter to ensure there are no questions regarding the spelling of names and terms.

So, we will start with the appearance for the Petitioner.

MR. BOWSER: Your Honors, this is Jonathan Bowser. I'm lead counsel for Petitioner.

And with me is my colleague, Matthew Beck. He will also be presenting. He is a LEAP practitioner.

JUDGE SHAH: Thank you.

Patent Owner?

1 MR. RABICOFF: Yes, this is Isaac Rabicoff for the Patent Owner.

2 JUDGE SHAH: All right.

3 So I just want to take this opportunity to address Counsel and their
4 clients before we begin.

5 I'm sorry, do either one of you have anyone else joining or listening in
6 on the line?

7 MR. BOWSER: Petitioner is not aware of anyone else.

8 JUDGE SHAH: Okay, thank you, sir.

9 So just to confirm, this is an inter partes review which is a contested
10 proceeding. And today's opportunity gives you -- today's hearing, sorry,
11 provides you an opportunity for Counsel to orally advocate for your
12 positions on the patentability of the challenged claims raised in the petition.

13 We understand that in every case comes before us, the parties, both
14 Petitioner and Patent Owner, have a lot at stake. We take our role in
15 deciding this dispute seriously.

16 And in the interest of fairness and due process, we must limit our
17 considerations to the arguments and evidence already presented in the
18 record.

19 A few administrative notes, recording of any PTAB hearing is
20 prohibited.

21 The court reporter will provide a transcript of the hearing that will
22 become part of the record in this proceeding at a later date.

23 To ensure that the transcript of this hearing is clear, we ask you to
24 identify yourselves before speaking, to speak directly into the microphone,
25 and to identify specific slide numbers, numbering and figures and any other
26 pertinent information when referring to demonstratives.

1 Please mute yourself when not speaking and unmute when you are.
2 If you encounter any technical difficulties, please let us know
3 immediately.

4 Please also note that this proceeding is being streamed online to
5 enable public attendance. If the parties wish to discuss confidential
6 information, please notify us before discussing anything confidential.

7 So, to let you know, to prepare for these arguments, we have
8 familiarized ourselves with the record and issues in this case. We have the
9 record before us, so we may occasionally look away from the camera to
10 address it and to look at it.

11 Our role as Judges on the panel is to assess your arguments and
12 evidence and weigh those in accordance with the burdens established by our
13 rules and procedure and presidential authority.

14 We remind the parties that Petition has the ultimate burden of
15 establishing unpatentability by a preponderance of the evidence.

16 Per the hearing order, each party has 45 minutes total time to argue
17 their cases.

18 We have received Petitioner's request for Matthew Beck to participate
19 in the oral hearing under the Legal Experience and Advancement Program,
20 or LEAP.

21 So, Petitioner will receive an additional 15 minutes of argument time
22 during oral hearing, bringing their total time to 60 minutes.

23 We remind Petitioner that the LEAP practitioner must have a
24 meaningful and substantive opportunity to argue during the hearing today.

25 That said, there is no set time requirement for the argument, and it
26 may be longer or shorter than 15 minutes.

1 Petitioner will open the argument and may reserve rebuttal time which
2 may not exceed more than half of Petitioner's total argument time.

3 Patent Owner will then response to Petitioner's argument and may
4 review surrebuttal time, also to not exceed more than half of Patent Owner's
5 total argument time.

6 Please remember that your arguments should be limited to only those
7 arguments previously presented in your briefs.

8 Please make it clear which challenges and claims you are addressing
9 at all times.

10 And we ask the parties to hold any objections regarding a party's
11 argument until it is their time to speak.

12 Finally, I will maintain a clock and endeavor to give each party time
13 warnings as you near the end of your allotted opening argument time and
14 near the end of any reserved rebuttal time.

15 But it would be helpful for the parties to also track their time.

16 So, Petitioner, do you wish to reserve any rebuttal time?

17 MR. BOWSER: Yes, Your Honor. Petitioner would like to reserve 15
18 minutes for rebuttal.

19 JUDGE SHAH: Fifteen minutes, okay. Okay, well, I am done, so you
20 may begin your arguments when ready.

21 Actually, give me one second to set the clock.

22 MR. BOWSER: And then, before we start, Your Honor, I just want to
23 get your permission for us to share our demonstratives on the screen.

24 JUDGE SHAH; Yes, you may do so.

25 We do have copies of them, just for your information.

1 MR. BOWSER: And I will make sure that -- and we will make sure
2 that we announce the slide numbers, too, but we just want to share the
3 screen. Okay.

4 All right, Your Honors, my name's Jonathan Bowser. I'm lead
5 counsel. And with me is Matthew Beck. We are representing the Petitioner,
6 Askeladden.

7 If we could turn to slide 2, please?

8 So, there are four main issues that we'd like to discuss today. I'm
9 going to, first, give an overview of the '286 Patent and the relevant issues
10 between the parties.

11 Then, Mr. Beck is going to discuss the dispositive issue as to whether
12 the challenged claims are supported by any priority application.

13 Then, we're going to talk about the claim construction of the claim
14 term transaction data.

15 And then, showing you why Cho, the only reference in dispute
16 teaches the disputed items.

17 If you could turn to the slide 3, please, Matt?

18 So, on slide 3, this is a brief summary -- I'm sorry, this is a
19 reproduction or a screenshot of the briefs already mentioned section.

20 And as we pointed on pages 16 and 17 of the petition, this is the only
21 portion of the specification of the '286 Patent which arguably supports the
22 concepts that are claimed in the challenged claims.

23 I want to just kind of highlight three main components that are recited
24 in Claim 1.

25 And we can see in the top highlighting, there is a transaction card,
26 okay, think of a credit card.

1 And then, the second highlighted portion is we've got a card reader
2 and it reads data from the card.

3 And it's then connected to a computerized appliance.

4 And the computerized appliance we can see in the third highlighted
5 portion, it does two things.

6 The computerized appliance, first, converts the analog modulated
7 signal to digital data.

8 And then, it uses that digital data to be able to conduct a transaction.

9 So, those are the three main components and we're going to go over
10 these in the claims where we have a transaction card, the card readers with
11 the output PIN, and then, the third is the computerized appliance.

12 If you would go to slide 4, please?

13 So, on slide 4, we can see, this is an embodiment of Figure 6 of the
14 card reader along with the smart card.

15 And the reason I wanted to point this out is just because the claims
16 are, as we're going to cover, you know, have a card reader. And this is the
17 embodiment where we have a card reader that receives information from a
18 card.

19 On the left hand side of Figure 6, we see the card reader. And it has
20 the, in blue highlighting, an output PIN. It's called a tip/ring. And that is
21 what is inserted or connected into the computerized appliance.

22 If we go to slide 5, please?

23 And there's a typo in this slide, I apologize, but it should be Claim 1
24 of the '286 Patent.

25 But what we've -- what I've highlighted here, we have the entirety of
26 Claim 1 and I've highlighted in yellow limitations 1.1.3 and 1.3.1. Those

1 are the limitations in dispute between the parties. And the reason that
2 they're in dispute is based on Patent Owner's argument that Cho somehow
3 doesn't teach transaction data or that Cho doesn't teach the analog variable
4 voltage audio signal.

5 I'm just going to cover, and this is similar to what I covered in the
6 brief summary, but in 1.1.3, we have the concept of how the card reader, it
7 accepts the transaction data, and it's coming from the card.

8 And it outputs as an analog variable voltage audio signal.

9 So, that's the first part of the -- of what's in dispute.

10 The second part is the 1.3.1, we can see that the smartphone or the
11 smart telephone, excuse me, when it executes the coded instructions, it
12 converts the analog variable voltage audio signal into a digital signal that's
13 then transaction data.

14 And we see the terms transaction data two times in red underlining.

15 It's also in 1.3.2, you can see the last two lines using the transaction
16 data.

17 But the point that we want to emphasize here is that, in the prior art,
18 as we're going to show, it receives the transaction data as an analog signal
19 and it converts it, just like the claim, and the smart telephone will convert it
20 and then, use that transaction data for a transaction.

21 If you go to slide 6, please?

22 So, this is just an overview of the ground. And I just want to highlight
23 a couple issues here.

24 So, both the parties have argued this is essentially Claims 1 and 3
25 together. And the reason for that is because Claim 1 is the apparatus, Claim
26 3 is the method.

1 The limitations are generally similar to each other. The one difference
2 is that Claim 3 just doesn't have something corresponding to limitation 1.2,
3 but that is not a limitation that's in dispute.

4 And I should also point out, too, that Patent Owner has only presented
5 arguments with respect to the Cho reference.

6 And our presentation today is going to focus largely on the Cho
7 reference because that's the only reference in dispute.

8 And if I could turn next to slide 7?

9 And my colleague, Mr. Beck, he is now going to discuss why the
10 challenged claims are not supported by the '030 application.

11 MR. BECK: Your Honors, Matthew Beck for Petitioner.

12 If you could turn to slide 8?

13 I'm just going to start by giving a little bit of context here on why a
14 priority is an issue in this case.

15 So, the '286 Patent at issue claims priority to two earlier
16 nonprovisional applications as well as a provisional application.

17 And the focus today is on the '030 application which was filed in
18 September of 2006.

19 All of the prior art presented in this case predates the '842 application.

20 And as we showed in the petition, the written description for the '286
21 Patent's claims are only found in the brief summary of the invention
22 section in the '286 Patent.

23 And this is important because the '030 Patent -- or the '030 application
24 was filed with a brief summary of the invention section that, when the '842
25 application was filed, they replaced the brief summary of the invention
26 section with a new brief summary of the invention section.

1 And we show that in Exhibit 1014 on pages 2 through 4.

2 And then, when the '674 application was filed, which led to the '286
3 Patent, they, again, replaced the brief summary of the invention section.

4 And we show that in Exhibit 1000 and -- sorry, that is Exhibit 1014,
5 pages 2 through 4.

6 The Exhibit 1016, pages 2 through 4 shows the changes to the brief
7 summary of the invention section from the '030 application to the '842
8 application.

9 And we also show in Exhibit 1015 that the brief summary of the
10 invention section that the '674 application is different from the brief
11 summary of the invention section of the '030 application.

12 Now, if we move on to slide 9, the claim language in the '674
13 application, which eventually led to the '286 Patent, evolved over the course
14 of prosecution.

15 And so, the issue claims that we are discussing today with the '286
16 Patent are significantly different than what was originally filed with the '674
17 application.

18 And so, we see up here in the top left from page 456 of Exhibit 1002
19 the original claim language that is claiming a computerized appliance.

20 And, you know, first amendment, the applicant changed the claim
21 language to instead be claiming a personal computing device or a smart
22 telephone, so we see on page 360 of the prosecution history.

23 And then, the applicant further amended in prosecution the claim
24 language to instead claim just a smart telephone.

25 If we move on to slide 10, it was this change from computerized
26 appliance to personal computing device or a smart telephone to finally just a

1 smart telephone that led the examiner to find that the applicant had added
2 new matter to the claims.

3 And so, the examiner found that the claims no longer should be
4 afforded a priority date of the '030 application, and instead, that the '674
5 application was the continuation in part. The examiner never withdrew this
6 finding.

7 And as we see here, the examiner specifically points to support for the
8 claims as being pages 2, lines 21 through 28, page 3, lines 21 through 28, or
9 lines 1 through 28, and page 4, lines 1 through 12 as constituting new matter.

10 And these cited portions of the '674 application correspond to the
11 brief summary invention section, that's column 1, line 65 through column 2,
12 line 67 of the '286 Patent, as we note on page 15 of the petition.

13 And Patent Owner never rebutted this finding on the record that the
14 '286 patent is actually a continuation in part.

15 Now, if we move on to slide 11, I'd just like to highlight, again, the --
16 what was issued for the claims is significantly different than what was
17 originally filed for the '286 Patent.

18 And we see a drastic difference where, originally, the claims were
19 envisioning the computerized appliance that was connecting with an output
20 PIN using a microphone port.

21 And the claims at issue today are discussing the card reader that's
22 being plugged into the microphone port of a smart telephone and then,
23 executing coded instructions.

24 And what these coded instructions are doing are -- this is not
25 supported in the '030 application.

26 If we move on to slide 12?

1 Limitations 1.3.1 and 1.3.2 correspond to the coded instructions in the
2 claim. And as we've shown in the petition and in our reply, and as we'll be
3 discussing today, those limitations 1.3.1 and 1.3.2 are not supported by any
4 parent application of the '286 Patent.

5 So, if we move on to slide 13, I'm going to start by discussing
6 limitation 1.3.1.

7 And limitation 1.3.1, again, discussed the coded instructions
8 converting an analog variable voltage audio signal received at the
9 microphone port to transaction data as digital data.

10 On the other hand, the '030 application focuses on providing a sound
11 pass to a PC.

12 And we see that here in Figure 2.

13 In the '030, this sound pass that's discussed in the '030 application,
14 this corresponds to the analog variable voltage audio signal as we discuss in
15 the reply on pages 4 through 5.

16 But the '030 application contemplates this sound pass being provided
17 to a PC from three different sources, a key jack, which is reflected in Figures
18 4 and 5, a smartcard and card reader, which is reflected in Figure 6, and a
19 smartphone which is reflected in Figure 7.

20 If we move on to slide 14, this shows Figures 4 and 5 and a key jack
21 that is one embodiment providing the sound pass to a PC.

22 Now, this embodiment contemplates the device with a button that
23 plugs in to an audio port and you press the button to provide the sound pass
24 to the PC.

25 Slide 15, Figure 6 provides an alternative to this key jack, a smartcard
26 and a smartcard reader.

1 And again, you see a smartcard reader with a tip and ring, marked as
2 Element 602 here, that plugs into the PC and provides an audio signal, the
3 sound pass, to a PC.

4 In Figure 7, turning to slide 16, Figure 7 shows another embodiment
5 where, instead, the sound pass is being provided to the PC by a smartphone.

6 In the specification of '030 application confirms that the mobile device
7 contemplated is merely providing an audio signal.

8 So, we see here in the '286 Patent, in column 9, lines 45 through 49,
9 the specification discussing a modulated audio signal is generated by a
10 sound generating applet installed on and executable from mobile device 701.

11 This mobile device is providing the sound pass to the PC. And the PC
12 is what is processing the audio signal.

13 Moving on to slide 17, we look at, again, the '286 Patent, lines 958
14 through 1003, the specification discussed is a PC-based applet on the PC that
15 communicates with the server.

16 And so, the '030 application is contemplating -- this portion of the
17 specification is found also in the '030 application.

18 And what we see here is the '030 application is contemplating a PC
19 applet receiving audio from a mobile device, a smartphone, an iPod, a PDA.
20 And it is then demodulating that signal and communicating with the server.

21 And if we move on to slide 18, again, we see both in Figures 2 and 3,
22 that the PC 203 is processing transactions with the server. There's no
23 suggestion within the '030 application that this PC 203 may be replaced with
24 a smart telephone, as we discuss on page 7 of the reply.

25 And moving on to slide 19, Patent Owner attempts to point to Figure
26 14 as somehow showing that there's an applet on the mobile device that's

1 communicating with a server, but ultimately, as the specification of the
2 patent shows, the '030 application is contemplating the communications are
3 done between client PC and the server.

4 And so, if we turn back to slide 12, just to look at the claim language
5 again, we -- both 1.3.1, the conversion of the analog variable voltage audio
6 signal, which the '030 application is clear that that is -- that signal is being
7 received at a PC and not a smartphone.

8 But also, 1.3.2 establishing a direct data exchange between the smart
9 telephone and the second interconnected server, that that direct data
10 exchange is contemplated in the '030 application as the data exchange
11 between a PC and a server.

12 And now, turning to slide 20, as Mr. McNair confirms, ultimately, the
13 use of a smartphone, a mobile device, a smart telephone in the '030
14 application, it is just there to generate sounds for a PC.

15 Now, moving on to slide 23 -- unless Your Honors have any
16 questions, I will let Mr. Bowser now talk about the claim construction issue.

17 JUDGE SHAH: Counselor, that was a very good explanation.

18 I just have one question, you mentioned that --

19 MR. BECK: Yes, Your Honor?

20 JUDGE SHAH: -- the PC cannot be a smartphone. And I think you
21 suggested something in the spec supporting that.

22 Can you just elaborate on that as to why a generic personal computer
23 as listed in the '030 application wouldn't necessarily include a smartphone?

24 MR. BECK: Yes, Your Honor.

1 Well, if we turn back to slide 17, it -- the '030 application
2 specification is very unambiguous in talking about a PC applet that's based
3 on a PC.

4 And so, it's -- the '030 application is very clear that it is
5 contemplating a PC performing these functions.

6 JUDGE SHAH: But I guess my question is, does the application
7 define a PC in a way that is either separate from a smartphone or would not
8 include a smartphone?

9 MR. BECK: Yes, Your Honor.

10 It -- so, turning back to slide 16, the application is very clear, it is
11 viewing a smartphone as the device -- a mobile device that's an alternative
12 to a PDA, a handheld music player, it's using this discussion of smartphone
13 as a distinct item from a PC.

14 JUDGE SHAH: Thank you.

15 That's all I had.

16 MR. BOWSER: All right, Your Honors, going to on slide 23, we are
17 going to next be talking about the construction of transaction data.

18 And if you could turn to slide 24, please?

19 Okay, so, on the top of slide 24, we have reproduced the commentary
20 by the Board and the institution's decision.

21 And the Board's preliminary construction is correct, in the Board
22 should maintain this construction in the promulgated decision.

23 And the term -- the claim term transaction data, it should be construed
24 as encompassing any data involved in a transaction including account data.

25 And this construction makes sense. When we look at the limitations
26 of the claims, all we see is that the transaction data is received as an analog

1 signal, excuse me, it's then converted into digital signal, and the transaction
2 data is used for a transaction.

3 There is no definition, excuse me, in Claim 1 or even the patent itself
4 that defines the concept of transaction data or limits it in any way.

5 All we have, as I pointed out, is just the fact that the transaction data
6 is received and then, the transaction data is converted, and the transaction
7 data, then, is used to conduct a transaction.

8 So, I want to make clear, too, we can see in Claim 1 that Claim 1 has
9 nothing to do with user authentication.

10 Patent Owner has been arguing an embodiment in Figure 11 that I'm
11 going to address, but that has to do with user authentication. And the claims
12 are not in any way limited to that, especially Claims 1 and 3.

13 If you'd go to slide 25, please?

14 So, at the top of slide 25, we have the -- another screenshot of the
15 institution decision on page 8. And we can see here that the transaction data,
16 there's an indication from the Board, which is correct, that the transaction
17 data comprises data stored and read from a card.

18 And that is consistent with what's actually recited in the claims.
19 Because we talked -- as I talked about earlier, the transaction data is received
20 and that transaction data is then used to conduct a transaction.

21 There is no further specification about what the transaction data has to
22 include.

23 If you go to slide 26?

24 I next want to address Patent Owner's arguments with respect to
25 Figure 11.

1 Okay, so, Patent Owner has argued that, well, the term transaction
2 data actually appears, and we can see in Field Number 1103, B1 and B9, and
3 transaction data.

4 And so, it's different than accounting.

5 And Patent Owner has argued effectively that transaction data can't be
6 the data on a card.

7 Now, notwithstanding the fact that Claim 1 really wouldn't function if
8 you don't have the account data, because how else would you conduct a
9 credit card transaction.

10 But Patent Owner wants to limit to this specific embodiment.

11 And I just want to make clear the fact that this embodiment deals with
12 user authentication.

13 This embodiment is not recited in Claims 1 or 3.

14 In fact, it's -- the concept of the CVV that is described in the card
15 verification value has been cited in independent Claims 2 and 4, which
16 Patent Owner hasn't contested.

17 So, what Patent Owner is doing here is they are importing, improperly
18 -- they're improperly importing limitations from the specification.

19 Again, there's no mention whatsoever about user authentication.

20 So, transaction data as used in the claims has to encompass data from
21 the card.

22 If we can move on to slide 27, please?

23 Next, going to address why the Cho reference teaches the disputed
24 claim limitations.

25 And as I mentioned earlier, Your Honors, the Cho reference is the
26 only reference that has actually been discussed after -- post-institution by the

1 parties. And I'm going to focus on the Cho reference unless anyone --
2 unless you have questions about any other references.

3 So, if we turn to slide 28, please?

4 So, on slide 28, there's a lot here, but I'm going to highlight what's
5 significant.

6 So, we can see in Figure 1, we have the three components of Cho. So,
7 we've got a smart telephone, number 110.

8 We've got a card reader, number 120.

9 And we've got a card, 130.

10 Those are the three components that are miscited in Claim 1. Same
11 components, same configuration. You've got a card reader; it reads a card.

12 And then, you've got the plug and it's actually called an audio jack,
13 125 in Cho, it's an audio jack, and it plugs directly into the audio jack in 115
14 of the smartphone.

15 And we note the smartphone, this is shown very clearly as it looks like
16 an iPhone.

17 All right, so, this is what happens in Cho. So, the client device, it
18 received -- the client device 110, which is a smartphone, it receives an audio
19 signal, an audible -- sorry, an analog signal from the card reader.

20 It then uses that analog signal, and we can see in the second round of
21 blue highlighting in the first paragraph, there's this connection between the
22 audio jacks, socket 115 and 125.

23 And then, the client device 110, again, the smart telephone, it receives
24 a first analog signal, which is then converted to a digital signal.

25 And that digital signal -- and that conversion happens in the smart
26 telephone, just like in Claim 1.

1 And then, we can see on the right hand side below Figure 1, the smart
2 telephone 110 executes a card payment based on that account information.

3 So, if we can move to slide 29, please?

4 Okay, so, I want to talk about the first argument the Patent Owner
5 raised, which was the fact -- or not the fact, but the argument was how the
6 account information doesn't teach transaction data.

7 So, I want to point out that Patent Owner's arguments are based
8 entirely on their incorrect claim construction.

9 So, if you reject Patent Owner's claim construction, which you
10 should, then Patent Owner's arguments are no longer applicable to what's
11 actually in Cho.

12 We can see, and we know -- and we can see from this on the right
13 hand side of Figure 1 that the account information, it's taken from the card,
14 it's read by the card reader, and it's passed on as an analog signal to the
15 smart telephone 110.

16 Now, I want to also address, and we can see in paragraph 67, this is
17 responding to Patent Owner's argument, so -- Patent Owner's claim
18 construction argument.

19 So, Patent Owner said, well, really what is meant by transaction data,
20 even though this is not recited at all in the claims, is that what transaction
21 data really means is that it's for performing a series of banking transactions.

22 Well, that's exactly what is being done. There is -- here in Cho
23 because we can see the account information is being used to conduct a
24 banking, i.e., credit card transaction.

25 Go to slide 30, please?

1 All right, I want to just compare the limitations of the claim with the
2 actual disclosure of Cho.

3 So, the first limitation, 1.1.1, and this on page 42 of the petition, we
4 have shown about the output interfaces is the magnet strip or the integrated
5 circuit chip of a card. So, those are the output interfaces.

6 The next part is in 1.1.3, is petition pages 46, 47, and 42, where we
7 show that there is transaction data that is accepted by the card reader from
8 the card and it's sent as an analog variable signal. Okay?

9 And we just showed that there's an analog signal that's transmitted
10 from the card reader to the smartphone.

11 Next, in 1.3.1, it is converted.

12 And what I've highlighted at the bottom of 1.3.1, it's converted as
13 digital data. I'm going to address that on slide 31, but we can see that -- and
14 we talked about this earlier about how the smart telephone actually, you
15 know, does convert this.

16 And last, we have 1.3.2 is using the transaction data to conduct a
17 financial -- sorry, facilitate a transaction or a purchase from an online
18 merchant.

19 We have that because, in Cho, the client device is configured to
20 execute a card payment using the transaction data, the account information.
21 Okay?

22 And we can see also on the bottom of slide 30, this is testimony from
23 Mr. McNair, it describes the concept, the same concept, it's transaction data.
24 The account information is transaction data.

25 And I should also point out that Petitioner's challenges are supported
26 by the testimony of an expert.

1 Patent Owner all throughout has provided only attorney argument for
2 tis prior are arguments.

3 JUDGE SHAH: Counselor?

4 MR. BOWSER: If you go on to slide 31, and I want to talk about --
5 yes?

6 JUDGE SHAH: Sorry, I just wanted to let you know, you have about
7 30 minutes left total, so 15 minutes until your rebuttal time.

8 MR. BOWSER: Thank you.

9 Okay, so, the last -- or let me address here on slide 31 is the actual
10 conversion. Okay?

11 And I've divided this just into two parts.

12 The first part, as we've already seen where the first analog signal is
13 then converted to a digital signal. Okay? That's on the left hand side and
14 that's in column 3, lines 20 to 24 of Cho.

15 And on the right hand side, in the bottom portion of the highlighted,
16 we can see that the card payment executor, 1030, and if you look up above
17 the text where we can see Figure 10, this is the software that's being -- that's
18 executing on Cho's smart telephone, we have the card payment executor,
19 1030.

20 And that is converting the first analog signal, and remember that the
21 first analog signal is what's coming from the card reader, that's converting it
22 to digital data.

23 And it can use any well-known analog to digital converting schemes.
24 Okay?

25 I want to make clear, too, that in Claim 1, it doesn't have any
26 recitation whatsoever about any specific conversion techniques. All that is

1 required in Claim 1 and Claim 3 as well is the conversion from analog data
2 to digital data.

3 If we can move to slide 32, please?

4 So, the last point that Patent Owner raises is with respect to this
5 concept of an analog variable voltage audio signal. Okay?

6 And this is a quoted term from the claims, and I've highlighted where
7 this mentioned in limitation 1.1.3 and 1.3.1.

8 I want to point out just initially, that the concept of analog variable
9 voltage audio signal, I mean, that term, by itself, is not recited anywhere in
10 the specification.

11 Patent Owner is trying to make some distinction about how the
12 concept of an analog variable voltage audio signal is somehow not an analog
13 signal and it's not a modulated signal.

14 That's what we understand.

15 But Patent Owner has provided only attorney argument.

16 And we've seen very clearly in Cho that there is an analog signal.
17 And we can see that it comes in the upper right hand corner where the
18 quoted text, there's analog signal.

19 And then, that is what is converted.

20 It works the same way.

21 If we go to slide 33, please?

22 So, what Mr. McNair pointed out is that what's happening in the 286
23 Patent, and you know, this is also from the '030 application, there's a
24 transmission of an analog signal from either the key jack, as Mr. Beck
25 described, or we have the card reader, which is what's recited in the claims,
26 or we have a mobile phone to a PC.

1 In all those instances, it's simply an analog signal. That's it. It's
2 going as an analog signal to, and then, the claims requires it to be to a smart
3 telephone.

4 And then, the smart telephone converts that. There is no difference --
5 we have Mr. McNair saying, there's no difference about what's happening in
6 terms of the disclosure of the 286 Patent and what's taught in Cho.

7 There's an analog signal.

8 And we also have multiple pieces of evidence showing that the analog
9 signal, and this is in Mr. McNair's reply declarations, starting at page 77, he
10 cited multiple bits of technical evidence showing that an analog signal as
11 taught by Cho is the same thing as an analog variable voltage audio signal.

12 And with that, I would like to reserve the remaining time for rebuttal,
13 Your Honors.

14 JUDGE SHAH: Okay, great.

15 You have about 26 minutes for rebuttal.

16 Thank you.

17 Patent Owner, whenever you're ready.

18 And would you like to save any time for rebuttal?

19 MR. RABICOFF: I actually won't reserve any time for rebuttal at this
20 time.

21 JUDGE SHAH: Okay.

22 Give me one second while I set the clock.

23 MR. RABICOFF: Sure.

24 JUDGE SHAH: Sorry about that.

25 Okay, so you have 45 minutes whenever you're ready.

26 MR. RABICOFF: Okay.

1 So, I'm going to address two main arguments.

2 The first argument is going to be that Claims 1 and 3 of the '286
3 Patent are fully supported by the earlier filed '030 application and entitled to
4 its earlier priority dates.

5 And if that is the case, then obviously, the priority date would predate
6 all the references.

7 The second argument is going to be that Cho does not teach or suggest
8 some limitation transaction data.

9 And of course, we're going to go through how that term should be
10 construed.

11 Okay, so first, that Claims 1 and 3 --

12 JUDGE SHAH: Counselor, I'm sorry.

13 I just have -- I just wanted -- I forgot to make sure, you do not have
14 any demonstratives, is that correct?

15 MR. RABICOFF: That's correct, yes, that's correct.

16 What I'm going to do is, I will very carefully cite to the record and
17 when I do that, I'm going to -- I mean, I think there's not going to be any
18 huge switching around, but I will pause and make sure Your Honors have a
19 chance to pull something up and I'll, of course, flag me if I'm going to fast,
20 but I will try to pause and make sure you're able to access it.

21 JUDGE SHAH: Okay.

22 I just wanted to make sure we weren't missing anything. So, thank
23 you.

24 MR. RABICOFF: That's correct, Your Honor.

25 Okay, okay, yes, so to the first argument is that Claims 1 and 3 of the
26 '286 Patent are entitled to the '030 priority date.

1 So, first, we're going to look at limitations 1.3.1 and 3.3, in particular,
2 the converting limitations. Right?

3 So, the first word we're going to focus on is receiving. And the
4 Petitioner argues that the '030 application describes providing a sound pass
5 to a PC rather than a smartphone.

6 But Petitioner ignores the disclosure of the mobile smart telephone
7 receiving the sound pass from the key jack. And this is -- I'm going to give
8 a citation -- this will be Exhibit 1015 at 8.

9 So, I'm going to pause a little bit and just make sure Your Honors
10 have 1015 in front of them.

11 JUDGE SHAH: Give me one second to pull that up, please?

12 MR. RABICOFF: Of course.

13 JUDGE SHAH: So, 1015, you're referring to the redline, is that
14 correct, that Petitioner created?

15 MR. RABICOFF: Correct, yes, yes.

16 JUDGE SHAH: I do have that up.

17 MR. RABICOFF: Okay.

18 I'm going to read an excerpt and, you know, this is not going to be
19 very new, but so 1015 at 8, Figure 4 is a block diagram illustrating basic
20 electronics of a key jack sound pass generator according to an embodiment
21 of the present invention.

22 I'm going to skip down just one sentence.

23 In one embodiment, the key jack may be plugged into the sound input
24 or headset connector jack associated with a mobile smart telephone or PDA
25 enabling authentication through a telephone network, end quote.

26 So, here the key jack is a sound pass generator.

1 The disclosure teaches the mobile smartphone or PDA receiving the
2 sound pass from the key jack which may be plugged into the sound input of
3 the mobile smart telephone.

4 So, Petitioner simply does not acknowledge that the sound pass is
5 received by the smart telephone in the disclosure, i.e., not just by the PC.

6 What's more, the '030 application discloses that a, quote, device or
7 devices will receive the token or replicate of the token if the, quote, token is
8 a portable token.

9 And this is -- I'm sorry, I jumped into another quote, Exhibit 1015 at
10 16, that's another quotation from 1015.

11 So, in the context, the disclosure of a, quote, portable token, which
12 may be a sound file or a generated sound.

13 And there, I'm quoting page 6 -- 15, one page back. So, again, it can
14 be -- a portable token can be, quote, a sound file or generated sound is,
15 quote, received at a device further supports the claim limitation.

16 Okay, so the next piece I'm going to focus on is, quote, converting
17 analog audio signal to digital data.

18 The '030 application disclosure also supports the smart telephone,
19 quote, converting the analog signal to digital data, continuing on the
20 embodiment of Figure 4.

21 So, again, Figure 4, I'm going to point back to 1015 and 8 again.

22 And I'm going to read a quote -- I'm sorry, this is actually 1015 at 9,
23 so it's just continuing over.

24 Quote, the applet is, of course, running when the sound pass token is
25 input for authentication using a key jack.

26 And I'm going to skip down about two sentences.

1 As a mobile device key jack 400 may be used at virtually any PC
2 station or, if so adapted, any mobile device capable of bidirectional network
3 connection.

4 Therefore, a user may perform a secure login without physically using
5 a clear text password or user name that might later be revealed through a key
6 logger program or the like.

7 Again, that as at 1015 at 9.

8 So, the disclosure of, quote, enabling authentication through a
9 telephone network cited above, which, again, was 1015 at 8, also inherently
10 requires that the analog signal was received by the mobile smartphone from
11 the key jack be converted to the transaction data as digital data.

12 Indeed, the very fact that the sound pass signal generated by the key
13 jack enables authentication through a telephone network after being plugged
14 into the sound input of a smart telephone proves that the signal is converted
15 to digital form.

16 Otherwise, authentication based on the sound pass signal would not be
17 possible.

18 Analog to digital conversion is necessary and inherently disclosed on
19 the smart telephone in order to accomplish such authentication.

20 Indeed, any device receiving an analog audio signal through its sound
21 input must necessarily convert that signal to digital form for further
22 processing.

23 This is a fundamental requirement for any device handling audio
24 signals.

25 Now, Petitioner argues that sound file was always digital to begin
26 with. But Petitioner ignores the disclosure cited above where the sound

1 passes received by the mobile smartphone telephone from a key jack
2 plugged into the sound input. And again, that's at 1015 and 8.

3 JUDGE SHAH: Counselor, I have a question.

4 I understand you're saying that it's inherent. Were you able to
5 provide any support or evidence supporting that proposition that this
6 paragraph of the applet running when the sound pass token is input for
7 authentication necessarily would mean that it would be converted in the way
8 claimed?

9 MR. RABICOFF: Okay.

10 So, give me a second, I'm looking at this --

11 JUDGE SHAH: Because I don't see anything in the record regarding
12 a declaration or anything to support your argument here.

13 And I'm just wondering if there is something else besides inherency,
14 part of it, or something to support that it would be inherent that's in the
15 record somewhere?

16 MR. RABICOFF: Right.

17 So, I think the key thing to look at would be our surreply from pages 2
18 through 8. I just kind of generally refer to that because it does actually
19 provide a number of examples.

20 I can read through that, but I think really on this, yes, on that point of
21 it just going beyond inherency, I would point Your Honors to those pages.

22 I mean, I can -- yes, I think that that's basically my response there.

23 JUDGE SHAH: Okay, thank you.

24 MR. RABICOFF: Okay.

25 Okay, so, yes, the next would be limitations 1.3.2 and 3.4, the direct
26 data exchange limitations.

1 Now, Petitioner argues that the '030 application describes direct data
2 exchanged performed by a PC, not a smart telephone.

3 For this, they quote the passage below and their demonstrative yet
4 ignore the communication between the mobile device and the server in the
5 last sentence. Right?

6 So, this is strange.

7 So, I'm just going to go ahead --

8 JUDGE SHAH: I'm sorry, what passage below are you referring to?

9 MR. RABICOFF: Right, it's exactly the passage I'm about to read.
10 Right?

11 JUDGE SHAH: Oh, okay.

12 MR. RABICOFF: And, yes, so, this will be Exhibit 1015 at 11, and I
13 know you have that in front of you, but I do want to make sure you get to
14 1015 and 11.

15 Okay, I'll just start reading, let me know if you need more time now.

16 Okay, so, quote, in another embodiment, mobile device 701 may
17 include a hardwire cable that connects the speaker or headset output to the
18 microphone input accomplishing the same task of inputting the signal.

19 A PC-based applet on the PC demodulates the sound pass signal and
20 communicates with the server to authenticate the user.

21 In this example, the token on the mobile device, the sound file may
22 not be updated by a PC applet or by the server through the host PC.

23 Now, I'm going to emphasize this next sentence.

24 However, in one embodiment, the sound file may be updated by the
25 applet on the device, the server sends a new session key to the mobile device

1 directly or by the server contacting the telephone directly and establishing a
2 secure network session with the device, update the file, end quote.

3 So, the written description also discloses, quote, any mobile device
4 capable of a bidirectional network connection. And again, this is -- that is at
5 Exhibit 1015 at 9, at page 9.

6 So, moreover, a person skilled in the art would understand that if the
7 mobile device could execute applets and process signals, it necessarily has
8 the processing capability to handle direct network communication.

9 JUDGE SHAH: So, Counselor, I don't mean to repeat myself, but do
10 you have any evidence to support that one of ordinary skill in the art would
11 understand that from these passages that you cited?

12 MR. RABICOFF: Right. So, I mean, I think that --

13 JUDGE SHAH: Outside of your argument and your su-rreply?

14 MR. RABICOFF: Right.

15 So, I think I would -- we would mostly rest on that sur-reply. Right?
16 I think that it would be apparent to a person skilled in the art based on the
17 passage that we provided and based on our argumentation there.

18 Okay, and if there's no further questions, I'll turn to our second
19 argument which is that the claimed -- and now, we're going to switch to
20 looking at Cho, that the claimed transaction data cannot read on Cho's
21 account data.

22 And I want to, just to kind of set the stage, kind of look at -- kind of
23 walk through the Board's position on rehearing as we understand it.

24 So, initially, the Board had recognized that the only embodiment
25 disclosure of transaction data in the 286 Patent was treated separately and
26 differently from account data.

1 And that disclosure of transaction data is submitted by the user after
2 entering a PIN code. That's how it's treated in Figure 11 as well where
3 transaction data is shown to be client-side and listed in a box entitled user
4 versus account data which is show in server-side.

5 And actually, I want to -- I said Figure 11 of 286, I want to step back
6 first, and I believe I'm going to be referring to that, so I'm going to take just
7 a second and make sure Your Honors have Figure 11 in front of you.

8 JUDGE SHAH: Okay, yes, I have it in front of me.

9 MR. RABICOFF: Okay, thank you.

10 Okay, so, but on rehearing, the Board did focus on the fact that Claim
11 1 itself -- that in Claim 1, the transaction data is, quote, accepted from the
12 output interface of the transaction card to the applet PIN.

13 Thus, the Board concluded that transaction data is distinct from the
14 transaction data described in connection with Figure 11 embodiment.

15 So, and this was at 1015 at 7.

16 In other words, the Board was moved by the fact that in the claim
17 itself, the transaction data is coming from the card, whereas, in the spec, it is
18 shown as being submitted by the user as described in the specification and
19 shown in Figure 11.

20 And so, reasoning the Board is equating transaction data with the data
21 read from the token, i.e., the card itself, including an ID number, password,
22 authentication information, session information, et cetera.

23 And since the token data is basically equivalent to account data as
24 shown in Figure 11, the Board appears to conclude that the token data is
25 effectively equivalent to account data.

1 But I think, you know, what we're going to argue is that the
2 transaction data is actually not the same thing as the account data. And it
3 shouldn't be construed that way.

4 So, Patent Owner contends that, even though the claimed transaction
5 data is coming from the card, that doesn't change what transaction data is or
6 how it should be construed.

7 And there's -- I have two points here. The first is that the transaction
8 data comes from the card in Claim 1. This doesn't mean that the transaction
9 data is a different kind of data that is described in an -- in the embodiment of
10 Figure 11. Patent Owner's response at page 25, this is where we made this
11 argument.

12 So, respectfully, the treatment of transaction data in the rehearing
13 decision is so broad that it equates transaction data with any kind of data
14 that's stored on the token, which is on the card.

15 JUDGE SHAH: So, Counselor?

16 MR. RABICOFF: Sure?

17 JUDGE SHAH: I'm sorry, I'm not following your argument.

18 So, the claim specifically says that the card reader has an input
19 interface configured to accept transaction data from an output interface of a
20 transaction card.

21 And I believe you're saying that the transaction data in Figure 11,
22 which is in block 1103, is -- are you saying that the transaction data that's in
23 Figure 11 in block 1103 is somehow received from a transaction card?

24 MR. RABICOFF: Right. So, yes --

25 JUDGE SHAH: That transaction data that is B1 minus BN that's used
26 in the Figure 11 embodiment for authentication?

1 And if it is on the transaction card, can you point to where in the
2 patent it's clear that that transaction data would be on the transaction card?

3 MR. RABICOFF: Your question was that the transaction data was
4 from the transaction card? Was that your question?

5 JUDGE SHAH: Yes, well, you're -- I believe you're arguing that in
6 Figure 11, Figure 11 clearly shows transaction data in block 1103.

7 And Claim 1 shows that the card reader accepts transaction data from
8 an output interface of a transaction card.

9 So, as opposed to just a simple interface of a computer where a user
10 can input it, it specifically says an output interface of a transaction card.

11 So, I'm trying to figure out where in the patent you're relying on to
12 show that the transaction data in Figure 11 that says B1 minus BN equals
13 transaction data, how and where that is shown in the patent to be read from a
14 transaction card?

15 MR. RABICOFF: Okay. Let me try to respond to that with two
16 points.

17 The first is that in the specification, the only disclosure of the
18 transaction data B1/BN, is submitted after a new session key, and this
19 includes the ID number which is a form of account data is generated. Right?

20 So, in other words, the specification contemplates transaction data
21 being submitted after an ID card is used and generate a new session key.

22 So, it's wrong to construe transaction data and so broad as to include
23 an ID number. The specification treats an ID number as a form of account
24 data in Figure 11. Right?

25 So, more importantly, the ID number is already part of the new
26 session key generated prior to the submission of the transaction data B1/BN.

1 And this is at Exhibit 1001, so it's at the patent and, yes, the citation I
2 can give you for that is 12:34/36-36. So, I can just pause a second for you to
3 look at the specification at 12:34-36.

4 JUDGE SHAH: So, I am at that point.

5 And just to read that into the record, it says the user may enter a PIN
6 code, PC, and then, may perform a series of banking transactions by
7 submitting transaction data B1 minus BN.

8 So, from what I read there, the user is entering that data, that PIN
9 code, right? It's not being read from a card.

10 And I think that's where -- I don't know if I'm misunderstanding your
11 argument, but the claim specifically states that the data is read from a card, a
12 transaction card.

13 So, I don't know if I'm misunderstanding your argument or if I'm
14 understanding it correctly and we're just disagreeing on what the claim
15 means.

16 MR. RABICOFF: Let me -- right, I am trying to understand, I guess,
17 the crux of the different understanding.

18 And maybe let me give an -- perhaps sort of real world example
19 would be helpful, possibly. And I'll see if it is. Right?

20 So, again, we're referring to the transaction data B1/BN and this is,
21 again, at column 12.

22 And I think a real world example would be the kind of transaction
23 data by -- generated by an EMB chip card. So, the EMB chip cards generate
24 a unique code for each transaction as opposed to magnet strip cards where
25 the account numbers are statically stored on the card.

1 JUDGE SHAH: Counselor, I'm sorry, I'm going to interrupt you
2 there.

3 I think -- I know you're talking about a lot of things that are possible,
4 but I'm not sure that any of that is in the record. And if it is in the patent
5 itself, if you could direct my attention to where you're talking about the
6 specific type of cards that were contemplated in the patent from which this
7 kind of information could be read.

8 Because I didn't see any real -- maybe I missed it, I just didn't see any
9 distinction between the types of cards and kind of data would be read from
10 the cards or anything like that.

11 And so, I would like to limit our conversation to what is in the record
12 and in the patent.

13 And if I'm missing it, please point it out to me.

14 MR. RABICOFF: So, let me -- you know, in addition to kind of what
15 I've pointed to the in the disclosure, I would say that, you know, if the
16 transaction data, even if it comes from the card, it should be construed to
17 relate to the specific transaction and not just the user's account number.
18 Right?

19 So, I think there is still like an -- we still have to draw some
20 boundaries around what transaction data should mean. Right?

21 It's just that -- it should be this sort of -- it shouldn't be the same thing
22 as account data for that reason. It should relate to the specific transaction.

23 JUDGE SHAH: I'm not sure why that wouldn't necessarily be the
24 case. I'm not sure what in the patent would require in the claim itself in
25 light of the patent be required to have the account data not be sufficient for
26 transaction data when it's being read from -- and again, I'll have to relook at

1 what Petitioner's saying for Cho, but I understand your point. I'm not sure I
2 agree, but I understand your point.

3 MR. RABICOFF: Okay. And I guess my final point to that would be
4 just to -- this is on our Patent Owner response pages 26, 27. It's just kind of
5 a note to where this is fully elaborated upon.

6 Because, obviously, I can't, you know, I can't provide you with new
7 arguments, but I just wanted to refer to that section.

8 Okay, so, the next point is --

9 JUDGE COCKS: Actually, this is Judge Cocks, Mr. Rabicoff.

10 So, one more question, to borrow on my colleague's question, Judge
11 Shah had asked if the support for the position that the transaction data of
12 Figure 11 block 1103, that it is coming from a transaction card, which she
13 asked for the support for that and I think you pointed to column 12, lines 34
14 to 36.

15 So, is it the case that, in your view, column 12, lines 34 to 36 support
16 the position that the transaction data of block 1103 is coming from a
17 transaction card? That's yes or no.

18 MR. RABICOFF: Right.

19 The answer is no, that it doesn't support that necessarily.

20 JUDGE COCKS: Okay.

21 So then, let me go further, is there a portion that you can direct us to
22 that does support that premise, that the transaction data of 1103 is coming
23 from a transaction card?

24 MR. RABICOFF: So, I think my response would be that the
25 construction of transaction data, whether or not it comes from the card,
26 wouldn't alter our ultimate claim term construction.

1 So, I don't have an answer for you today outside of what's in our
2 brief, but that's -- I think that's my point is that whether or not it comes from
3 the card, that doesn't change like our principal interpretation of transaction
4 data.

5 JUDGE COCKS: Okay, thank you.

6 MR. RABICOFF: Yes, if there's, okay, if there's no further questions,
7 the next point is that -- right, so even -- again, even under the Board's broad
8 construction of transaction data, Cho still cannot meet the claim limitation.

9 So, Cho's account information includes, quote, an account number,
10 the card expiration date, et cetera.

11 I'm going to pause, so this is at Exhibit 1005 at 3:24 to 27. I'm going
12 to pause just for a second to make sure you have -- I'm going to do that one
13 and then, I'm going to refer back to column 12 and the patent again, that's
14 going to be it.

15 So, I'm just going to pause for a second and make sure you have this
16 part of Cho in front of you, again, 3:24 to 27.

17 JUDGE SHAH: Okay, I have it up.

18 MR. RABICOFF: Okay, all right, thank you, Your Honor.

19 Okay, but -- and I'll just repeat my point just to make -- to reorient
20 ourselves, so Cho's account information includes, again, quote, an account
21 number, a card expiration date, et cetera. And then, that's at, again, 3:24.

22 But here, the Board's rehearing decision did not construe transaction
23 data to include an account number or a card expiration date.

24 The Board referred to ID number, password, authentication
25 information, session information, et cetera.

1 And in fact, the specification makes clear that the ID number read
2 from the bank card is, quote, different than the issued card number. And that
3 is from column 12, I believe that's what we did, again, right, 12:24, we were
4 close to that.

5 Okay, I'll take a moment just to make sure you can see this quotation,
6 quote, different than the issued card number, again, that's at the patent 12:24
7 to 25. I'll just pause for a second.

8 And this is going to be the last time I make you, you know, thrash
9 around the record.

10 Yes, just let me know when you have it pulled up.

11 JUDGE SHAH: I have that pulled up.

12 MR. RABICOFF: Okay.

13 And I'm going to just, again, reorient what I said there.

14 So, again, the specification makes clear that, quote, the ID number
15 read from the bank card is, quote, different than the issued card number.
16 And that's at 12:24 to 25.

17 So, in other words --

18 JUDGE SHAH: I have a question about that.

19 MR. RABICOFF: Sure, sure, go ahead.

20 JUDGE SHAH: I see where you're pointing to, and it says that the
21 bank card includes the token parameters and that N is different than the
22 issued card number.

23 MR. RABICOFF: Correct.

24 JUDGE SHAH: But I'm trying to find where the data that's read from
25 the card, what that includes.

1 So, that's only part of it, that the entirety is that there are different data
2 that are read from the transaction card.

3 And in the section that you're quoting from the patent, that only talks
4 about what the token parameters include.

5 I don't know how that relates to all the information that's read from
6 the transaction card.

7 MR. RABICOFF: Right, yes.

8 The reason why I cited that, so let me elaborate and see if this, you
9 know, helps to elucidate.

10 So, in other words, even if the Board construes transaction data to
11 include the ID number referred to in the specification, this is not the user's
12 account number or the number on the issued bank card. So, that's the
13 distinction we're trying to make.

14 As such, Cho's account number --

15 JUDGE SHAH: But what if we were to construe the information as
16 account number? Would it then read on it?

17 MR. RABICOFF: If you construed which information is the account
18 number?

19 JUDGE SHAH: If we construe the transaction data as including the
20 account number that's read from the card?

21 MR. RABICOFF: Right.

22 So, I think we cited this passage to point out that the main part is the
23 different than the account number.

24 So, if the account number that is (audio interference) information, you
25 know, but we're pointing out that that account information read at the, in the

1 specification at least that ID numbers read from the bank card is not the
2 same as the issue card number.

3 So, it seems like there's just this gap in the teaching based on that.

4 JUDGE SHAH: Okay, I understand the point you're trying to make.
5 Thank you.

6 MR. RABICOFF: So, as such, Cho's account number cannot meet
7 this limitation, nor is there any disclosure of a card expiration date being
8 transaction data or any other form of data in the '286 Patent.

9 Okay, so, at this point, I'll just open the floor to see if Your Honors
10 have any questions.

11 Otherwise, that's the conclusion of my oral argument.

12 JUDGE SHAH: I have no further questions.

13 Judge Cocks, Judge Melvin, do you have any questions?

14 JUDGE COCKS: No questions from me. Thank you.

15 JUDGE SHAH: Okay.

16 MR. RABICOFF: Thank you, Your Honors.

17 JUDGE SHAH: Thank you.

18 So, Petitioner, you have 26 minutes remaining.

19 MR. BECK: Thank you, Your Honor. Matthew Beck, again, for
20 Petitioner. May I share my screen for the slides?

21 JUDGE SHAH: Sure, yes.

22 MR. BECK: Your Honor, I'm turning to slide 17 of Petitioner's
23 demonstratives here.

24 I'd just like to respond to one of the points that Patent Owner made
25 here.

1 Again, I'd like to point out that Patent Owner did not provide any
2 expert testimony in this case.

3 Patent Owner is, instead, pointing to different portions of '286 Patent
4 to try to establish that the '030 application does provide support for the
5 challenged claims.

6 Now, here, this quote from Exhibit 1001, lines 958 to 1003, this is one
7 of the portions to which Patent Owner points to, this final sentence here that
8 discusses in one embodiment the sound file may be updated by the applet on
9 the device if the server sends a new session key to the mobile device directly
10 whereby the serve contacting the telephone directly in establishing secure
11 network session with the device to update the file.

12 Now, I'd like to emphasize again that this discussion is in the context
13 of a mobile device providing a sound pass to a PC.

14 And while this -- the sound pass that's being passed to a PC may be
15 updated via network connection here, this does not provide support for the
16 mobile device converting an analog variable voltage audio signal received at
17 the microphone port to transaction data or establishing a direct data
18 exchange between the smart telephone and a second internet connected
19 server.

20 That is all being done by the PC contemplated here.

21 Now, looking at page 6 of Patent Owner's response, Patent Owner
22 also points at the end of this paragraph here, that the written description is
23 not limited to a PC, but may include a PDA or smart telephone.

24 Now, Patent Owner points to a portion of the patent that can be found
25 in column 11, lines 13 through 15, where a client is a sound file token 901

1 located on a PC or on some external device like a cell phone, PDA, or other
2 handheld device capable of playing a sound file.

3 Again, this supports Petitioner's point that the '030 application is
4 describing a mobile phone outputting a sound file to a PC. It's looking at a
5 cell phone here or a PDA as alternatives for a device playing a sound file.

6 If we turn to slide 20 of Petitioner's demonstratives, Mr. McNair
7 provided testimony explaining that this discussion in the '030 application is
8 looking at a smartphone as a device generating sounds for a PC.

9 And indeed, in paragraphs 84 through 87 of Mr. McNair's declaration,
10 he explains why the capabilities of the devices that are described as
11 alternatives to the smartphone in the '030 application for devices only
12 capable of outputting audio.

13 I'd just like to conclude by turning to page 7 of Patent Owner's
14 response, in the middle of the page, Patent Owner cites -- notes that the
15 applet on the smart telephone or PDA is fully capable of converting the
16 sound pass generated by the key jack into a digital signal since it is capable
17 of, quote, performing the modulation and demodulation and encryption, end
18 quote.

19 Now, this discussion is found in column 11 of the '286 Patent, lines 55
20 through 58.

21 And this discusses a sound file stored on mobile device or a device
22 like a cell phone or PDA.

23 But again, the '286 Patent specification, the portion that it receives
24 from the '030 application, makes clear, we go down to line 65 of column 11,
25 that this -- in this example, the user 1003 enters a PIN code PC and plays the

1 modulated signal into the microphone input of the PC acoustically using the
2 speaker system of the mobile device.

3 And so, the '030 application's discussion of mobile device is
4 unambiguously discussing contemplating the devices generating sounds for
5 a PC, and ultimately, this PC is doing the conversion and the direct
6 exchange.

7 And so, there's no support in the '030 application for the claims for
8 the '286 Patent.

9 JUDGE SHAH: Thank you. I don't have any questions.

10 MR. BOWSER: Your Honors, I want to just briefly touch on some of
11 Patent Owner's arguments about transaction data.

12 And I sense from some of your questions that you have the same
13 difficulty I do in trying to figure out why exactly the ID in Figure 11 should
14 -- the ID number should be distinguished from the account information.

15 And I just want to make clear, too, and actually, can you please turn
16 back to slide 25?

17 Okay, so, this is the -- as we see at the top, it has data stored and read
18 from the card. That's really important, right, because that's what the claim
19 requires.

20 We have transaction data that is being read from a card.

21 Now, Patent Owner was unable to identify where in the embodiment
22 of Figure 11 any of that transaction data and how that's read from a card.

23 In fact, if you go to slide 26, we can see in the blue highlighting on the
24 right, this is an alternative embodiment that doesn't relate to a smart card.

25 Okay?

1 So, this is not user authentication and this is not on the slide, so I'm
2 going to ask you to please point to the fact -- or sorry, look at column 12,
3 lines 34 to 36.

4 So, this embodiment is about once the user authenticates their self,
5 that the user can then submit transaction data. None of this is recited in the
6 claims. Okay?

7 So, this embodiment doesn't have anything to do with what's going
8 on in Claim 1.

9 And I would also say, too, the fact, you know, Patent Owner tries to
10 create this distinction between how an account number cannot be transaction
11 data as used. This argument relates entirely on their attorney argument
12 about this Figure 11 embodiment. And keep in mind that they submitted no
13 expert testimony.

14 And I would just point to, if you would like to look at this, we have a
15 very detailed discussion in Mr. McNair's supplemental declaration, pages 65
16 to 67 that's explaining why Cho's account information corresponds to the
17 transaction data.

18 And also, why in paragraphs 52 and 53, why the term transaction data
19 should not be limited to any concept in this user authentication embodiment
20 of Figure 11.

21 And with that, Petitioner rests its case unless the Board has any
22 questions.

23 JUDGE SHAH: I do have a question.

24 Patent Owner -- well, no, outside of Patent Owner's arguments, can
25 you direct attention to me where in the patent the account number can be
26 read from the smart pass or a transaction card?

1 MR. BOWSER: Where the account number --

2 JUDGE SHAH: Yes. So, from what I understand from Patent
3 Owner's argument is that the patent describes an ID number being read and
4 that ID number is different than an account number.

5 And I wanted to get your thoughts on why that is not the case?

6 MR. BOWSER: Okay, why that's not the case?

7 So, first off, I would like to direct your attention, Your Honor, to
8 summary of invention section of the specification starting with column 1,
9 line 65 to column 2, line 7.

10 And it doesn't use the words specifically, transaction data, but it uses
11 the words transaction card bearing data. Okay?

12 And actually, if you could please turn back to slide 25 just so you can
13 see the claim language?

14 So, what's important is that all that's required is transaction data.

15 And to answer your question, there is not a specific embodiment in
16 the specification which says that an account number cannot be this
17 transaction data. There's no exclusion.

18 And I would also point out the fact that, in the claim, there's no
19 exclusion of account information here.

20 There is the concept, as we talked about in Figure 11, about account
21 ID.

22 If you can go back to slide 26?

23 So, we can see in field 1102 and in field 1101, right, there's an
24 account number or an ID number, and Patent Owner's saying that can't be --
25 an account number can't be an ID number.

1 Now, Patent Owner hasn't shown that an account number can't be an
2 ID number.

3 All that aside, the fact that we have testimony from Mr. McNair and
4 he's saying in paragraph 66, for example, about how Patent Owner has
5 confused the concept of user authentication.

6 These ID numbers are for creating a session for user authentication.
7 This entire embodiment really has no relationship to what's going on in
8 Claim 1 which is just simply, there's, again, if you look back at column 1,
9 line starting with summary invention, column 65, it's just mentioned a
10 transaction card bearing data. Right?

11 And this concept of a transaction card bearing data is mentioned
12 throughout the brief summary invention section which is what supports the
13 claims.

14 JUDGE SHAH: Thank you, that answered my question.

15 I have no further questions. I'd look to the panel for any other
16 questions?

17 JUDGE COCKS: No more questions from me. Thank you.

18 MR. BOWSER: Thank you, Your Honors.

19 JUDGE SHAH: Well, thank you both for appearing today and for
20 answering our questions.

21 We especially would like to thank our LEAP petitioner for
22 participating today. We appreciate for your willingness to take part in it and
23 to your law firm for allowing this opportunity.

24 So, we will now take this case under advisement and issue our
25 decision in due course.

1 I will ask that you remain if the -- to see if the court reporter has any
2 questions on spelling or anything.

3 Okay, well, thank you both, again, appreciate it.

4 MR. BOWSER: Thank you, Your Honors.

5 Have a good day, Your Honors.

6 (Whereupon, the above-entitled matter went off the record at 2:25 p.m.)

PETITIONER:

Jonathan R. Bowser
Laura Vu
Adam Erickson
Matthew Beck
HAYNES AND BOONE, LLP
jon.bowser.ipr@haynesboone.com
laura.vu.ipr@haynesboone.com
adam.erickson.ipr@haynesboone.com
matthew.beck.ipr@haynesboone.com

PATENT OWNER:

Isaac Rabicoff
RABICOFF LAW LLC
isaac@rabilaw.com