

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOAST, INC.,
Petitioner,
v.
GRATUITY, LLC,
Patent Owner.

Case IPR2023-01408
Patent 9,741,050 B2

Record of Oral Hearing
Held: January 10, 2025

Before MEREDITH C. PETRAVICK, CYNTHIA L. MURPHY, and
JASON W. MELVIN, *Administrative Patent Judges*.

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The above-entitled matter came on for hearing Friday, January 10, commencing at 1:00 p.m. EST, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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

(1:01 p.m.)

JUDGE MELVIN: Please be seated. All right, good. Good afternoon. I'm Judge Melvin, joined remotely by -- with Judges Murphy and Petrovic. This is a hearing for IPR2023-01408. Could Counsel for Petitioner please make an appearance?

MR. REDDY: Good afternoon, Your Honor. This is Srikanth Reddy on behalf of the Petitioner, and with me is my -- who will also be arguing today is my colleague, Andrew Ong.

JUDGE MELVIN: Thank you. And Counsel for Patent Owner, please?

MR. WRIGHT: Thank you, Your Honor. Alan Wright with the Devlin Law Firm for Patent Owner.

JUDGE MELVIN: Excellent. So you both have 60 minutes to use as you wish. You may reserve up to half your time for rebuttal, or surrebuttal. Of course, we will start with Petitioner. Before we get started, does anybody have any questions?

MR. REDDY: No.

JUDGE MELVIN: Excellent. We have your demonstratives. I would ask that you refer -- you may share your screen, I believe, with the remote judges, but you don't have to. We can -- either way, I would ask that you refer to slides that you're showing just for a clear record. Other than that, we're ready when you are. And how much time would you like to reserve?

MR. REDDY: Fifteen minutes, Your Honor.

JUDGE MELVIN: Fifteen minutes, okay. I will keep track of your

1 time. I believe that the light will turn yellow when the 15 minutes starts.

2 MR. REDDY: Thank you. And just so the Court is aware, I will be
3 speaking on Grounds 1 and 2, and then my colleague will speak on Grounds
4 3 and 4, so we'll pass the baton at a certain point.

5 JUDGE MELVIN: As you wish.

6 MR. REDDY: Thank you. Great. Good afternoon, Your Honors.
7 Again, my name is Srikanth Reddy from the Goodwin Law Firm on behalf
8 of the Petitioners, and with me are my colleagues Andrew Ong, Sanjeet
9 Dutta, and Laura Gordon, and in addition from our client Toast, Inc., we
10 have with us Jillian Dumas and Melissa Morte. Today we're here to discuss
11 U.S. Patent 9,741,050.

12 The 13 challenged claims relate to computer-implemented methods
13 and systems for allocating tips and gratuities. This computer software is
14 primarily used by restaurants. Both the Patent Owner and the petitioner
15 make software used by restaurants to allocate tips and gratuities.

16 Now the concept of tipping obviously existed before the 2012 priority
17 date, as did the idea of using distribution rules to split tips between
18 employees in a restaurant. A classic example is a situation where a server at
19 a cocktail restaurant gives a portion of their tips to the bartender who made
20 the cocktail.

21 Another example is pooling tips to avoid a situation where one server
22 who's unable to generate as many tips as other employees, despite working
23 just as many hours. Now the alleged inventions in the '050 patent use well-
24 known techniques, namely distributed computer systems, to allocate tips
25 more efficiently and to integrate tip allocations with other HR functions,
26 such as payroll software.

1 May I have Slide 83, please? Slide 83 is showing Claim 1 of the '050
2 patent, and there are a lot of words in Claim 1, but there are really two
3 structural aspects to this claim.

4 There is a client business system, which is a local computer used at a
5 restaurant location, and there is a cloud-based gratuity management system,
6 which is a computer processor that's remote from the client business system
7 that receives employee sales and tip information, allocates the gratuities
8 using rules, and sends the allocation back to the client business system.

9 This is the key disputed limitation that I expect you'll hear both sides
10 talking mostly about this afternoon. There's one other independent claim,
11 which is Claim 8, which is substantively identical. If I can go back to Slide
12 2, please? Slide 2 shows Figures 1 and 2A, which are representations of the
13 independent claims in the '050 patent. There's no real dispute over what the
14 structure of the gratuity management system is as claimed.

15 Figure 1 shows the overall architecture of the system that's covered by
16 Claim 1 in the challenged claims. At the top is the client business system,
17 which is shown in a red box. Claim 1 includes a point-of-sale server and
18 employee information. The dependent claims require that the client business
19 system include a payroll system and a time and attendance server.

20 The client business system interfaces with a cloud-based gratuity
21 management system, which is shown in yellow. The gratuity management
22 system has a server that's accessible by a plurality of clients, and the server
23 is configurable to execute gratuity distribution rules for each client. The
24 claims refer -- use the phrase cloud computing.

25 That's simply referring to this concept of a centralized processing
26 format that has numerous well-known features, particularly for businesses

1 like restaurants and other small businesses that may not have in-house IT
2 teams. Now in between the client business system and the gratuity
3 management system is an interface, which is depicted as a bidirectional
4 arrow, which we have circled on Slide 2.

5 That interface is called a gratuity client sync application in Claims 1
6 through 7 and an interface component in Claims 8 through 13. There's also
7 a web portal shown in Figure 1. That's really only required for Claims 8
8 through 13. Now may I have Slide 4, please? Slide 4 presents what we
9 believe to be the key disputed issues based on our review of Patent Owner's
10 papers.

11 The first, and again, the first issue is really the most heavily disputed,
12 namely, whether the Marshall reference discloses or renders obvious a
13 gratuity management system that is a cloud computing system remote from a
14 plurality of client business systems.

15 There cannot really be any dispute that Marshall discloses the idea of
16 using distributed computer architecture in a restaurant setting to improve the
17 efficiency of back-office functions. For example, Paragraph 25 in Marshall,
18 which is part of the background of that invention in the application, discloses
19 how it was well known to send information from a point-of-sale system,
20 such as tax information, to a remote location over the Internet.

21 The remote computer would then perform additional processing such
22 as debiting the restaurant's account for the required tax payment to make
23 sure money was available when it was time to pay it. That's all in the
24 background of the invention in Marshall.

25 So rather, the key dispute here is whether Marshall discloses
26 allocating tips on the remote computer and then sending that allocation back

1 to the local client business system. Now we've also listed Issues 2 through
2 5, which again, based on our review of the papers, we understand are
3 disputed.

4 But based on our review of the response, it's not clear that the Patent
5 Owner disputes that Marshall discloses these limitations for any reason other
6 than its argument that Marshall does not disclose a cloud-based gratuity
7 management system.

8 To the extent the Board has specific questions on those, I'm happy to
9 answer them, but I'll be focusing most of my presentation on question
10 number one. If I could have Slide 7, please. Slide 7 maps the Marshall
11 reference against the '050 patent.

12 The Marshall reference is titled Systems and Methods for Managing
13 Tips and Gratuities. Not only does Marshall disclose every element in
14 Independent Claims 1 and 8, but it discloses embodiments having an
15 architecture that is nearly identical to what is disclosed in the '050 patent.

16 Here, we've mapped the disclosures from Marshall against Figure 1 in
17 the patent. There's a local point-of-sale terminal which obtains sales,
18 employee, and gratuity information. Marshall refers to that as the ALOHA
19 point-of-sale system.

20 In Paragraph 70, for example, Marshall discloses that multiple point-
21 of-sale terminals can be networked together using a server. Marshall also
22 discloses a gratuity management system. For example, in Paragraph 105,
23 Marshall calls this a, "Gratuity reporting and tip allocation software," which
24 it refers to in shorthand as GrataSoft.

25 Marshall also discloses an interface system, which it paraphrases IS,
26 that is part of the ALOHA point-of-sale system. For example, in Paragraph

1 400, Marshall says, “The present invention has been discussed herein as an
2 independent system capable of interfacing to third-party systems such as
3 point-of-sale systems.”

4 Now, the ALOHA point-of-sale system covers both the client
5 interface and the client business system. For example, in Paragraph 108,
6 Marshall says that an exemplary interface system is the ALOHA point-of-
7 sale system. It has software that interfaces to the gratuity management
8 system. Now I'd like to move to Slide 20.

9 Slide 20 is where we'll begin discussing this concept of whether
10 Marshall discloses a gratuity management system that is a cloud computing
11 system remote from the plurality of client business systems. And as I
12 mentioned, this appears to be the key dispute between the parties. Now
13 Patent Owner relies heavily on Figure 3 from the Marshall reference.

14 May I have Patent Owner's Slide 7, please? Figure 3 is one
15 embodiment that's disclosed in the Marshall reference. In this embodiment,
16 the gratuity allocation is performed locally at the processor unit 302, and
17 then the results of that gratuity allocation can be sent to the internet, which is
18 Element 318. But importantly, that is just one embodiment.

19 If I could have Paragraph 106 from Marshall, please? Paragraph 106,
20 which is cited and discussed in our petition at Page 11, demonstrates that
21 Figure 3 and the cloud-based embodiment are two separate embodiments.
22 This paragraph is discussing the process for starting up the system and
23 collecting data at the client side.

24 It says, “For example, when GrataSoft is operated on a system such as
25 those described in greater detail with respect to Figure 3, such enabling may

1 include energizing processing unit 302, monitor 304, and optionally printing
2 device 306.”

3 That's referring to Figure 3. That is the local system or the client-side
4 system as discussed in Patent Owner's papers. The paragraph continues,
5 though. “In web-based embodiments of the present invention, such enabling
6 may include initiating a connection between a local processing unit or DUM
7 terminal and the web-based system via an Internet connection.”

8 Importantly, there is no reference to the processing unit 302 in the
9 web-based embodiment. That makes sense because the processing unit is
10 located in the cloud. If we can return back to Slide 20, please. Paragraph
11 20, or Slide 20, thank you. Paragraph 102 contains a detailed description of
12 what this web-based embodiment looks like.

13 It begins, “Connection of system 300 to Internet 318 allows the
14 systems and methods of the present invention to be implemented in a web-
15 based manner. As I mentioned a moment ago, Marshall is titled Systems
16 and Methods for Managing Tips and Gratuities. The disclosed systems like
17 GrataSoft are the systems and methods of the present invention.

18 Importantly, it continues, for example, the systems and methods of the
19 present invention may be executed via a web server or similar apparatus that
20 interacts with one or more users via an internet connection, such as Internet
21 connection 316, between the web server and the user's local processing
22 device or DUM terminal.”

23 The word executed is important. It means that the gratuity allocation
24 is being performed at the remote web-based server, not the local machine.
25 The reference to, “User's local processing device,” is referring to the point-

1 of-sale system. Now the specification in Marshall discloses various methods
2 that are part of the invention. If I could have Slide 12, please.

3 Four exemplary methods for allocating tips that are part of the
4 invention disclosed in Marshall are set forth in Paragraph 142. One example
5 is that tips are allocated based on the number of hours worked by each
6 employee divided by the total number of hours worked by all employees
7 during a particular shift.

8 Another option is to attribute each employee, attribute gratuities to
9 each employee based upon the total sales of each employee divided by the
10 total sales of all employees for a particular shift, or you could create
11 subgroups.

12 You could have one group of certain classes of employees such as
13 bartenders and then a separate group which would be something like the
14 servers. And you could come up with separate rules for each of those.

15 That's all discussed in Paragraph 142. And importantly, Paragraph
16 142 also recognizes that these are just exemplary and that, "Any number of
17 subsets and any number of methods may be used without departing from the
18 scope of present invention." These are gratuity distribution rules executed
19 by the web server.

20 We can go back to Slide 20, please. Paragraph 102 concludes by
21 saying, "Such interaction may include receiving input from a user and or
22 providing output, e.g. reports, to a user via the internet connection." A
23 person skilled in the art would understand that this means that the user inputs
24 information, the web server analyzes the information by executing the
25 gratuity distribution rules, and returns the analysis to the user.

1 Now Marshall takes it a step further. In Paragraph 103, Marshall
2 discusses the advantages of this web-based deployment. It talks about how
3 web-based deployment makes it easier to deploy the system at multiple sites.

4 It also allows employees to access the gratuity allocation through the
5 internet. In Paragraph 103, it talks about the advantages with respect to,
6 “Maintenance, support, upgrades, enhancements to, centralized
7 administration of, storage and backup of the systems of the present
8 invention.”

9 Now these are important inventions. Instead of going through and
10 backing up every single system at every single restaurant that has GrataSoft,
11 the cloud-based system allows you to only back up the cloud-based server.
12 And that's an important advantage that Marshall itself describes, which can
13 only be achieved through a cloud-based implementation.

14 Finally, Paragraph 104 talks about how the web-based deployment
15 makes it easier to transfer employee information to the gratuity management
16 system. Can I have Slide 21, please. Now importantly, Marshall also
17 discloses two different types of structures in the specification that would
18 make it clear to a person skilled in the art that it includes a gratuity
19 management system that can be deployed in the cloud.

20 For example, Paragraph 110 discusses how data is transferred from
21 the client business system to the gratuity management system. And there are
22 three different communication protocols, all of which support a cloud-based
23 infrastructure. One example is HTTP, which is in fact a website web
24 programming language. The second type of structure is with respect to the
25 multi-employer embodiment.

1 Paragraphs 385 to 393 discuss this multi-employer embodiment where
2 an employee who works at multiple restaurants is able to log into the system
3 and determine gratuities owed and allocated via the web. If I could have
4 Slide 22, please. Now the examiner also recognized during prosecution of
5 the '050 patent that Marshall discloses a cloud-based gratuity management
6 system.

7 This is Exhibit 1008 at Page 215. The examiner cited Paragraph 25 to
8 support its position, which is the paragraph that I discussed earlier today,
9 which is part of the background of the invention in Marshall. Slide 23,
10 please.

11 Now to the extent that Marshall does not disclose a gratuity
12 management system in the cloud, it would have been obvious to have a
13 cloud-based server perform gratuity allocations. Modifying the system in
14 Marshall to perform gratuity allocations in the cloud would require the use
15 of known techniques, namely the use of distributed computer architecture, to
16 achieve predictable results, which is the benefits of remote processing.

17 As shown in the excerpts on Slide 23, the Patent Owner's expert
18 acknowledged that these benefits would have been well known to a person
19 skilled in the art at the time of the invention, and Marshall itself discloses the
20 advantages of cloud-based systems, and I've already discussed many of
21 those.

22 Paragraph 104 describes additional advantages, including receiving
23 updates and improved efficiency. Slide 24, please. Likewise, Patent
24 Owner's expert acknowledged that the benefits of distributed architecture
25 would be understood by a person skilled in the art who placed a gratuity
26 management system in the cloud.

1 So in summary, Marshall discloses or renders obvious the concept of
2 remote allocation of gratuities using information ingested from a remote
3 client-based system. There's just a couple other points I'd like to raise with
4 respect to a couple other limitations. If I could have Slide 12 once again,
5 please.

6 Now the Patent Owner likewise disputes that Marshall discloses a
7 server that's configurable to independently execute gratuity distribution rules
8 on a client-by-client basis.

9 The server on which the gratuity management software in Marshall
10 resides is configurable in the way that the claim requires. And I already
11 gave you some examples of gratuity distribution rules in Paragraph 142.
12 Paragraph 127 gives examples of additional gratuity distribution rules that
13 can be run on a client-by-client basis.

14 For example, ATIP, allocation-enabled, and autocorrect. Paragraph
15 226 in Marshall states that the defaults concerning TRDA, ATIP, allocation-
16 enabled, autocorrect, they can all be toggled on and off. That's an example
17 of customizing the distribution rules based on the client.

18 Slide 13, please. Now at Pages 29 through 32 of the response, the
19 Patent Owner disputes that this limitation is disclosed or rendered obvious
20 by Marshall. They cite Paragraphs 107 and 109 to support the proposition
21 that gratuity allocation is only performed at the point-of-sale system in
22 Marshall.

23 Paragraph 107 is discussing how the GrataSoft system ingests
24 transaction information from the point-of-sale server. It says nothing about
25 the invention being limited to local processing. Paragraph 109 likewise is

1 simply discussing the process for transferring information from the point-of-
2 sale server to the GrataSoft software system.

3 Again the paragraph does not say that the GrataSoft software must be
4 located on this point-of-sale server as the Patent Owner suggests. Slide 15,
5 please. Patent Owner also disputes that Marshall discloses a plurality of
6 client business systems in electronic communication with a gratuity
7 management system server.

8 Now we know that the gratuity management system can be accessible
9 to multiple restaurants because of the multi-employer embodiment that's
10 disclosed in Figure 27. In Paragraph 385, Marshall discloses that in its
11 system it, "Allows an employee that holds multiple jobs to record his or her
12 data via a single integrated system."

13 It continues in Paragraph 390 by discussing a process where an
14 employee logs into the system to divide tips with co-workers, the employee
15 selects the employer and the employee that it wants to share tips with.

16 A person skilled in the art would understand that these activities can
17 only be achieved if there is a plurality of client business systems in
18 electronic communication with a gratuity management system. This is
19 because information like sales and gratuities need to be pulled from each
20 individual restaurant.

21 Likewise, in Paragraph 386, Marshall discloses, "Each of the entered
22 co-workers should be associated with a specific one or more of the multiple
23 employers."

24 What that means is that each of these restaurants has to have their own
25 client business system and point-of-sale server so that information can be
26 sent via the interface system to the GrataSoft gratuity management system.

1 Now the Patent Owner again appears to contest that Marshall discloses a
2 client business system at Pages 32 through 35 in their response.

3 They said, “The client disclosed in Marshall communicates with a
4 point-of-sale server to either download tip or sales information from the
5 client's point-of-sale server or to report the tip calculations performed at the
6 client to the point-of-sale server.”

7 So to the extent we follow that, the point-of-sale server in Marshall is
8 part of the client business system. As we've discussed, that exists on the
9 client side. The interface takes information from the point-of-sale server and
10 transfers it to the GrataSoft gratuity management system.

11 So with that, I just have one point I'd like to briefly make with respect
12 to Ground 2. If I may have Slide 39, please. Now Ground 2 is directed to
13 eight dependent claims. These eight dependent claims are directed to the
14 idea that the client business system contains more than just sales and gratuity
15 information.

16 For example, a time and attendance server that tracks employee
17 working hours or that the client business system includes a payroll system.
18 Marshall discloses each of these features, but it doesn't necessarily disclose
19 integrating the time and attendance server or the payroll system with the
20 interface between the client business system and the gratuity management
21 system.

22 But like Marshall, Webb discloses the gratuity management system.
23 And along with gratuity management, Webb also discloses a system where
24 the point-of-sale terminal, time and attendance server, and payroll
25 information are all interconnected to the gratuity management system.

1 And I started my presentation with a list of disputed issues. I did not
2 identify any disputed issues concerning Ground 2, and it's not clear to us that
3 there are any disputed issues here. The Patent Owner argued that the
4 combination of Webb and Marshall does not render obvious the limitation in
5 Claim 1 requiring a cloud-based gratuity management system.

6 But as I've discussed, we're not relying on Webb to support that
7 limitation. Rather, our argument is that Marshall itself discloses that
8 limitation or it would have been obvious to modify Marshall to do so.
9 Petitioner does not appear to be arguing that the combination of Webb and
10 Marshall renders obvious the limitations requiring a cloud-based gratuity
11 management system.

12 Nor do they appear to dispute that any of the eight dependent claims
13 in Ground 2 are not rendered invalid based on the evidence presented. With
14 that, if there are no further questions for me on Grounds 1 and 2, I'll cede the
15 floor to my colleague with respect to Grounds 3 and 4. And we'll reserve
16 any balance of our time for rebuttal.

17 MR. ONG: Good afternoon, Your Honors. Andrew Ong on behalf of
18 Petitioner. We're going to turn now to Ground 3, which focuses on a
19 different primary reference, Phillips, in combination with the Marshall
20 reference that my colleague was just discussing.

21 Turning to Slide 49 of Petitioner's demonstratives, just as a quick
22 reminder, Phillips is a prior art reference directed to a gratuity processing
23 system apparatus. You see that in the title.

24 And one embodiment of the Phillips system is shown in Figure 1 on
25 the right side of the slide. One issue that Phillips was directed to was paying
26 tip-outs to employees at the end of the day for various business

1 establishments, venues, and that would be for a period of time, whether it be
2 the end of the shift or the end of the day.

3 The gratuity processing system of Phillips you'll see is in the middle,
4 the System Processor 10 of Figure 1. That processor system is designed to
5 interact with a number of point-of-sale systems that are representing a
6 number of the venues. And you'll see in the figure on the left-hand side,
7 there's a number of venues.

8 Those are each a separate business establishment, and they are each
9 interacting with a point-of-sale system one column over in Element 20. The
10 point-of-sale systems, as disclosed in Phillips, perform standard operations
11 collecting employee information, transaction information, including tips.
12 And then you'll see in Figure 1, there are the arrows that are pointing to the
13 System Processor 10.

14 That's the transmission of the information, the employee information,
15 transaction information that's needed for the System Processor 10.

16 And the processor is, as you can see, remote from the various point-
17 of-sale systems and the business establishments. What the processor, what
18 the Phillips system then does is, in this particular context, will calculate the
19 tip allocations per employee. And on the right-hand side, you'll see there are
20 the debit cards, the Element 5, where the allocations have been presented
21 and the cards are given out to the employees.

22 So if we could turn to Slide 4, please. So Slide 4 is the disputed issues
23 that we were talking about earlier. And as to this, Ground 3, the issue is
24 whether Phillips, in combination with Marshall, renders obvious a remote
25 cloud-based gratuity management system having a server that is separate and
26 distinct from any client point-of-sale server.

1 With respect to this ground, the Patent Owner's argument is a little
2 sparse. They spent maybe one and a half to two pages on this ground total.
3 If you could turn to Slide 16 of the Patent Owner's slides. So, on this slide,
4 which you'll see from Patent Owner in a bit, this is where they summarized
5 the arguments as related to Ground 3.

6 The first one here is that Phillips is supposedly directed to client-side
7 tip calculations at a client's point-of-sale system. And so this assertion is
8 baseless. It's not grounded in the disclosures of Phillips.

9 As I'll discuss in a bit, Phillips discloses that the tip calculations are in
10 fact performed remotely at the server. So we are now on Slide 50 of
11 Petitioner's Demonstratives, and the limitation being addressed here is 1A,
12 which is a gratuity management system comprising a server coupled to a
13 computer network accessible by a plurality of clients. This takes us back to
14 Figure 1 of Phillips.

15 You'll see that the server of the gratuity management system is
16 highlighted in yellow in Figure 1. What we see here is that the server is in
17 fact remote and separate from the various venues in the point-of-sale
18 systems.

19 And we know that because you see all the communications that are
20 coming from each of the point-of-sale systems to the same server, indicating
21 that that server cannot possibly be co-located at every single one --
22 physically located at every single venue.

23 And so those communications are happening over a computer network
24 like the Internet, so we know that it is in fact a remote system. This
25 understanding is supported by the Phillips disclosure. Paragraph 34 of
26 Phillips says that the tip totals, 25, or other information and data are

1 uploaded from the point-of-sale systems 20, to a central processing system
2 10.

3 And the uploading, as discussed here, as I mentioned earlier, is
4 occurring over the Internet, over a computer network rather, as would be
5 understood by a person of ordinary skill in the art, again indicating that the
6 server 10 is in fact remote from the client business systems.

7 So the other -- so having demonstrated that the server is remote, the
8 other issue here is whether the server is configurable to independently
9 execute the 2D distribution rules on a client-by-client basis. And Phillips
10 discloses this as well. As you'll see in Paragraph 34, it talks about -- it says
11 Figures 2A and 2B illustrate one of the many processes for which the system
12 of Figure 1 can be used.

13 And the system of Figure 1 is the Phillips system processor 10 that
14 we've been talking about. And further down in Paragraph 34 says that
15 system allows tip-outs to be automatically calculated and distributed to other
16 employees at this time depending on location or corporate-level business
17 rules within the system. That's executing gratuity distribution rules on a
18 client-by-client basis.

19 Briefly, Paragraph 68 similarly says that the system of the invention,
20 the server 10, preferably calculates the tips owed to each member of each
21 team or group based on the rules and data that have been input. So it's a
22 similar disclosure as I discussed earlier. So what we have here with these
23 disclosures is that the server 10 is remote and the server 10 is the entity or
24 machine that's calculating the gratuity allocations on a client-by-client basis.

1 So taking us back to Patent Owner Slide 16, we've already covered the
2 first point. That's incorrect because, as I explained, based on the disclosures
3 of Phillips. The second point here is a little bit of a long one.

4 And it looks like the Patent Owner has taken various claim language
5 from Claim 1 relating to the gratuity management system and put it together.
6 So what it says in the second point here is that there's no disclosure of cloud-
7 based gratuity management system. And we'll come back to that in a little
8 bit because the cloud-based is obviously important for these proceedings.

9 But the rest of the sentence says that the gratuity management system
10 calculates gratuities on a client-by-client basis using employee and
11 transaction information extracted from individual client business systems
12 and sent to a separate and distinct remote gratuity management server to
13 apply stored client-specific gratuity distribution rules.

14 Now I won't finish the rest of that. As I've already discussed and just
15 turning briefly back to Slide 52 of our presentation, the server is in fact
16 remote. The Phillips server is in fact remote, and it is the server 10 that is
17 performing these various gratuity allocation rules on a client-by- client basis.

18 And so going back to Patent Owner Slide 16, we've covered the first
19 and the second points. The final point I just want to touch on here is the
20 Patent Owner states, institution decision does not set forth analysis of how
21 challenged claims would be obvious based on Phillips and view of Marshall.

22 That is, no explanation of what Phillips discloses or why it would
23 have been obvious to -- Sorry, going back to the cloud-based point. So the
24 end of the second point in Patent Owner's Slide 16 is not in dispute.

1 What's in dispute is the cloud-based gratuity management system, and
2 Patent Owner ignores the disclosures of Phillips, ignores the evidence that
3 we've cited in the petition.

4 As I've already mentioned, the Phillips server 10 is a remote server,
5 and so basically what that is disclosing is a distributed architecture, as my
6 colleague mentioned earlier, and that's using distributed architecture to
7 optimize a system where some things are performed locally and some things
8 are performed better remotely.

9 And as we've discussed in our papers and in Dr. Russ's declaration,
10 the cloud is essentially just another way of describing the distributed
11 architecture. And so the cloud and its benefits were known well before
12 2012, as my colleague showed earlier, Dr. Collamore, a Patent Owner's
13 expert, also admitted to the benefits of using a cloud-based technology.

14 And so it would have been a simple switch to the extent required for
15 Phillips to migrate to the cloud. And –

16 JUDGE MELVIN: You rely on Marshall for that, don't you?

17 MR. ONG: We do rely on Marshall for that. So we do believe that --
18 so Phillips's disclosure is already showing a distributed architecture. To the
19 extent that that's not considered to be a cloud-based system, it would have
20 been obvious.

21 And you see in Dr. Russ's declaration, there, again, there are many
22 known benefits to using a cloud-based system, and we do rely on Marshall
23 for the specific point that, in the particular context of a gratuity management
24 system, as of September 2012, it would have been obvious to move Phillips
25 to the cloud.

1 So then that takes us now back to the third point on -- apologies for
2 the mix-up earlier -- to Slide 16 of Patent Owner's slides. The Institution
3 decision does not set forth analysis of how challenged claims would be
4 obvious based on Phillips, in view of Marshall. That is, no explanation of
5 what Phillips discloses or why it would have been obvious to combine with
6 Marshall.

7 This point, we think, doesn't really make much sense. The Panel was
8 not required each and every ground to institute IPR in these proceedings.
9 Regardless, as set forth in our petition and in our reply papers, we have
10 covered and explained why the -- why Phillips, with Marshall, renders
11 obvious the claims for Ground 3, and then also, with respect to the claims in
12 Ground 4, the addition of Webb, as my colleague mentioned earlier.

13 The only other point that we want to address with respect to this
14 combination is we just want to make clear, like, what we're relying on here
15 for the combination. We are not relying on Marshall to cure any alleged
16 deficiencies in -- sorry. We're not relying on Phillips to cure any alleged
17 deficiencies in Marshall.

18 You'll see on the left-hand side, we're not relying on Phillips to
19 provide a motivation to reconfigure Marshall to be a cloud-based system.
20 As I already described, you know, Phillips is its own primary reference. It
21 has its own disclosures. Really, the only point that we relied on for Marshall
22 was to show that cloud-based technology and, particularly in the context of
23 gratuity management systems, was known and it would have been obvious
24 as of September 2012. So --

25 JUDGE MELVIN: Just for the record and for my colleagues, you're
26 talking about Slide 72.

1 MR. ONG: Apologies, yes. So this is Slide 72 of Petitioner's
2 demonstratives.

3 JUDGE MELVIN: So does Marshall expressly use the word, cloud?

4 MR. ONG: It does not expressly use the word, cloud, and neither
5 does Phillips. But based on the disclosures that are there, including the
6 HTTP protocol, the XML protocol, the -- I forget the last one, but based on
7 those disclosures, it would have been -- a person of ordinary skill would
8 have understood that to be discussing cloud-based technology.

9 So unless the Panel has any has any further questions, we would like
10 to -- we'll reserve the rest our time for our follow-up.

11 JUDGE MELVIN: Okay. You have about 23 minutes.

12 MR. WRIGHT: Thank you.

13 JUDGE MURPHY: Yes.

14 MR. WRIGHT: Thank you, Your Honors. Alan Wright for the
15 Patent Owner.

16 JUDGE MELVIN: And how much time would you like to reserve,
17 Mr. Wright?

18 MR. WRIGHT: Five minutes, please.

19 JUDGE MELVIN: Five minutes. Okay.

20 MR. WRIGHT: Give me just a second here. I've got a lot of stuff in
21 front of me that I want to make sure I have access to.

22 So thank you, Your Honors, for hearing us today. We have
23 essentially several arguments that we have, and I'll go through this. I had a
24 little bit of trouble with the presentation so I'm going to be doing this kind of
25 on a slide by slide basis. And if you need me to increase this, I certainly
26 can.

1 So two primary points that, to kind of address everything that you
2 heard from Petitioner. First of all, Patent Owner does not believe that
3 Marshall or Phillips or Webb discloses a cloud-based gratuity management
4 system. And the reason that we say that is several-fold.

5 Part of it is understanding what the '050 Patent is disclosing and
6 claiming, and then also taking a little bit more closer look at the prior art
7 references that were discussed today and, in particular, Marshall. Marshall
8 is the primary reference relied upon.

9 Marshall is relied upon for the independent Claim 1 and independent
10 Claim 8. And we have a number of positions on Marshall and because
11 Marshall has a number of deficiencies, we do not believe that it anticipates
12 or renders obvious Claims 1 or 8. And also, because the dependent claims
13 depend from either Claims 1 or 8, that is the reason we say that Phillips and
14 Webb do not cure any deficiencies in Marshall.

15 But let me start with the '050 Patent first, if you will. We looked at
16 this a little bit earlier, and in particular, we looked at Figure 2A. And if you
17 look at Figure 2A -- I'll use my cursor here if I can -- and you will see a
18 couple of things in Figure 2A.

19 You'll see, down at the bottom of Figure 2A, there is a point-of-sale
20 server at the back of house, point-of-sale server. And that is essentially a
21 point-of-sale server that is used by a restaurant or what is known as a client
22 in the '050 Patent.

23 It is a server that is used back of house. It may connect to a number of
24 things. It may connect to multiple point-of-sale terminals like cash registers.
25 It may connect with various devices used for getting signatures for credit
26 cards.

1 It may also be hooked into the point-of-sale business -- excuse me,
2 data management that holds records on transactions and employees, which is
3 to the left. And you'll see there are some other accounting management
4 materials that can be added on there as well.

5 As the Board noted and also as Petitioner noted, this is the client
6 business system. And it's -- the '050 Patent is specifically designed to be
7 able to handle and to be able to distribute -- or calculate and distribute
8 gratuities to numerous clients, not just one point-of-sale system, but
9 numerous point-of-sale systems.

10 That could be several restaurants. It could be a TGI Fridays. It could
11 be an Old Ebbitt Grill. It could be something that isn't a restaurant. It could
12 be a hotel. Each one of these clients, presumably, has its own point-of-sale
13 system that includes employee information and can include other peripherals
14 that are specific to that client business system.

15 Part of the reason that the '050 Patent is powerful is it recognized the
16 problems associated with various legacy systems and wanted to design a
17 system that was able to communicate with all these legacy systems
18 regardless of where the particular point-of-sale client -- how they have their
19 particular system configured.

20 On that system, you will see there is a, what is known as the GratSoft
21 -- excuse me, GratSync client. This is a software that is on the point-of-sale
22 side and is used to extract specific information on employees and
23 transactions and to send that through the Web, through to a cloud services
24 server, which is marked in the upper left-hand corner as 210.

25 And the notion here is that this remote point-of-sale -- excuse me, this
26 remote gratuity management system server is able and configured to perform

1 gratuity calculations for not just the one point-of-sale system client business
2 system shown but for also other client -- plurality of client business systems.

3 And you see that in Claim 1 of the patent. As Petitioner noted, there
4 are two structural components. There is the gratuity management system
5 which is a server coupled to a computer network and accessible by a
6 plurality of clients, the server being configurable to independently execute
7 gratuity distribution rules on a client-by-client basis.

8 That server will also hold, in addition to information coming from
9 each of these client's point-of-sale systems, it will include a module that
10 maintains the gratuity distribution rules not only for each client, not each
11 point-of-sale system, but also for specific employees in each one of those
12 client systems as needed.

13 Some point-of-sale systems, some client business systems may have a
14 few employees, may have two employees, doesn't need an elaborate gratuity
15 distribution rules. A larger restaurant may have bartenders. It may have
16 bussers. It may have people that get tip-outs. It may have people that have
17 no tips. And so, in those situations, the client business system has to be able
18 to handle a larger group with additional gratuity distribution rules.

19 The second structural component in Claim 1 and also in Claim 8 is a
20 plurality of client business systems and electronic communication with that
21 gratuity management system server. And each one of those correspond to a
22 particular client. Again, individual restaurant, hotel, whatever the client may
23 be, that's the point-of-sale system and that is the client business system that
24 includes that point-of-sale server that takes that information and sends it
25 remotely to the gratuity management system.

1 There are now three wherein clauses in Claim 1, also in Claim 8. And
2 these wherein clauses are important because they describe where the
3 calculations are occurring, where the information that is used to make the
4 calculations comes from and what is done with that information once it's
5 calculated.

6 And what this shows is that the synch client application, which is on
7 the client business system side, is configured to extract transaction
8 information and employee information from the client business system and
9 to initiate transfer of that information to the remote gratuity management
10 system.

11 It also notes the gratuity management system is a cloud computing
12 system, remote from the plurality of client business systems configured to
13 receive and -- excuse me, receive the extracted transaction and employee
14 information and to store that information in the database at the remote
15 gratuity management server.

16 And then the system is further configured to execute independently,
17 for each client business, for each client gratuity distribution rules for
18 allocating gratuities among at least a portion of the employees from each one
19 of those independent clients, determine that allocations based on the
20 information received and the gratuity distribution rules for each particular
21 client and then to determine what those gratuities are and return that
22 information to each of the respective client business systems.

23 If we take a look at the Marshall application, which we've been
24 discussing today, you'll see we do, indeed, point to Figure 3. As we have in
25 our briefs, Figure 3 is essentially the way the Marshall system is set up. It is
26 an exemplary embodiment. There is a web-based embodiment, but what

1 you will see from what I'm going to show you is it is still a client-side
2 system.

3 It's a client business system that has these particular components. And
4 it explains what they are: a processing unit 302, an interface and various
5 other peripherals that can be used with this system.

6 And you'll see also, I pointed this out, there are other figures that are
7 discussed in the Marshall patent but they all refer to flow charts that are used
8 with respect to Figure 3, the system of Figure 3. So Figure 3 is the primary
9 architecture that we're talking about for the Marshall client business system.

10 Now you do have, in Marshall, a disclosure of a web-based system.
11 And in the web-based system, it explains that you can have -- like many
12 businesses, you can have access to a client business system using the
13 internet, using the web. A lot of people use this for teleworking. You have
14 a password and a user name that allows you to get into the system and
15 allows you to use the system remotely.

16 It's important to understand, though, that all this is is a web-based
17 access by users of a given client into the client's business system. This is not
18 an ability of each one of these users to perform gratuity calculations. The
19 calculations are done at Figure 3, at that system on the software that is
20 maintained on that system.

21 It is all part of a client side, and we refer to this repeatedly through our
22 briefing. This is client-side processing and does not contemplate taking the
23 information from that point-of-sale client's system and sending it to a remote
24 cloud-based system that can handle not only that client's gratuity distribution
25 but also other clients' as well on a client-by-client basis. Marshall does not
26 teach that.

1 Marshall does teach that users of their web-based system can input
2 information. If I'm an employee of TGI Friday's, I can go onto the system.
3 If I have a user name and a password, I have credentials to get onto this web-
4 based system, I can add information to the point-of-sale system.

5 The point-of-sale system can include that in its records but it is not
6 taking that information and then sending it elsewhere. Similarly, the user
7 can get reports from the client's point-of-sale system, but it is not getting it
8 from outside in a cloud-based system.

9 Indeed, if you take a look at Marshall 104, you'll see that these web-
10 based systems allow employees to, you know, declare tips and do tax type
11 information for themselves specifically. But they don't have access -- this is
12 a reason they have a password and credentials -- they don't have access to all
13 the other employees' information, how much money the employee made,
14 what their tax liabilities are. That's private information for each employee.

15 So whereas you can have access to the point-of-sale client business
16 system, you're not getting access to everything. And you're certainly, even if
17 you're downloading information from the point-of-sale system to the
18 individual user, the user is not conducting any gratuity calculations for the
19 other employees and certainly not doing any gratuity applications for other
20 clients outside of that particular business. It's simply just an access to the
21 client business system.

22 And I'd point out -- I pointed to 104 but I also want to point out, with
23 Marshall, just to be clear because there seems to be some confusion as to
24 where the calculations are occurring and I want to make sure that we're clear
25 on this. If you look, for example, at Paragraph 108 which I believe
26 Petitioner discussed, it talks about an exemplary embodiment.

1 One such IS is Aloha POS -- that's the point-of-sale server, that's at
2 the client business system -- and software which is executed by the same
3 processing unit, 302, that executes the GrataSoft software. The server is
4 doing -- the point-of-sale server and the software that's on that client-based
5 point-of-sale server is doing the calculations that can then be communicated
6 to each individual employee.

7 But what it is not doing is it's not taking extracted information and
8 sending it off to another cloud-based server with all the information from all
9 the employees of not only that client but other clients as well.

10 JUDGE MELVIN: Well, what about Petitioner's reliance on the
11 multiple employer embodiment in Marshall?

12 MR. WRIGHT: Sure. The Figure 27 in the multiple employer
13 embodiment is a situation where a particular employee may have more than
14 one job. It's not a situation where the point-of-sale is getting information
15 from different clients. This is still me --

16 JUDGE MELVIN: The point-of-sale need not get information from
17 different clients in your claim, does it?

18 MR. WRIGHT: I'm sorry?

19 JUDGE MELVIN: Does your claim require that the point-of-sale gets
20 information from multiple clients?

21 MR. WRIGHT: No.

22 JUDGE MELVIN: Okay.

23 MR. WRIGHT: No, it does not. The claim requires that the gratuity
24 management system gets --

25 JUDGE MELVIN: Right.

1 MR. WRIGHT: -- employee information, gets transactional
2 information and distribution rules for multiple clients.

3 JUDGE MELVIN: So if an employee in the multiple employer
4 embodiment in Marshall can access information from multiple employers,
5 doesn't that require that the system receives information from multiple
6 employers?

7 MR. WRIGHT: No, what it is, Your Honor, is a situation where, if
8 you look at, specifically, if you look at, for example, Paragraphs 378
9 through, you know, it looks like 386 and perhaps a little bit further, but what
10 this is, a situation taking a look at -- it starts in Paragraph 385.

11 The individualized system, a system on a user's computer at home,
12 equipped with the ability to record data associated with multiple employers,
13 this allows the employee to -- assuming that this employee and its point-of-
14 sale client that it's communicating with, possibly more than one, has the
15 credentials to get into those systems and work from their personal computer,
16 they still have to have the requisite credentials to get their information only.

17 In fact, it specifically says, if you look back at Paragraph 378, this is
18 referring to Figure 4, an individual employee does not have access to
19 irrelevant and/or sensitive information such as coworkers' Social Security
20 numbers, the other employees' wages, tips or gratuity data, other employee's
21 personal information, et cetera.

22 In contrast, the loaded data should relate solely to the individual
23 employee's sales data, tip and gratuity data, tip-out data and the like. In
24 some embodiments, the system from which data is downloaded may be
25 specifically configured to provide such information on an individual
26 employee basis.

1 But the employee is not getting information on multiple employees.
2 It's getting information on that employee that possibly comes from different
3 clients. But it's not receiving information on tips and gratuities from -- for
4 all employees from those --

5 JUDGE MELVIN: Well, why would that -- why does that matter to
6 your claim language?

7 MR. WRIGHT: Well, because the claim language requires that you're
8 receiving information on multiple employees regarding the given clients.

9 JUDGE MELVIN: It requires an employee to receive that
10 information?

11 MR. WRIGHT: It requires the gratuity management system.

12 JUDGE MELVIN: Right.

13 MR. WRIGHT: So if there's --

14 JUDGE MELVIN: But you were arguing, just two sentences ago, that
15 an employee does not have access to other employees' information. And I'm
16 trying to figure out why that matters.

17 MR. WRIGHT: If you look at -- so in Claim 1, you will see that there
18 is a plurality of client business systems and electronic communication with
19 the server of the gratuity management system, the remote gratuity
20 management system. The individual user's computer that is connected to a
21 client business system, that is not a cloud-based gratuity management system
22 that's maintaining client distribution rules for all employees of those two or
23 more clients.

24 They're not receiving information from other employees of either of
25 those two clients. They're receiving only their information.

1 JUDGE MELVIN: But you agree that, in Marshall, an employee can
2 receive information about that employee's tips from multiple employers.
3 Correct?

4 MR. WRIGHT: Yes.

5 JUDGE MELVIN: Okay. From where does that information come?

6 MR. WRIGHT: It comes from the point-of-sale servers.

7 JUDGE MELVIN: So an employee, to receive that information from
8 multiple employers would have to connect to multiple different systems to
9 receive the information? You think that's what Marshall's disclosing?

10 MR. WRIGHT: I think that it's a single-user computer that may be
11 able to connect to more than one point-of-sale client business system, yes.

12 JUDGE MELVIN: Okay.

13 MR. WRIGHT: But it is not receiving all information or information
14 from all employees from either. At best, it's receiving the individual's
15 employee's information from those two client business systems. The
16 employee is not looking at other employees of either its own or other clients,
17 and the employee does not have the gratuity distribution rules for all the
18 other employees because that's not their purview.

19 This is an ability of a user to access a client business system. Yes, it
20 can access more than one, but it's still access of a client business system.
21 And the calculations are still occurring at the client business system that is
22 being sent to the user. The user can provide information about their hours.

23 The user can provide information about the tips that they collected,
24 and they can upload that information from their user terminal up to the client
25 business system, whether it's one or more.

1 But under Marshall, the calculations are still occurring at the client
2 business system and all that employee is doing is accessing that information.
3 They're not performing the calculations. And to the extent they perform any
4 input or anything, it's their own information. It's not the information of all
5 the others.

6 And I think that's important for a number of reasons, one of which is -
7 - it has to do with the issue of obviousness. Petitioner said that Marshall and
8 Phillips do not mention the cloud. But actually, Marshall does mention
9 cloud-based systems.

10 And despite this cloud-based system or at least recognizing it and
11 acknowledging that it can exist, Marshall still pushes individualized
12 information down to these individual users. It never sends any of the
13 calculations off-site to a remote gratuity management system.

14 And I'd point specifically -- so I believe it's on Page 14 of our
15 response. During prosecution, their general Examiner cited Marshall as
16 teaching a number of items that is well known for processing resources,
17 processor servers to be embodied as and include a single system, a multi-
18 system, co-located or distributed, cloud computing system or a combination
19 of the above.

20 So Marshall was certainly aware that there were different types of
21 architectures including cloud computing, yet never disclosed the idea of
22 taking information from multiple clients and sending it to a gratuity
23 management system.

24 JUDGE MELVIN: That's a statement from the Examiner, right?

25 MR. WRIGHT: That was a statement from the Examiner regarding
26 his understanding of what Marshall taught, yes.

1 JUDGE MELVIN: Okay.

2 MR. WRIGHT: So for purposes --

3 JUDGE MELVIN: But the other side thinks that Marshall teaches a
4 cloud-based system but you don't.

5 MR. WRIGHT: The Examiner said that Marshall understands cloud
6 computing to a certain extent but the Examiner never made a rejection over
7 Marshall because the combination of features, in the Examiner's mind, was
8 not shown in Marshall and it wasn't shown in combinations of Marshall with
9 other art that was cited. Phillips was also cited.

10 JUDGE MELVIN: Well, what does Marshall mean when it says that
11 systems and methods of the present invention to be implemented in a web-
12 based manner?

13 MR. WRIGHT: I think it means that they have the ability for
14 employees to access that system, but it is still a client side system. And
15 really, all these -- all this --

16 JUDGE MELVIN: But when Marshall says that, it says, systems and
17 methods of the present invention. It's not limited to any employee side
18 aspect of Marshall.

19 MR. WRIGHT: Well, it's --

20 JUDGE MELVIN: Pretty broad statement, is it not?

21 MR. WRIGHT: It's a broad statement but the claim indicates, Claim 1
22 and Claim 8 indicates that you have this separate cloud-based system that
23 receives this information from multiple clients. And Marshall does not teach
24 that.

25 Marshall teaches that you have individual users that can access a
26 client business system -- the client side. This is all client side and really has

1 nothing to do with a cloud-based gratuity management system. To the
2 extent that Marshall teaches --

3 JUDGE MELVIN: Well, when Marshall talks about web-based
4 systems and methods of the present invention, it's not really talking about
5 individual client side access. It's just making some broad statement.

6 MR. WRIGHT: Well, if you were to --

7 JUDGE MELVIN: It's just like in 103.

8 MR. WRIGHT: If you look at --

9 JUDGE MELVIN: It also talked about individualized system, i.e.,
10 systems intended for personal use by a single employee, right? But that
11 comes after Marshall's use of this term, web-based manner.

12 MR. WRIGHT: Well, you do have a situation where you can have a
13 web-based system where perhaps a manager has credentials to be able to get
14 information from Marshall's point-of-sale server and bring it down and take
15 a look at multiple -- you know, look at more than one employee if they have
16 the credentials to do that. But it's still for only that one server.

17 JUDGE MELVIN: Well, why should we read Marshall's broad
18 statement in such a narrow manner? You just suggested that Marshall might
19 be talking about, oh, a manager could access information --

20 MR. WRIGHT: But it's still a client side system.

21 JUDGE MELVIN: Well, you say that, but Marshall says may be
22 implemented in a web-based manner.

23 MR. WRIGHT: Right, but you're not -- the key is what is a client
24 business system as described in the '050 Patent? And the client business
25 system is a system that is involved with at least one point-of-sale server. So

1 when Marshall talks about a point-of-sale server, the Aloha point-of-sale
2 server, that is the client business system.

3 That is not the structure of Claims 1 and 8 that is separate from the
4 client business system, which is a cloud-based system that obtains all the
5 information from not only that single client, that single client's point-of-sale
6 server, but also other clients as well.

7 Marshall is dealing only with one client --

8 JUDGE MELVIN: Well --

9 MR. WRIGHT: -- one point-of-sale server.

10 JUDGE MELVIN: -- not the multiple employer embodiment of
11 Marshall.

12 MR. WRIGHT: In that situation, the employee has access to multiple
13 -- for example, multiple systems of Figure 3, of different clients. That's
14 correct. But it still is not doing -- it's not taking all the information from
15 those multiple clients and determining gratuities on a client-by-client basis
16 for all the employees. It just isn't doing that.

17 It gives an employee, a single employee, access to their information
18 on potentially two different point-of-sale systems. But the employee system
19 is not determining any gratuities. Those gratuities are being determined at
20 the point-of-sale systems and are being sent back to the employees on their
21 personal systems. It just doesn't fit the structure and the way that the
22 structure operates Claims 1 and 8 of the '050 Patent.

23 And I note also -- and this is worth noticing -- noting as well, if you
24 look at the '050 Patent, as I mentioned earlier, the '050 Patent is designed to
25 be able to handle a variety of different legacy systems at a client's point-of-
26 sale.

1 And, for example, if you look at Column 5, Lines 5 through 11, it
2 says, a business or other user of the gratuity management system may
3 therefore select computing resources to implement various elements of the
4 systems and the gratuity management system presently disclosed is
5 contemplated to operate in conjunction with both local and cloud-based
6 point-of-sale and/or employee records systems.

7 So the '050 Patent recognizes that there may be situations, like
8 Marshall, where you have a point-of-sale system that is cloud or web-based,
9 however you want to describe that, where there is access from people
10 through the internet to that client's point-of-sale system. But that doesn't
11 turn it into a remote gratuity management system.

12 That just means that you have a client business system that has
13 employee access through the web. And if you have the right credentials,
14 you, as a personal employee, can get your information. If you're a manager,
15 you might have the ability to get other employees' information, but certainly
16 not from outside of the single client.

17 If you're working at TGIF and you're a manager and you have access
18 to TGIF's point-of-sale client side business system and you can look at your
19 three employees, those are TGIF employees. You're not going to see the
20 information from Old Ebbitt Grill which is an entirely different company
21 and has its own set of employees with their own privacy issues. That
22 employer is not going to see that.

23 The gratuity management system in the '050 Patent takes all of it,
24 takes Point-of-Sale System 1, Client Business System 1, 2, 3, however many
25 -- however many employees are in those, has the rules for all of them,

1 applies it to them, sends it back to them. And that's the difference between
2 '050 and not only Marshall but also Phillips.

3 Phillips is also a client -- Phillips states, and actually Petitioner had it
4 on the slide -- it says that the tip totals are sent to the system processor. This
5 is from Processor 10 in Phillips. It's a payment system. It's not determining
6 the tips. The tips have been calculated at
7 the point-of-sale system, client side system, and that's being sent to a
8 payment system.

9 And that says, right in Paragraph 34, Phillips Figures 2A and 2B
10 illustrate one of the many processes for which the system of Figure 1 can be
11 used. As illustrated in Figure 2A, at the end of the work shift, the tip totals,
12 25, or other information data are uploaded from the point-of-sale system.

13 It's a client side tip total that is sent to the processing system. And
14 when it receives that tip data, it uses that information to load the amount
15 owed to an employee, to a cart.

16 JUDGE MELVIN: So did you make this argument in your response?

17 MR. WRIGHT: I believe I noted it in the background section of the
18 response where I discussed the three prior art references. And I believe all
19 three of them were summarized as client side processing. Yes, Page 8 of the
20 response.

21 JUDGE MELVIN: And you think that's a sufficient way to make an
22 argument?

23 MR. WRIGHT: Yes, Your Honor, I do. I believe it is a -- it shows,
24 again, a client business system. And the '050 Patent acknowledges that
25 client business systems are known and there are a lot of different types of

1 them, a lot of different architectures depending on the legacy of those
2 particular businesses.

3 But the point of the '050 Patent is, regardless of what you have on
4 your client side system, you can put the GratSync client on there. You can
5 program it to send the information that you want sent to a separate cloud-
6 based gratuity management system, and that gratuity management system
7 will offload that information, offload that processing and take it to the cloud,
8 do the calculations the way that they were set up in the distribution rules and
9 return the information to the client side system.

10 The prior art certainly understood how that architecture was available.
11 I believe that Marshall mentions cloud-based. There are various types of
12 communications through the Web that are described. But none of the prior
13 art comes up with this idea of being able to manage and handle multiple
14 clients' business systems in a remote gratuity management system.

15 And as far as obviousness, I'd just point out that obviousness requires
16 a motivation to make a change. It requires some motivation to combine or
17 some modification. And all these systems -- there's nothing in these patents,
18 Marshall, Webb or Phillips, that says, you know, this is a great invention but
19 it has problems.

20 It is -- they work perfectly well for the situations that they are
21 designed to work for. And it's only when, in hindsight, you see the '050
22 Patent takes things to a cloud-based system for all these various clients and
23 resolves the issues with respect to that.

24 Once you have that goal in mind, perhaps you can go through these
25 references the way Petitioner has and point -- they accuse us of looking at
26 specifics in these references, but I would argue that they, too, are looking at

1 specific portions to say, look, this picture looks the same as that; look, this
2 term is the same as that. It's not the same system.

3 JUDGE MELVIN: So I'm trying to understand your point about
4 Phillips a little bit better. You're saying that transaction information cannot
5 include tip information? You agree that, in Phillips, tip information is
6 uploaded from the point-of-sale to the server, right?

7 MR. WRIGHT: That's what Phillips teaches, yes.

8 JUDGE MELVIN: Well --

9 MR. WRIGHT: Tip information is sent to --

10 JUDGE MELVIN: And you're saying that's not transaction
11 information?

12 MR. WRIGHT: It says that it's tip information. I'm assuming tip --

13 JUDGE MELVIN: Well, and I'm wondering if --

14 MR. WRIGHT: Tip values. Tip values, I believe, is the term --

15 JUDGE MELVIN: It's tip totals.

16 MR. WRIGHT: Tip totals, so that's a total. Something's been totaled.
17 It's been calculated. And it's been calculated at the --

18 JUDGE MELVIN: That's outside of your view of transaction
19 information?

20 MR. WRIGHT: Well, the transaction information could be things
21 like, how many sales were there? Were they cash or were they credit card?
22 Who was the person involved in handling those transactions? Was it a
23 bartender or was it a waitress? That's transactional information.

24 JUDGE MELVIN: Wouldn't it include tip information?

25 MR. WRIGHT: It includes information that's used to calculate the
26 tips.

1 JUDGE MELVIN: Like what?

2 MR. WRIGHT: Whether or not the employee is purely tip, they have
3 tip-out information. For example, is there a bus person that gets a portion of
4 the bartender's work because they are -- or does the bartender get a portion
5 of the server's work because they're making drinks for a table even though
6 that table is not at the bar.

7 JUDGE MELVIN: But that's employee information, right?

8 MR. WRIGHT: That's transaction information. There's also
9 employee information as well. How was behind the bar? Who was actually
10 working? Who was the bartender? Was it me or was it you?

11 JUDGE MELVIN: If a transaction, if a person who purchases
12 something specifies a tip amount, that's not part of the transaction
13 information?

14 MR. WRIGHT: Yes.

15 JUDGE MELVIN: How is that --

16 MR. WRIGHT: That is part of the transaction information but it's not
17 a tip total. The tip total is the total amount of tips that that employee is
18 receiving or is entitled to. That calculation is done client side. That
19 calculation is not done by the processor.

20 And the processor certainly doesn't -- Phillips doesn't teach that the
21 processor has client-by-client distribution rules that allow it to determine
22 what the various employees or the various multiple plurality of systems are
23 going to require. That information's being to the central processor that says,
24 okay, for Client No. 1, Joe gets this much money. Put it on his card.

25 JUDGE MELVIN: Well, that's sort of a separate issue, right. One is
26 whether Phillips sends transaction information to its server. And the other is

1 whether Phillips calculates, I suppose it would help to refer to the claim
2 language, to execute independently for each client. It's that third, the last
3 clause in your claim. That's the separate argument, right, as to whether
4 Phillips performs that function?

5 MR. WRIGHT: Yeah, it does not perform that function. At least
6 according to Phillips, it does not perform that function. It receives the tip
7 totals from each individual point-of-sale system. Presumably, those tip
8 totals are calculated at the point-of-sale system. I believe Phillips says that.

9 This is Paragraph 70. The invention preferably reduces the risk of
10 human error, as mentioned above, for restaurants already using POS systems
11 that track tips, preferably embodiments of this invention can use that data
12 from the existing POS system within the invention's other functions,
13 calculating and paying tips to performing and reporting, et cetera.

14 In such cases, the invention still preferably identifies the employee
15 and the amount of tips they earn and calculate the shift and team to which
16 they belong and calculates the tip amounts that are due to each server and
17 downstream employees.

18 The system of the invention can also be integrated even more directly
19 into the POS system to automatically populate that data into the invention,
20 avoiding the need to enter it. That information is maintained in the point-of-
21 sale system. That information is calculated at the point-of-sale system, and
22 in a sense, for this, essentially third-party payout server to make sure that it
23 gets on a card for each employee.

24 Again, only one -- the tip information, the tip totals are sent from the
25 point-of-sale systems to this payment system. They're not asking the
26 payment system to calculate the tips for each of these point-of-sale systems.

1 So because -- and our position is, because none of the three references
2 cited provide any contemplation of a remote cloud-based gratuity
3 management system that obtains this information and calculates the tip on a
4 client-by-client basis, we believe that there's really no incentive for anybody
5 looking at these references to say that there's anything wrong and that they
6 should change the architecture from what is essentially a client side system
7 to a cloud system.

8 Certainly, there are advantages. The '050 Patent describes those
9 advantages. But those advantages were known and yet, there's no
10 contemplation. Despite understanding that there's web-based technology,
11 there's cloud-based technology, none of those references teaches or suggests
12 that this, the invention of the '050 Patent.

13 I'll reserve the remainder of my time, unless I -- you have any
14 questions for me.

15 JUDGE MELVIN: Okay. You have about 21 minutes remaining.

16 MR. REDDY: I'm going to briefly discuss a few points with respect
17 to Grounds 1 and 2 and then hand it back to Mr. Ong with respect to Ground
18 3.

19 The first thing I'd like to discuss is this concept of whether the multi-
20 employer embodiment simply means that a user is able to go online and look
21 at a gratuity allocation but not actually perform allocations.

22 The whole purpose of the multi-employer embodiment is for an
23 employee to go onto the system, see all of their tips and gratuities that have
24 been allocated across all of their different jobs and if they choose to do so,
25 modify the tips and allocate them amongst their employees.

1 Paragraph 385, for example, talks about how it's a single integrated
2 system. If it's a single integrated system, that means it's pulling in data from
3 multiple different places and putting it in one place. The employee is not
4 physically interacting with the point-of-sale server at each of the different
5 locations.

6 Rather, as I discussed in my presentation, as Marshall discloses, the
7 point is that multiple point-of-sale servers can funnel information to a single
8 location. And in the multi-employer embodiment, the employee is accessing
9 that single location and making edits as they see fit.

10 JUDGE MELVIN: So, I think you would agree that the single
11 integrated system and the employee access, that is the individualized system
12 in Marshall, could be limited to just retrieving information. Like, the fact
13 that an employee received information from multiple employers doesn't
14 necessarily mean that the system from -- that the employee's interacting with
15 is the system that calculates all of the tips, right?

16 MR. REDDY: But that's absolutely right. There's multiple
17 disclosures, obviously, which I discussed at length, where the user is going,
18 using the web-based server to execute the invention. The invention isn't --
19 the invention in Marshall isn't putting something on the internet and
20 allowing somebody to see it.

21 The invention is allocating tips and gratuities. So when Marshall
22 says, in Paragraph 102, that there's a web server that executes the invention,
23 it's referring to using the web server to execute and to allocate the tips and
24 gratuities, not simply going online and seeing what's available to you.

1 JUDGE MELVIN: Right. And so that, in your view, is at least a
2 single client system, and the fact that there's a multiple employer system sort
3 of shows that Marshall's larger context includes a multiple employer --

4 MR. REDDY: That's right. So we predominantly rely on the multi-
5 employer embodiment to demonstrate that a plurality of client businesses are
6 all funneling information to the same gratuity management system. That's
7 how we know that that's happening.

8 JUDGE MELVIN: Right.

9 MR. REDDY: And likewise, so Paragraphs 139 through 142 in
10 Marshall, those are the paragraphs that discuss how a manager can go onto
11 the system and execute the gratuity allocations as they see fit. Again, that's
12 not limited to an employee who's just going onto a web-based system and
13 trying to observe what the gratuity allocations are.

14 I'd just like to briefly touch on a few of the points from some of the
15 slides that the Patent Owner raised. If I could have Patent Owner's Slide 9,
16 please? I'm sorry, actually, before we do that, why don't we stick with Slide
17 12, then, please?

18 MR. ONG: Which slide? Petitioner's Slide 12 or Patent Owner's?

19 MR. REDDY: Our Slide 12. Sorry. Give me one moment. I'm
20 sorry, Slide 20.

21 I'd just like to point out, in Paragraph 103, there's a reference at the
22 bottom of Slide 20. It says, quote, this capability allows users with the
23 required user rights to access the systems and methods of the present
24 invention at the business establishment, from home or on the go, unquote.

25 So what that's saying -- and this is in the context of the web-based
26 implementation -- what that's saying is that if you're an employee or you're a

1 manager at the restaurant and you want to find the results of the web-based
2 gratuity allocation, you're able to do that at the restaurant.

3 And the only reason that that's possible is because the gratuity
4 allocation has already taken place elsewhere and then been made available to
5 you through this web-based implementation. That's what Paragraph 103 is
6 talking about.

7 Now, if I may have Patent Owner's Slide 9, please. Now, as to Patent
8 Owner's Slide 9, counsel stated that or argued that all of the embodiments in
9 Marshall are limited to only Figure 3. I'll just point out that, in Paragraph
10 105, when the reference is made to Figure 3, the words, such as, is indicated
11 right before that.

12 It's by no means suggesting that Figures 4 through 25 are only limited
13 to Figure 3. Likewise, in Paragraph 106, we just note they cut off the rest of
14 the paragraph which discusses the rest of the web-based implementation
15 which is the same portions that I've been speaking about at length.

16 If I could have Patent Owner's Slide 10, please. So as I've discussed,
17 Paragraph 103 entirely supports the Petitioner's position. In this, as we
18 what's discussed here in 103, obviously, the employee is going online and
19 taking a look at their gratuity allocation.

20 But this is just one feature of the gratuity management system. You
21 could access the client or you could access the Web. It's not limited in the
22 way that the Patent Owner suggests. Slide 11, please.

23 Slide 11, there's a mismatch between the title of this slide and the
24 content of what's actually in Paragraph 104. There's a reference to declared
25 tips in Paragraph 104. That's not calculated tips. Declared tips is simply the
26 tips that were earned.

1 If you ever worked in food service, you know that a declared tip is a
2 situation where a server receives a cash tip, and they need to manually input
3 what their tips were into the system. That's a declared tip. That's not a
4 declared tip. And I think that that explanation would also be relevant to the
5 Phillips discussion.

6 This process of inputting the tip is declaring a tip. It's not calculating
7 a tip. So Paragraph 104 does not support the proposition that tips are being
8 allocated at the client side.

9 Finally, I just wanted to discuss, Your Honor, Judge Melvin's question
10 with respect to whether web-based implies cloud-based. And I'm a little
11 unclear as to whether Patent Owner is contesting whether Marshall discloses
12 cloud-based implementation or not because at one point, I think he said it
13 did and then he said it doesn't.

14 But our position is that, in the context of Marshall and the '050 patent,
15 the references to web-based servers is clearly disclosing cloud-based
16 computing.

17 First, Marshall discloses a web server. That's in Paragraph 102, as we
18 talked about. In the Russ declaration in Paragraphs 145 through 153, he
19 discussed why a person skilled in the art would understand that a web server,
20 as described in Marshall, would be cloud-based.

21 Likewise, in Paragraph 70 of Marshall, it states that, one feature of the
22 system is that many point-of-sales systems are networked or otherwise
23 linked together such that data from each collection point is transferred to one
24 central location for analysis, reporting and the like, unquote.

25 That's what cloud computing is. And, you know, this is not a --
26 neither party has asked that the phrase, cloud computing, be construed. Both

1 sides agree that the plain and ordinary meaning applies. And examples of
2 that plain meaning can be found at the Russ declaration in Paragraph 53.

3 One of the -- and Dr. Russ describes several different references that
4 talk about what cloud computing is. One of them just simply says, cloud
5 computing is an on-demand access to a shared pool of computing resources,
6 which is exactly what Marshall is disclosing is taking place.

7 With that, unless there's any other questions, I will pass it to Mr. Ong
8 to just briefly discuss the Phillips reference.

9 MR. ONG: Thank you, Your Honors. So I wanted to address, with
10 respect to Phillips, Patent Owner discussed Paragraphs 34 and 70 of Phillips.
11 We do believe those are new arguments that were made, not addressed in the
12 petition. But regardless, we do not believe it supports Petitioner's argument
13 -- or Patent Owner's argument that Phillips is directed only to client side tip
14 calculations.

15 So first, with respect to Paragraph 34, we had discussed previously the
16 disclosure that the tip totals, 25, or other information are uploaded from the
17 POS systems, 20, to a central processing system, 10.

18 The tip totals there that are being discussed is just aggregating the
19 total that have been collected over the day. It's not indicating -- it doesn't
20 indicate here that any calculations have been down in terms of distributing to
21 the various employees.

22 And actually, if you could turn to the next slide, which is Slide 52 of
23 our demonstratives, the bottom part of Paragraph 34 talks there about tip-
24 outs can also be automatically calculated and distributed to other employees
25 at this time, depending on location or corporate level business rules set
26 within the system.

1 So what that's saying there is, even assuming, let's just say that the tip
2 totals, 25, that were discussed earlier have some -- there's some calculation
3 being done. There is further calculation that can be performed at the server,
4 10, to provide these tip-outs to the employees.

5 And lastly, if you could just pull up -- if I can -- I just want to -- so
6 this is Paragraph 70 from Phillips. And this was what was discussed by the
7 Patent Owner earlier. And here, it says, in such cases, the invention still
8 preferably identifies -- again, the invention here is talking about Phillips's
9 system, System 10 -- preferably identifies the employee and the amount of
10 tips they earned and calculates the shift and team to which they belong and
11 calculates the tip amounts that are due to each server and downstream
12 employee.

13 So, it's making clear here that the invention, the Server 10, is what's
14 performing the tip allocations. And as we discussed earlier, if you look at
15 Figure 1, it's clear that Phillips contemplates that that server is remote from
16 the various business establishments.

17 Just one last point. The Patent Owner points to this last sentence of
18 Paragraph 70, that the system of the invention can also be integrated even
19 more directly into the POS System 20. That's one potential embodiment.

20 As I mentioned earlier, if you look at Figure 1, clearly, the System 10
21 is separate from and not integrated with the POS System 20.

22 So unless you have further questions, we have nothing further on this.

23 JUDGE MELVIN: All right, thank you.

24 MR. ONG: Thank you.

25 MR. WRIGHT: Just a couple of quick points, Your Honor. Alan
26 Wright again. Regarding, to the extent that I was suggesting that the web-

1 based system on Marshall was only viewing information that was on the
2 client business system server, if I may clarify that.

3 Marshall is clear that two things can happen using the web-based
4 embodiment. A user can download information from the client's point-of-
5 sale system and it can -- such as reports, information about what the system
6 knows about that employee and possibly other employees if they have
7 credentials for it.

8 The user can also input information into that system to send to the
9 client business system's point-of-sale server. They do have that ability. But
10 when they access the web-based system, it specifically states in Marshall
11 that the execution is still done on the client's point-of-sale system. It's not a
12 separate server that is designed to offload that information separately to a
13 remote gratuity management system that can handle calculations for multiple
14 plurality of clients.

15 So to the extent there was any ambiguity to that, we're not arguing that
16 it's purely viewing. There are things that a user can do. Calculation of
17 gratuities, away from the point-of-sale server, is not what it does. The point-
18 of-sale server and the software is taught in Marshall as being on the same
19 processor.

20 That's not the way the '050 Patent is structured where you have two
21 distinct structures. The point-of-sale client business system and the web --
22 cloud-based gratuity management system. They're distinct. Also, with
23 respect to Phillips and Mr. Ong's argument in rebuttal, Paragraphs 34 and 70
24 was responding to Your Honor's questions regarding Phillips. And again,
25 Paragraph 70, it talks about the point-of-sale systems. It doesn't talk about
26 the processor of 10.

1 It talks about all these things that can be done at the client side point-
2 of-sale system and that is not sending it to a remote gratuity management
3 system that can determine tips for not only all those employees at one point-
4 of-sale systems but for other point-of-sale systems in the Phillips
5 architecture. So we would --

6 JUDGE MELVIN: I'm not clear on that point. You say that
7 Paragraph 70 is limited to functionality of a point-of-sale system?

8 MR. WRIGHT: The invention preferably reduces the risk -- excuse
9 me. This is Paragraph 70.

10 JUDGE MELVIN: Right.

11 MR. WRIGHT: For restaurants already using point-of-sale System 20
12 that track tips, preferred embodiments of the invention can use that data
13 from the existing POS System 20 within the invention's other functions,
14 calculating and paying tips, tip funding and reporting.

15 In such cases, the invention still preferably identifies the employee
16 and the amount of tips they earned and calculates the shift and team to which
17 they belong, calculates the tip amounts that are due to each server and
18 downstream employee.

19 The system of the invention can also be integrated even more directly
20 into the point-of-sale system to automatically populate that data.

21 JUDGE MELVIN: Right, but --

22 MR. WRIGHT: They're talking about the integration to do the
23 population, but that information is still -- the tip information is still being
24 calculated at the point-of-sale systems. It is then being --

25 JUDGE MELVIN: Well, it says that the restaurants can use data from
26 the point-of-sale system, right. It says --

1 MR. WRIGHT: Yeah, I suspect -- I think that's right. I think they --
2 the point-of-sale system is part of the restaurants. They can certainly -- the
3 restaurants certainly have the ability to look at their own data to adjust it
4 however they do through their point-of-sale client business system.

5 JUDGE MELVIN: But why is Petitioner wrong that Phillips is, what
6 is it, Server 10 is separate from the point-of-sale system? System Processor
7 10?

8 MR. WRIGHT: Well, it's a separate component. It's certainly a
9 separate --

10 JUDGE MELVIN: Well, it's separate and it does aggregate data from
11 numerous point-of-sale systems.

12 MR. WRIGHT: But it doesn't calculate the tips for those particular
13 systems. It pays that information out to employees on a card. But it does
14 not calculate the tips from multiple clients.

15 JUDGE MELVIN: Well, it's -- I mean, Paragraph 70 does say the
16 invention's other functions, paren, e.g., calculating and paying tips.

17 MR. WRIGHT: And that's -- I'm reading that as that is information
18 that's on the point-of-sale system. Whatever the point-of-sale system does,
19 the point-of-sale system integrates with this processor to take the
20 information that has been calculated by the point-of-sale and put it on an
21 employee's card.

22 JUDGE MELVIN: You think that when Phillips says, within the
23 invention's other functions, e.g., calculating and paying tips, it's referring to
24 something performed by not the invention?

25 MR. WRIGHT: No, it's part of the invention. It's the point-of-sale
26 side. It's the client side point-of-sale business system.

1 JUDGE MELVIN: The existing point-of-sale system?

2 MR. WRIGHT: Yes.

3 JUDGE MELVIN: Is part of Phillips's invention?

4 MR. WRIGHT: That's the say I'm -- if you're looking at the figure of
5 Phillips, it has a number of point-of-sale systems. And it has this processor
6 that is in connection with all those point-of-sale systems. And that processor
7 isn't used to calculate tips.

8 The processor is used to take the tip totals that have come from the
9 point-of-sale client side and put them on a card. That's what I read from
10 Phillips.

11 JUDGE MELVIN: Okay.

12 MR. WRIGHT: Thank you, Your Honors, appreciate your time very
13 much.

14 JUDGE MELVIN: All right, thank you. With that, that concludes
15 our proceeding today. Before we finish, I just want to make sure if the court
16 reporter has questions about spelling or other words.

17 (Whereupon, the above-entitled matter went off the record at 2:39
18 p.m.)

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