

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC,
Petitioner,

v.

PROXENSE, LLC
Patent Owner

U.S. Patent No. 8,886,954
IPR Case Nos.: IPR2024-00233 & IPR2024-01334

PATENT OWNER'S SUR-REPLY

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EXHIBIT LIST

No.	
2001	Claim Construction Order in <i>Proxense v. Samsung Electronics, Co., Ltd. et al.</i> , No. 6:21-CV-00210-ADA
2002	Memorandum In Support of Claim Construction Order in <i>Proxense v. Samsung Electronics, Co., Ltd. et al.</i>
2003	<i>Markman Transcript from Proxense v. Samsung Electronics, Co., Ltd. et al.</i>
2004	Claim Construction Order in <i>Proxense v. Google LLC</i> , No. 6:23-cv-00320-ADA
2005	Opening Claim Construction Brief in <i>Proxense v. Microsoft Corporation</i> , No. 6:23-cv-00319-ADA
2006	Responsive Claim Construction Brief in <i>Proxense v. Microsoft Corporation</i>
2007	Reply Claim Construction Brief in <i>Proxense v. Microsoft Corporation</i>
2008	Sur-reply Claim Construction Brief in <i>Proxense v. Microsoft Corporation</i>
2009	Case Schedule in <i>Proxense v. Google LLC</i>
2010	Order Denying Motion to Transfer in <i>Proxense v. Google LLC</i>
2011	Order from the Federal Circuit Regarding Mandamus Petition
2012	Order Denying Motion to Transfer in <i>Proxense v. Microsoft Corporation</i>
2013	Google's Invalidity Contentions Cover Pleading
2014	<i>Intentionally Left Blank</i>
2015	Microsoft's Amended Preliminary Invalidity Contentions
2016	Claim Construction Order in <i>Proxense v. Microsoft Corp.</i> , No. 6:23-cv-00320-ADA
2017	Opening Claim Construction Brief in <i>Proxense v. Google, LLC</i> , No. 6:23-cv-00320-ADA
2018	Declaration of Troy Carrothers
2019	PCT Publication No. WO 99/56429 ("Scott")
2020	Application No. 90/015,052, Response filed October 9, 2024
2021	Application No. 90/015,052, Non-Final Office Action mailed November 25, 2024
2022	Application No. 90/015,052, Order Granting Request for <i>Ex Parte</i> Reexamination, mailed August 2, 2022.
2023	Application No. 90/015,052, Request for <i>Ex Parte</i> Reexamination of U.S. Patent No. 8,353,730, received June 8, 2022.
2024	Application No. 90/015,052, Patent Owner Response, filed November 2, 2022.
2025	Application No. 90/015,052, Non-Final Office Action mailed September 12, 2024
2026	Application No. 90/015,052, Interview Agenda mailed December 6, 2024
2027	Application No. 90/015,052, <i>Ex Parte</i> Reexamination Interview Summary mailed December 17, 2024.
2028	Transaction Definition & Meaning - Merriam-Webster, https://www.merriam-webster.com/dictionary/transaction

2029	Stripe Statistics (2024): Revenue, Market Share & Growth Rate, https://capitaloneshopping.com/research/stripe-statistics/
2030	How Online Payment Processing Works PayPal US, https://www.paypal.com/us/brc/article/how-online-payments processing-works
2031	How credit card processing works Stripe, https://stripe.com/en-de/resources/more/how-credit-card-transaction-processing works-a-quick-guide
2032	How PayPal helps sellers process and accept credit card payments PayPal US, https://www.paypal.com/us/brc/article/how-paypal-works-for-sellers .
2033	Card authorization explained: How does it work? Stripe, https://stripe.com/resources/more/card-authorization-explained#what-is-card authorization .
2034	Definition of transaction PCMag, https://www.pcmag.com/encyclopedia/term/transaction

I. INTRODUCTION

Not only does the Reply mischaracterize the Patent Owner's position and statements, but it completely disregards that every rationale for the grounds of invalidity presented in the Petition were addressed and refuted in the co-pending *Ex Parte* Review of related U.S. Patent No. 8,352,730 ("730 Patent") (Application No. 90/015,052, hereafter "730 Reexam"). Rather than challenge the determinations made by the CRU in the 730 Reexam, the Reply desperately asserts a claim construction that is contrary to the express language of the claims and interim guidance provided by the Board in co-pending proceedings involving the same patent.

II. THE TESTIMONY OF MR. CARROTHERS WITH RESPECT TO THE PROCESSING OF WEB TRANSACTIONS IS CORROBORATED.

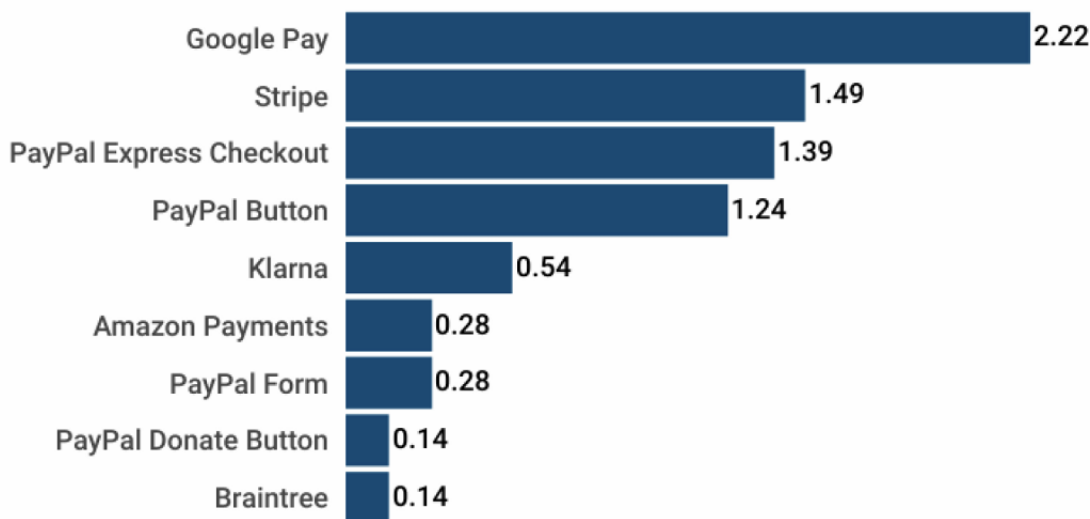
The Petition asserts grounds of invalidity based upon "web transaction" between a user and a vendor during which a user provides payment via a debit / credit card. To put the asserted portions of Ludtke in context, Mr. Carrothers provided testimony regarding the processing of credit and debit card payments with respect to online transactions based on his expertise and experience with retail payments. Furthermore, Mr. Carrothers testimony can be corroborated by independent sources. Accordingly, there is no credible reason for the Board to disregard Mr. Carrothers's testimony, as the Reply suggests.

The rationale asserted in support of the grounds for invalidity are based upon Ludtke's transaction processing clearing house (TPCH) providing credit / debit card approvals and issuing settlements for "web transactions." *See* Paper 1, 25-26 and 28-30. The activities of the TPCH relied upon in the Petition are thus financial services; specifically, the online processing of credit and debit card payments. Furthermore, the Petitioner's rationale and description of Ludtke references terms such as "approval," "authorization," and "settlement." These terms have accepted meanings with respect to the processing of online payments. Mr. Carrothers provided testimony

regarding the meaning of these terms, that can be corroborated by independent sources. With respect to processing online payments, Stripe and PayPal are among the most prominent companies in the online payment industry.

Payment Processors by Number of Websites Globally

(in millions of live websites)



Source: BuiltWith.com

Ex. 2029.

According to PayPal, “there are two stages to online payment processing: *authorization (approving the sale)* and settlement (*getting the money in your account*).” Ex. 2030 (emphasis added). Similarly, Stripe states that “Credit card processing occurs when electronic transactions involving credit cards are *authorised, authenticated and settled* between the cardholder, the business and their respective financial institutions.” Ex. 2031 (emphasis added). The agreement between PayPal and Stripe indicates that “authorization,” “approval,” and “settlement” are terms of art used to reference various phases of payment processing.

There is also agreement as to the meaning of the terms, thereby demonstrating the terms have accepted meaning within the relevant art. PayPal simply defines “authorization” as

“approving the sale.” Ex. 2030. PayPal subsequently explains that during “card authorization” a “payment processor sends a request to the customer’s issuing *bank to check to see if they have enough credit to pay for the item,*” and the “issuer responds with a *yes (an approval) or a no (a denial).*” Ex. 2030 (emphasis added). Accordingly, an authorization is an approval for a transaction provided by the bank issuing the credit card being used to pay for the purchase. PayPal further details how a vendor should respond to an authorization, “Once the *payment is authorized,* the customer receives confirmation that the *purchase is complete.* You’ll also get a notification so you can *start processing the order.*” Ex. 2032 (emphasis added).

As an authorization *completes a purchase* and a vendor should respond by *processing the order,* the authorization received is a payment accepted by the vendor, though settlement has not yet occurred. Of course, the vendor processes the order by delivering the purchased items, such that the “vendor completes the transaction” as detailed in Fig. 15 and col. 27, lines 3-26 of Ludtke.

PayPal defines “settlement” as the “*second piece* of the online payment system process (*where you get paid*).” Ex. 2030 (emphasis added). During the settlement process, “[t]he *card issuer sends the funds* to your merchant bank, which deposits the money into your account.” Ex. 2030 (emphasis added). The settlement process is not instantaneous and often occurs days after receipt of the authorization. “Although the *settlement process can sometimes take a few days,* certain banks might allow you to access your funds even before they are officially transferred.” Ex. 2030 (emphasis added). Regardless of its duration, “settlement” is defined by PayPal to be a transfer of funds following issuance of an “authorization.”

Stripe defines “authorization” and “settlement” consistent with PayPal. Stripe defines “authorization” as “*approval from a credit or debit card issuer* (usually a bank or credit union) that states the cardholder has sufficient funds or the available credit needed to cover the cost of a

transaction they're using a card to complete." Ex. 2033 (emphasis added). As with PayPal, Stripe states the authorization should be accepted as payment completing a purchase. "If the transaction is *approved*, the business can *complete the sale* and *provide the goods or services* to the customer." Ex. 2031 (emphasis added). Accordingly, as with PayPal, Stripe recognizes that an authorization *completes a purchase* and a vendor should respond by *providing the goods or services*, and is thus a payment accepted by the vendor, though settlement has not yet occurred.

Stripe defines "settlement" as "when the *funds actually move* from the issuing account to the business account." Ex. 2033 (emphasis added). During the funds transfer, "card networks coordinate with the issuing banks to transfer the funds for each transaction to the acquiring bank, which receives the funds in the merchant account." Ex. 2031. As with PayPal, Stripe acknowledges that settlement can take some time to complete, stating that the "entire process usually takes one to three working days." Ex. 2031. Regardless of its duration, "settlement" is defined by Ludtke, Stripe, and PayPal to be a transfer of funds following issuance of an "authorization."

PayPal's and Stripe's understanding of the terms "approval," "authorization," and "settlement" corroborates the testimony of Mr. Carrothers.

"A 'payment authorization' is a commonly used term in transaction processing... The merchant interprets the authorization as a virtual commitment or promise to pay for the transaction. This authorization is traditionally delivered from a card acquirer or a clearing house and provides the merchant the guarantee that it will be compensated for the sale of the goods or services to the purchaser." Ex. 2018, ¶ 15.

As with both Stripe and PayPal, Mr. Carrothers notes an "authorization" is part of payment processing that represents a payment to the merchant.

PayPal and Stripe further corroborate the testimony of Mr. Carrothers with regards to "settlement":

Settlement is the function of transaction funding and clearing between the parties. In transactions that include payment acceptance or payment processing fees, the fees will be netted out of settlement before funding the merchant account. According to Kount, ‘transaction settlement is the process of moving funds from the cardholder’s account to the merchant’s account...’. Since the merchant does not interact directly with the payment card issuers, the acquirer or clearing house serves the function of funding the merchant’s account on behalf of the cardholder and the issuer of the payment card.

Ex. 2018, ¶ 17. Thus, Mr. Carrothers, consistent with both Stripe and PayPal, states that “settlement” is the transfer of funds following a purchase that is paid for with an “authorization.”

Rather than rebut the testimony of Mr. Carrothers, the Reply attempts to dismiss it merely because Mr. Carrothers does not have a bachelor’s degree in computer science or work experience in the field of computer science. Paper 16, at 3. However, Mr. Carrothers does not provide testimony regarding computer science. Rather, Mr. Carrothers is providing corroborated testimony regarding the processing of credit and debit card payments for web transactions, as to put the portions of Ludtke relied upon in the Petition into context. His testimony informs the state of the art relevant to that prior art, which is the proper framework for evaluating the prior art. Furthermore, neither the petition nor Reply has established that these portions of Ludtke could, or even would, be understood by a person with a bachelor’s degree in computer science and no knowledge of financial services and retail payments. Indeed, given the lack of demonstrated expertise in financial services, the Board should cautiously evaluate the relevance of Stephen Gray’s testimony regarding these portions of Ludtke.

III. CLAIM CONSTRUCTION

The Board has maintained its construction of “third-party trusted authority” as “a trusted authority that is an entity separate from the parties to a transaction.” Paper 10, at 12. Accepting this construction, however, does not mean Patent Owner acknowledges Ludtke’s TPOCH is a “third-party trusted authority” per the claims.

The claims of the 954 Patent explicitly recite a transaction of allowing a user to access an application. 954 Patent, claim 1 (“allowing the user access to the application”); claim 12 (“allowing the user access to an application”); claim 16 (“allowing the biometrically verified user access to the application.”); and claim 22 (“allowing the user to access an application”). Before determining whether an active participant is a “third-party trusted authority,” it is necessary to evaluate the transaction specified in the claims and the relationship of each party specified in the claims thereto. The Board stated this issue more concisely: “we evaluate a party’s relationship to the transaction to determine whether it is a principal party to the transaction or a third-party.” *Microsoft Corporation v. Proxense, LLC*, IPR2024-00846, Paper 8, at 11.

Before a party’s relationship to the transaction can be evaluated, the transaction must first be identified. A transaction is an activity or a request involving two parties. *See* Ex. 2034 (Defining a transaction as “[a]n **activity or request**. Orders, purchases, payments as well as changes, additions and deletions are typical transactions... Ad hoc queries are a type of transaction as well; however, they are usually just acted upon, and the query transaction is not saved.” (emphasis added)); *See also* Ex. 2028 (Defining a transaction as “**a communicative action or activity involving two parties** or things that reciprocally affect or influence each other” (emphasis added)). The express language of the claims recites the action / activity of “allowing the user access to an application.” Accordingly, the claims recite the transaction is allowing a user access to an application, identifying the principal parties as the user allowed access and the application being

accessed. The “third-party trusted authority,” therefore, is a third-party with respect to the user being allowed access and the application being accessed.

Furthermore, as the Board noted in these proceedings, the specification discloses an embodiment in which the “third-party trusted authority” is a third-party with respect to a transaction having as principal parties a user being allowed access and an application being accessed.

[T]he trusted key authority of the preferred embodiments of the ’954 patent, which actively participates in a transaction, for example by receiving a request for authentication with a code, determining whether the code is valid, authenticating the code, and transmitting an access code to the requester, which ***allows a user access to an application***. Ex. 1001, 8:5–17, Fig. 7. Although the trusted key authority in this example is not ***a principal party to the transaction (here, those parties are the user and the application)***, it is an active participant in facilitating the transaction.

Paper 10, at 10-11. “Although reluctant to exclude an embodiment, this [Board] must not allow the disclosed embodiment to ‘outweigh the language of the claim.’ *Rolls-Royce, PLC v. United Technologies Corp.*, 603 F. 3d 1325, 1334 (Fed. Cir. 2010). *See also TIP SYSTEMS, LLC v. Phillips & Brooks/Gladwin*, 529 F. 3d 1364, 1373 (Fed. Cir. 2008) (“However, to construe the claim term to encompass the alternative embodiment in this case would contradict the language of the claims... Our precedent is replete with examples of subject matter that is included in the specification, but is not claimed.”); and *Schoenhaus v. Genesco, Inc.*, 440 F. 3d 1354, 1359 (Fed. Cir. 2006) (“[W]here a patent specification includes a description lacking a feature, but the claim recites that feature, the language of the claim controls.”). As such, when the claim language is limited to certain embodiments of “third-party trusted authority,” the language of the claims controls, not the embodiments disclosed in the specification.

The independent claims of the 954 Patent explicitly recite the elements of the embodiment in which the “third-party trusted authority” is a third-party with respect to a user being allowed access and an application being accessed. Thus, to construe “third-party trusted authority” to include anything but a third-party to a transaction in which the principal parties are a user being allowed access and an application being accessed (i.e., where the underlying transaction is the user being allowed access to the application), would be to allow potentially disclosed alternative embodiments to outweigh the language of the claims and to contradict the language of the claims. “Third-party trusted authority,” therefore, cannot be construed to encompass third parties to transactions other than those in which the principal parties are a user being allowed access and an application being accessed, and the underlying transaction is allowing a user access to an application.

The Petition and Reply filed in co-pending IPR2024-00232 is also telling. There Petitioner asserted that the TPC is a “third-party trusted authority” because after it is used by the user to tender payment (i.e., issue an approval) for an online purchase (i.e., a “web transaction”) as if it were an ATM from which money is withdrawn. *See* Paper 1, at 34 (“A POSITA would have also understood that a transaction device configured to access “bank balances” and “debit accounts” upon approval, ***at least suggests allowing the user access to an ATM machine***, as recited in [1f], ***because ATMs allow users to access bank balances and debit accounts.***” (emphasis added)). The Petition also asserts the TPC allows access by noting it validates “that the selected account has sufficient funds” and “causing the necessary funds to be transferred to the vendor.” Paper 1, at 28 and 30. In both instances, the TPC is being accessed to withdrawal funds to pay for a purchase. The scope of “third-party trusted authority” cannot be expanded to include instances of a third-party with respect to other transactions that occur after the user has already been allowed access

to an application to withdrawn money for the purposes of providing payment. Yet that is what Petitioner’s arguments require.

The expansion of claim scope proposed in the Petition and Reply, as outlined above, was rejected in *In re Suitco Surface, Inc.*, 603 F.3d 1255 (Fed. Cir. 2010). There, the patent at issue included claims defining an element (“material”) by the action it performed (“finishing the top surface of the floor”). *Id.* at 1260. That court rejected a construction of “material” that did not require the material to perform the action of “finishing.” *Id.* at 1260 (“A material cannot be finishing any surface unless it is the final layer on that surface. Otherwise, the material would not be “finishing” the surface in any meaningful sense of the word.”).

Petitioner’s actions here demand the same result. Here, as in *In re Suitco*, the claims require a specific action to be performed (i.e., “allowing the user access to an application” / “allowing the biometrically verified user access to an application”). The “third-party trusted authority,” therefore, is limited to instances in which it is a third-party with respect to principal parties engaged in the activity of allowing the user access to the application – just as how the “material” at issue in *In re Suitco* was limited to those performing the action of “*finishing the top* surface of the floor.” Thus, just because a user may complete a transaction with a vendor after accessing an application to withdraw money does not make any other party a “third-party trusted authority” per the claims. Even under the broadest reasonable interpretation standard, therefore, the “third-party trusted authority” is limited to a third-party with respect to a user allowed access to an application and the application being accessed.

IV. THE RATIONALES PRESENTED IN THE PETITION WERE REJECTED BY THE CRU IN THE 730 REEXAM

A. The Rationales Presented in the Petition

1. Rationale 1: TPOCH Is a Third-Party Trusted Authority Due to Processing a Financial Transaction

The grounds of invalidity asserted in the Petition were based on the rationale that Ludtke's TPOCH is a "third-party trusted authority" with respect to a financial transaction between a vendor and a user. Specifically, the Petition stated:

"In one embodiment, where 'the transaction device is used to *trigger shopping activity*' such as a '*web-based transaction using a transaction device such as a privacy card and/or digital wallet and a personal POS terminal*,' 'the user may tap on an on-screen icon being displayed by the transaction device, e.g., digital wallet; and the digital wallet transmits a signal' which 'causes' a 'web browser' for purchasing desired content (application) 'to launch.' Ludtke, 28:15-18, 28:26-40. '*Once a transaction has been triggered*, the browser communicates with the personal POS terminal, requesting it to initiate a transaction' and 'provides a transaction record, which includes all of the necessary data to support th[e] transaction, including a list of items being purchased, *unit cost and quantity*, the vendor who will provide the items, etc.' Ludtke, 28:13-18, 28:50-56; Decl., 100." Paper 1, at 23 (emphasis added).

"After the transaction device receives the fingerprint recognition sample 'to confirm [an] entire transaction and that the user is authorized,' *the personal POS terminal 'opens a secure communications session to the TPOCH, requesting a transaction' and 'provides the transaction record that it received from the web browser* and the unique ID of the transaction device." Paper 1, at 24 (emphasis added).

Here the petition is clearly arguing that the TPOCH is a third party with respect to *shopping activity* in which Ludtke's privacy card and/or digital wallet is used to provide payment via a *POS*

(point of sale) device. The Petition then goes on to explain the TPCCH's involvement in the transaction as "authorizing" the transaction and facilitating "settlement" – which Ludtke defines as the transfer of fund into a vendor's account. Ludtke, 29:35-36 ("The settlement of funds involves the transfer of the appropriate financial credit into the vendor's account.")

"Ludtke expressly discloses that the *TPCH* '**may issue a funds settlement request** to a third party financial institution on behalf of the user, **causing the necessary funds to be transferred to the vendor from the 30 user's account**' thus further confirming that the TPCCH is not the vendor/retailer, or even the user's financial institution from which funds are withdrawn (not a principal party to the transaction, and therefore a third party)." Paper 1, 28 (emphasis added).

"Ludtke further discloses that the separation between the TPCCH, vendors, and the POS on which the user/transaction device is performing a transaction 'ensures secure communications among the components internal to the TPCCH 600 and the entities external to the TPCCH 600' and 'ensures that only authorized entities are allowed access to data and that **only authorized transaction devices can execute transactions against a user's account**,' thereby allowing the TPCCH to function "as the middleman of the distribution channel." Paper, 1, at 25-26 (emphasis added).

"The TPCCH uses the unique ID of the transaction device to **process the transaction**' and '**issues a transaction confirmation pack to the personal POS terminal (access message) after validating** that the transaction device is in good standing and **that the selected account has sufficient funds for the transaction**," Paper 1, at 30 (emphasis added).

Accordingly, the Petitioner's rationale for why the TPCCH is a "third-party trusted authority" is that the TPCCH processes payments for "web transactions."

Furthermore, the Petition goes onto explicitly the state what every purchaser hopes to happen after tendering payment for an online purchase – i.e. the vendor delivering the purchased item.

“Ludtke’s approval allows the user to access an application selected from a group consisting of a casino machine, a keyless lock, a garage door opener, an ATM machine, a hard drive, computer software, a web site, and a file because *‘[s]ecure distribution of physical (or electronic) content...is performed once the transaction is authorized’*—that is, once the access message is sent ‘back to the web browser’ webpage.” Paper 1, at 33.

However, the above does not assert nor cite any passage indicating that the TPCH is involved in the distribution of purchased items. Rather, the Petition indicates the exact opposite by asserting “the ‘*external*’ retailers and vendors’ that *complete* transaction.” Paper 1, at 25; Paper 16, at 7 (emphasis added). The Petition goes onto further clarify that the “external retailer and vendor” completes the transaction, not the TPCH.

‘Ludtke further explains that ‘*once a user has carried out a typical transaction to purchase electronic content’ using the downloaded functionality—that is, after the TPCH validates the transaction device and sends a “transaction confirmation” (access message) back to the transaction device*, as discussed above—a “content provider” has the content “delivered to the transaction device” thereby allowing the user to access the service(s) offered by the downloaded functionality/software.” Paper 1, at 31-32.

Thus, the rationale asserted in the Petition and reiterated in the Reply is that the online vendor completes the transaction by distributing the purchased items to the user after the user has provided payment via the TPCH.¹

The rationale is based on the erroneous assumption that the TPCH is a “third party trusted authority” because, after it is accessed by the user to provide payment, a separate transaction between the user and the vendor is completed by the vendor. This goes well beyond any reasonable

¹ Patent Owner notes the second Non-Final Office Action mailed November 25, 2025, in the 730 Reexam presents a rejection based upon the assertion that TPCH securely distributes purchased content after authentication (Ex. 2021, at 12), but this rationale has not been presented in the Petition and is thus not properly before the Board.

construction of the claims by expanding the transaction to include other subsequently occurring transactions or events. Ludtke discloses that the user performed a transaction with Ludtke's TPCB to provide payment to the vendor – as if it were an ATM accessed to withdrawal money that is subsequently provided to the vendor. With that transaction between the user and the TPCB complete, the web transaction between the user and vendor can be completed by the vendor delivering the product. However, just because the user may engage in one transaction to fulfill their obligations in a second does not mean that the parties to the first transaction also become third parties with respect to the second. Rather, the web transaction is a separate and distinct transaction between the user and the vendor that is *completed by the vendor*.

Not only is the rationale beyond any reasonable construction of the claims, but it has also been rejected by the CRU in the 730 Reexam, as explained below.

2. Rationale 2: The Access Message Permits Additional Services to be Downloaded to the Device

The Petition presents an additional rationale for finding an “access message” within the teachings of Ludtke that is not linked to any identified activity of the TPCB. Specifically, the Petition asserts:

“Ludtke also discloses [1e] because Ludtke discloses downloading “new functionality,” software, and services (an application) on the transaction device, and accessing the service after receiving the transaction confirmation (access message) at the transaction device.” Paper 1, at 30

The Petition is thus asserting the rationale that functional capabilities are provided on the device in response to an “access message.” Yet, the Petition does not identify an access message enabling or announcing access to these additional functionalities. This rationale was also directly addressed and rejected by the CRU in the 730 Reexam, as explained below.

3. Rationale 3: The Access Message Permits Access to Webpages

A second rationale for finding an “access message” within the teachings of Ludtke is that “[t]he access message also allows the user to access “content or a reference to the content” on the webpage.” Paper 1, at 29. The rationale was addressed and rejected by the CRU in the 730 Reexam, as explained below.

B. The Rationales Presented in the Petition Were Addressed and Rejected by the CRU in the 730 Reexam

1. The CRU Determined That the TPCCH Is Not a Third-Party Trusted Authority Due to Processing a Financial Transaction

Prior to the institution of these proceedings, the 730 Reexam was instituted. *See* Ex. 2022. The Request for *Ex Parte* Reexamination, as with the Petition, asserted Ludtke’s TPCCH was a “third-party trusted authority” because it facilitates a financial transaction between the user and a vendor.

“In one embodiment, the TPCCH 110 interfaces to at least one financial processing system 140 to perform *associated financial transactions, such as confirming sufficient funds to perform the transaction, and transfers to the vendor 125 the fees required to complete the transaction.*’ And as explained above, Ludtke explains that the ‘transaction device information is provided to the TPCCH 110 that then indicates to the vendor 125 and the user 120 *approval of the transaction* to be performed.” Ex. 2023, at 65 (citations omitted and emphasis added).

“In a number of embodiments, Ludtke describes the transaction device as including a ‘*digital wallet*’ which a POSITA would recognize as computer software and files that allow a user to *digitally store credit card and other payment information and to make transactions with that card.*” Ex. 2023, at 69 (emphasis added).

The Request for *Ex Parte* Reexamination of the 730 Patent was based upon Ludtke’s TPCCH being a “third-party trusted authority” because it processes a financial transaction. Additionally, the Request and Petition identified the same actions performed by the TPCCH as the rationale for

invalidity – i.e., 1) ensuring sufficient funds; 2) transferring funds; and 3) issuing an approval of the transaction. The Request and the Petition, therefore, presented the same rationale for why Ludtke’s TPOCH qualified as a “third-party trusted authority.”

Patent Owner responded by explaining that the TPOCH was the application being accessed by the user to tender payment to the vendor. *See* Ex. 2024, at 5-10. The CRU then issued a first Non-Final Office Action (presented herewith as Ex. 2025), which notably did not reference the TPOCH processing a financial transaction nor otherwise assert the TPOCH was a “third-party trusted authority” because it processes a financial transaction. *See* Ex. 2025, at 11-14. However, the first Non-Final Office Action did not affirmatively state new grounds of rejection were being asserted. As such, in the Response filed October 9, 2025 (presented herewith as Ex. 2026), Patent Owner expanded upon the argument. *See* Ex. 2026, at 12-17. In response to Patent Owner’s arguments, the second Non-Final Office Action stated:

“In the Remarks, PO argues the TPOCH is the application being accessed to perform the function of a clearing house. (p. 14 of Remarks). This argument is moot in view of the updated rejections.” Ex. 2021, at 27-28.

Accordingly, the 730 Reexam has addressed -- and refuted -- the argument that Ludtke’s TPOCH is a “third-party trusted authority” due to processing a financial transaction.

2. The CRU Determined That Ludtke Does Not Disclose an Access Message Permitting Additional Services to Be Downloaded

The first Non-Final Office Action issued in the 730 Reexam asserted that an access message received from Ludtke’s TPOCH enabled or announced access to additional functionalities, including access to the digital wallet itself.

“The memory/info stick driver 952 allows the digital wallet to accept memory stick and info stick devices. The info stick is mechanism that puts a CPU, ROM/RAM, etc. on a memory stick device. By inserting an info stick into the digital wallet, the

functionality of the wallet device can be extended with the functions of the info stick.’ (16:57-62)”

“In addition to the eCommerce functionality, the digital wallet may be configured to provide other functional capabilities. For example, the digital wallet can be configured to contain extra user information, such as passport numbers or medical records. The digital wallet may contain personal digital assistant functionality such as a calendar. An extra memory slot can be used to insert memory cards containing digital photo albums for viewing on the screen or a slot on the device may receive a card that has pager or cell phone functionality built-in.’ (17:62-18:4)”

“In addition to the functionalities discussed above, the digital wallet itself may be considered computer software and a file. (Fig. 9b)” Ex. 2025, at 15 (emphasis in original).

Thus, as with the Petition, the first Non-Final Office Action asserted that functional capabilities are provided on the device in response to an “access message.” Patent Owner responded by detailing why Ludtke fails to disclose the TPOCH sending an “access message” allowing the user to access additional functionalities. *See* Ex. 2020, at 17-19. The CRU found Patent Owner’s arguments persuasive. *See* Ex. 2021, at 28 (“In the Remarks, PO argues the TPOCH does not send an access message allowing the user to access an application. (p. 17 of Remarks) This argument is moot in view of the updated rejections.”).

Accordingly, the 730 Reexam has addressed -- and refuted -- the argument that Ludtke’s TPOCH sends an access message allowing access to additional functionalities.

3. The CRU Determined That Ludtke Does Not Disclose an Access Message Permitting Access to a Webpage

A third rationale presented in the Petition is that Ludtke’s TPOCH provides an “access message” permitting access to a webpage. In the Response filed October 24, 2024, Patent Owner noted the following:

“Likewise, the confirmation received from the TPCB does not allow access to a website. When making a web transaction, “The user triggers the purchase, usually by clicking on a ‘Buy’ or similar button in the web browser.” Ludtke, 28:34-35. “Once a transaction has been triggered, the browser communicates with the personal POS terminal, requesting it to initiate a transaction.” Ludtke, 28:50-52. Then, as detailed above, the POS establishes a secure connection with the TPCB and transfers transaction data to the TPCB. Accordingly, to initiate a transaction, the user must have been allowed access to the website prior to the receipt of the confirmation from the TPCB.” Ex. 2020, at 19.

The CRU found the Patent Owner’s remarks persuasive. *See* Ex. 2021, at 28 (“In the Remarks, PO argues the TPCB does not send an access message allowing the user to access an application. (p. 17 of Remarks) This argument is moot in view of the updated rejections.”).

Accordingly, the 730 Reexam has addressed -- and refuted -- the argument that Ludtke’s TPCB sends an access message allowing access to a webpage.

V. NEW RATIONALE ASSERTED IN THE REPLY

To the extent the Reply is attempting to put forth a new rationale that the TPCB delivers content to the user, such would still not indicate the TPCB is a “third-party trusted authority” providing an “access message” allowing access to the delivered content.

“Secure distribution of physical (or electronic) content to the user is performed once the transaction is authorized. ***Subsequently, the TPCB receives confirmation that the content was successfully shipped to the user and the user has acknowledged receipt of the content.*** Once the confirmation is received, the TPCB processes the settlement of funds.” Ludtke, 29:29-34.

The above passage demonstrates that authorization from the TPCB does not provide access to the electronic content as to allow access. The above passage states that subsequent to the transaction being authorized, “***the TPCB receives confirmation*** that the content was successfully

shipped to the user and the *user has acknowledged receipt* of the content. *Once the confirmation is received, the TPOCH processes the settlement of the funds.*” Ludtke defines “settlement” as “the transfer of the appropriate financial credit into the vendor’s account.” Ludtke, 29:35-36. Thus, Ludtke explicitly states the vendor does not receive payment until the user confirms receipt of the content. If a transaction authorization received from the TPOCH allowed access to the electronic content, it would not be necessary to withhold payment to the vendor until “the user has acknowledged receipt of the content.” Such would only be necessary if the vendor controlled access to the content and was responsible for delivering access to the user – as the Petition asserts. With access under the control of the vendor, despite receiving an authorization from the TPOCH, the vendor might never deliver or otherwise provide the user access to the content. Accordingly, the fact that the TPOCH withholds the transfer of funds (i.e. settlement) until the user acknowledges receipt demonstrates that the receipt of authorization for the transaction does not allow access to the contents. Rather, only delivery of the electronic product to the user by the vendor allows access. But delivery of the product would be an access message provided by the vendor because the “content provider” has the content ‘delivered to the transaction device thereby allowing the user to access the service(s) offered by the downloaded functionality/software.” Paper 1, at 31. Accordingly, the vendor would be providing the access message be delivering the content.

VI. CONCLUSION

As noted above, every proper rationale asserted in the Petition has been addressed and refuted by the CRU in the 730 Reexam. Accordingly, Patent Owner respectfully requests the Board give full deference to the determinations of the CRU in its final written opinion.

Dated: February 18, 2025

Respectfully submitted by,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that Patent Owner Proxense, LLC's Patent Owner Response was served on Petitioner by e-mailing copies to the following e-mail addresses as provided in Petitioner's Petition:

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CERTIFICATE OF WORD COUNT (37 C.F.R. § 42.24(d))

Under the provisions of 37 C.F.R. § 42.24, the undersigned hereby certifies that word count for the foregoing Patent Owner Response (excluding the table of contents, certificate of service, certificate of word count, or listing of exhibits) total 5,522 words, which is less than the 5,600 words allowed under 37 C.F.R. § 42.24(c)(4).

Dated: February 18, 2025

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