

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUOTIENT TECHNOLOGY, LLC,
Petitioner,

v.

INTELLIGENT CLEARING NETWORK INC.,
Patent Owner

Case IPR2024-01324
U.S. Patent No. 9,098,855

PATENT OWNER'S PRELIMINARY RESPONSE

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Exhibit No.	Description
2001	Joint Claim Construction Chart in <i>Inmar Brand Solutions, Inc. v. Quotient Technology Inc.</i> , Case No. 1:23-cv-00994 (D. Del.)

IPR2024-01324 Patent Owner’s Preliminary Response

Pursuant to 37 C.F.R. § 42.107, Exclusive Licensee Inmar Brand Solutions, Inc. (“Inmar” or “Patent Owner”) files this preliminary response, setting forth reasons why the Petition for *inter partes* review (“IPR”) of claims 1-57 of U.S. Patent No. 9,098,855 (the “’855 Patent”), as requested by Quotient Technology, LLC (“Quotient” or “Petitioner”), should be denied.¹

I. INTRODUCTION

The ’855 Patent “relates to the distribution and electronic processing of coupons and/or incentives.” ’855 Pat., Abst. The ’855 Patent discloses a coupon server (also referred to as an “Intelligent Clearing Network” server, or ICN server) that is remote from and communicates with point-of-sale (“POS”) terminals via a POS controller during a transaction. First coupon or incentive information, including universal product code information of an item to be purchased, can be scanned at a POS terminal and transmitted to the remote ICN coupon server. In all challenged claims, after first coupon or incentive information is received by the ICN server, the ICN coupon server ***validates*** the first coupon or incentive related information ***for redemption*** based at least in part on the universal product code information that the ICN coupon server received. If the validation is successful, the ICN server transmits, in response to the validation, second coupon or incentive

¹ By submitting this Preliminary Response, no waiver of any argument is intended by Patent Owner. Patent Owner will have a right to file a complete response to the Petition, should the Board institute *inter partes* review. 37 C.F.R. § 42.120(a).

information to *the POS terminal*. The '855 Patent discloses that the second coupon or incentive information can be used by the POS terminal for redemption.

The Petition has several fundamental flaws. Petitioner's first Ground asserts that the Deaton reference discloses all elements of the challenged claims, including element [1g], which recites an ICN server "configured to validate the first coupon or incentive related information for redemption based at least in part on the universal product codes of items to be purchased and, in response to validating the first coupon or incentive related information, to transmit to the POS terminal, via the POS controller, second coupon or incentive related information" as recited in each challenged claim of the '855 Patent. To meet this claim element, Petitioner's theory relies on a portion of Deaton's specification describing Figure 9, depicted below:

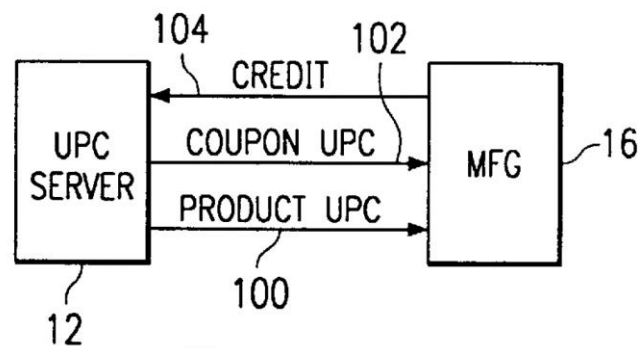


FIG. 9

As depicted, Figure 9 relates only to communications between a manufacturer and Deaton's UPC server so that a manufacturer can properly credit a retailer for the

value of redeemed coupons. Further, communications between Deaton's UPC server and the manufacturer relate to coupon redemptions that have *already occurred*, and do not disclose or suggest a validation "for redemption" at the ICN server as claimed in the '855 Patent. As Deaton discloses, the manufacturer may use the UPC server to "verify the proper redemption of a manufacturer coupon and provide an appropriate credit to store 14." Such verification may include confirming "the price at which the product *was purchased*." Deaton, 11:8-9 (emphasis added). Accordingly, this process in Deaton does not involve communication between a server and the POS controller or terminals to validate "first coupon or incentive related information for redemption" at the ICN server, as claimed, but instead is performed to "provide an appropriate credit to store 14" for redemptions that have already occurred.

Another flaw in Petitioner's theory on element [1g] relates to claim language that requires the ICN server to "transmit to the POS terminal, via the POS controller, second coupon or incentive related information" "in response to validating the first coupon or incentive related information." Petitioner's theory for this element relies on communication "via the manufacturer," namely from a manufacturer to a POS controller or POS terminal. This theory fails because the claimed source of the communication is the ICN server that performed the "validation ... for redemption," not a different server (i.e., a manufacturer's server)

that the ICN server communicates with. In any event, even if the communication between the manufacturer and the UPC server is considered, Petitioner does not identify any “second coupon or incentive related information” transmitted from Deaton’s UPC server to a POS terminal via a POS controller “in response to validating the first coupon or incentive related information,” as those features are claimed. Once again, the process Petitioner points to in Figure 9 of Deaton is directed to redemption verification, after redemption has already occurred.

Petitioner’s obviousness arguments do not cure these shortcomings of Deaton considered alone. Thus, the Petition’s failure to establish every claimed feature in Deaton alone is fatal to each of Petitioner’s challenges.

Further, underlying the flaws in all of Petitioner’s challenges, each Ground relies heavily on the testimony presented from Dr. Mowry, who is offered as “an expert in the field of computer science.” Mowry, ¶17. Although Dr. Mowry does not claim to possess any experience in coupon processing business or technology, he offers many opinions on coupon-processing subject matter, which are relied on upon by Petitioner to provide evidentiary support for understanding the asserted references and also to justify the proposed modifications in Petitioner’s obviousness-based grounds. Thus, his opinions on the coupon industry, which are central to Petitioner’s theories, are not based upon his experience or education, and these opinions should be given no weight.

For at least these reasons, Petitioner's challenges each fail, and the Petition should be denied without institution.

II. THE '855 PATENT

The '855 Patent is titled, "Intelligent Clearing Network." The '855 Patent describes a "system for redeeming coupons, promotions, or incentives." '855 Pat., Abst. Figure 1 depicts an example of an "Intelligent Clearing Network" (ICN) system as disclosed:

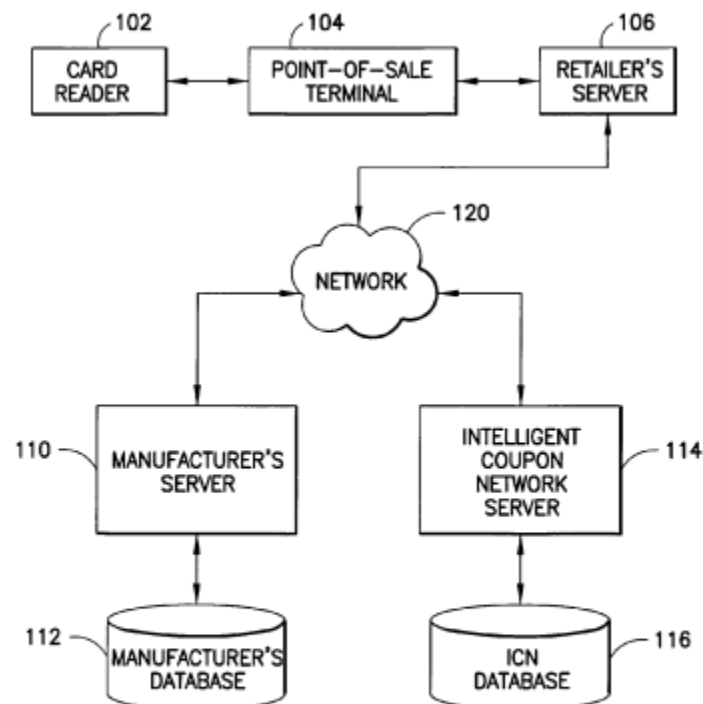


FIG.1

As described for the embodiment of FIG. 1, the ICN system can electronically validate and redeem coupons through "a centralized database, such as ICN database

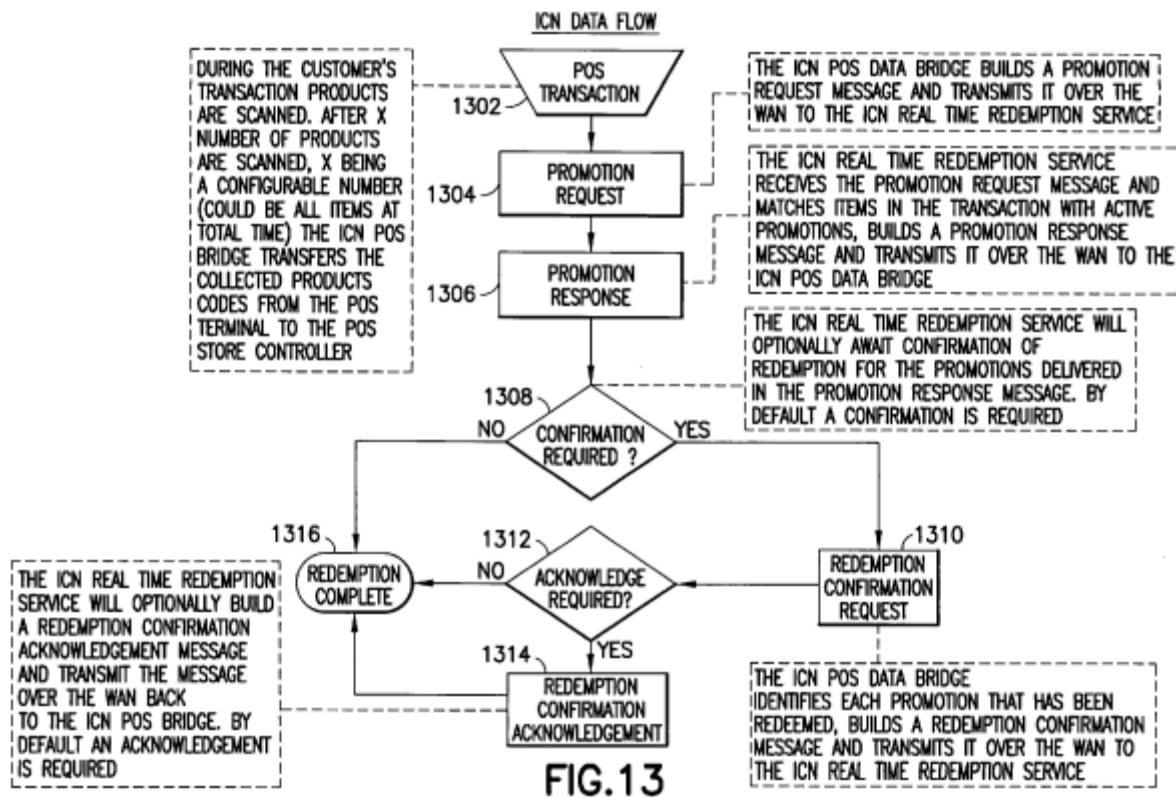
116, which is coupled to the ICN server 114.” ’855 Pat., 4:17-27. The disclosed ICN system embodiment includes a card reader 102, which can read a coupon card to obtain a unique account identifier, and then send that unique account identifier via the point-of-sale terminal 104 to the retail store server 106 and to the ICN server 114. ’855 Pat., 4:43-46. In this embodiment, the ICN server 114 can notify the manufacturer of a completed transaction by sending information to manufacturer’s server 110. ’855 Pat., 5:1-4.

The ’855 patent discloses additional embodiments, such as the embodiment illustrated in Figure 10, in which “coupons are delivered based on the presence of specific [Uniform Product Codes (UPCs)] or products in the consumer’s transaction 1004.” ’855 Pat., 17:38-40. As the ’855 patent describes for this exemplary embodiment, the customer can present “products with UPCs 1004 to be purchased” at point-of-sale terminal 1006. ’855 Pat., 17:47-50. The UPCs are then communicated from the point-of-sale terminal 1006 through the retailer’s network to ICN server 1012. ’855 Pat., 17:51-65. The ICN server 1012, via ICN promotion redemption service 1013, can compare the UPCs to be purchased “to all active promotions defined by the manufacturer or its representative on the ICN database 1014.” ’855 Pat., 17:65-18:2. For any promotions applicable to the UPCs to be purchased, the ICN promotion redemption service 1013 may send a message back to the point-of-

sale terminal 1006 with “the manufacturer coupon code.” ’855 Pat., 18:2-7.

The point-of-sale terminal 1006 may “attempt to redeem the manufacturer coupon against the target UPC.” ’855 Pat., 18:15-17. The point-of-sale terminal 1006 may also generate a message that contains “information regarding the success of the coupon redemption process” and transmit that message to the ICN server 1012. ’855 Pat., 18:18-22.

FIG. 13 (reproduced below) illustrates an exemplary embodiment of a data flow that provides discounts based on the scanning of products during a customer’s transaction. ’855 Pat., 21:59-22:28.



In this exemplary process, in step 1302, when a point-of-sale transaction is complete and the total key has been pressed at checkout (or after X number of items have been scanned), the retail-side software may collect information about the items in the customer's transaction to build a promotion request message and transmit it over a network to an ICN real time promotion redemption service, in step 1304. '855 Pat., 21:59-22:3.

In response, in step 1306, the ICN real time promotion redemption service may receive the promotion request and may match items in the transaction with prospective promotions defined in the ICN database, may build a promotion response message, and transmit it over the network to the retail business. '855 Pat., 22:3-11. In step 1310, the point-of-sale software may then identify each promotion that has been redeemed, may build a redemption confirmation request message, and may transmit the redemption confirmation request message over the network to the redemption service. '855 Pat., 22:16-20.

Consistent with the '855 Patent's disclosure, independent claim 1 recites:

1. A system, comprising:
 - an Intelligent Clearing Network (ICN) network;
 - at least two point-of-sale (POS) terminals;
 - at least two POS controllers, where each POS controller is configured to communicate with a plurality of the at least two POS terminals; and

an ICN server configured to communicate with the at least two POS controllers,

wherein a POS terminal of the at least two POS terminals is located at a retail store and is configured to scan, at a point-of-sale (POS) terminal, first coupon or incentive related information including universal product code information of an item to be purchased, and to transmit the first coupon or incentive related information at the POS terminal to a POS controller of the at least two POS controllers;

the POS controller is configured to transmit the first coupon and/or incentive related information to the ICN server via the network, where the ICN server is at a location that is remote from the retail store; and

the ICN server is configured to validate the first coupon or incentive related information for redemption based at least in part on the universal product codes of items to be purchased and, in response to validating the first coupon or incentive related information, to transmit to the POS terminal, via the POS controller, second coupon or incentive related information.

'855 Patent, 28:37-63 (claim 1) (emphasis added).

Claim 32 recites:

32. A method for processing at least one of coupons and incentives, comprising:

scanning via a first interface, first coupon or incentive related information at a terminal located at a retail store, the first

coupon or incentive related information including universal product code information of an item to be purchased;
transmitting, via a second interface, the first coupon or incentive related information through a network to a coupon or incentive processing server for validation and redemption, where the first interface is different from the second interface, and where the coupon or incentive processing server is located remotely from the retail store; and
in response to the first coupon or incentive related information being validated at the coupon or incentive processing server based at least in part on the universal product code information, receiving, via the second interface, second coupon related information through the network to the terminal, where the second coupon related information indicates whether the coupon or incentive processing server has validated the first coupon related information.

'855 Patent, 30:38-60 (claim 32) (emphasis added).

Claim 49 recites:

49. A computer readable medium storing computer code for processing coupons or incentives across a network, where execution of the computer code by a processor causes the processor to perform action comprising:

receiving, at an ICN server from a terminal via the network, first coupon or incentive related information including

universal product code information of an item to be purchased at the terminal, where the first coupon or incentive related information is scanned at the terminal located at a retail store, where the ICN server is at a location that is remote from the retail store and the ICN server is configured to receive first coupon or incentive related information from a plurality of terminals; interpreting, and comparing the first coupon or incentive related information at the ICN server;

validating the first coupon or incentive related information based on the interpreting, and comparing and based at least in part on the universal product code information; in response to validating the first coupon or incentive code, retrieving coupon or incentive codes and any corresponding target universal product codes triggered by the validation of the first coupon or incentive code from a centralized database; and transmitting the retrieved coupon or incentive codes to the terminal via the network.

'855 Patent, 31:64-32:21 (claim 49) (emphasis added).

Claim 51 recites:

51. A point of sale (POS) terminal located at a retail store comprising:

a first interface configured to scan coupon or incentive related information and to scan product code information of an item to be purchased;

a second interface configured to receive information from and transmit information to a retailer server, where the first interface is different from the second interface;
a processor; and
a memory for storing a point of sale bridge software configured to redeem a manufacturer coupon or incentive contained in a promotion request message received through the second interface,

where the promotion request message indicates that a coupon or incentive processing server has validated the manufacturer coupon or incentive,

the processor configured to receive information comprising product code information of an item to be purchased and the coupon related information from the first interface; to transmit the information through the second interface to the coupon or incentive processing server, where the coupon or incentive processing server is at a location that is remote from the retail store; ***in response to the coupon or incentive related information being validated at the coupon or incentive processing server based at least in part on the product code information, to receive the promotion request message;*** and to execute the point of sale bridge software.

'855 Patent, 32:25-52 (claim 51) (emphasis added).

Claim 53 recites:

53. An Intelligent Clearing Network (ICN) server comprising:
a processor;

an interface configured to permit communications over a network to a plurality of POS terminals; and an ICN database, wherein the processor of the ICN server is configured to receive data elements through a network from a point-of-sale (POS) terminal of a retailer for validation and redemption, the data elements including product code information of an item to be purchased at the POS terminal and a promotion request message, where the promotion request message is scanned at the POS terminal located at a retail store, *where the ICN server is at a location that is remote from the retail store, to validate the promotion request message based at least in part on the product code information, and, in response to validating the data elements at the ICN server, to send a promotion request response message that indicates whether the promotion request message has been validated.*

'855 Patent, 32:56-33:8 (claim 53) (emphasis added).

Claim 54 recites:

54. A method comprising:
receiving, at an intelligent clearing network (ICN) server, a first message from a point-of-sale terminal via a network, where the first message comprises a unique account number and product code information of an item to be purchased at the POS terminal, where the unique account number is scanned

at the POS terminal located at a retail store, where the ICN server is at a location that is remote from the retail store;
in response to receiving the first message, determining, at the ICN server, whether at least one coupon code is assigned to the unique account number, where a coupon code comprises a first portion and a second portion;

in response to determining that the at least one coupon code is assigned to the unique account number, validating the at least one coupon code based at least in part on the product code information and transmitting, from the ICN server, a second message to the point-of-sale terminal via the network, the second message comprising the first portion of each of the at least one coupon code assigned to the unique account number;

in response to transmitting the second message, receiving, at the ICN server, a third message, from the point-of-sale terminal via the network, the third message indicating which of the at least one coupon code was redeemed at the point-of-sale terminal; and

transmitting, from the ICN server, a fourth message to a manufacturer, the fourth message comprising the second portion of at least one coupon code that was redeemed.

'855 Patent, 33:9-39 (claim 54) (emphasis added).

Claim 57 recites:

57. A system, comprising:
an Intelligent Clearing Network (ICN) network;

at least two point-of-sale (POS) terminals;
at least two POS controllers, where each POS controller is
configured to communicate with a plurality of the at least
two POS terminals; and
an ICN server configured to communicate with the at least two
POS controllers,
wherein a POS terminal of the at least two POS terminals is
located at a retail store and is configured to scan, at a point-
of-sale (POS) terminal, first coupon and incentive related
information, including universal product code information of
an item to be purchased, and to transmit the first coupon and
incentive related information at the POS terminal to a POS
controller of the at least two POS controllers;
the POS controller is configured to transmit the first coupon
and incentive related information to the ICN server via the
network where the ICN server is at a location that is remote
from the retail store; and
***the ICN server is configured to validate the first coupon and
incentive related information for redemption based at least
in part on the universal product codes of an item to be
purchased and, in response to validating the first coupon
and incentive related information, to transmit to the POS
terminal, via the POS controller, second coupon and
incentive related information.***

'855 Patent, 34:12-37 (claim 57) (emphasis added). The Petition fails to
establish that these emphasized features are disclosed or suggested by the

asserted art, and therefore must fail as to each challenge and each independent claim. Specifically, as addressed below, Petitioner's theory for these claimed features is directed to Deaton's "redemption verification" process involving the manufacturer. However, whether the redemption verification process is performed at Deaton's manufacturer or UPC server, this process is to verify that proper redemptions that have already occurred in order to credit a retailer for those redemptions.

III. THE BOARD NEED NOT REACH ANY CLAIM CONSTRUCTION ISSUES TO DENY THE PETITION

The Petitioner identifies no terms as requiring constructions in this IPR. Pet. 5 ("Petitioner submits that no construction of any claims term is necessary for the Board to resolve"). In contrast, in the District Court, Petitioner has advanced numerous limiting constructions that are inconsistent with Petitioner's invalidity theories. Section IV.B below is directed to claim element [1g], which recites: "the ICN server is configured to validate the first coupon or incentive related information for redemption based at least in part on the universal product codes of items to be purchased and, in response to validating the first coupon or incentive related information, to transmit to the POS terminal, via the POS controller, second coupon or incentive related information." In District Court, Petitioner contends that "validate" requires a determination "whether the purchase requirements of the [coupon/incentive/etc.] have been met." *See* Ex. 2001, Joint Claim Construction

Chart, at 3-5. Nowhere in the Petition does Petitioner address or apply its narrow definition of “validate.” Petitioner does not attempt to show that any claim is allegedly unpatentable under Petitioner’s proposed claim constructions.

Without waiving its right to submit constructions in a Patent Owner Response, and consistent with the position Patent Owner has taken in the District Court, Patent Owner submits that the Board need not engage in any pre-institution claim construction because the Petition fails to establish invalidity of any challenged claim under the plain and ordinary meaning of each term. For the substantive reasons presented in Section IV below, Petitioner’s grounds include fundamental flaws and fail to establish the disclosure of every claimed element in each independent claim. These findings do not require the Board to conduct any construction of the above-identified terms.

IV. PETITIONER’S CHALLENGES FAIL ON THE MERITS

Petitioner asserts seven grounds in its Petition, but only two of those grounds, Grounds 1 and 2, apply to the independent claims (claims 1, 32, 49, 51, 53, 54, and 57). In Ground 1, Petitioner contends that the independent claims and certain dependent claims² are anticipated by Deaton³, and in Ground 2, Petitioner contends that the independent claims and the same set of dependent claims from

² Dependent claims 2-23, 29-31, 33-36, 41, and 45-48, 50, 52, 55, and 56.

³ Ex. 1004, U.S. Patent No. 6,993,498 (“Deaton”).

ground 1, are obvious in view of Deaton. For completeness, Grounds 3-7 are not used to shore up the deficiencies the challenges against the independent claims in Grounds 1 and 2 and instead are asserted against certain dependent claims as follows: Ground 3 contends dependent claims 23-27, 38-40, and 42-43 are obvious in view of Deaton and Brown⁴; Ground 4 contends dependent claims 28 and 44 are obvious in view of Deaton and Brown and further in view of Aggrawal⁵; Ground 5 contends dependent claim 8 is obvious in view of Deaton and Fajkowski⁶; Ground 6 contends dependent claim 37 is obvious in view of Deaton and Hawkins⁷; and Ground 7 contends dependent claim 37 is obvious in view of Deaton and Schneider⁸.

Petitioner relies upon Deaton to disclose element [1g] below, and then relies upon its same flawed analysis for element [1g] to challenge the remaining independent claims. However, considered in full, Deaton neither discloses nor renders obvious at least element [1g]. In particular, Deaton fails to disclose at least an ICN server “configured to validate the first coupon or incentive related information for redemption based at least in part on the universal product codes of items to be purchased and, in response to validating the first coupon or incentive

⁴ Ex. 1005, U.S. Patent App. Publ. No. US 2006/0074784 (“Brown”).

⁵ Ex. 1006, U.S. Patent No. 7,013,286 (“Aggrawal”).

⁶ Ex. 1007, U.S. Patent No. 6,932,270 (“Fajkowski”).

⁷ Ex. 1008, U.S. Patent App. Publ. No. US 2007/0162337 A1 (“Hawkins”).

⁸ Ex. 1009, U.S. Patent App. Publ. No. US 2005/0216340 A1 (“Schneider”).

related information, to transmit to the POS terminal, via the POS controller, second coupon or incentive related information” as recited in claim 1. Petitioner fails to establish that this feature is either disclosed or suggested in Deaton, and looks instead to Deaton’s “redemption validation” process, which is performed at a manufacturer or UPC server only following a redemption that has already occurred. Further, Petitioner fails to identify any “second coupon or incentive related information” that is transmitted to a POS terminal, via a POS controller, from a server, “in response to validating the first coupon or incentive related information.” This shortcoming affects both Grounds 1 and 2 because Petitioner does not rely upon any secondary reference to remedy this shortcoming of Deaton. This shortcoming also affects every independent claim since Petitioner simply cites back to its flawed [1g] analysis for each independent claim without further discussion. Thus, Grounds 1 and 2 are facially deficient in establishing the unpatentability of any challenged independent claim, and Grounds 3-7 do not remedy the deficiencies of Grounds 1-2.

Additionally, Petitioner’s proposed standard of ordinary skill in the art fails to support Petitioner’s factual assertions and arguments regarding the coupon processing art. Petitioner contends that a person of ordinary skill in the art would have technical education and training, but Petitioner repeatedly relies on factual assertions about how the coupon-processing industry and technology operate

without explaining how the hypothetical person of ordinary skill would possess this knowledge. Similarly, Petitioner's expert, Dr. Mowry, provides no basis upon which he understands the coupon-processing industry and technology, or how he has formulated his opinions on coupon processing. Nothing about Petitioner's proposed POSITA standard or Dr. Mowry's experience supports his espoused opinions on such topics as coupon-processing practices, the functionality of point-of-sale terminals in retail stores, or the networking considerations in retail-to-coupon server messaging. Thus, his opinions on the coupon industry, which are central to Petitioner's obviousness theories, are not based upon his experience or education, and should be rejected as unreliable and unsupported.

For these reasons, as discussed in more detail below, the Petition should be denied without institution.

A. Petitioner's Proposed POSITA Standard and Dr. Mowry's Qualifications Fail To Support the Petition's Challenges, Which Rely on Specialized Insight Into the Art of Coupon Processing Technology or Practices

As will be addressed in Section IV.B below, the Petition fails in large part because of Petitioner's failure to adequately address the coupon-processing-related concept of "validation...for redemption" in the claims and instead relies on Deaton's redemption validation processes. Additionally, Petitioner's factual allegations regarding the coupon processing art, upon which the Petition depends

in its flawed analysis,⁹ are founded upon testimony from a person who has no experience in the coupon processing art.

Petitioner’s proposed standard for a “Person of Ordinary Skill in the Art” (hereinafter, “POSITA”) focuses purely on technical qualifications and experience. Petitioner defines the POSITA here as someone with knowledge of “distributed applications that involve client machines communicating with remote server machines over a network to perform queries and update transactions on data stored in database management systems.” Pet., 10-11 (citing Mowry, ¶22-24). Petitioner asserts that a POSITA would have the following qualifications:

1. First, a POSITA “would have had an undergraduate degree in electrical engineering, computer science, computer engineering, or similar technical field.” Pet., 10.
2. Second, a POSITA would have had “one to two years of experience in the analysis, design, development, and implementation of distributed applications that involve client machines communicating with remote server machines over a network to perform queries and update transactions on data stored in database management systems.” Pet., 10.

⁹ Petitioner states “All obviousness grounds include the knowledge of POSITA.” Pet. 2 n.1.

3. Relatedly, Petitioner notes that “additional education” could substitute “for less experience and vice versa.” Pet., 10.

Notably for the purpose of this proceeding, nothing about this proposed standard informs how the alleged POSITA would have any understanding about coupon-processing business or technology. While a POSITA meeting this proposed standard could have the requisite education and experience to implement network technology solutions, a POSITA would not have the knowledge that the Petition itself claims is necessary to render the claims obvious, including whether such implementations made sense within the field of coupon processing art or would be desired or feasible within the context of this art. But such knowledge is critical to and a central part of the obviousness grounds in the Petition.

The Petition repeatedly contends that a POSITA would require a deep and specific understanding of various aspects of the business and technology of validating, redeeming, and clearing coupons to reach the proposed obviousness determinations. Left unexplained is why a computer scientist or electrical engineer with experience in networking or database systems would have formulated any opinion about coupon processing references.

The Petition repeatedly touts Dr. Mowry as someone with insight into how a POSITA would understand coupon processing business practices and technologies in the coupon processing industry, when he has no such knowledge. On its face,

the Petition’s asserted basis for modifying Paul expressly depends upon numerous statements attributed to a POSITA having extensive knowledge coupon processing business practices and technologies, despite proffering no witness with this knowledge. These statements include, for example:

- “A POSITA would have known that GS1 coupon code would have been contemplated as a ‘type[] of code representation of products.’” Pet., 27 (citing Mowry, ¶102).
- “[A] POSITA would have found it obvious to retrieve and store such information from the manufacturer in a centralized database.” Pet., 28 (citing Mowry, ¶107).
- “A POSITA would understand that the ‘coupons redeemed for the particular manufacturer’ is the raw data of coupon and incentive processing transactions.” Pet., 29 (citing Mowry, ¶109).
- “A POSITA would understand that UPC codes were transmitted upon successful redemption of a coupon (i.e., “redeemed coupon”).” Pet., 32 (citing Mowry, ¶115).
- “[A] POSITA would have found it obvious to couple a originating financial institution server to the server disclosed in Deaton, which facilitated purchases through the Internet.” Pet., 36 (citing Mowry, ¶126).

- “A POSITA would have understood from this teaching that particular products (e.g., products that correspond to trigger universal product codes) may correspond to a coupon for another product. ... In addition, a POSITA would have understood that the manufacturer could offer a coupon for a product that is not based on the said purchase of particular products.” Pet., 20 (citing Mowry, ¶130).
- “[A] POSITA would have found it obvious to modify Deaton to transmit such information because the store and customer would need to know whether the coupon is valid to properly redeem the coupon.” Pet., 40 (citing Mowry, ¶137).
- “A POSITA would have understood that clearing the processed coupon could include a rate, including an intelligent clearing network rate and retailer credit rate because it would be expected to charge a fee to facilitate the transaction. ... In addition, a POSITA would have understood that crediting a retailer would necessarily mean that funds are held. ... To the extent that such rates and holding of funds are not disclosed in Deaton, however, a POSITA would have found such limitations obvious over Deaton.” Pet., 43 (citing Mowry, ¶144).
- “A POSITA reading Deaton would understand that assigning the coupon code to a unique account number would occur after

determining the identity of the customer was verified to ensure the correct coupon code was assigned.” Pet., 50-51 (citing Mowry, ¶173)

- “Implementation of Brown’s functionality would have required only routine knowledge because Deaton already contemplated that information would be sent from a point-of-sale to a central server and that the central server would have performed tasks.” Pet., 54 (citing Mowry, ¶183).
- “A POSITA would have been motivated to combine the teachings from Aggrawal with Deaton because it could have simplified the consolidation of coupons from different manufacturers for the retailers in the already consolidated UPC server.” Pet. 61 (citing Mowry, ¶196).

But Petitioner fails to establish how a person having only the education and training identified in its proposed POSITA definition would have understood these intricacies of the coupon-processing business and technology, which are critical to the Grounds presented in the Petition.¹⁰

¹⁰ “[T]he dispositive question regarding anticipation is whether one skilled in the art would reasonably understand or infer from the prior art reference’s teaching that every claim [limitation] was disclosed in that single reference.” *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1368 (Fed. Cir. 2003).

More importantly, Petitioner's declarant, Dr. Mowry, does not have the required experience and knowledge the Petition contends a POSITA must have. Dr. Mowry identifies no education or qualifications in his background that would qualify him to render these opinions on coupon processing. Dr. Mowry candidly states, "I have over 30 years of experience in the field of computer science, including distributed computing, networked computer systems, database management systems, and transaction processing. In light of the foregoing, *I consider myself to be an expert in the field of computer science.*" Mowry, ¶17 (emphasis added). What he fails to address is how this education and experience informs his conclusions regarding the coupon-processing industry. Although the Petition establishes that knowledge regarding the coupon processing art is essential to each of the Grounds, Dr. Mowry's qualifications statement, and his Declaration in general, fail to state the basis for Dr. Mowry's understandings and opinions regarding how the coupon-processing industry and technology work.

Each instance that Dr. Mowry issues an "opinion" about the coupon-processing industry should be disregarded by the Board as unsupported and lacking foundation under 37 C.F.R. § 42.65(a). *See Avail Medsystems, Inc. v. Teladoc Health, Inc.*, IPR2022-0044, Paper 10 at 24-27 (PTAB July 21, 2022) (denying institution after giving "no weight" to testimony from the perspective of a skilled artisan where the expert's qualifications fell short). Such opinions "amount[] to

nothing more than advocacy from the witness stand.” *See Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1362, 1364-65 (Fed. Cir. 2008); *see also Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1375-79 (Fed. Cir. 2022) (finding ***abuse of discretion*** when ALJ relied on testimony from an expert with “advanced degrees in engineering and extensive experience in the design and manufacture of fastener driving tools” but who did not have experience in “power nailer design”). Because Dr. Mowry’s opinions are critical to the Petition’s challenges, the Petition should be denied institution on this basis alone.

B. Petitioner’s Ground 1 Fails to Satisfy Element [1g], and Ground 2 Includes No Theory to Remedy the Deficiency of Element [1g]

The Petition’s lack of reliable evidence on a POSITA’s understanding of the coupon-processing industry manifests itself in the flawed substantive analysis of the Deaton reference in Ground 1, and element [1g] in particular. Element [1g] recites: “the ICN server is configured to validate the first coupon or incentive related information for redemption based at least in part on the universal product codes of items to be purchased and, in response to validating the first coupon or incentive related information, to transmit to the POS terminal, via the POS controller, second coupon or incentive related information.”

1. The Petition Erroneously Relies on Deaton's Redemption Verification Processes to Satisfy the Claimed "Validation...For Redemption"

According to the plain language of element [1g], an "ICN server is configured to validate the first coupon or incentive related information for redemption based at least in part on the universal product codes of items to be purchased." Then, "in response to validating the first coupon or incentive related information," the ICN server is configured to "transmit to the POS terminal, via the POS controller, second coupon or incentive related information."

Petitioner points to Deaton when attempting to disclose element [1g] but fails to establish that every claimed feature in element [1g] is disclosed or rendered obvious by Deaton, under any construction of "validate" / "validating."¹¹

The Petition begins to address element [1g] of claim 1 on page 19. But Petitioner's theory is off-base from the start because Petitioner initially cites to Deaton's incentive controller 44, which is located at a store and is not an ICN server. Once Petitioner shifts its theory to Deaton's UPC server and manufacturer, however, Petitioner focuses on Deaton's process for verifying prior redemptions for purchases that have already occurred, and not a process of validation "for

¹¹ Petitioner does not even attempt to apply its proposed construction of "validate" / "validating" in its challenge based on Deaton. *See* Ex. 2001, 3-5 (Petitioner construing "validate" / "validating" as requiring a determination "whether the purchase requirements of the [coupon/incentive/etc.] have been met").

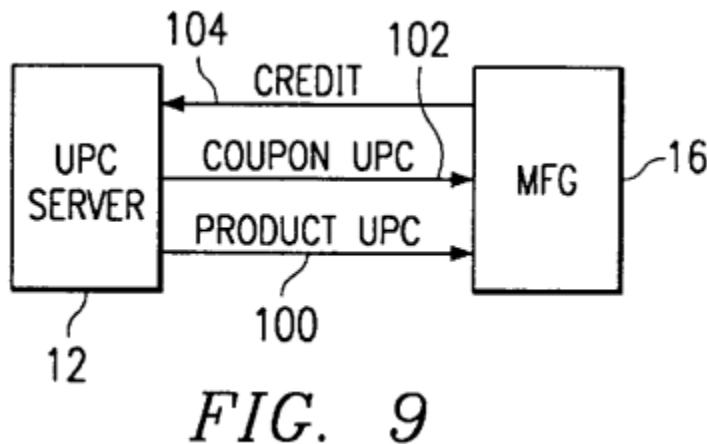
redemption” of “first coupon or incentive related information.” Under any theory, Petitioner fails to establish that Deaton discloses or suggests an “ICN server [that] is configured to validate the first coupon or incentive related information for redemption based at least in part on the universal product codes of items to be purchased,” as claimed.

As noted, the Petition first points to features of Deaton’s “[i]ncentive controller 44,” which may “be used in validating *product purchases* in conjunction with products offered at a discount or for products for which coupons are redeemed.” Pet., 19 (quoting Deaton, 5:4-7) (emphasis added). But Deaton’s incentive controller 44 is located at a store 14, and cannot be relied upon as the claimed “ICN server.” *See* Deaton, FIG. 2C, 4:53-55 (“FIG. 2C is a block diagram of store 14 showing alternative details of a portion of system 10 for providing point-of-sale information to a client, such as manufacturer 16.”).

Not only is incentive controller 44 at the wrong location to disclose or suggest the claimed “ICN server,” but Petitioner never explains how the incentive controller 44 allegedly “validate[s] the first coupon or incentive related information for redemption based at least in part on the universal product codes of items to be purchased.” Instead, Petitioner simply quotes Deaton’s 5:4-7 and leaves it to the Board to figure out how this quotation corresponds to the claim language being challenged. This is improper under 37 C.F.R. § 42.104(b), (b)(4)

(The petition must include “a statement of the precise relief requested for each claim challenged”); (“The petition must specify where each element of the claim is found in the prior art patents or printed publications relied upon.”). Petitioner’s theory based on incentive controller 44 cannot prevail.

The Petition next looks to Deaton’s UPC server, as illustrated and described in FIG. 9:



“FIG. 9 is a block diagram illustrating the use of UPC server in facilitating coupon redemption validation and electronic crediting.” Pet., 19 (quoting Deaton, 10:63-65). But as introduced above, the process of “redemption validation and electronic crediting,” whether performed by a manufacturer or UPC server, is a process of crediting a store for a coupon redemption that has already occurred. Following a redemption, “the manufacturer may verify the proper redemption of a manufacturer coupon and provide an appropriate credit to store 14.” Deaton, 11:4-6. As Deaton explains, once the coupon redemption is verified, “manufacturer 16

may effect a credit ... directed to store 14 in the amount of the redeemed coupons.”

Deaton, 11:16-18. The Petition also cites to Deaton’s disclosure that a “UPC server 12 may include circuitry and/or software 70 for also performing this validation and for providing manufacturer 16 of a summary of the number and amount of coupons redeemed for the particular manufacturer.” Pet., 19-20 (quoting Deaton, 11:12-16). But again this disclosure in Deaton simply describes Deaton’s use of the UPC server 12 in the process of verifying that past coupon redemptions were proper so the manufacturer may properly credit the store for those redemptions. This does not disclose or suggest any validation of “the first coupon or incentive related information *for redemption*,” as claimed.

Following Petitioner’s citations to Deaton regarding the off-topic post-redemption verification process, Petitioner includes only a short paragraph describing how Petitioner contends that this first portion of element [1g] is allegedly disclosed or suggested by Deaton. Pet., 20. There, Petitioner alleges that electronic discounts are stored at a server and “may be sent to the store for application” “when the customer is identified as purchasing a product associated with the discount.” Pet., 20. To support this allegation, Petitioner quotes Deaton’s 12:65-13:3, which recites “discounts may be electronically stored on UPC server 12 . . . for subsequent access by the customer. The electronic discounts may also communicate to store 14 for application when the customer is identified purchasing

the product associated with the discount.” Deaton, 12:65-13:3. Once again, this theory is not on-point. Nowhere does Petitioner allege that this process includes the UPC server validating any “first coupon or incentive related information for redemption.” The UPC server receives an identification of the customer’s purchases, but does not “validate” those identified purchases “for redemption.”

Ultimately, Petitioner’s theory for the first portion of element [1g] fails. The incentive controller 44 is not an ICN server, and Petitioner never explains how the incentive controller 44 allegedly “validate[s] the first coupon or incentive related information for redemption based at least in part on the universal product codes of items to be purchased.” When Petitioner shifts its theory to Deaton’s UPC server and manufacturer, Petitioner incorrectly relies upon Deaton’s “redemption verification” process involving the manufacturer. But the manufacturer’s involvement in Deaton occurs to verify a redemption that has *already occurred*, and does not disclose or suggest a validation “for redemption” as claimed in the ’855 Patent. As Deaton discloses, Deaton’s redemption verification process “may also include verifying the price at which the product *was purchased*.” Deaton, 11:8-9 (emphasis added). This process in Deaton is not to validate “first coupon or incentive related information for redemption,” but instead is performed to “provide an appropriate credit to store 14” for a redemption that has already occurred.

While Petitioner also looks to Deaton’s UPC server, Deaton discloses that the UPC

server may include circuitry or software for performing the manufacturer's redemption verification process, and the UPC server does so to provide the manufacturer with "a summary of the number and amount of coupons redeemed for the particular manufacturer." Deaton, 11:12-16. Thus, the UPC server's role in this process is still to report on redemptions that have already occurred, and this process does not disclose a validation "for redemption" as claimed.

2. The Petition Fails to Satisfy the Claimed Limitation of a Server to "Transmit to the POS Terminal, via the POS Controller, Second Coupon or Incentive Related Information"

Petitioner's theory is further flawed because "in response to validating the first coupon or incentive related information," element [1g] requires the ICN server to "transmit to the POS terminal, via the POS controller, second coupon or incentive related information." Petitioner addresses the transmission of "second ... information" "in response to validating the first coupon or incentive related information" on page 20. There, Petitioner characterizes Deaton as follows:

Deaton also discloses that in response to validating the first information, the server, *via the manufacturer*, transmits to the POS terminal via the POS controller second coupon or incentive related information (the "second information").

Pet., 20-21 (emphasis added). Once again, because Petitioner's inclusion of the manufacturer in this process is directed to Deaton's redemption verification, which

occurs following redemption, Petitioner's theory fails for the same reasons explained above.

Moreover, Petitioner's theory for the "second coupon or incentive related information" incorrectly relies on information that originates at the manufacturer, not the UPC server. *See* Pet., 20-21 (relying on Deaton's 4:44-49, "register controller receives information from manufacturers 16" and Deaton's "5:39-48, "manufacturer 16 may communicate, through UPC server 12, incentives ..."). Petitioner does not account for the fact that in element [1g], the claimed ICN server, which "validate[s] the first coupon or incentive related information for redemption," also "transmit[s] to the POS terminal, via the POS controller, second coupon or incentive related information" "in response to validating the first coupon or incentive related information." Despite injecting a manufacturer into the communication route, Petitioner still does not identify any "second coupon or incentive related information" in Deaton that is transmitted from UPC server to a POS controller, to a POS terminal, "in response to validating the first coupon or incentive related information."

Indeed, Petitioner's theory is threadbare at best. Petitioner provides no detailed explanation of how it alleges that these claimed features of element [1g] are allegedly disclosed or suggested by Deaton, and instead simply cites to and

quotes three passages in Deaton without further discussion. Each of these quotations fall short, however.

Petitioner first quotes 4:44-49 of Deaton: “register controller 46 receives information from manufacturers 16 for delivery to the customer at the points-of-sale 36, 38, 40.” Pet., 20. Nowhere in this quotation does Deaton disclose that the information received at the register controller 46 from manufacturers is “in response to validating the first coupon or incentive related information for redemption,” or that the “information from manufacturers 16” originates from an ICN server, as required by the claim. This analysis fails to establish how Deaton allegedly discloses the second portion of element [1g].

Petitioner next quotes 4:66-5:4 of Deaton: “incentive controller 44 may provide incentives, such as redeemable coupons or a written notification of a future product discount or advertising message, to customers at points of sale 36, 38, 40, recommend such incentives to manufacturer 16, or process incentives generated by manufacturer 16.” Pet., 20-21. Once again, nowhere in this quotation does Deaton disclose that the “incentives” at an incentive controller 44 originate from an ICN server, as required by the claim, or are transmitted from ICN server “in response to validating the first coupon or incentive related information for redemption.” These recommended “incentives” are also not on point for the “second information” recited in claim 1. Deaton’s disclosure of processing “incentives generated by

manufacturer 16” also fails to disclose any action “in response to validating the first coupon or incentive related information” and fails to disclose the transmission of second information from an ICN server “to [a] POS terminal, via [a] POS controller.” Again, this analysis fails to establish that Deaton allegedly discloses this portion of element [1g].

Petitioner lastly cites to Deaton’s disclosure at 5:39-48: “In response to receiving information from the point-of-sale, manufacturer 16 may communicate, through UPC server 12, incentives to be communicated to a customer of store.” Pet., 21. Like the prior disclosures from Deaton relied upon for element [1g], this disclosure fails to disclose that any “second information” is transmitted from a server to a POS terminal “in response to [the server] validating the first coupon or incentive related information.” Further, this disclosure merely states that a manufacturer may communicate with a “customer” via Deaton’s UPC server, which shows manufacturer-to-server communication instead of server-to-manufacturer communication. In fact, Petitioner cites to nothing in Deaton to complete that chain of transmission from the server to POS controller and then to a POS terminal.

Petitioner also cites to Ex. 1003, ¶84 for support for these allegations. Pet., 21. But paragraph 84 of Dr. Mowrey’s declaration includes nothing more than a bare assertion that Deaton somehow discloses element [1g]:

84. Deaton also discloses that in response to validating the first information, the server, via the manufacturer, transmits to the POS terminal via the POS controller second coupon or incentive related information (the “second information”). Ex-1004, 4:44-49; 5:39-48; *see also* Fig. 1.

This statement by Dr. Mowrey runs afoul of 37 C.F.R. § 42.65(a) for including no analysis how element [1g] is allegedly disclosed by Deaton, and should be disregarded. More importantly, this statement by Dr. Mowrey confirms without question that neither Petition nor Dr. Mowrey has any theory how Deaton allegedly discloses this claimed aspect of element [1g]. In the face of such unsupported and conclusory testimony, Petitioner's argument and its expert's testimony should be rejected. *Consolidated Trial Practice Guide* at 36 (Nov. 2019) (“expert testimony cannot take the place of disclosure from patents or printed publications”); 37 C.F.R. § 42.65(a).

Thus, even absent Petitioner's explanation, it is clear that none of these passages trace any “second information” from Deaton's server to a POS controller, to a POS terminal, “in response to validating the first coupon or incentive related information,” as claimed. For these reasons, Petitioner's Ground 1 theory of anticipation based on Deaton plainly fails.

3. The Petition's Single-Reference Obviousness Theory Fails to Identify How or Why Deaton Would Have Been Modified

Finally, Petitioner and Dr. Mowrey follow their facially deficient analysis of element [1g] with a weak obviousness argument that “the UPC server may be implemented in many forms and ... although a particular configuration of a store is illustrated [in Deaton], other configurations may be utilized.” Pet., 21. Petitioner follows this by stating that a “POSITA would have found it obvious based on this teaching to reconfigure the various components of the system in Deaton to meet the claimed system and would have had a reasonable expectation of success in doing so because the systems described are basic computer components like servers, networks and terminals.” *Id.* These arguments lack any awareness by Petitioner of Deaton's shortcomings as discussed above for element [1g], and how to allegedly fix those shortcomings through obvious-based modifications. Instead, Petitioner tries to capture the universe of whatever reconfigurations would have been necessary “to meet the claimed system,” apparently using the claimed system as a road map for the modifications. Pet., 21. But Petitioner does not propose any specific modifications to Deaton, and instead offers this weak safety-net backstop “[t]o the extent that Patent Owner argues that a particular configuration in Deaton differs from the claimed system.” Pet., 21.

This catch-all generalization flies in the face of the statutory requirements for IPRs, which must identify challenges “with particularity.” *See* 35 U.S.C. §

312(a)(3). Patent owners are not expected to chase ghosts, but rather are entitled to present “reasons why no inter partes review should be instituted based upon the failure of the petition to meet any requirement of this chapter.” 35 U.S.C. § 313. Here, Petitioner’s failures with regard to element [1g], as discussed above, are plain and warrant denial.

Further, Patent Owner does not need to argue that a “particular configuration in Deaton differs from the claimed system.” Petitioner has plainly failed to establish that Deaton discloses at least element [1g] (*see also* Ex. 1003, ¶84), and neither Petitioner nor Dr. Mowrey has any theory how Deaton would have been modified to otherwise suggest that claimed feature. Ground 1 fails because Deaton does not anticipate claim 1, and Petitioner advances no viable obviousness-based argument to remedy Deaton’s failure to disclose element [1g]. Thus, Ground 2 also must fail.

For all these reasons, Petitioner’s evaluation of element [1g] is faulty because Deaton fails to disclose element [1g], and Petitioner advances no obviousness-based theory to remedy Deaton’s failure as to this element. Claim 1 necessarily survives this IPR.

C. Petitioner’s Challenges of Each Independent Claim Fail Because Petitioner Continues to Rely on its Deficient Theory on Element [1g]

Petitioner challenges every claim in the ’855 patent, claims 1-57. *See, e.g.*, Pet., 2.

The precise relief requested by Petitioner is that claims 1–57 be canceled based on the grounds below:

Ground	Claims	Basis for Rejection ¹
1	1-23, 29-36, 41, and 45-57	Anticipation over Deaton
2	1-23, 29-36, 41, and 45-57	Obviousness over Deaton
3	23-27, 38-40, and 42-43	Obviousness over Deaton in view of Brown
4	28 and 44	Obviousness over Deaton and Brown in view of Aggrawal
5	8	Obviousness over Deaton in view of Fajkowski
6	37	Obviousness over Deaton in view of Hawkins
7	37	Obviousness over Deaton in view of Schneider

Petitioner’s theories as to independent claims 32, 49, 51, 53, 54, and 57 continue to call back to Petitioner’s deficient analysis of element [1g]. For example, element [32c] recites “in response to the first coupon or incentive related information being validated at the coupon or incentive processing server based at least in part on the universal product code information, receiving, via the second interface, second coupon related information through the network to the

terminal, where the second coupon related information indicates whether the coupon or incentive processing server has validated the first coupon related information.” Petitioner argues that “Deaton teaches that second coupon related information can be transmitted from the manufacture[r] via the UPC server through the incentive controller to the POS terminal.” *See* Pet., 39 (citing back to Petitioner’s evaluation of element [1g] and Dr. Mowry’s ¶135 without any further analysis).

Deaton teaches that second coupon related information can be transmitted from the manufacture via the UPC server through the incentive controller to the POS terminal. *See supra* claim 1, Element [1g]; Ex-1003, ¶135.

Dr. Mowry’s paragraph 135 is equally conclusory:

software 70 for also performing this validation”); *see* claim 1, Element [1g]. In addition, Deaton teaches that second coupon related information can be transmitted from the manufacture via the UPC server through the incentive controller to the POS terminal. *See* claim 1, Element [1g]

Thus, just as Petitioner was wrong about element [1g], Petitioner is wrong about element [32c].

Petitioner repeats this error by relying on its flawed analysis for element [1g] to challenge elements [49b] and [49c] (Pet., 45), element [49d] (Pet., 45), element [49e] (Pet., 46), elements [51c] and [51d] (Pet., 47), element [51e] (Pet., 47),

element [52f] (Pet., 47), elements [53pre] and [53a] (Pet., 48), element [53b] (Pet., 48), element [54c] (Pet., 50), and element [57g] (Pet., 52). For the reasons discussed above with respect to element [1g], including Petitioner's failure to establish that the claimed transmission and "in response to" relationship is disclosed or obvious in view of Deaton, Petitioner's challenge of each of these claims must fail.

For all these reasons, Petitioner's Ground 1 challenges of claims 32, 49, 51, 53, 54, and 57 are deficient, and Petitioner advances no obviousness-based theory to remedy Deaton's failure as to the above-recited elements of these claims. All independent claims of the '855 Patent necessarily survive this IPR.

D. Grounds 3-7 are Not Presented to Remedy the Shortcomings of Grounds 1-2

Finally, Grounds 3-7 is presented against specific dependent claims, and are not presented in the Petition to remedy the above-discussed deficiencies of Grounds 1-2. For the same reasons discussed above, the Petition fails to establish the unpatentability of any challenged claim, and should be denied without institution.

V. CONCLUSION

For the reasons presented above, the Petition should be denied, and no *inter partes* review should be instituted.

IPR2024-01324 Patent Owner's Preliminary Response

Dated: December 18, 2024

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CERTIFICATE OF WORD COUNT

The undersigned certifies that the foregoing PATENT OWNER'S PRELIMINARY RESPONSE complies with the type-volume limitation in 37 C.F.R. § 42.24(b)(1). According to the word-processing system's word count, the brief contains 8,508 words, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a).

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CERTIFICATE OF SERVICE

Petitioner has consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on this date, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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