

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TICKETNETWORK, INC. and TICKET SOFTWARE LLC,  
Petitioner,

v.

CEATS, INC.,  
Patent Owner.

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Case IPR2018-00245  
Patent 7,640,178 B2

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Before MICHAEL W. KIM, WILLIAM V. SAINDON, and  
KEVIN W. CHERRY, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
Finding No Challenged Claims Unpatentable  
*35 U.S.C. § 318(a)*  
Denying Petitioner's Motion to Exclude  
*37 C.F.R. § 42.64*

## I. INTRODUCTION

We have jurisdiction under 35 U.S.C. § 6. The evidentiary standard is a preponderance of the evidence. *See* 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). This Final Written Decision (“Decision”) is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

TicketNetwork, Inc. and Ticket Software LLC, (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–20 of U.S. Patent No. 7,640,178 B2 (Ex. 1001, “the ’178 patent”). Paper 3 (“Pet.”). We instituted an *inter partes* review on each challenged claim. Paper 14 (“Dec. on Inst.”). CEATS, Inc. (“Patent Owner”) filed a Response. Paper 32 (“PO Resp.”). Petitioner filed a Reply. Paper 36 (“Pet. Reply”). Patent Owner filed a Sur-Reply. Paper 42 (“PO Sur-Reply”). We held an oral hearing on March 20, 2019, and the transcript was entered into the record. Paper 49 (“Tr.”).

This Decision also addresses Petitioner’s Motion to Exclude. Paper 41 (“Pet. Mot. Excl.”). Patent Owner filed an opposition. Paper 45 (“PO Opp. Mot. Excl.”). Petitioner filed a reply. Paper 46 (“Pet. Reply Mot. Excl.”).

Upon consideration of the arguments and evidence before us, we determine that Petitioner has not established by a preponderance of the evidence that any claims of the ’178 patent are unpatentable. We deny Petitioner’s Motion to Exclude as moot.

*A. Related Matters*

The parties identify *TicketNetwork, Inc., et al. v. CEATS, Inc.*, Civil Action No. 2:15-cv-1470 (E.D. Tex.) as related to the issues presented in this proceeding. Pet. 1; Paper 6, 2.

Petitioner additionally filed proceedings challenging related patents belonging to Patent Owner: CBM2018-00004 (U.S. Patent No. 8,229,774) and IPR2018-00244 (U.S. Patent No. 7,548,867).

*B. The '178 Patent*

The '178 patent relates to a system for selecting and reserving seats over the web using a touch screen device. The '178 patent contrasts itself with prior art solutions that are limited to a remote site such as a kiosk, two-way human conversation, or that are not instantaneous. Ex. 1001, 1:59–2:23. The '178 patent presents the following scenario:

Consider the traveler who has planned a vacation in, say, New York City and wants tickets for some Broadway show. Presently he has either to phone and accept someone else's definition of what constitutes "best available" or wait until he gets into town and seek out a scalper or reseller agency and he still isn't sure exactly what his seats offer.

*Id.* at 2:24–29.

The '178 patent proposes to solve that problem by allowing a user to select "the exact seat . . . of their choosing directly online" using a graphical representation of the seating arrangement of the venue showing current seat availability. *Id.* at 1:22–32.

*C. Challenged Claims*

Petitioner challenges claims 1–20 of the '178 patent. Claims 1, 8, and 15 are independent; independent claim 1 is reproduced below.

1. A computer-implemented method for interactively selecting one or more seats at a venue by an end user over a network, the method comprising:  
transmitting first data to a web browser running on a home or office personal computing device, the first data including information descriptive of available individual seats at the venue, the first data configured to cause the web browser to generate a web page on the personal computing device that comprises an interactive seating map representing individual seats at the venue;  
receiving from the personal computing device second data representing one or more seats selected by a touch screen input to a location on the interactive seating map; and  
receiving over the network from the personal computing device third data representing payment information for the one or more seats selected by the touch screen input.

#### *D. Prior Art and Asserted Grounds*

Petitioner asserts that claims 1–20 would have been obvious in view of Expedia Reviews,<sup>1</sup> Clough,<sup>2</sup> and Wilder.<sup>3</sup> Pet. 3.

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<sup>1</sup> Petitioner cites to “a collection of three contemporaneous, published reviews of the prior art Expedia web-based airline reservation system, referred collectively herein as the ‘Expedia Reviews.’” Pet. 21–22. These references are: Laura Bly, *Pick Your Airline Seat on the Web*, Los Angeles Times (May 11, 1997); Joseph Kornik, *Expedia overhaul adds more content, seat selection to site*, Travel Weekly (May 22, 1997); and *American Express and Microsoft Unveil Online Travel Reservations System for Corporations*, News Press Release, Microsoft News Center (July 14, 1997) (Ex. 1005).

<sup>2</sup> U.S. Patent No. 5,379,057, iss. Jan. 3, 1995 (Ex. 1007).

<sup>3</sup> U.S. Patent No. 5,408,417, iss. Apr. 18, 1995 (Ex. 1008).

## II. PATENTABILITY ANALYSIS

### A. Claim Construction

Claim terms in this proceeding are to be construed under the broadest reasonable interpretation standard. 37 C.F.R. § 42.100(b) (2016).<sup>4</sup>

Petitioner contends that “no terms require construction beyond ‘their broadest reasonable interpretation consistent with the specification.’ *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, (Fed. Cir. 2005).” Pet. 20. Patent Owner contends that it “applies the plain and ordinary meaning of the claim terms.” PO Resp. 5.

Reviewing the briefs, we determine that a dispositive issue turns on claim construction. Specifically, the parties dispute whether the method steps of independent claims 1, 8, and 15 require a certain order. *See, e.g.*, PO Resp. 26 (“Because payment information is for the selected seats, users must select seats before making payments”); Pet. Reply 16 (“Patent Owner is attempting to add a requirement of a particular order for performing the recited steps of the claimed method”). As explained below, we agree with Patent Owner that claims 1, 8, and 15 require a certain order of steps.

Independent claims 1, 8, and 15 each include a step of receiving “payment information for the one or more seats selected by the touch screen input.” The plain and ordinary meaning of “selected” is in the past tense.

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<sup>4</sup> A recent amendment to this rule does not apply here because the Petition was filed before November 13, 2018. *See* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340 (Oct. 11, 2018) (amending 37 C.F.R. § 42.100(b) effective November 13, 2018).

As such, we agree with Patent Owner that in order to receive payment for *selected* seats, the seats must first have been selected. This would be different from a system where seat payment was not tied to a particular seat. The '178 patent is consistent with these constructions, in that it provides examples of users experiencing the system by first selecting a specific seat and then paying for it. Ex. 1001, 5:31–32, 6:31–34, Fig. 1 (flowchart depicting order of steps), Fig. 5 (code remark describing how the program “allows the ability to select multiple seats before proceeding to the next step of reservation process”). Thus, Patent Owner’s position has express support both in the claim language itself, as well as in the specification.

Petitioner argues the general rule that “method claims are not limited to a particular order,” and asserts that Patent Owner has not established an exception to that rule. Pet. Reply 17. However, the general rule only applies “[u]nless the steps of a method actually recite an order.” *mFormation Tech v. Research in Motion*, 764 F.3d 1392, 1398 (Fed. Cir. 2014). We determine that independent claims 1, 8, and 15 recite an order because the receiving payment information step requires a seat to have been selected in the receiving seat selection step—the payment information step cannot proceed until the seat is selected. *See Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1309 (Fed. Cir. 2014) (holding that claim order can be determined based on “grammar, logic, the specification, or the prosecution history”), *overruled on other grounds by Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015). Accordingly, we determine that the “receiving payment information” step in claims 1, 8, and 15 must occur after the seat selection has been made.

No further claim construction is necessary to render this decision. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (only those terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy).

*B. Petitioner's Obviousness Ground*

Claim 1 is directed to a method wherein a user receives an interactive seat map via a web browser on a personal computing device, user selects one or more seats using a touch screen input, and finally, sends payment information for those seats. Independent claims 8 and 15 are virtually identical, for purposes of this Decision.

Petitioner's ground is based on a first premise that the Expedia Reviews discuss an interactive seat map over a web browser. Pet. 31–35. The second premise is that a skilled artisan would have found it obvious to use a touch screen as an alternative input method from Expedia Reviews' mouse clicking for seat selection, as taught in Wilder. *Id.* at 35–36. Expedia Reviews discusses a website having a “real-time seat map that lets airline passengers pick where they want to sit.” Ex. 1005, 1. While on the website, “customers purchase airline tickets with most major carriers, [and] they are now able to choose open seats they prefer using a graphical interface that highlights the interior of the plane.” *Id.* at 2.

*C. Analysis of Petitioner's Obviousness Ground*

Patent Owner raises several different arguments as to why it believes Petitioner's ground is deficient. *See generally* PO Resp. 11–26. We consider one to be dispositive of the case, and thus focus solely on that argument.

As we stated in our claim construction section, the parties disagreed as to whether the independent claims required a certain order—whether the seats must be selected prior to receipt of payment information. *See, e.g.*, PO Resp. 26 (“Because payment information is for the selected seats, users must select seats before making payments”); Pet. Reply 16 (“Patent Owner is attempting to add a requirement of a particular order for performing the recited steps of the claimed method”). We determine in our claim construction analysis above that the claims do require a certain order. Accordingly, we turn to whether Petitioner’s ground explains how the relevant prior art discloses or suggests the steps are performed in the required order.

As to the limitation requiring receipt of payment information for the selected seats, Petitioner asserts that “Expedia allows its customers to ‘purchase airline tickets’ on a ‘web browser.’” Pet. 37 (citing Ex. 1005, 2). The portion of the Expedia Reviews quoted by Petitioner states:

In addition, as customers purchase airline tickets with most major carriers, they are now able to choose open seats they prefer by using a graphical interface that highlights the interior of the plane.

Ex. 1005, 2.

We find that this passage does not state that passengers purchase *selected* seats. Instead, we find that the passage states that both seat selection and ticket purchase occur using the graphical interface provided by Expedia; the order in which these steps occur is not stated.

Petitioner cites to Wilder in addressing the receiving payment information step, but that is only offered as evidence of obtaining credit approval, not with regard to payment information for selected seats.<sup>5</sup>

Petitioner notes that a jury found that a claim having a similar receiving payment information limitation<sup>6</sup> was determined to be invalid in related litigation as anticipated or obvious in view of prior art called “Expedia 2.0.” Pet. Reply 38 (citing *CEATS, Inc. v. Cont’l Airlines, Inc.*, 526 F. App’x 966 (Fed. Cir. 2013) (Ex. 1025)). Petitioner asserts that collateral estoppel precludes Patent Owner from arguing that the receiving payment information limitation is not disclosed in Expedia 2.0. Pet. 8. But even if we were to hold that Patent Owner were estopped from arguing against Expedia 2.0, that prior art is not before us. The Expedia 2.0 art before the jury was system art (i.e., the underlying software), whereas the Expedia Reviews before us are printed publications (specifically, news articles). Different art makes different grounds, which makes for different issues. Collateral estoppel is not appropriate where the issues are different. *In re Freeman*, 30 F.3d 1459, 1465 (Fed. Cir. 1994) (setting forth various factors for when collateral estoppel is appropriate and requiring that “the

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<sup>5</sup> We do not address a combination of Expedia Reviews and Wilder, where Wilder provides the teaching of receiving payment information for a selected seat, because such a ground is not before us. *See SAS Inst., Inc. v. Iancu*, — U.S. —, 138 S. Ct. 1348, 1355 (2018) (noting “the petitioner is master of its complaint”); *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 775 (Fed. Cir. 2018) (holding that PTAB did not abuse its discretion in declining to consider arguments not made); *see also* Ex. 1008, 9:10–10:14 (noting a process where seat selection is made prior to payment).

<sup>6</sup> For example, “accepting over the wide area network from the end user a payment for the seat.” Pet. Reply 38.

issue is identical to one decided in the first action”). Petitioner has not shown that collateral estoppel applies here.

In summary, we find that the Expedia Reviews do not disclose receiving payment information for selected seats. Petitioner’s ground before us relies on such a finding. Accordingly, we determine that Petitioner has not established, by a preponderance of the evidence, that the subject matter of independent claim 1 would have been obvious in view of the Expedia Reviews, Wilder, and Clough. Petitioner’s ground addressing independent claims 8 and 15 have the same deficiency (*see* Pet. 49, 57), as well as all of the challenged claims depending from independent claims 1, 8, and 15. Thus, we determine that Petitioner has not established by a preponderance of the evidence that the subject matter of claims 1–20 would have been obvious in view of the Expedia Reviews, Wilder, and Clough.

### III. PETITIONER’S MOTION TO EXCLUDE

Petitioner moves to exclude portions of Patent Owner’s Response (Paper 32), Patent Owner’s Demonstratives for Oral Hearing (Ex. 2001), the Declaration of Zatkovich (Ex. 2002), the Second Declaration of Zatkovich (Ex. 2014), the Declaration of Hsu (Ex. 2015), and the entirety of Exhibits 2003–2012. Pet. Mot. Excl. 1. We dismiss Petitioner’s motion as moot because our Decision does not rely on any of the portions of the documents that Petitioner moves to exclude.

IV. ORDER

In view of the foregoing, it is hereby:

ORDERED that Petitioner has *not* established that claims 1–20 of the '178 patent are unpatentable in view of the Expedia Reviews, Wilder, and Clough;

FURTHER ORDERED that Petitioner's Motion to Exclude is *dismissed* as moot; and

FURTHER ORDERED that this is a Final Written Decision under 35 U.S.C. § 318(a), and that parties to the proceeding seeking judicial review of the decision under 35 U.S.C. § 319 must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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PETITIONER:

P. Weston Musselman, Jr.  
Ricardo Bonilla  
FISH & RICHARDSON, P.C.  
musselman@fr.com  
rbonilla@fr.com

PATENT OWNER:

Donald Daybell  
Brian Billett  
Johannes Hsu  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
d2dptabdocket@orrick.com  
bsbillett@gmail.com  
ptabdocketj1h1@orrick.com