

United States District Court,
D. South Carolina, Columbia Division.

DECISIONING.COM, INC,
Plaintiff.

v.

**FEDERATED DEPARTMENT STORES, INC.; FDS Bank; Macys.com, Inc.; Bloomingdale's, Inc.;
The Bon, Inc., d/b/a The Bon Marche; Burdines, Inc.; Rich's Department Stores, Inc., d/b/a Rich's-
Macy's, Lazarus, Goldsmith's, FACS Group, Inc.; Federated Systems Group, Inc.; and Department
Stores National Bank,**
Defendants.

decisioning.com, Inc,
Plaintiff.

v.

**TD Ameritrade Holding Corporation; TD Ameritrade, Inc.; and TD Ameritrade Online Holding
Corporation, successor of TD Waterhouse Group, Inc,**
Defendants.

HSBC Finance Corporation as successor to Household International, Inc,
Plaintiff.

v.

decisioning.com, Inc,
Defendant.

Civil Action Nos. 3:03-1924-CMC, 3:03-2837-CMC, 3:04-1200-CMC

Dec. 6, 2006.

Joseph Calhoun Watson, Sowell Gray Stepp and Laffitte, Columbia, SC, Kevin Patrick McBride, McBride
Law, Santa Monica, CA, Mark A. Glick, Parsons Behle and Latimer, Salt Lake City, UT, Steven N.
Terranova, Withrow and Terranova, Cary, NC, for Plaintiff.

Larry Dwight Floyd, Jr., Ronald James Tryon, Parker Poe Adams and Bernstein, Columbia, SC, Daniel S.
Ebenstein, Ira E. Silfin, J. Marc Jason, Amster Rothstein and Ebenstein, New York, NY, for Defendant.

ORDER ON CLAIM CONSTRUCTION

CAMERON McGOWAN CURRIE, District Judge.

This order sets forth the court's construction of claim terms as determined during the hearing held December 4-5, 2006. The reasoning behind the constructions was stated fully on the record and is not repeated here. To the extent there are any differences in wording between the construction given on the record and in this order, the wording in the order controls. FN1

FN1. Minor, non-substantive changes have been made to reflect differences between the formatting of this order and sentence structure used in handouts provided during the hearing.

The first eleven terms were construed based predominately on Patent Number 6,105,007 ("007 Patent") but, by agreement of the parties, shall have the same meaning for Patents Numbered 5,870,721 ("721 Patent") and 5,940,811 ("811 Patent") unless otherwise indicated. The remaining three terms relate only to the '721 Patent and the '811 Patent.

1. "Automatic," "Without Human Intervention," and "Without Human Assistance"

These terms mean a system which is fully automated and completed without human involvement (other than by the applicant). This construction does not exclude systems that allow human involvement after all steps described as being performed without human assistance are completed. In the '007 patent, this means steps d.i. through d.v.

2. "Whether or Not ... Approved"

The phrase "whether or not ... approved" means determining without human involvement whether or not establishment of the financial account was fully approved, not merely reaching a pre-approval determination. This means the automated process continues until information is provided to the applicant as to whether the financial account was approved or not approved.

While the "not approved" alternative is also referred to within the specifications and history as "denial" or "rejection" of the account, the court does not construe the notification of non-approval to preclude offering the applicant an opportunity for further review or processing, including with human assistance, so long as such assistance is offered only after step d.v. in claim 1 of the '007 patent, or similar final step in other claims and patents using the same phrase.

3. "Remote Interface," "Applicant Interface" and "Remote Applicant Interface"

For purposes of the '007 and '811 Patents, these terms refer to dedicated computer equipment, meaning equipment supplied by the entity providing the financial account or service, such as but not limited to equipment housed in a kiosk, which allows an applicant (borrower in '811) to provide information to and receive information from a data processing system and which facilitates completion of all steps of the claim involving interaction between the applicant (borrower) and the data processing system.

For purposes of the '721 Patent, these terms refer to computer equipment, either dedicated or consumer owned, which allows an applicant or borrower to provide information to and receive information from a data processing system and which facilitates completion of all steps of the claim involving interaction between the applicant or borrower and the data processing system.

4. "Communications Network"

The term "communications network" means a telecommunication link from the applicant interface to the data processing system.

5. "Verify the Applicant's Identity"

To "verify the applicant's identity" means to confirm or substantiate the applicant's identity. This is not limited to checking biometric information and does not exclude verification using information such as name, address, and social security number *plus some additional information* less likely to have been improperly obtained (*e.g.*, mother's maiden name, years at current address, years at job, etc).

6. "Willingness," in the phrase "ability and willingness"

The term "willingness" in the phrase "ability and willingness" has a meaning distinct from "ability." It indicates the inclination or desire, as opposed to simple ability.

7. "Compare ... With" and "Compare ... And"

"Compare" means to look for similarities and differences between two or more items or sets of information.

In Claim 1, clause d. iii. of the '007 Patent, the comparison is made for the purpose of verifying the applicant's identity and compares (1) "information received from the applicant"; with (2) "information received from [one or more] database[s]."

In Claim 1, clause d. iv. of the '007 Patent, the comparison is made for the purpose of determining if the account should be approved and compares two sets of information to a set of establishment criteria. The two sets of information compared to the establishment criteria consist of "information received from the applicant," and "information received from [one or more] database[s]," both of which are relevant to the applicant's ability and willingness to comply with the account requirements.

8. "Account" and "Financial Account"

The terms "account" and "financial account" refer to a risk-based account. A "risk-based" account is one which requires an analysis of the applicant's ability and willingness to repay a credit obligation or comply with account requirements where the account requirements include a financial risk to the institution such as would result from an extension of credit or account involving the possibility of an extension of credit.

9. "Establishment Criteria"

"Establishment criteria" refers to criteria or factors programmed into a computer used to evaluate an applicant for establishing and holding the requested account. These criteria may include but are not limited to underwriting criteria such as would take into account the applicant's credit history or score.

10. "Data Processing System"

"Data processing system" refers to a combination of computer hardware and software capable of performing the steps listed in subpart d (d. i. through d. v.) without human involvement.

11. "Result"

"Result" refers to a decision, in this case, the decision which was derived from analysis of establishment criteria bearing upon the ability and willingness of the applicant to comply with account requirements.

12. "Closed Loop"

"Closed Loop" means that all of the steps are completed in real time by a computer without human assistance.

13. "Issue Proceeds ... Without Further Instruction"

"Issue proceeds ... without further instruction" means providing direct deposit by an electronic funds transfer to an account, or distributing a check or cash, automatically and without human assistance. Issuance of proceeds must be in "closed loop" which incorporates a requirement for "real time" processing. Therefore, proceeds must be issued in a matter of minutes, but not necessarily before completion of the borrower's interaction with the remote interface.

14. "Loan"

The term "loan" as used in the '721 and '811 patents does not include credit cards.

IT IS SO ORDERED.

D.S.C.,2006.

decisioning.com, Inc. v. Federated Dept. Stores, Inc.

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