

EXHIBIT J

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VOLUME: I
PAGES: 1 - 306
EXHIBITS: Per index

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

C.A. No. 6:05-cv-424-LED-JDL

ADVANCEME, INC.,)
Plaintiff)
vs.)
RAPIDPAY LLC, BUSINESS CAPITAL)
CORPORATION, FIRST FUNDS LLC,)
MERCHANT MONEY TREE, INC.,)
REACH FINANCIAL, LLC and)
FAST TRANSACT, INC.)
d/b/a SIMPLE CASH,)
Defendants)

C.A. No. 6:06-cv-82-LED

ADVANCEME, INC.,)
Plaintiff)
vs.)
AMERIMERCHANT, LLC,)
Defendant.)

VIDEOTAPED DEPOSITION
OF
THOMAS J. LITTLE, IV
WEDNESDAY, SEPTEMBER 6, 2006

<p style="text-align: right;">122</p> <p>1 it, and the performance obligation was 2 something that the fulfillment company is 3 legally required to do anyway, and that is, 4 don't charge the customer until the goods 5 are shipped. 6 Q. What are the obligations of the catalog 7 company? 8 A. In what sense? 9 Q. In the three-party agreement, did the 10 merchant have any obligations to the 11 fulfillment company? 12 A. The merchant had to pay the fulfillment 13 company for their services. 14 Q. And the obligations of Litle & Company? 15 A. We had to pay the fulfillment company on 16 behalf of the merchant and we had our normal 17 obligations as -- for routine payment 18 processing, as well. 19 Q. That were outlined in the Member Agreement? 20 A. Yes. 21 (One-page document entitled "US 22 6,941,281 B1" is marked Exhibit 23 Number 11 for Identification.) 24 Q. I'm handing you what has been marked Litle 25 Exhibit 11, which are the claims of United</p>	<p style="text-align: right;">124</p> <p>1 prepared with two columns. The left column 2 lists the claims of the patent, which is the 3 claims on Litle Exhibit 11 that you just 4 read, 1 and 10, as well as all the other 5 claims which are printed in the left column, 6 and in the right column, we've cited to 7 portions of the Litle documents that you've 8 testified here today that refer to the 9 elements of the claim that are listed in the 10 left-hand column, and what I'd like to ask 11 you to do is -- we'll go through this row by 12 row and I'd like you to read the right-hand 13 column, I'll read the left-hand column to 14 you, and ask you to tell us if what we've 15 cited in the right-hand column is accurate. 16 MR. EDELMAN: Excuse me. Before 17 you read that, can I have a representation 18 as to whether this was provided -- 19 MR. GRAY: Yes, it was. 20 MR. EDELMAN: It was provided when? 21 MR. GRAY: Last week sometime. 22 MR. EDELMAN: Okay. 23 MR. SMITH: I'd like to note, we're 24 not going to object to the line of 25 questioning, certainly, but Mr. Litle is</p>
<p style="text-align: right;">123</p> <p>1 States Patent 6941281. It shows -- it's 2 just the last page of the Patent Column 7 3 and 8. 4 MR. EDELMAN: I'll object to the 5 extent that you're excerpting a page from an 6 entire patent and also not showing Mr. Litle 7 the proposed construction of the terms of 8 the patent, and also not show him the 9 arguments the parties have made with the 10 file list of the patent. 11 Q. Okay, could you please read Claims 1 and 10 12 to yourself? 13 MR. SMITH: Just 1 and 10? 14 Q. Just 1 and 10. 15 A. All right. 16 Q. Do you understand those two claims? 17 MR. EDELMAN: Same objections. 18 A. I think so. 19 (Document entitled "Little & Co., 20 Invalidity Claim Chart, United 21 States Patent No. 6,941,281" is 22 marked Exhibit Number 12 for 23 Identification.) 24 Q. I'm handing you what has been marked Litle 25 Exhibit 12, which is a chart that we have</p>	<p style="text-align: right;">125</p> <p>1 here as a fact witness. He is not rendering 2 a conclusion on patent validity. He is here 3 simply to testify as a factual witness. I 4 just wanted to make that clear before -- 5 MR. EDELMAN: And again, I want to 6 object to the extent that this is being 7 shown to Mr. Litle without the discussion of 8 what the terms are construed to mean, or the 9 parties' construction. It's misleading, 10 putting the witness in an impossible 11 situation. If you want to do it, go ahead. 12 Q. You testified that you understand the terms 13 that are used in the patent; is that 14 correct? 15 MR. EDELMAN: Same objections. 16 A. Yeah, I think so, but if we get to some I 17 don't understand, then I'll say that. 18 Q. Please do. So on Page 1 of Litle Exhibit 19 12, in the first row, the claim recites, 20 "A method for automated payment, 21 comprising." 22 A. That's not exactly a complete sentence. 23 Q. No, and what we've done, and the reason I 24 had you read Claims 1 through 10, is because 25 we have broken down the claims --</p>

32 (Pages 122 to 125)

<p style="text-align: right;">126</p> <p>1 A. Okay.</p> <p>2 Q. -- and if you would like to refer back to</p> <p>3 Litle Exhibit 11, right there, you can read</p> <p>4 the full claim in context.</p> <p>5 A. Okay.</p> <p>6 Q. So "A method for automated payment," and</p> <p>7 what we've listed here are all the documents</p> <p>8 you've testified about today and stated</p> <p>9 "Litle & Company utilized a method for</p> <p>10 automated payments as repayment of</p> <p>11 obligations owed by merchants either for</p> <p>12 postage or cash advances." Is that correct?</p> <p>13 A. Yeah, and also, the reserves and something</p> <p>14 like the Hanover Direct obligation. The</p> <p>15 other kinds of obligations that we've talked</p> <p>16 about. So it isn't just for postage or cash</p> <p>17 advances.</p> <p>18 Q. Was the fulfillment center operation that</p> <p>19 you just testified about, was that a method</p> <p>20 of automated payment?</p> <p>21 A. To the fulfillment center?</p> <p>22 Q. Yes.</p> <p>23 A. Yes.</p> <p>24 Q. What about for the wire fee you discussed?</p> <p>25 A. For the what?</p>	<p style="text-align: right;">128</p> <p>1 MR. EDELMAN: I can put my</p> <p>2 objections on the record.</p> <p>3 MR. SCHUURMAN: Well, make them</p> <p>4 short.</p> <p>5 MR. EDELMAN: I will make them as</p> <p>6 long as I want to make them.</p> <p>7 Q. Based on your understanding after being in</p> <p>8 the card processing industry for about 25</p> <p>9 years --</p> <p>10 A. More than that.</p> <p>11 Q. I'm sorry? Longer than that?</p> <p>12 MR. SMITH: 25-plus.</p> <p>13 Q. 25-plus years.</p> <p>14 MR. EDELMAN: Don't make him a</p> <p>15 patent attorney.</p> <p>16 Q. Do the --</p> <p>17 MR. GRAY: I'm sorry. Is that an</p> <p>18 objection?</p> <p>19 MR. EDELMAN: Yes, it is.</p> <p>20 MR. GRAY: I didn't hear</p> <p>21 "objection."</p> <p>22 MR. EDELMAN: Objection. It</p> <p>23 doesn't make him a patent attorney. Go</p> <p>24 ahead.</p> <p>25 MR. GRAY: Please limit your</p>
<p style="text-align: right;">127</p> <p>1 Q. For the wire fee; was that a method for</p> <p>2 automated payment?</p> <p>3 A. Yes.</p> <p>4 Q. And was equipment -- payments for equipment</p> <p>5 rental and purchase, was that a method for</p> <p>6 automated payment?</p> <p>7 A. Yes.</p> <p>8 Q. Looking now at the second row of the first</p> <p>9 page of Litle 12, the claim says "At a</p> <p>10 merchant, accepting a customer identifier as</p> <p>11 payment from the customer." Can you look at</p> <p>12 the right-hand column and tell me whether or</p> <p>13 not those citations from the Litle documents</p> <p>14 show that a merchant accepted the customer</p> <p>15 identifier as payment from the customer?</p> <p>16 MR. EDELMAN: Objection. Calls for</p> <p>17 claim construction, beyond the scope of the</p> <p>18 testimony, misleading, lack of foundation.</p> <p>19 Q. I absolutely do not want you to try to</p> <p>20 construe the claims.</p> <p>21 MR. EDELMAN: He has to construe</p> <p>22 the claim to answer the question.</p> <p>23 MR. SCHUURMAN: Why don't you ask</p> <p>24 him during your cross and stop interfering.</p> <p>25 Go ahead.</p>	<p style="text-align: right;">129</p> <p>1 objections to objections as to form.</p> <p>2 MR. EDELMAN: It was a beautiful</p> <p>3 objection as to form.</p> <p>4 Q. Okay. Does the right-hand column, does that</p> <p>5 recite citations to the documents you've</p> <p>6 testified about today that show a merchant</p> <p>7 accepts a customer identifier as payment</p> <p>8 from a customer?</p> <p>9 MR. EDELMAN: Same objection.</p> <p>10 Q. Please take as much time as you need.</p> <p>11 A. And the question is, at that time, did we</p> <p>12 accept the customer identifier as a payment</p> <p>13 for transaction, and the answer is we did.</p> <p>14 Q. The merchants did or Litle & Company did?</p> <p>15 A. The merchants accepted it.</p> <p>16 Q. As described in the quotes in this chart</p> <p>17 that you're reading?</p> <p>18 MR. EDELMAN: Same objection.</p> <p>19 A. Right.</p> <p>20 Q. Okay. Looking at the bottom row on Page 2</p> <p>21 of Litle Exhibit 12, the claim states "and</p> <p>22 electronically forwarding information</p> <p>23 related to the payment to a computerized</p> <p>24 merchant processor." Could you please tell</p> <p>25 me whether the cites in the right-hand</p>

<p style="text-align: right;">130</p> <p>1 column illustrate that Litle & Company 2 electronically -- or that the merchant 3 electronically forwarded information related 4 to the payment to Litle & Company? 5 MR. EDELMAN: Objection. Calls for 6 claim construction, beyond beyond the scope 7 of the deposition, lack of foundation. 8 A. Yes. 9 Q. And to clarify, you said that using -- 10 pursuant to the Member Agreement, which is 11 Litle Exhibit 4, the merchant would accept 12 credit cards, debit cards, and charge cards, 13 such as an American Express card? 14 A. That's correct. 15 Q. And did you also testify that the merchant 16 would accept those cards using a telephone 17 and inputting the credit card number into a 18 computer? 19 A. That's one way, yes. 20 MR. EDELMAN: I just want to put an 21 objection on the record. It wasn't clear to 22 me -- vague and ambiguous as to which 23 merchants you're referring to. 24 Q. Which merchants would accept a credit card 25 via telephone?</p>	<p style="text-align: right;">132</p> <p>1 needed for our process, and then the 2 settlement information might have gone to 3 NDC first and then through NPC, but it was 4 part of our contract, and the settlement 5 information sometimes then went directly to 6 us. Could go any one of those ways. 7 Q. Whether the card was present or not present, 8 was the information related to the payment, 9 such as the card number and the payment 10 amount -- 11 A. Yes. 12 Q. -- was that electronically forwarded? 13 A. Yes. In the card-not-present, it was always 14 directly forwarded to us. 15 Q. Electronically? 16 A. Yes. When it was card-not-present, it was 17 always forwarded electronically, but the 18 route that it took could vary, depending on 19 the circumstances. 20 Q. Okay. Thank you. On Page 3 of Litle 21 Exhibit 12, the next portion of the claim 22 states "at the computerized merchant 23 processor, acquiring the information related 24 to the payment from the merchant, 25 authorizing and settling the payment, and</p>
<p style="text-align: right;">131</p> <p>1 A. That's how the card-not-present merchants 2 received most of their transactions. When 3 they didn't receive them by telephone was 4 when they -- or by an order blank sent 5 through the mail. It was typically at a 6 warehouse sale or something like that. Then 7 they were operating just like a normal 8 retailer operating. 9 Q. And was the process by which those merchants 10 forwarded information, such as the card, 11 information and payment amount, to Litle & 12 Company in the authorization step in Litle 13 10, was that process different for 14 card-not-present or card-present 15 transactions? 16 A. How they actually forwarded the information 17 to us? Yeah. Actually, sometimes we got 18 the settlement information -- well, the 19 authorization process might not -- I can't 20 remember. It depended on the situation. 21 Might not have actually gone through us, but 22 we were responsible for it. It might have 23 gone directly to NDC, and then that 24 information would have come to us through 25 NDC, the authorization information, which we</p>	<p style="text-align: right;">133</p> <p>1 forwarding at least a portion of the payment 2 to a computerized payment receiver as 3 payment of at least a portion of an 4 obligation made by the merchant." 5 A. Uh-huh. 6 Q. Could you please read the citations in the 7 right-hand column, and it flows over on to 8 Page 4 and 5, and tell me whether that 9 accurately recites the portions of the 10 agreements you've testified to today. 11 MR. EDELMAN: I'm sorry. Was your 12 question getting at whether it reflects the 13 language of the Claim 10? 14 MR. GRAY: No. I asked whether it 15 accurately reflects -- 16 MR. EDELMAN: Reflects the 17 agreements. 18 Q. Do you understand my question? 19 A. Yeah. You are asking -- I'll read it back. 20 As I understand it, you're asking me to look 21 at the citations and without trying to 22 interpret whether they comply with the 23 patent or not, you're asking whether those 24 citations are accurate. Is that true? 25 Q. Right.</p>

134

1 MR. EDELMAN: That's fine.
 2 A. I have a question. In the first sentence,
 3 it says, at the end, "Management fee to
 4 Litle & Company, or order." I'm not sure
 5 that's either what it says or what it should
 6 have said.
 7 Q. I believe that is what it says. That's
 8 Litle Exhibit 7, I believe?
 9 MR. EDELMAN: I'm sorry. Where is
 10 the witness referring?
 11 MR. GRAY: The bottom of Page 3,
 12 the bottom paragraph in the right column,
 13 the fourth line down.
 14 MR. EDELMAN: Oh, I see it.
 15 Thanks.
 16 A. Yeah, I think that was a typo and it should
 17 have probably said -- it should have
 18 probably referred to what we were thinking
 19 of setting up or maybe had set up as a
 20 separate operation to do postage financing.
 21 Q. Okay. Outside of Litle & Company?
 22 A. Right. Well, it would have been owned by
 23 roughly the same people, but it would have
 24 been a separate operation.
 25 Q. Do you have any other questions about the

135

1 citations in the right column?
 2 A. Yeah. I'd like to look at the definition of
 3 "prepayments."
 4 Q. That's in the Member Agreement?
 5 A. Okay. Yes, that's accurate.
 6 Q. Do all these citations on Pages 3 through 5
 7 accurately reflect your understanding of
 8 what the language in the left column
 9 requires?
 10 MR. EDELMAN: Same objections.
 11 A. As I understand it, yes.
 12 Q. And do you have any questions about what
 13 that -- do you understand what the claim
 14 language in the left-hand column is on those
 15 pages?
 16 MR. EDELMAN: Same objection.
 17 MR. SMITH: Objection. I think
 18 "claim language" is misleading. He can
 19 talk about what the words say, but "claim
 20 language" is a big problem.
 21 Q. The language that's printed in the left-hand
 22 column, do the right-hand citations
 23 accurately reflect your understanding?
 24 A. As a layman's understanding because lawyers
 25 always interpret stuff a little

136

1 differently.
 2 MR. SMITH: He knows too well.
 3 MR. EDELMAN: Objection.
 4 A. And then they charge you for it.
 5 Q. Your understanding, though, as someone who
 6 has been in the payment processing
 7 industry for 25-plus years.
 8 A. I would say I understand what the left-hand
 9 column is getting at and the right-hand
 10 column is a reflection of exactly that --
 11 Q. Okay.
 12 A. -- and matches what our documentation was.
 13 Q. And I'm going to be asking the same
 14 questions about each row going throughout
 15 this document. So beginning on Page 5,
 16 would you please read the citations in the
 17 right column?
 18 A. The question is the same; is this an
 19 accurate representation?
 20 Q. Yes.
 21 A. Yes, it is.
 22 Q. Do those citations accurately reflect your
 23 understanding of the description in the
 24 left-hand column?
 25 MR. EDELMAN: Same objections.

137

1 A. Yes. I understand the computer payment
 2 receiver as what I call the third party, and
 3 if that's the case, yes, it does accurately
 4 reflect it.
 5 Q. Looking at the next row, and the left-hand
 6 column begins with the Number 2 --
 7 A. Uh-huh.
 8 Q. -- it says "The method of claim 1 wherein
 9 the accepting step comprises accepting a
 10 credit card number as the customer
 11 identifier." Could you please look at
 12 what's cited in the right-hand column and
 13 tell me if that accurately reflects the
 14 Litle documents and -- well, if it
 15 accurately reflects that Litle accepted
 16 credit card numbers? Sorry. Let me start
 17 over. That the merchants who processed
 18 through Litle accepted credit card numbers.
 19 MR. EDELMAN: Same objections.
 20 MR. SMITH: Do you understand that
 21 question?
 22 THE WITNESS: I think so.
 23 Q. Let me rephrase. Sorry. Could you look at
 24 the citations in the right-hand column and
 25 tell me whether those citations accurately

138

1 illustrate that Little & Company processed
 2 credit card transactions for merchants?
 3 MR. EDELMAN: Same objections.
 4 A. Yes. That was our service, processing
 5 credit cards for merchants.
 6 Q. And on Page 6 of Little Exhibit 12, the
 7 bottom row begins with the number 3, could
 8 you please look at the right-hand column
 9 and, disregarding the first paragraph,
 10 please tell me whether those citations --
 11 A. Disregarding the first paragraph?
 12 Q. Right, disregarding, and was your testimony
 13 earlier that Little would process debit cards
 14 on behalf of merchants?
 15 A. Yes, but they weren't necessarily identified
 16 as debit cards.
 17 Q. Right.
 18 A. In fact, they were necessarily by the
 19 payment networks disguised as debit cards.
 20 Q. Could you please read the citations to the
 21 documents and tell me whether those
 22 citations showed that Little accepted debit
 23 cards -- sorry -- that Little processed
 24 transactions where debit cards were used at
 25 the merchant?

139

1 MR. EDELMAN: Same objections.
 2 A. And the question again, is?
 3 Q. Whether these citations in the right-hand
 4 column illustrate that Little would process
 5 debit card transactions for merchants.
 6 A. Yes.
 7 Q. Do you know what a Smart Card is?
 8 A. Yes.
 9 Q. What is a Smart Card?
 10 A. It's typically a card with a chip on it that
 11 carries information about an individual. In
 12 those days, they were talking about Smart
 13 Cards carrying your medical history and all
 14 kinds of stuff on it, and so they would have
 15 represented a distributor database of a
 16 hundred million nodes, which was in my view
 17 ridiculous, and I said so on regular
 18 occasions in front of a bunch of credit card
 19 people. Now, it's really become a card that
 20 carries personal identification
 21 information. So a Smart Card is usually an
 22 identification device. Prepaid phone cards
 23 could be considered Smart Cards because they
 24 stored information on them, but I always
 25 looked at Smart Cards as those that had a

140

1 computer chip on them that did something.
 2 There are cards now that carry changing
 3 passwords on it, sort of like an RSA
 4 password. There are cards that you can
 5 stick your thumb over and it can identify
 6 the fact that your thumb print is really
 7 your thumb print and not somebody else's. A
 8 Smart Card encompasses all kinds of stuff.
 9 A Smart Card typically had to be used in
 10 conjunction with some sort of terminal
 11 device. So we didn't handle any Smart Cards
 12 that I know, except that it's also my
 13 understanding that some Smart Cards had Visa
 14 or MasterCard identification numbers on
 15 them, and if that case, if somebody gave
 16 those Visa and MasterCard identification
 17 numbers over the telephone as a
 18 card-not-present card, we would handle it
 19 like we'd handle any other credit card,
 20 although we wouldn't necessarily know it was
 21 a Smart Card.
 22 Q. Could you look at Page 8 of Little Exhibit
 23 12, the very bottom line, and Page 9, and
 24 tell me whether the citations to the Little
 25 documents in the right-hand column

141

1 illustrate that Little processed charge card
 2 transactions for its merchants.
 3 MR. EDELMAN: Same objections as
 4 before.
 5 A. Yes.
 6 Q. And on the row that's numbered 6, would you
 7 please read the citations in the right-hand
 8 column and tell me whether that accurately
 9 illustrates that the merchants for whom
 10 Little would process transactions would
 11 sometimes accept credit cards at their
 12 warehouse sales or otherwise at the merchant
 13 location?
 14 MR. EDELMAN: Same objections.
 15 A. Well, interestingly enough,
 16 card-not-present, based on the Visa and
 17 MasterCard regulations, the
 18 card-not-presents were accepted at the
 19 merchant location that was their office or
 20 the place where they were accepting orders,
 21 and that location, I think in those days, it
 22 changed, had to be identified, by city and
 23 state. So that was true with
 24 card-not-present, but card present is more
 25 obvious. Card-presents were done -- one of

<p style="text-align: right;">142</p> <p>1 the things that I actually got Visa and 2 MasterCard to do was to allow us, instead of 3 putting the city and state as an identifier 4 for where the card-not-present transactions 5 came from, allowing them -- or now, it's a 6 requirement -- to put the 800 number of the 7 customer service number on it. I don't 8 remember at this time whether the actual 9 city and state was still required, but this 10 was interestingly enough true for 11 card-not-present, as well as card-present 12 transactions. 13 Q. On Page 10, Row 7, would you please tell me 14 whether the right-hand column illustrates 15 how merchants for whom Litle would process 16 transactions would electronically accept 17 cards? 18 MR. EDELMAN: Same objections. 19 MR. SMITH: It looks like, on some 20 of this, there's some editorial, as well. 21 So within the quotes is what came from the 22 documents; is that right? 23 MR. GRAY: Right. 24 MR. SMITH: Are you asking him to 25 verify what is in the parentheses?</p>	<p style="text-align: right;">144</p> <p>1 it religiously and sometimes they didn't do 2 so well, but -- 3 Q. And you earlier -- did you earlier testify 4 that some of Litle & Company's merchants 5 would have credit card terminals or card 6 terminals at the merchant location? 7 A. Yes, and we could always identify those 8 transactions, because we'd get a terminal 9 number and we knew which terminal it was 10 used, and so we'd always know that was a 11 card-present transaction. We didn't 12 necessarily always know that a 13 card-not-present transaction was a telephone 14 order or a mail order, and I frankly don't 15 think Visa and MasterCard cared about that. 16 Q. How would you receive that information from 17 the terminal? 18 A. Well, it could take several routes, but 19 electronically, the path that it took 20 would -- could take several different 21 routes. It could come right from the 22 terminal to us. It could go from the 23 terminal to NDC. It could go from the 24 terminal to NPC, and I don't really remember 25 all the ways, but we would change -- over</p>
<p style="text-align: right;">143</p> <p>1 MR. GRAY: No. 2 MR. SMITH: Okay. So just -- I 3 just want to be -- 4 MR. GRAY: Well, actually, yes. 5 Q. If we say it shows something, I'd like you 6 to verify that the quote actually does 7 show. 8 MR. SMITH: Do you understand what 9 they're asking? 10 THE WITNESS: Yes. 11 A. This is certainly what was said. The idea 12 of actually identifying a sale as a mail 13 order or a telephone order was often done, 14 not necessarily always done. We'd identify 15 each merchant or each sub-merchant by our 16 internal merchant number that we had that 17 the merchant also used. So anything that 18 would come under one merchant number would 19 be a mail order. Another sub-merchant 20 number would be a telephone number. Another 21 sub-merchant number would be a card-present 22 transaction. We'd roll all that up and 23 account for it as one merchant, but we could 24 tell where the transactions came from, 25 typically, and the merchants sometimes did</p>	<p style="text-align: right;">145</p> <p>1 time, we would change the way we did that. 2 For efficiency reasons, for cost reasons, 3 for whatever reasons, we would change that, 4 but we always received it electronically. 5 We probably received some paper 6 transactions, but I can't imagine, during 7 the whole course of our company, we received 8 more than a handful. 9 Q. Looking at Row 8 on Page 10 of Litle Exhibit 10 12, did Litle & Company ever instruct FNBL 11 to accumulate payments until a certain 12 amount is reached before forwarding 13 payments? 14 MR. EDELMAN: Objection. Calls for 15 claim construction, mischaracterizes the 16 claim. 17 Q. Do you understand that language, Mr. Litle, 18 "accumulate the payments"? 19 MR. EDELMAN: Same objection. 20 MR. SMITH: Well, I think it's a 21 couple of questions. So do you want him to 22 answer your question or do you want him to 23 comment on the text that's written here next 24 to -- 25 MR. GRAY: Comment on my question.</p>

146

1 Q. You can disregard the text on the right-hand
 2 side.
 3 MR. SMITH: Okay. Ignore what is
 4 on the paper. Can you read the question
 5 back, please.
 6 (The following question was read
 7 back by the court reporter:
 8 "Looking at Row 8 on Page 10 of
 9 Litle Exhibit 12, did Litle &
 10 Company ever instruct FNBL to
 11 accumulate payments until a certain
 12 amount is reached before forwarding
 13 payments?")
 14 A. I'll answer that in two parts. The first
 15 part is, we did accumulate transactions.
 16 Some of our customers would send us --
 17 they'd go through a cycle every day. Some
 18 of them would go through a cycle every ten
 19 minutes, and based on the way transactions
 20 are settled, you know, they're all settled
 21 in a batch, that's all batch is today, even,
 22 and we would settle them through the Visa
 23 and MasterCard network. Also, multiple
 24 times during the day, but somebody like
 25 Micro Warehouse would send us batches every

147

1 ten minutes, and we would accumulate those
 2 until it was convenient or until the next
 3 time we settled it through the Visa and
 4 MasterCard networks. Now, that wasn't
 5 necessarily accumulating it until a
 6 pre-determined amount was reached. It was
 7 accumulating it until either we wanted to
 8 get them in under the day's fiscal cutoff or
 9 for the next time we -- our next cycle we
 10 had to settle through Visa and MasterCard.
 11 We probably had three or four times a day,
 12 we did that.
 13 Q. Okay.
 14 A. Now, as far as accumulating payments until a
 15 pre-determined amount is reached, we really
 16 didn't do that, as far as I can tell.
 17 Q. Looking at Row 9 on Page 10, you just
 18 described that Litle & Company would often
 19 instruct FNBL to forward the payments -- or
 20 to settle the payments and forward the
 21 payments daily; is that correct?
 22 A. What we did is we settled the payments --
 23 when I said go to the Visa/MasterCard
 24 networks, that, in those days I think was
 25 through FNBL. They were operating as our

148

1 gateway into the networks, and so we would
 2 settle with them multiple times. Maybe we'd
 3 only settle with them once. I don't
 4 remember. I know when we were settling
 5 directly through Visa and MasterCard, we did
 6 settle with them multiple times.
 7 Now, we didn't -- the part of when
 8 we would electronically transmit the data to
 9 the merchants or the third parties, that was
 10 kind of independent of that. The dollar
 11 value would accumulate or the dollar value
 12 would show up in the First National Bank of
 13 Louisville account as a funds transfer in
 14 bulk. They were just one big number that
 15 came in from Visa, one number that came in
 16 from MasterCard, and then we'd sort it out
 17 according to our own accounting records.
 18 Maybe I don't understand the question.
 19 Q. Was there a particular event that would
 20 trigger an electronic forwarding of money
 21 from FNBL to a merchant or to a third
 22 party?
 23 A. Our instruction.
 24 Q. And what was a typical instruction?
 25 A. It would be, at this point in time -- "On

149

1 this day, transfer this amount to that
 2 account, this account to that account," and
 3 it was just a list of amounts and accounts
 4 that we would transfer.
 5 Q. Would it forward -- would it transfer those
 6 amounts daily, for example?
 7 A. Yes. That cycle was done every day.
 8 Q. Okay. Looking at Line 9 on Page 10, the
 9 quote that begins "In consideration of
 10 Litle & Company making advances," if you
 11 look at the second line from the bottom of
 12 that quote on Page 11, it says, *small Roman*
 13 *Numeral ii*, "The daily repayments shall be
 14 deducted from daily net proceeds."
 15 A. Uh-huh.
 16 Q. Does that show that FNBL would forward
 17 payments to the merchant daily and deduct --
 18 well, does that show that FNBL would forward
 19 payments, net proceeds, daily to the
 20 merchant?
 21 A. Based on our instruction, we would say
 22 "Forward this amount of money, some amount
 23 of money, to the merchant." FNBL did not
 24 know what the components of that money was.
 25 From our point of view, our instructions

150

1 would say "Forward the daily net proceeds,
 2 less any of the other obligations of the
 3 merchant." The other obligations could be
 4 for chargebacks that had actually already
 5 been withheld by the networks, it could be
 6 for our fees, it could be for payment of
 7 postage advances, it could be for payment of
 8 terminals, it could be to increase increase
 9 the reserve account. It could be all kinds
 10 of stuff --
 11 THE VIDEOGRAPHER: Five minutes
 12 left on tape.
 13 A. -- but when you say FNBL forwarded an
 14 amount, they forwarded what we told them.
 15 It was the sum of all those components.
 16 Q. Would you instruct FNBL to forward those
 17 payments to the third party?
 18 A. Yes.
 19 Q. Daily?
 20 A. Yes.
 21 Q. For example --
 22 A. It depended. Actually, sometimes we did do
 23 it weekly, so we would -- I guess we
 24 would -- yeah, most of the time we did it
 25 daily. Frankly, we tried to do everything

151

1 daily. We tried to deal with interchange
 2 daily. We tried to deal with all this stuff
 3 daily, because that was easiest for the
 4 merchant if everything happened all at the
 5 same time. We'd sort out the fact that Visa
 6 actually charge dollars us for interchange
 7 once a month. There were all kinds of
 8 different timing arrangements that were in
 9 there, and for a merchant to try and figure
 10 that all out, it was difficult, so we tried
 11 to do everything daily for the merchant. .
 12 Q. But if not daily, was it typically on some
 13 other periodic basis?
 14 A. Yes.
 15 MR. GRAY: We can go ahead and
 16 change the tape.
 17 THE VIDEOGRAPHER: The time is
 18 2:08. This is the end of Cassette 2. We
 19 are off the record.
 20 MR. SMITH: We'll take five.
 21 (Recess.)
 22 THE VIDEOGRAPHER: The time is
 23 2:17. This is the beginning of Cassette
 24 Number 3 in the deposition of Thomas Litle.
 25 We are on the record.

152

1 Q. (Cont'd. By Mr. Gray) Mr. Litle, I'd like
 2 you to look back at Litle Exhibit 11, and
 3 again, read Claim 10 to yourself slowly.
 4 When the language -- when the claim recites
 5 "means" for something, that means it's
 6 reciting an apparatus or equipment that is
 7 used for performing a particular function,
 8 and what I'd like to ask you is, for each of
 9 those portions of a claim, and I'll begin
 10 with "means for accepting a customer
 11 identifier as payment for the customer."
 12 I'd like you to tell me whether there was
 13 standard equipment used in the industry for
 14 performing a particular function. Do you
 15 understand?
 16 A. I think so.
 17 MR. EDELMAN: I object. Also, it
 18 calls for claim construction.
 19 Q. Was there standard equipment used in the
 20 industry for accepting a customer identifier
 21 as payment from the customer?
 22 MR. EDELMAN: Same objections.
 23 A. There were standards. There were several
 24 types of equipment. The one we dealt with
 25 most was an order processing system that was

153

1 basically a terminal and an operator would
 2 key in the order. The software that managed
 3 that computerized order entry system was
 4 often sold to the direct marketers by a
 5 third party, and there are limited numbers.
 6 Sometimes direct marketers wrote their own
 7 software. They used different equipment,
 8 but it was all basically what one would
 9 consider a relatively standard order entry
 10 system.
 11 Q. And to clarify, was that a computer keyboard
 12 where someone would input a number --
 13 A. Yes.
 14 Q. -- into a computer?
 15 A. Uh-huh. That was one way.
 16 Q. What was another way?
 17 A. Another way was to actually use terminals
 18 and probably five years before the period of
 19 time we're talking about, which I think is
 20 1992, that range, the computerized order
 21 entry systems really didn't accept credit
 22 cards, so terminals were used in parallel
 23 with the computerized order entry system,
 24 but by 1992, it was generally order entry
 25 systems that were built to accept credit

154

1 cards, to check the validity, the mechanical
 2 validity. The Visa and MasterCard
 3 transactions were 16 characters long and
 4 started with a 4 and a 5 respectively, and
 5 had a 10-check digit at the end, and that
 6 kind of stuff, and that was most of the
 7 card-not-present transactions.
 8 Q. And Litle & Company processed -- did Litle &
 9 Company process card transactions for
 10 merchants who accepted credit cards or cards
 11 via terminals or computer keyboard input?
 12 A. Yes. The terminals was -- we certainly
 13 did. That was a smaller part of our
 14 business.
 15 Q. What sort of hardware did merchants use to
 16 electronically forward information related
 17 to the payment to Litle?
 18 A. They used -- on their computers, they had
 19 connections to either -- in those days, they
 20 had connections to either a frame relay
 21 system, which was something supplied by the
 22 telephone company, or a regular dial-up
 23 telephone, and those transactions would get
 24 conveyed to us via those kinds of
 25 telephone-operated networks.

155

1 Q. Okay. How would Litle receive that
 2 information from the merchant?
 3 A. We would also be connected to either a plain
 4 dial-up line, and the merchant would call
 5 the number, our number, basically, make a
 6 telephone call, and we'd have a modem
 7 connected to that and we'd receive the
 8 merchant's data, or we'd be connected to the
 9 other end of a frame relay circuit and
 10 accept the information from the merchant, or
 11 in some cases, we actually had a lease line
 12 between the merchant and us, and so it was
 13 just like a -- the phone company provided
 14 it, but it was like a wire between us and
 15 the merchant.
 16 Q. What hardware was used for authorizing and
 17 settling the payment at each of the entities
 18 involved in the process?
 19 MR. EDELMAN: Objection. Calls for
 20 claim construction.
 21 A. The -- what hardware was --
 22 Q. -- was used by each entity in the process
 23 outlined in Litle Exhibit 10, and I'm just
 24 asking generally.
 25 MR. SMITH: You mean, each of

156

1 the --
 2 Q. Right. For example, computers, network and
 3 modem.
 4 A. Well, that's it. It was the way the
 5 transaction was captured, whether it was in
 6 an order entry system or a terminal, the way
 7 it was transmitted, whether it was connected
 8 by modem or to a lease line -- a modem to a
 9 dial-up line. It was actually modems to a
 10 frame relay line or connected to a lease
 11 line at the merchant's end. Basically, the
 12 reverse of that at our end to receive the
 13 information, and the information went back
 14 and forth. When a merchant would send in a
 15 settlement file, for example, then we had to
 16 send back a confirmation that what they
 17 thought they sent us, we actually got, and
 18 that was the moment in time, when we sent
 19 back that confirmation, when we owned the
 20 transactions.
 21 Q. And you testified earlier to this, but what
 22 hardware was used -- sorry. Let me start
 23 over. How was the money forwarded from FNBL
 24 to the third party in your diagram in
 25 Exhibit 10?

157

1 A. Either through a wire transfer, which was,
 2 a wire transfer system is operated by the
 3 Fed -- it's the way banks typically transfer
 4 money between each other -- or by the ACH --
 5 an ACH system, which means automated
 6 clearinghouse, and I think that's operated
 7 by the Fed -- no. It's operated by an
 8 organization called NACHA, National
 9 Automated Clearinghouse Association, or
 10 something like that, and which really did
 11 the same thing as a wire did, except it took
 12 a day longer.
 13 Q. In each of the examples that you've
 14 testified to here today, is the equipment
 15 that is used by each of the entities in
 16 Litle Exhibit 10, is that -- is it the same
 17 equipment?
 18 A. Pretty much. Depending on the
 19 circumstance. If it was the same
 20 circumstance, it would be the same type of
 21 equipment. I mean, we would have ten people
 22 transmitting files at the same time, so
 23 there were ten instances in the same
 24 equipment, but --
 25 Q. Okay. In other words, did the equipment

158	<p>1 change between the Hanover finance situation</p> <p>2 and the postage finance situation, for</p> <p>3 example?</p> <p>4 A. It could because it just depended on how</p> <p>5 Hanover would receive payments. Maybe they</p> <p>6 received an ACH. Maybe they received a</p> <p>7 wire. I don't remember how they did that.</p> <p>8 Q. Either way, it was an electronic transfer?</p> <p>9 A. Yes.</p> <p>10 MR. GRAY: I'll pass the witness.</p> <p>11 (Discussion off the record.)</p> <p>12 CROSS-EXAMINATION</p> <p>13 by Mr. Edelman:</p> <p>14 Q. Good afternoon.</p> <p>15 A. Hi.</p> <p>16 Q. I am Mike Edelman. I will be asking you</p> <p>17 questions on behalf of Advanceme. Could you</p> <p>18 put Little Exhibit 11 back in front of you?</p> <p>19 Now, I believe you testified earlier that</p> <p>20 you thought, at least from your perspective,</p> <p>21 that you understood what Claims 1 and 10</p> <p>22 encompassed?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Is that correct?</p> <p>25 A. Not from a lawyer's point of view, but</p>	160	<p>1 we haven't really gotten to that aspect of</p> <p>2 what we -- what we think our service will</p> <p>3 be. I don't know if we'll ever perform</p> <p>4 that. We may. We may not.</p> <p>5 Q. When you say "that," do you mean providing</p> <p>6 payments to third parties?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have an option that's advertised on</p> <p>9 your website called Dynamic Settlement?</p> <p>10 A. It's not active. Dynamic Settlement, no, we</p> <p>11 don't --</p> <p>12 Q. What is Dynamic Settlement?</p> <p>13 A. Huh?</p> <p>14 Q. What is Dynamic Settlement?</p> <p>15 A. Actually, I don't remember what Dynamic</p> <p>16 Settlement is.</p> <p>17 Q. Doesn't Dynamic Settlement, as described on</p> <p>18 your website, describe payments to third</p> <p>19 parties?</p> <p>20 MR. SMITH: Objection. Same</p> <p>21 instruction. You're here in a personal</p> <p>22 capacity; not as a representative of the new</p> <p>23 Little & Co.</p> <p>24 A. Okay. Providing payments to third parties.</p> <p>25 We do that in the sense that we maintain</p>
159	<p>1 from --</p> <p>2 Q. From your point of view?</p> <p>3 A. -- from a layman's point of view, yeah.</p> <p>4 Q. All right. Does your company perform the</p> <p>5 inventions in Claims in 1 and 10?</p> <p>6 MR. SMITH: I'm going to object and</p> <p>7 I'm going to instruct the witness not to</p> <p>8 answer to the extent that the answer would</p> <p>9 reveal confidential proprietary information.</p> <p>10 To the extent that it would not it, you may</p> <p>11 answer. He's here in his personal capacity;</p> <p>12 not as a representative of the current Little</p> <p>13 & Company. So with that caveat, the</p> <p>14 question again?</p> <p>15 A. So I'm going to get sued if I say yes;</p> <p>16 right?</p> <p>17 Q. I'm asking --</p> <p>18 A. No, we don't.</p> <p>19 Q. You do not, and why do you not perform the</p> <p>20 inventions in Claims 1 and 10 in your</p> <p>21 current business?</p> <p>22 A. Because our company is a relatively new</p> <p>23 company and the process by which we build</p> <p>24 our system is building it up sequentially to</p> <p>25 serve the needs of our early customers, and</p>	161	<p>1 reserves, we maintain -- we do some of the</p> <p>2 stuff we're talking about. We don't do</p> <p>3 postage financing.</p> <p>4 Q. Do you believe that maintaining reserves for</p> <p>5 third parties is not performing Claims 1 and</p> <p>6 10?</p> <p>7 MR. SMITH: Objection.</p> <p>8 A. I think that's -- I think that's an</p> <p>9 interpretation of the patent and that's not</p> <p>10 why I'm here.</p> <p>11 Q. You didn't seem to have any problem with the</p> <p>12 other side's questions.</p> <p>13 MR. SMITH: Object to the</p> <p>14 characterizations.</p> <p>15 MR. GRAY: I never asked --</p> <p>16 Q. Mr. Little, is there any way to perform</p> <p>17 Claims 1 and 10, other than postage</p> <p>18 financing?</p> <p>19 MR. SMITH: Objection. You're</p> <p>20 asking about his interpretation again.</p> <p>21 Q. In your layman's perspective.</p> <p>22 A. Is there any way to what?</p> <p>23 Q. Perform Claims 1 and 10, other than by</p> <p>24 postage financing.</p> <p>25 A. Sure.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, SS.

I, Denise M. Rae, a Certified
Shorthand Reporter and Notary Public duly
commissioned and qualified within and for
the Commonwealth of Massachusetts, do hereby
certify:

That THOMAS J. LITTLE, IV, the
witness whose deposition is hereinbefore set
forth, was duly sworn by me, and that such
deposition is a true record of the testimony
given by the witness to the best of my
skill, knowledge, and ability.

IN WITNESS WHEREOF, I have hereunto
set my hand and my affixed notarial seal
this 8th day of September, 2006.

Denise M. Rae

Denise M. Rae

Notary Public

My commission expires:

January 16, 2009