

Redesignated decision Mailed: September 27, 2011
Original Decision Mailed: September 15, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re ING Direct Bancorp

Serial No. 77694743

Mark B. Harrison and Rebecca Liebowitz of Venable LLP for ING Direct Bancorp.

Lakeisha S. Munn-Lewis, Trademark Examining Attorney, Law Office 111 (Robert Lorenzo, Managing Attorney).

Before Bucher, Kuhlke and Mermelstein, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

The decision issued on September 15, 2011, affirming the Office's refusal to register the applied-for term under Section 23(c) of the Lanham Act is corrected as follows:

On line 4 of the final page of the decision, the word "Applicant's" has been spelled correctly.

In addition, the opinion is redesignated as a precedent of the Board. However, since the substance of the opinion remains unchanged, the appeal period continues to run from the date of original issuance of the decision. A copy of the corrected precedential opinion is attached.

**THIS OPINION IS A
PRECEDENT OF THE TTAB**

Mailed:
September 15, 2011
Bucher

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Before Bucher, Kuhlke and Mermelstein, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

ING Direct Bancorp seeks registration on the Supplemental Register of the term **Person2Person Payment** (*in standard character format*) for services recited in the application as follows:

"electronic funds transfer via electronic communications networks; clearing and reconciling financial transactions via electronic communications networks; providing a wide variety of payment and financial services, namely, processing and transmission of bills and payments thereof" in International Class 36.¹

¹ Application Serial No. 77694743 was filed on March 19, 2009, based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. Subsequently, in response to a refusal based on mere descriptiveness under Section 2(e)(1) of the

The Trademark Examining Attorney has refused registration on the Supplemental Register on the ground that the term **Person2Person Payment** is generic for applicant's recited services under Section 23(c) of the Trademark Act, 15 U.S.C. § 1091(c).²

After the Trademark Examining Attorney made the refusal final, applicant appealed to this Board.

We affirm the refusal to register.

When a proposed mark is refused registration as generic, the Trademark Examining Attorney has the burden of proving genericness by "clear evidence." *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); see also *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987); and *In re Wm. B. Coleman Co.*, 93 USPQ2d 2019 (TTAB 2010). The critical issue is to determine whether the record shows that members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of goods or services in question. *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987,

Trademark Act, applicant filed an Amendment to Allege Use (AAU) and sought registration on the Supplemental Register on October 26, 2009. No claim is made to the exclusive right to use the word "Payment" apart from the mark as shown.

² Inasmuch as applicant now only seeks registration on the Supplemental Register, the initial refusal of mere descriptiveness under Section 2(e)(1) is no longer an issue.

228 USPQ 528, 530 (Fed. Cir. 1986); and *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992). Making this determination "involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?" *Marvin Ginn*, 228 USPQ at 530. Evidence of the public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers and other publications. *Merrill Lynch*, 4 USPQ2d at 1143, and *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

We turn then to the question of defining the genus of services at issue. We agree with applicant's contention that the genus of its services is adequately defined as direct electronic funds transfers. This genus would also encompass electronic payment services between individuals. The relevant consumers would be individual persons wanting to transfer funds electronically - often to other individuals or to small businesses.

Turning to the second inquiry, the Trademark Examining Attorney argues that the words "'person to person payments' are commonly used in the financial-payments industry to mean

payments made from one person to another person.” Trademark Examining Attorney’s brief at unnumbered 3. In support of her position, the Trademark Examining Attorney attached printouts from third-party websites to her several Office Actions:



PayPal Account Resources
Overview
Tracking Your Money
Person-to-Person Payments

Sending Money **Person-to-Person** is Easy

3

PAYMENTSNEWS

[US Noncash **Person-to-Person** Market Reaches \\$1.1 Trillion in 2008](#)

New research from TowerGroup finds that the gross dollar volume (GDV) of the U.S. noncash **person-to-person** (P2P) market in 2008 was \$1.1 trillion in over 3 billion transactions”⁴

FOR CONSUMER PRODUCT STRATEGY PROFESSIONALS



April 19, 2007

Person-To-Person Payment Goes Mobile

But P2P Mobile Payment Is A Technology In Search Of A Market

by [Michelle de Lussanet](#)

with Lizet Menke, [Benjamin Ensor](#)

EXECUTIVE SUMMARY

A number of firms in Western Europe have recently launched payment systems that allow consumers to make **person-to-person payments** using their mobile phones. Executives at other payment system operators, mobile operators, and banks need not rush to follow suit. We are not convinced that there is a large market for these new systems: Currently P2P supports only well-defined, narrow payment scenarios like mobile airtime prepay top-up of another person’s prepay account. Instead, P2P payments are likely to become just one feature within broader mobile banking and mobile payment services.⁵

³ <https://www.paypal.com/sg/cgi-bin/webscr?cmd=xpt/Marketing/general/PersonPayments-outside>

⁴ <http://www.paymentsnews.com/2009/03/us-noncash-person-to-person-market-reaches-11-trillion-in-2008.html>

⁵ <http://www.forrester.com/rb/Research/person-to-person-payment-goes-mobile/q/id/41334/t/2>



April 23 2003

eCommerce

Headings

Will P2P market be a Paypal monopoly?

Rivals of Paypal such as Yahoo or Microsoft still don't have any real weight in online **person-to-person payment** systems in front of this eBay company. Other rivals such as Beenz.com have simply left the P2P market. ⁶



May 24, 2000 2:10 PM PDT

ProPay enters **person-to-person payment** sector

By [Greg Sandoval](#)

Staff Writer, CNET News

ProPay, a credit card processing company, today introduced its **person-to-person payment service and joined the glut of companies striving to allow individuals to accept credit card payments.** ⁷

July 31, 2000 12:20 PM PDT

Short Take: Yahoo unveils **person-to-person payment** service

By [Stefanie Olsen](#)

Staff Writer, CNET News

To better compete in online auctions, Yahoo said it launched PayDirect, a **person-to-person payment service that lets consumers settle purchases through email. The service is a result of Yahoo's acquisition of Arthas.com earlier this year and a partnership with CIBC National Bank.** ⁸

⁶ <http://www.emarketnews.com/3/4/paypal.htm>

⁷ http://news.cnet.com/ProPay-enters-person-to-person-payment-sector/2100-1017_3-241034.html

⁸ http://news.cnet.com/Short-Take-Yahoo-unveils-person-to-person-payment-service/2110-1017_3-243855.html

PAYMENTS NEWS

[p2p - Person to Person Payments](#)

Welcome to the News View for "[p2p - Person to Person Payments](#)".

Here, on these archive pages, you'll find all of the articles on Payments News for [p2p - Person to Person Payments](#) listed in date sequence beginning with the most recent article at the top of the page.

Click [here](#) for a complete listing of what's available in the [Payments News Archive](#) - organized by both posting date and subject category.

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[December 18, 2009](#)

First Two Banks Go Live with CashEdge's POPmoney P2P Payments Service



CashEdge has announced today two U.S. banks are the first in the nation to launch POPmoney, its new email and mobile [person-to-person](#) (P2P) [payments](#) service that is offered through banks. According to the company, "five additional financial institutions have signed on to launch the service in early 2010, demonstrating strong momentum for the innovative new P2P payments service." From the list of participating banks shown on the POPmoney.com website, it appears the first two banks are First Hawaiian and PNC.⁹

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[November 04, 2009](#)

Fiserv Plans New [Person-to-Person Payment](#) Service

Fiserv has announced plans for a new personal payments service that it says "will enable individuals to quickly and easily send or receive money [person-to-person](#) using their existing online banking relationship. The service will be made available to the more than 3,100 financial institutions in the Fiserv online payment network, linking users with their friends, family, neighbors and colleagues."¹⁰

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[August 13, 2009](#)

Consumers Want [Person-to-Person Payments](#) Services From Banks



CashEdge has announced results from its fourth annual Consumer Online Banking Survey saying it "demonstrated an increasing demand for simple, secure [person-to-person](#) (P2P) [payment](#) services and the preference by consumers to get these services from their financial institution, rather than an independent service such as PayPal. Conducted annually by CashEdge, the study examines the behavior and preferences of more than 850 consumers nationwide aged 18 years and older who use online banking capabilities."¹¹

⁹ <http://www.paymentsnews.com/2009/12/first-two-banks-go-live-with-cashedges-popmoney-p2p-payments-service.html>

¹⁰ <http://www.paymentsnews.com/2009/11/fiserv-plans-new-person-to-person-payment-service.html>

¹¹ <http://www.paymentsnews.com/2009/08/consumers-want-person-to-person-payments-services-from-banks.html>

June 23, 2009

CashEdge Launches POPmoney P2P Payments Service for Banks



CashEdge has announced the launch of POPmoney – calling it "the first person-to-person payments (P2P) service for banks, enabling banks to provide simple and secure P2P payments from their online or mobile banking applications." 12

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May 13, 2009

MasterCard Mobile MoneySend Platform Set To Go Live

MasterCard has announced that its "fully-integrated, on-demand person-to-person (P2P) mobile payment platform for issuers in the United States is set to go live later this month. With this new platform, MasterCard participating bank customers will be able to offer Mobile MasterCard MoneySend™ P2P payments to their customers." 13

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March 03, 2009

TwitPay Is Ready for Prime Time – Powered by Amazon Payments

TwitPay, the Twitter-based person-to-person payments service, has announced that it's exiting its beta phase and will be moving "real money" starting today using Amazon Payments.

Working with Amazon Payments, we've built a new version of Twitpay that means we don't have to be the middle-man for your cash. That's good for you as a user because you don't have to trust us with your money, you just have to trust Amazon. It's good for us as a service because it allows us to focus on adding new features and focus on the core of our business." 14

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September 11, 2008

Revolution Money Introduces MoneyExchange Revolution Card

Revolution Money has announced the introduction of the MoneyExchange RevolutionCard, a PIN-based reloadable card that enables free online person-to-person (P2P) payments to other accountholders, ATM access and retail store purchases -- from a single account. 15



First Data Launches Person-to-Person Payment Service

By Beth Cox / June 06, 2000

Electronic commerce payment services company First Data Corp. said it plans to launch an Internet person-to-person (P2P) payment service, Western Union MoneyZap, in July.

¹² <http://www.paymentsnews.com/2009/06/cashedge-launches-popmoney-p2p-payments-service-for-banks.html>

¹³ <http://www.paymentsnews.com/2009/05/mastercard-mobile-moneysend-platform-set-to-go-live.html>

¹⁴ http://www.paymentsnews.com/p2p_person_to_person_payments/page/3/

¹⁵ <http://www.paymentsnews.com/2008/09/revolution-mone.html>

The service would leverage the **P2P payment** brand of First Data 's electronic money transfer subsidiary Western Union and will enable consumers to select how, when and where to securely and easily send, receive and request payments from other consumers over the Internet and ultimately through wireless devices.

...

Meanwhile, First Data signed a deal with [Excite@Home](#) making First Data the preferred provider of Internet payment solutions for several of Excite@Home's consumer services. Excite@Home will promote First Data's **person-to-person (P2P) Internet payment** service to consumers and will leverage First Data's expertise to power transaction processing within existing and emerging [Excite@Home](#) consumer services. Financial arrangements were not disclosed.

16

Revolution MoneyExchange: New **Person-to-Person Payment** System and \$25 Bonus Promotion



Yes, here's yet another new financial service vying for your attention. This time it's [RevolutionMoneyExchange](#), which is a **person-to-person payment** system similar to PayPal. It's free to send, receive, and withdraw money, but the only funding source allowed is your bank account (no credit cards). It will be interesting to see if it gains some traction (and if eBay allows them as a payment option). Currently, they are offering a **\$25 bonus** just for signing up ...

17



July 15th, 2009

170 Million to Make **Person-to-Person Payments** by 2011

A recently published study from ABI Research shows that one of the services that are expected to become very popular in the near future is the mobile **person-to-person payment** system. While the mobile banking services will also become popular soon, the research firm says that three times more subscribers will make **person-to-person payments** by 2011, compared to those who will conduct traditional banking operations via their mobile phones.

"The developing world is embracing mobile domestic **person to person payments** with enthusiasm wherever they are offered," Senior Analyst Mark Beccue says. "It is becoming

¹⁶ <http://www.internetnews.com/ec-news/article.php/388491/First+Data+Launches+PersontoPerson+Payment+Service.htm>

¹⁷ <http://www.mymoneyblog.com/revolution-moneyexchange-new-person-to-person-payment-system-and-25-bonus-promotion.html>

the first financial service for previously 'unbanked' people, and may make a real contribution towards lifting them out of poverty."

18

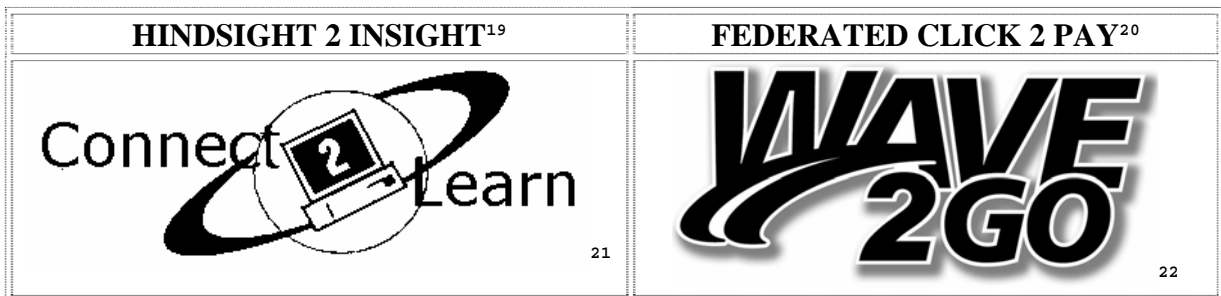
The examining attorney contends that this evidence shows that many third parties are already using the term "person-to-person payment(s)" to name the service involving the "electronic transfer of funds and payments." However, applicant argues that inasmuch as most of these transfers still involve the financial services of banks, the actual money is being transferred from one bank account to another bank account, and that technically, the money does not go from "person to person." Rather, it transfers directly from "bank account to bank account."

We are not persuaded by applicant's arguments. The above evidence clearly shows that "person to person payments" is well-established in the financial payments industry as a term of art with specific meaning identical to the usage that applicant intends.

The record also shows that in the field of e-finance, a term such as "Business to Business" is designated as "B2B," and "Person to Person" is shortened to "P2P." In this apposite manner, the word "to" is represented by the numeral "2" in virtually every article made a part of the

¹⁸ <http://news.softpedia.com/news/170-Million-to-Make-Person-to-Person-Payments-by-2011-116765.shtml>

record. Accordingly, to the extent applicant is claiming that its replacing the preposition "to" with the numeral "2" ("person-2-person") is so unique in this field as to take away the genericness of "person-to-person," we also disagree. In addition to the examples shown above, the Trademark Examining Attorney points to third-party registrations where providers of other financial services have done much the same thing:



Finally, the excellent record put together by the Trademark Examining Attorney includes instances where third parties employ the numeral "2" in terms substantially identical to applicant's designation (e.g., "person-2-person payment[s]"):

¹⁹ Registration No. 3109839 issued on June 27, 2006 for financial investment advisory services.

²⁰ Registration No. 3314842 issued on October 16, 2007 for providing online payment for insurance premiums.

²¹ Registration No. 2798605 issued on December 23, 2003 for financial services, namely, providing an Internet website containing information relating to financial and investment services. Section 8 affidavit accepted and Section 15 affidavit acknowledged.

²² Registration No. 3222377 issued on March 27, 2007 for electronic payment services for passage through a toll facility.



JAVELIN STRATEGY & RESEARCH

Mobile **Person-to-Person Payments**: A Javelin take on this emerging alternative payment technology

Consumer Usage of Mobile P2P

More than one out of ten adult U.S. consumers with a mobile phone, almost 26 million people, would likely use mobile **person 2 person (P2P) payments** if it were made available to them today. An additional 17% is on the fence with a more neutral stance toward mobile person to person (P2P) usage.

As Mobile **person to person (P2P) payments** continues to grow, it will break down into various sub-categories. First is between consumers interested in standard domestic person-to-person transactions, essentially replacing the exchange of cash or checks in transactions among individuals. The other groups are those interested in international money remittances, sending money to family members in home countries or other similar transactions ...

23

The screenshot shows the EasyMerchantServices.com website. At the top, there is a navigation bar with links for HOME, CONTACT US, AFFILIATES, and LINKS. Below this is a secondary navigation bar with links for Merchant Account Basics, Processing Fees, Comparison Calculator, Fraud Prevention, Electronic Payments, Our Rates, and Common Terms. A third navigation bar offers alternatives like Third Party Accounts and Person 2 Person Accounts, along with a 'Quick Navigation!' section featuring a dropdown menu for Person 2 Person Accounts. The main content area is titled 'Person to person payment services' and contains several informational sections:

- What are person to person payment services?** Person to person payment services, such as Paypal, allow anyone to send money to someone else via email, the web and sometimes phone. These services make it easier to process cross border payments involving currencies differences and more. Initially these services were established to allow auctioneers a way to accept payments quickly and easily.
- How to P2P payment services work?** These services require that both the buyer and seller have accounts created before payment can be sent back and forth and that these accounts be funded. Each service has different funding methods but some of the most popular are wire transfer, credit and debit cards and or checks.
- What are the primary benefits of P2P services?** P2P payment accounts are very easy to get, anyone with an email address can setup an account and get paid the same day. P2P accounts can make payment easier to customers who are unable to get approved for a credit card.
- What are the drawbacks of using P2P services?** P2P services are so easy to get that they give a business very little credibility on the web. While P2P services are acceptable for auction buyers they are generally not acceptable to consumers at websites. In addition since these services require registration by your shopper you could very well lose customers who decide that they dont want to give out their private information to yet another company. These services have at times also been known to freeze accounts based on complaints from customers that are not yet proven true. A frozen account could halt all transactions until resolved possibly losing the merchant many sales.
- Is this right for my business?** As an alternative or second payment option Paypal and other P2P accounts can be excellent additions to any ecommerce store but we do not recommend them for any business as a single payment option. If your business is unable to get approved for a regular merchant account try a 3rd party merchant account before resorting to a P2P payment service.


At the bottom of the page, a copyright notice reads: Copyright 2004 - EasyMerchantSevices.com. All Rights Reserved

24

23 <https://www.javelinstrategy.com/lp/landpage-149>

24 <http://www.easymERCHANTservices.com/person-to-person-accounts.asp>


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Person To- Person Payments

If you wanted to send money to someone you only had a few options.



The problem was:


- All providers required users, sending and receiving funds, to be members.
- Some providers only worked with banks that were members of their platform.
- Some charged a percentage of the funds sent plus a processing fee.
- Some providers held funds for 48 to 72 hours making it difficult when you really need access to your money.
- None of the providers offered an alternative solution for those who did not have a bank account.

The solution is


- No exchange of personal banking information. Each party enters their own information.
- No membership required
- One flat transaction fee
- Fast access to your money (in most cases within 24 hours).
- Dove Tell is open to both banked and self-banked users. Funds can be deposited to prepaid debit cards.

Maybe it's time to stop living in the past.

Welcome to Dove Tell



Try it on us your first transactions free!




How The DoveTell P2P Works

The DoveTell system is made up of three basic elements:

- 1st. The "Sender," who sends the funds. He simply clicks the link above, completes the brief questionnaire and submits it to DoveTell for processing.
- 2nd. The "Recipient," who receives the funds. He receives an email from DoveTell informing him that he has funds waiting to be accepted by following the link in the email.
- 3rd. Once the recipient clicks on the secure link, and completes the form the transaction is processed and funds are electronically deposited.

25



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SERVICES *eSimpleCash*

SCI's Integrated Electronic Payment Solution (IEPS) allows merchant and consumer member virtual wallet accounts to be accessed and used in real time. These "virtual wallet accounts" allow members to deposit, withdraw, and transfer funds to any entity, regardless of size (individual or corporation), that employs SCI's IEPS solution. This solution allows any merchant or member to send and receive online payments securely, conveniently, and cost effectively.

25

<http://www.dovetell.com/P2P-page.html>

...

4. **Person-2-Person (P2P) Payment Enrichment** - The **person-to-person payments business** is a key area in SCI's IEPS solution as it serves the global money remittance business and is compatible with and facilitates fund transfers for any financial institution. The SCI solution delivers automated money transfers and payment services without physical investment (as Western Union does). The SCI solution economically benefits the underserved customer base in developing countries that doesn't have traditional bank accounts and/or a credit/debit card. The inexpensive fee structure and automated conveniences associated with money transfer, payment, lending, and check cashing, which Western Union™, MoneyGram™, and American Cashing™ are not delivering today, will further benefit consumers as well as service delivery channels.

26

In the face of this evidence, applicant argues as follows: " ... Applicant has reviewed the evidence and was unable to locate a single use of Applicant's exact mark Person2Person Payment. The evidence therefore does not show, as the Examining Attorney argues, that applicant's exact mark Person2Person Payment is a commonly-used term in the industry." Applicant's appeal brief at 3.

Perhaps applicant's argument is that its "Person2Person Payment" designation is not precisely the same as "Person 2 Person Payment" (having spaces) or "Person-2-Person Payment" (having hyphens). We also do not find this particular argument persuasive. Applicant's deletion of spaces or hyphens within the designation "Person2Person" cannot transform clearly generic terms such as "Person 2 Person Payment" or "Person-2-Person Payment" into something that is capable of functioning as a source identifier. *In re 3Com Corp.*, 56 USPQ2d 1060, 1061 (TTAB 2000) [ATMLINK held generic

for computer hardware components used for enabling connection of asynchronous communication networks]. Applicant's slight change does not result in a term that will be understood by relevant purchasers as anything other than primarily naming a category of direct electronic funds transfers. The pronunciation of all these versions is identical, and the differences in appearance among the versions are subtle to the point of being imperceptible. Accordingly, we conclude that "Person2Person Payment" like "Person 2 Person Payment" or "Person-2-Person Payment," is generic and incapable of functioning as a service mark for direct electronic funds transfers. Specifically, we find that the term **Person2Person Payment** is generic for services recited as "electronic funds transfer via electronic communications networks; clearing and reconciling financial transactions via electronic communications networks; providing a wide variety of payment and financial services, namely, processing and transmission of bills and payments thereof."

Decision: The refusal of the Trademark Examining Attorney to register the applied-for term under Section 23(c) of the Lanham Act is hereby affirmed.

²⁶ <http://www.esimplecash.com/services.php>