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.
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.


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).

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, 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:

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**PAYMENTS NEWS**

**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 ...

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**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.

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3  https://www.paypal.com/sg/cgi-bin/webscr?cmd=xpt/Marketing/general/personPayments-outside
5  http://www.forrester.com/rb/Research/person-to-person_payment_goes_mobile/q/id/41334/t/2
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.

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.

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.

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.

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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."

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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."
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."  

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."

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.

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.

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.

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

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 …

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

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 appositive manner, the word “to” is represented by the numeral “2 in virtually every article made a part of the

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:

<table>
<thead>
<tr>
<th>HINDSIGHT 2 INSIGHT(^{19})</th>
<th>FEDERATED CLICK 2 PAY(^{20})</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image" alt="HINDSIGHT 2 INSIGHT" /></td>
<td><img src="image" alt="FEDERATED CLICK 2 PAY" /></td>
</tr>
</tbody>
</table>

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.
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 ...
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.

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.

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