



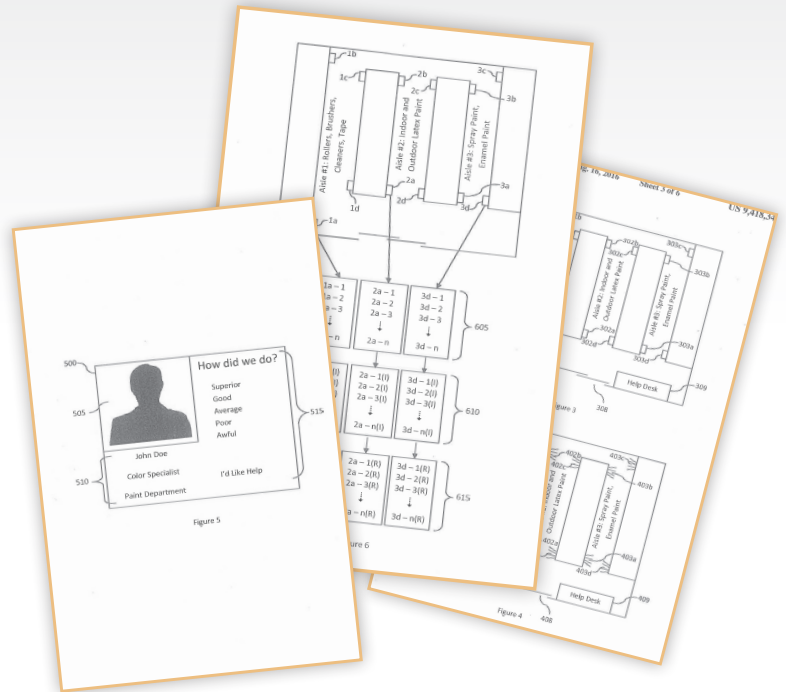
# PATENT MAY HELP YOU FIND ANSWERS IN BIG-BOX STORE (CONT.)

Fulkerson says he originally filed for the patent in 2012 and the four-year process “is about average” to receive a patent these days, although he notes, “it is possible to sometimes get a patent approved in six months.”

He noted that he had not approached any stores about using his system adding that they usually have people who look through the published patents to see what might be interesting.

Patenting isn't new to the Fulkerson clan. Tom's grandfather and uncle patented an improved truck-borne rotary fertilizer spreader in 1942 and his older brother Greg holds four patents in the optical projection field. He admits that his desire to get the patent was driven a bit by family pride, adding, “I just wanted to say that I contributed something to society.”

I'm definitely the social sciences variety of inventor, so if you want hard-science, you have to check out Greg's patents” Fulkerson says.



*Sample of artwork used in Tom Fulkerson's patent application for customer service communication system to be used in big-box stores.*

## FULKERSON LOTZ OBTAINS PERMANENT INJUNCTION AGAINST TRADEMARK VIOLATION

The gods were on the side of Vesta Corporation when a lawsuit (Case 4:15-CV-00719 – Vesta Corporation v. Vesta Management Services, LLC—In the United States District Court for the Southern District of Texas, Houston Division ) brought by Fulkerson Lotz prevented a property management company from using the same word as part of their name.

The District Court decision prohibited Vesta Management Services from using the name “Vesta” - the Roman goddess of hearth and home - as part of its name.

Vesta Corporation is a real-estate development and management company focusing on multifamily residential housing, which in 2002, had registered “Vesta” as a word mark for its business. The lawsuit alleged that Vesta Management had infringed on their trademark.

No monetary damages were assessed, but the management firm will no longer be able to use the word in their name.



*“Vesta” - the Roman goddess of hearth and home*

# FULKERSON LOTZ OBTAINS LANDMARK RULING IN THE CAR RENTAL INDUSTRY



Thanks to the legal efforts of Fulkerson Lotz attorney Ethan Gibson, and the software of his client BancPass, consumers have another option to save money while operating a rental car.

A recent decision from District Judge Sam Sparks of the Western District of Texas determined that consumers have the right to opt out of standard rental car tolling fees by using BancPass's PToll™ software instead, thereby avoiding the significant charges issued by the rental car companies and its toll collection partner, Highway Toll Administration, LLC ("HTA"). This case has garnered national attention, including an article in the *Washington Post*.

"The fine print of most rental car agreements allows the rental car company to not only charge the value of the toll, but also to add up to \$5 dollars a day in 'administrative fees,' including days in which no tolls were incurred," Gibson stated. "Incurring even a single toll under this fee structure can add up quickly," Gibson added. "The real issue is that regular cash toll booths are disappearing around the country, and the only way to pay tolls is electronically." Gibson continued, "at the heart of it, these charges are becoming a significant profit center for rental car companies and HTA, and they simply don't want consumers to have an alternative."

About two years ago, BancPass began marketing PToll™, which allowed its users to avoid rental companies' tolling fees in tolling markets where the PToll™ is accepted. Before driving the rental vehicle, the renter can download the app to their smart phone, take a photo of their rental car license plate through the app, and provide BancPass with a valid method of payment. From that point, BancPass pays any tolls on behalf of the driver and charges only the cost of the toll plus a small transaction fee. Importantly, the consumer is only charged for any tolls actually incurred, and never for the mere passage of time.

"Obviously," Gibson points out, "this had the potential to cost HTA and the rental companies significant revenue, so HTA took a number of steps to try to keep it out of consumers' hands."

According to Gibson, HTA lawyers wrote letters to three key players in the toll administration field in an effort to stop PToll™. They wrote to the Texas Department of Transportation and they also sent letters to Apple and Google claiming the application was illegal, and that BancPass and PToll™ users were committing felonies. These letters were sent just before the September 2014 International Bridge, Tunnel and Turnpike Association (IBTTA) national conference, where PToll™ was set to launch.

"They alleged that that our client was involved in a criminal activity and that any driver using PToll™ was defrauding the State of Texas," Gibson says. "Unfortunately, HTA's threats and false statements initially succeeded, as BancPass was unable to rollout PToll™ under the cloud of these allegations."

"Their arguments were baseless. Look at it this way, consumers have always had the right to choose whether to either refill their gas tanks themselves or pay the higher per gallon cost to have the rental company do it for you. HTA argued, however, that consumers were powerless to choose how to pay their own tolls, which just so happened to mean that HTA should be allowed to continue collecting these fees without any competition." Gibson added, "the court disagreed."

"After a two-year battle, the court sided with us in every major aspect of the case," Gibson says. "It was a real David vs. Goliath scenario as we had to stare down several national law firms in court to prove that our client had not violated the terms of the rental car agreements, merely by offering the consumers a choice," the sixth-year attorney noted. "Most importantly, the client was thrilled," Gibson stated.

"BancPass is more than delighted with the work of Ethan Gibson and the Fulkerson Lotz Team," said Glenn Deitiker, President of BancPass. "This type of unexpected litigation can be devastating to small businesses like ours. Mr. Gibson and the entire Fulkerson Lotz team did a great job of handling the litigation while at the same time not losing focus of our business goals, and helping us insure that we emerged from this with a bright future."

In addition, the District Court ruled that BancPass's defamation claims will be submitted to the jury and that HTA's letters were not protected by the "absolute privilege" simply because they were written by an attorney.

That aspect of the case is currently on appeal to the Fifth Circuit, which has accelerated that appeal to hear oral arguments by December of this year. At stake is \$1.5 million in damages.

While the case continues, BancPass has been able to return to the market free of HTA's allegations with an order from Judge Sparks that it is free to operate in the market. BancPass's PToll™ application is currently available on both Apple and Google.

The case is *BancPass, Inc. v. Highway Toll Administration, LLC* in the Western District of Texas, Case No. A-14-CA-1062-SS.