

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TUITIONFUND, LLC	§	
<i>Plaintiff</i>	§	
	§	
v.	§	CASE NO.:
	§	JURY DEMAND
FIRST HORIZON NATIONAL	§	
CORPORATION; FIRST TENNESSEE	§	
BANK NATIONAL ASSOCIATION;	§	
BB&T CORPORATION; BRANCH	§	
BANKING AND TRUST COMPANY;	§	
COMERICA INCORPORATED;	§	
COMERICA BANK; FISERV, INC.;	§	
ALLY FINANCIAL, INC.; ALLY BANK;	§	
FIFTH THIRD BANCORP; FIFTH	§	
THIRD BANK; EDO INTERACTIVE,	§	
INC.; AFFINITY SOLUTIONS, INC.	§	
<i>Defendants</i>	§	

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff TuitionFund, LLC (“TuitionFund”) and files this Original Complaint against Defendants First Horizon National Corporation and First Tennessee Bank National Association (collectively “First Tennessee”); BB&T Corporation and Branch Banking and Trust Company (collectively, “BB&T”); Comerica Incorporated and Comerica Bank (collectively “Comerica”); Fiserv, Inc. (“Fiserv”); Ally Financial, Inc. and Ally Bank (collectively “Ally”); Fifth Third Bancorp and Fifth Third Bank (collectively “Fifth Third”); EDO Interactive, Inc. (“EDO”); and Affinity Solutions, Inc. (“Affinity”) (all collectively referred to as “Defendants”) and alleges as follows:

I. NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

II. THE PARTIES

2. Plaintiff **TuitionFund, LLC** is a Delaware limited liability company that maintains its principal place of business at 422 Wild Elm, Franklin, Tennessee 37064.

3. **First Horizon National Corporation** is a Tennessee corporation that maintains its principal place of business at 165 Madison Avenue, Memphis, Tennessee 38103. This Defendant does business in Tennessee and can be served with process through its Registered Agent for service, Clyde A. Billings, Jr., 165 Madison Avenue, Memphis, Tennessee 38103.

4. **First Tennessee Bank National Association** is a wholly-owned banking subsidiary of Defendant First Horizon National Corporation. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Clyde A. Billings, Jr., 165 Madison Avenue, Memphis, Tennessee 38103.

5. **BB&T Corporation** is a North Carolina corporation that maintains its principal place of business at 200 West Second Street, Winston-Salem, North Carolina 27101. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, North Carolina 27601.

6. **Branch Banking and Trust Company** is a wholly-owned subsidiary of Defendant BB&T Corporation. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, CT Corporation System, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929.

7. **Comerica Incorporated** is a Delaware corporation that maintains its principal place of business at Comerica Bank Tower, 1717 Main Street, MC 6404, Dallas, Texas 75201. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Corporate Creations Network, Inc., 3411 Silverside Road Rodney Building #104, Wilmington, Delaware 19810.

8. **Comerica Bank** is a wholly-owned subsidiary of Defendant Comerica Incorporated. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Corporate Creations Network, Inc., 205 Powell Place, Brentwood, Tennessee 37027.

9. **Fiserv, Inc.** is a Delaware corporation that maintains its principal place of business at 255 Fiserv Drive, Brookfield, Wisconsin 53045. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

10. **Fifth Third Bancorp** is an Ohio corporation that maintains its principal place of business at Fifth Third Center, 38 Fountain Square Plaza, Cincinnati, Ohio 45263. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Paul L. Reynolds, 38 Fountain square Plaza, Cincinnati, Ohio 45263.

11. **Fifth Third Bank** is a wholly-owned subsidiary of Fifth Third Bancorp. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, James R. Hubbard, 38 Fountain Square Plaza, MD#10AT76, Cincinnati, Ohio 45263.

12. **Ally Financial, Inc.** is a Delaware corporation that maintains its principal place of business at 200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

13. **Ally Bank** is a wholly-owned subsidiary of Ally Financial, Inc. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203.

14. **Affinity Solutions, Inc.** is a Delaware corporation that maintains its principal place of business at 333 7th Avenue, 18th Floor, New York, New York 10001. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

15. **EDO Interactive, Inc.** is a Delaware corporation that maintains its principal place of business at 3841 Green Hills, Village Dr. S-425, Nashville, Tennessee 37215. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, CT Corporation System, 800 S. Gay Street, Ste. 2021, Knoxville, Tennessee 37929.

III. JURISDICTION AND VENUE

16. This action arises under the patent laws of the United States, Title 35 of the United States Code. The Court's jurisdiction over this action is proper under the above statutes, including 35 U.S.C. §271 *et seq.*, 28 U.S.C. § 1331, 28 U.S.C. § 1332, and 28 U.S.C. § 1338.

17. Personal jurisdiction exists generally over Defendants pursuant to 28 U.S.C. § 1391 because they have sufficient minimum contacts with the forum as a result of business conducted within the State of Tennessee and/or within this district. Personal jurisdiction also exists specifically over Defendants because of Defendants' conduct in making, using, selling, and/or offering to sell directly or indirectly infringing products or services, and/or Defendants' contributory infringement or inducement of infringement within the State of Tennessee and within this District.

18. Venue is proper in this Court under 28 U.S.C. §§1391(b), (c), and (d), as well as 28 U.S.C., §1400(b) for the reasons set forth above. Furthermore, venue is proper because Defendants solicit and establish banking and other business relationships with individuals and businesses in this District, which include infringing products or services as discussed below. Each act of Defendants' directly or indirectly infringing conduct in this District gives rise to proper venue.

IV. BACKGROUND

19. This cause of action asserts infringement of three patents—United States Patent No. 7,499,872 B1 entitled “Methods and Systems for Applying Rebates to Higher Education” (“the ’872 Patent”), United States Patent No. 7,653,572 B1 entitled “Methods and Systems for Providing a Rebate Program” (“the ’572 Patent”), and United States Patent No. 7,899,704 B1 entitled “Methods and Systems for Providing a Merchant Funded Rebate Program” (the ‘704” Patent) (collectively, the “Patents-in-Suit”). A true and correct copy of the ’872 Patent is attached hereto as Exhibit A; a true and correct copy of the ’572 Patent is attached hereto as Exhibit B. A true and correct copy of the ‘704 Patent is attached hereto as Exhibit C. The ’572 Patent is a continuation of the application (No. 09/703,562) that resulted in the ’872 Patent. The

'704 Patent is a continuation of the application (No. 12/347,136) that resulted in the '572 Patent. TuitionFund is the current owner of all rights, title, and interest in and under the '872 Patent, which duly and legally issued on March 3, 2009, with Michael P. Thompson as the named inventor. The term of the '872 Patent was extended or adjusted under 35 U.S.C. 154(b) by 1205 days. TuitionFund has standing to sue for the infringement of the '872 Patent.

20. TuitionFund is the current owner of all rights, title, and interest in and under the '572 Patent, which duly and legally issued on January 26, 2010, with Michael P. Thompson as the named inventor. Application No. 12/347,136, which resulted in the '572 Patent is a continuation of application No. 09/703,562, which resulted in the '872 Patent. The '572 Patent is subject to a terminal disclaimer. TuitionFund has standing to sue for the infringement of the '572 Patent.

21. TuitionFund is the current owner of all rights, title and interest in and under the '704 Patent, which duly and legally issued on March 1, 2011, with Michael P. Thompson as the named inventor. Application No. 12/649,903, which resulted in the '704 Patent is a continuation of application No. 12/347,136, which resulted in the '572 Patent. The '704 Patent is subject to a terminal disclaimer. TuitionFund has standing to sue for the infringement of the '704 Patent.

22. TuitionFund has marked its website with the Patents-in-Suit at all times subsequent to their respective issuance dates. All Defendants have had actual or constructive knowledge of the Patents-in-Suit at least as a result of TuitionFund's marking efforts and the events and circumstances described herein.

23. Defendants First Tennessee and Affinity offer qualifying First Tennessee credit and debit card account holders in the United States, including Tennessee and within this District, debit and credit card accounts that offer the client rewards (known as First Tennessee Cash

Rewards), based on purchases with certain merchants using the debit and/or credit card accounts. Various merchants partner with First Tennessee and/or Affinity to offer these merchant funded rewards to First Tennessee's clients. Affinity serves as the rebate network manager for the First Tennessee Cash Rewards program.

24. The First Tennessee Cash Rewards program was implemented in or around November 2010. One or more officers and representatives of First Tennessee were aware of the TuitionFund technology before the implementation of the First Tennessee Cash Rewards program in November 2010. In 2003, TuitionFund and National Commerce Financial Corporation ("NCF") began negotiations for NCF to become the official and exclusive bank sponsor of the TuitionFund rewards program in the Nashville market. On July 16, 2003, TuitionFund and NCF entered into a "Sponsorship Agreement" whereby NCF obtained the right to be the exclusive bank sponsor of the TuitionFund rewards program in the Nashville market for a three-year term. One or more current officers and directors of First Tennessee were, at that time, officers and representatives of NCF. As a result of the information they had obtained as early as 2003, one or more of the current First Tennessee officers and representatives was aware of the TuitionFund technology prior to November 2010 when the First Tennessee Cash Rewards program was implemented.

25. In offering these debit and credit card accounts featuring merchant funded rewards, First Tennessee and Affinity, each individually as well as jointly, make and use a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

26. In its role as the rebate network manager for the First Tennessee Cash Rewards program, Affinity makes and uses a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

27. First Tennessee, with knowledge of the patents in suit, induced Affinity to make and use a rewards program for the First Tennessee credit and/or debit card clients as described in the preceding paragraphs.

28. In sum, First Tennessee is individually liable for infringement, jointly liable for infringement together with and through Affinity, and liable for inducing Affinity's direct infringement. Furthermore, Affinity is individually liable and jointly and severally liable for infringement of the Patents-in-Suit by and through its work pertaining to the First Tennessee Cash Rewards program.

29. Defendants BB&T and Affinity offer BB&T Check Card and BB&T Business Check Card holders in the United States, including Tennessee and within this District, debit card accounts that offer the client rewards (known as BB&T Cash Rewards), based on purchases with certain merchants using the debit card accounts. Various merchants partner with BB&T and/or Affinity to offer these merchant funded rewards to BB&T's clients. Affinity serves as the rebate network manager for the BB&T Cash Rewards program.

30. In offering these debit card accounts featuring merchant funded rewards, BB&T and Affinity, each individually as well as jointly, make and use a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

31. In its role as the rebate network manager for the BB&T Cash Back Rewards program, Affinity makes and uses a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

32. In sum, BB&T is individually liable for infringement and jointly liable for infringement together with and through Affinity. Furthermore, Affinity is individually liable and jointly and severally liable for infringement of the Patents-in-Suit by and through its work pertaining to the BB&T Cash Rewards program.

33. Defendants Comerica and Affinity offer Comerica EZ Perks Check Card and EZ Perks Small Business Check Card holders in the United States, including Tennessee and within this District, accounts that offer the client rewards (known as the Comerica EZ Perks program), based on purchases with certain merchants using the debit card accounts. Various merchants partner with Comerica and/or Affinity to offer these merchant funded rewards to Comerica's checking and business checking clients. Affinity serves as the rebate network manager for the Comerica EZ Perks program.

34. In offering these debit card accounts featuring merchant funded rewards, Comerica and Affinity, each individually as well as jointly, make and use a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

35. In its role as the rebate network manager for the Comerica EZ Perks program, Affinity makes and uses a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

36. In sum, Comerica is individually liable for infringement and jointly liable for infringement together with and through Affinity. Furthermore, Affinity is individually liable and jointly and severally liable for infringement of the Patents-in-Suit by and through its work pertaining to the Comerica EZ Perks program.

37. Defendants Fiserv and Affinity offer the UChoose Rewards programs to financial institutions that operate in the United States, including Tennessee and within this District. The

UChoose Rewards program enables debit and credit card accounts holders at participating financial institutions to receive rewards based on purchases with certain merchants using their debit and/or credit card accounts. Various merchants partner with Fiserv and/or Affinity to offer these merchant funded rewards. Affinity serves as the rebate network manager for the Fiserv UChoose program.

38. In offering the merchant funded UChoose Rewards program, Fiserv and Affinity, each individually as well as jointly, make and use a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

39. In its role as the rebate network manager for the UChoose Rewards program, Affinity makes and uses a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

40. In sum, Fiserv is individually liable for infringement and jointly liable for infringement together with and through Affinity. Furthermore, Affinity is individually liable and jointly and severally liable for infringement of the Patents-in-Suit by and through its work pertaining to the Fiserv UChoose Rewards program.

41. EDO was initially formed as Facecard, Inc. in 2007 and subsequently changed its name to EDO Interactive, Inc. in 2008. In March 2009 EDO and TuitionFund entered into a non-disclosure agreement, officers and representatives of EDO met with officers and representatives of TuitionFund to discuss TuitionFund's technology and potential business opportunities. As a result of the information they had obtained as early as 2009, one or more EDO officers and representatives was aware of the TuitionFund technology prior to the spring/summer of 2011 when the Fifth Third Prewards program was implemented and prior to the summer of 2011 when the Ally Perks program was implemented.

42. EDO, with knowledge of the patents in suit, induced Fifth Third to make and use a rewards program for the Fifth Third debit card clients as described herein.

43. EDO, with knowledge of the patents in suit, induced Ally to make and use a rewards program for the Ally debit card clients as described herein.

44. Defendants Fifth Third and EDO offer qualifying Fifth Third debit card account holders in the United States, including Tennessee and within this District, debit card accounts that offer the client rewards (known as Fifth Third Prewards program), based on purchases with certain merchants using the debit card accounts. Various merchants partner with Fifth Third and/or EDO to offer these merchant funded rewards to Fifth Third's clients. EDO serves as the rebate network manager for the Fifth Third Prewards program.

45. The Fifth Third Prewards program was implemented in or around the spring/summer of 2011. In November 1999, officers and representatives of Fifth Third met with Mike Thompson, the named inventor of the Patents-in-Suit, at which time certain aspects of the technology embodied by the Patents-in-Suit were discussed. A non-disclosure agreement was entered into between Fifth Third and Alumni Publications, Inc. (a predecessor to TuitionFund) through Mike Thompson at that time. Subsequent discussions also took place between Mike Thompson and certain Fifth Third representatives. As a result, one or more Fifth Third officers and representatives was aware of the TuitionFund technology prior to the spring/summer of 2011 when the Fifth Third Prewards program was implemented.

46. In offering these debit card accounts featuring merchant funded rewards, Fifth Third and EDO, each individually as well as jointly, make and use a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

47. In its role as the rebate network manager for the Fifth Third Prewards program, EDO makes and uses a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

48. Fifth Third, with knowledge of the patents in suit, induced EDO to make and use a rewards program for the Fifth Third debit card clients as described in the preceding paragraphs.

49. In sum, Fifth Third is individually liable for infringement, jointly liable for infringement together with and through EDO, and liable for inducing EDO's direct infringement. Furthermore, EDO is individually liable and jointly and severally liable for infringement of the Patents-in-Suit by and through its work pertaining to the Fifth Third Prewards program.

50. Defendants Ally and EDO offer qualifying Ally debit card account holders in the United States, including Tennessee and within this District, debit card accounts that offer the client rewards (known as the Ally Perks program), based on purchases with certain merchants using the debit card accounts. Various merchants partner with Ally and/or EDO to offer these merchant funded rewards to Ally's clients. EDO serves as the rebate network manager for the Ally Perks program.

51. In offering these debit card accounts featuring merchant funded rewards, Ally and EDO, each individually as well as jointly, make and use a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

52. In its role as the rebate network manager for the Ally Perks program, EDO makes and uses a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

53. In sum, Ally is individually liable for infringement and jointly liable for infringement together with and through EDO. Furthermore, EDO is individually liable and

jointly and severally liable for infringement of the Patents-in-Suit by and through its work pertaining to the Ally Perks program.

V. CLAIMS

A. Direct Patent Infringement

54. The allegations of paragraphs 1-53 above are incorporated by reference as if fully set forth herein.

55. First Tennessee has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '872, '572 and '704 Patents by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services, specifically the First Tennessee Cash Rewards program as described herein, that embody the inventions claimed in the Patents-in-Suit. First Tennessee infringes alone and/or jointly with Affinity.

56. BB&T has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '872, '572 and '704 Patents by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services, specifically the BB&T Cash Rewards program as described herein, that embody the inventions claimed in the Patents-in-Suit. BB&T infringes alone and/or jointly with Affinity.

57. Comerica has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '872, '572 and '704 Patents by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services, specifically the Comerica EZ Perks program as described herein,

that embody the inventions claimed in the Patents-in-Suit. Comerica infringes alone and/or jointly with Affinity.

58. Fiserv has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '872, '572 and '704 Patents by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services, specifically the Fiserv UChoose Rewards program as described herein, that embody the inventions claimed in the Patents-in-Suit. Fiserv infringes alone and/or jointly with Affinity.

59. Affinity has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '872, '572 and '704 Patents by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services that embody the inventions claimed in the Patents-in-Suit. Plaintiff asserts that Affinity infringes alone and/or jointly with each of First Tennessee, BB&T, Comerica, and Fiserv, respectively.

60. At this time, Plaintiff's claims of infringement by Affinity are limited to Affinity's actions with regard to making, using, selling, and/or offering to sell in the United States the First Tennessee Cash Rewards, BB&T Cash Rewards, Comerica EZ Perks, and the Fiserv UChoose Rewards programs, respectively, as described herein.

61. Fifth Third has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '872, '572 and '704 Patents by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services, specifically the Fifth Third Prewards program as described herein,

that embody the inventions claimed in the Patents-in-Suit. Fifth Third infringes alone and/or jointly with EDO.

62. Ally has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '872, '572 and '704 Patents by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services, specifically the Ally Perks program as described herein, that embody the inventions claimed in the Patents-in-Suit. Ally infringes alone and/or jointly with EDO.

63. EDO has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '872, '572 and '704 Patents by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services that embody the inventions claimed in the Patents-in-Suit. Plaintiff asserts that EDO infringes alone and/or jointly with each of Fifth Third and Ally, respectively.

64. At this time, Plaintiff's claims of infringement by EDO are limited to EDO's actions with regard to making, using, selling, and/or offering to sell in the United States the Fifth Third Prewards and Ally Perks programs, respectively, as described herein.

B. Inducement of Patent Infringement

65. The allegations of paragraphs 1-64 above are incorporated by reference as if fully set forth herein.

66. Further and in the alternative, First Horizon National Corporation has in the past, does now, and continues to induce direct infringement by its wholly-owned subsidiary First Tennessee Bank National Association of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. First Horizon National Corporation had actual

knowledge of the Patents-in-Suit and knew or should have known that its actions, including without limitation exercising influence, control, and direction over subsidiary First Tennessee Bank National Association's resources, operations, and decision making, would induce First Tennessee Bank National Association's direct infringement of the Patents-in-Suit. First Horizon National Corporation's actions resulted in inducing First Tennessee Bank National Association to infringe the Patents-in-Suit via the First Tennessee Cash Rewards program as described herein.

67. Further and in the alternative, First Tennessee has in the past, does now, and continues to induce direct infringement by Affinity of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. First Tennessee had actual knowledge of the Patents-in-Suit and knew or should have known that its actions would induce Affinity's direct infringement of the Patents-in-Suit. First Tennessee's actions resulted in inducing Affinity to infringe the Patents-in-Suit via the First Tennessee Cash Rewards program as described herein.

68. Further and in the alternative, Fifth Third Bancorp has in the past, does now, and continues to induce direct infringement by its wholly-owned subsidiary Fifth Third Bank of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. Fifth Third Bancorp had actual knowledge of the Patents-in-Suit and knew or should have known that its actions, including without limitation exercising influence, control, and direction over subsidiary Fifth Third Bank's resources, operations, and decision making, would induce Fifth Third Bank's direct infringement of the Patents-in-Suit. Fifth Third Bancorp's actions resulted in inducing Fifth Third Bank to infringe the Patents-in-Suit via the Fifth Third Prewards program as described herein.

69. Further and in the alternative, Fifth Third has in the past, does now, and continues to induce direct infringement by EDO of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. Fifth Third had actual knowledge of the Patents-in-Suit and knew or should have known that its actions would induce EDO's direct infringement of the Patents-in-Suit. Fifth Third's actions resulted in inducing EDO to infringe the Patents-in-Suit via the Fifth Third Prewards program as described herein.

70. Further and in the alternative, EDO, has in the past, does now, and continues to induce direct infringement by Fifth Third of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. EDO had actual knowledge of the Patents-in-Suit and knew or should have known that its actions would induce Fifth Third's direct infringement of the Patents-in-Suit. EDO's actions resulted in inducing Fifth Third to infringe the Patents-in-Suit via the Fifth Third Prewards program as described herein.

71. Further and in the alternative, EDO, has in the past, does now, and continues to induce direct infringement by Ally of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. EDO had actual knowledge of the Patents-in-Suit and knew or should have known that its actions would induce Ally's direct infringement of the Patents-in-Suit. EDO's actions resulted in inducing Ally to infringe the Patents-in-Suit via the Ally Perks program as described herein.

VI. VICARIOUS LIABILITY

72. The allegations of paragraphs 1-71 above are incorporated by reference as if fully set forth herein.

73. In addition to liability for their own independent conduct, the Defendants are also liable for the conduct of their subsidiaries, affiliates, and related entities under the doctrines of

joint venture, single business enterprise, alter ego, and under applicable state and federal statutes and regulations.

74. On information and belief, First Horizon National Corporation and First Tennessee Bank National Association, among other things, share common officers and directors, have common employees, share office space, have common attorneys, have identical business and operation policies and procedures. Additionally, First Tennessee Bank National Association is wholly owned by First Horizon National Corporation

75. On information and belief, First Horizon National Corporation and First Tennessee Bank National Association have engaged in a business venture for joint profit, including but not limited to the implementation of the First Tennessee Cash Rewards program. On information and belief, First Horizon National Corporation and First Tennessee Bank National Association have combined their efforts, property, skill, knowledge, employees, and officer and directors, among other things, for the purpose of undertaking this venture.

76. On information and belief, the First Tennessee Defendants were engaged in a joint venture/enterprise at all times in which they are accused of infringement and immediately prior thereto. Each of the First Tennessee Defendants had a shared community of interest in the object and purpose of the undertaking for which the banking entity known as First Tennessee Bank National Association was being operated/used.

77. On information and belief, each of the First Tennessee Defendants had an equal right to share in the control of the operation of the First Tennessee banking entity during the time of infringement regardless of whether such right was actually exercised.

78. On information and belief, the First Tennessee Defendants controlled at least the operation, planning, and management of the First Tennessee banking entity. On information and

belief, the authority exercised by the First Tennessee Defendants over the First Tennessee banking entity included, but was not limited to, control of marketing, human resources management, creation and implementation of policy and procedure manuals used by the First Tennessee banking entity, legal services, and financial, tax, and accounting control through fiscal policies established by the First Tennessee Defendants.

79. On information and belief, these companies operated as a joint venture/enterprise for the purpose of streamlining and furthering their similar business interests and collectively controlled First Tennessee Bank.

80. On information and belief, at all relevant times mentioned herein, the First Tennessee Defendants owned, operated and/or controlled, either directly or through the agency of each other and/or other diverse subalterns, agents, subsidiaries, servants, or employees the operation of First Tennessee Bank.

81. Because the First Tennessee Defendants named herein were engaged in a joint venture/enterprise before and throughout the time of infringement the acts and omissions of each participant in the joint venture/enterprise are imputable to all other participants.

82. Because the First Tennessee Defendants named herein are the alter egos of the other, before and throughout the time of infringement, the acts and omissions of each of the First Tennessee Defendants are imputable to the other First Tennessee Defendants.

83. The actions of the First Tennessee Defendants and each of its servants, agents and employees, as set forth herein, are imputed to each of the First Tennessee Defendants, jointly and severally.

84. On information and belief, BB&T Corporation and Branch Banking and Trust Company, among other things, share common officers and directors, have common employees,

share office space, have common attorneys, have identical business and operation policies and procedures. Additionally, Branch Banking and Trust Company is wholly owned by BB&T Corporation

85. On information and belief, BB&T Corporation and Branch Banking and Trust Company have engaged in a business venture for joint profit, including but not limited to the implementation of the BB&T Cash Rewards program. On information and belief, BB&T Corporation and Branch Banking and Trust Company have combined their efforts, property, skill, knowledge, employees, and officer and directors, among other things, for the purpose of undertaking this venture.

86. On information and belief, the BB&T Defendants were engaged in a joint venture/enterprise at all times in which they are accused of infringement and immediately prior thereto. Each of the BB&T Defendants had a shared community of interest in the object and purpose of the undertaking for which the banking entity known as Branch Banking and Trust Company was being operated/used.

87. On information and belief, each of the BB&T Defendants had an equal right to share in the control of the operation of the BB&T banking entity during the time of infringement regardless of whether such right was actually exercised.

88. On information and belief, the BB&T Defendants controlled at least the operation, planning, and management of the BB&T banking entity. On information and belief, the authority exercised by the BB&T Defendants over the BB&T banking entity included, but was not limited to, control of marketing, human resources management, creation and implementation of policy and procedure manuals used by the BB&T banking entity, legal

services, and financial, tax, and accounting control through fiscal policies established by the BB&T Defendants.

89. On information and belief, these companies operated as a joint venture/enterprise for the purpose of streamlining and furthering their similar business interests and collectively controlled Branch Banking and Trust Company.

90. On information and belief, at all relevant times mentioned herein, the BB&T Defendants owned, operated and/or controlled, either directly or through the agency of each other and/or other diverse subalterns, agents, subsidiaries, servants, or employees the operation of Branch Banking and Trust Company.

91. Because the BB&T Defendants named herein were engaged in a joint venture/enterprise before and throughout the time of infringement the acts and omissions of each participant in the joint venture/enterprise are imputable to all other participants.

92. Because the BB&T Defendants named herein are the alter egos of the other, before and throughout the time of infringement, the acts and omissions of each of the BB&T Defendants are imputable to the other BB&T Defendants.

93. The actions of the BB&T Defendants and each of its servants, agents and employees, as set forth herein, are imputed to each of the BB&T Defendants, jointly and severally.

94. On information and belief, Comerica Incorporated and Comerica Bank, among other things, share common officers and directors, have common employees, share office space, have common attorneys, have identical business and operation policies and procedures. Additionally, Comerica Bank is wholly owned by Comerica Incorporated

95. On information and belief, Comerica Incorporated and Comerica Bank have engaged in a business venture for joint profit, including but not limited to the implementation of the Comerica EZ Perks program. On information and belief, Comerica Incorporated and Comerica Bank have combined their efforts, property, skill, knowledge, employees, and officer and directors, among other things, for the purpose of undertaking this venture.

96. On information and belief, the Comerica Defendants were engaged in a joint venture/enterprise at all times in which they are accused of infringement and immediately prior thereto. Each of the Comerica Defendants had a shared community of interest in the object and purpose of the undertaking for which the banking entity known as Comerica Bank was being operated/used.

97. On information and belief, each of the Comerica Defendants had an equal right to share in the control of the operation of the Comerica banking entity during the time of infringement regardless of whether such right was actually exercised.

98. On information and belief, the Comerica Defendants controlled at least the operation, planning, and management of the Comerica banking entity. On information and belief, the authority exercised by the Comerica Defendants over the Comerica banking entity included, but was not limited to, control of marketing, human resources management, creation and implementation of policy and procedure manuals used by the Comerica banking entity, legal services, and financial, tax, and accounting control through fiscal policies established by the Comerica Defendants.

99. On information and belief, these companies operated as a joint venture/enterprise for the purpose of streamlining and furthering their similar business interests and collectively controlled Comerica Bank.

100. On information and belief, at all relevant times mentioned herein, the Comerica Defendants owned, operated and/or controlled, either directly or through the agency of each other and/or other diverse subalterns, agents, subsidiaries, servants, or employees the operation of Comerica Bank.

101. Because the Comerica Defendants named herein were engaged in a joint venture/enterprise before and throughout the time of infringement the acts and omissions of each participant in the joint venture/enterprise are imputable to all other participants.

102. Because the Comerica Defendants named herein are the alter egos of the other, before and throughout the time of infringement, the acts and omissions of each of the Comerica Defendants are imputable to the other Comerica Defendants.

103. The actions of the Comerica Defendants and each of its servants, agents and employees, as set forth herein, are imputed to each of the Comerica Defendants, jointly and severally.

104. On information and belief, Fifth Third Bancorp and Fifth Third Bank, among other things, share common officers and directors, have common employees, share office space, have common attorneys, have identical business and operation policies and procedures. Additionally, Fifth Third Bank is wholly owned by Fifth Third Bancorp

105. On information and belief, Fifth Third Bancorp and Fifth Third Bank have engaged in a business venture for joint profit, including but not limited to the implementation of the Fifth Third Prewards program. On information and belief, Fifth Third Bancorp and Fifth Third Bank have combined their efforts, property, skill, knowledge, employees, and officer and directors, among other things, for the purpose of undertaking this venture.

106. On information and belief, the Fifth Third Defendants were engaged in a joint venture/enterprise at all times in which they are accused of infringement and immediately prior thereto. Each of the Fifth Third Defendants had a shared community of interest in the object and purpose of the undertaking for which the banking entity known as Fifth Third Bank was being operated/used.

107. On information and belief, each of the Fifth Third Defendants had an equal right to share in the control of the operation of the Fifth Third banking entity during the time of infringement regardless of whether such right was actually exercised.

108. On information and belief, the Fifth Third Defendants controlled at least the operation, planning, and management of the Fifth Third banking entity. On information and belief, the authority exercised by the Fifth Third Defendants over the Fifth Third banking entity included, but was not limited to, control of marketing, human resources management, creation and implementation of policy and procedure manuals used by the Fifth Third banking entity, legal services, and financial, tax, and accounting control through fiscal policies established by the Fifth Third Defendants.

109. On information and belief, these companies operated as a joint venture/enterprise for the purpose of streamlining and furthering their similar business interests and collectively controlled Fifth Third Bank.

110. On information and belief, at all relevant times mentioned herein, the Fifth Third Defendants owned, operated and/or controlled, either directly or through the agency of each other and/or other diverse subalterns, agents, subsidiaries, servants, or employees the operation of Fifth Third Bank.

111. Because the Fifth Third Defendants named herein were engaged in a joint venture/enterprise before and throughout the time of infringement the acts and omissions of each participant in the joint venture/enterprise are imputable to all other participants.

112. Because the Fifth Third Defendants named herein are the alter egos of the other, before and throughout the time of infringement, the acts and omissions of each of the Fifth Third Defendants are imputable to the other Fifth Third Defendants.

113. The actions of the Fifth Third Defendants and each of its servants, agents and employees, as set forth herein, are imputed to each of the Fifth Third Defendants, jointly and severally.

114. On information and belief, Ally Financial Inc. and Ally Bank, among other things, share common officers and directors, have common employees, share office space, have common attorneys, have identical business and operation policies and procedures. Additionally, Ally Bank is wholly owned by Ally Financial Inc.

115. On information and belief, Ally Financial Inc. and Ally Bank have engaged in a business venture for joint profit, including but not limited to the implementation of the Ally Perks program. On information and belief, Ally Financial Inc. and Ally Bank have combined their efforts, property, skill, knowledge, employees, and officer and directors, among other things, for the purpose of undertaking this venture.

116. On information and belief, the Ally Defendants were engaged in a joint venture/enterprise at all times in which they are accused of infringement and immediately prior thereto. Each of the Ally Defendants had a shared community of interest in the object and purpose of the undertaking for which the banking entity known as Ally Bank was being operated/used.

117. On information and belief, each of the Ally Defendants had an equal right to share in the control of the operation of the Ally banking entity during the time of infringement regardless of whether such right was actually exercised.

118. On information and belief, the Ally Defendants controlled at least the operation, planning, and management of the Ally banking entity. On information and belief, the authority exercised by the Ally Defendants over the Ally banking entity included, but was not limited to, control of marketing, human resources management, creation and implementation of policy and procedure manuals used by the Ally banking entity, legal services, and financial, tax, and accounting control through fiscal policies established by the Ally Defendants.

119. On information and belief, these companies operated as a joint venture/enterprise for the purpose of streamlining and furthering their similar business interests and collectively controlled Ally Bank.

120. On information and belief, at all relevant times mentioned herein, the Ally Defendants owned, operated and/or controlled, either directly or through the agency of each other and/or other diverse subalterns, agents, subsidiaries, servants, or employees the operation of Ally Bank.

121. Because the Ally Defendants named herein were engaged in a joint venture/enterprise before and throughout the time of infringement the acts and omissions of each participant in the joint venture/enterprise are imputable to all other participants.

122. Because the Ally Defendants named herein are the alter egos of the other, before and throughout the time of infringement, the acts and omissions of each of the Ally Defendants are imputable to the other Ally Defendants.

123. The actions of the Ally Defendants and each of its servants, agents and employees, as set forth herein, are imputed to each of the Ally Defendants, jointly and severally.

VII. INJUNCTION

124. The allegations of paragraphs 1-123 above are incorporated by reference as if fully set forth herein.

125. Defendants will continue to infringe the '572, '872 and '704 Patents unless enjoined by this Court. TuitionFund therefore requests that this Court enter an order under 35 U.S.C. § 283 preliminarily and permanently enjoining Defendants from continuing to make or use only the infringing merchant funded reward systems or methods described herein.

VIII. DAMAGES

A. Reasonable Royalty

126. The allegations of paragraphs 1-125 above are incorporated by reference as if fully set forth herein.

127. For the above-described infringement, TuitionFund has been injured and seeks damages to adequately compensate it for Defendants' infringement of the Patents-in-Suit as it relates to the First Tennessee Cash Rewards, BB&T Cash Rewards, Comerica EZ Perks, Fiserv UChoose Rewards, Fifth Third Rewards, and the Ally Perks programs, all as described herein. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

B. Enhanced Damages, Attorneys' Fees, and Expenses

128. The allegations of paragraphs 1-127 above are incorporated by reference as if fully set forth herein.

129. TuitionFund contends that Defendants willfully infringed the '872, '572 and '704 Patents as it relates to the First Tennessee Cash Rewards, BB&T Cash Rewards, Comerica EZ

Perks, Fiserv UChoose Rewards, Fifth Third Prewards, and the Ally Perks programs, all as described herein. TuitionFund requests that the Court enter a finding of willful infringement and enhanced damages under 35 U.S.C. § 284 up to three times the amount found by the trier of fact.

130. TuitionFund further requests that the Court enter an order finding that this is an exceptional case within the meaning of 35 U.S.C. §285. Pursuant to such an order TuitionFund seeks recovery of its reasonable attorneys' fees and expenses.

IX. PRAYER FOR RELIEF

131. TuitionFund respectfully requests the following relief:

a. A judgment that the '872, '572 and '704 Patents are infringed, directly and/or indirectly, by Defendants as described herein;

b. A judgment and order preliminarily and permanently enjoining each Defendant, its agents, employees, representatives, successors and assigns, and those acting in privity or in concert with them, from further infringement, contributory infringement and/or inducing infringement of the '872, '572 and '704 Patents as it relates to the First Tennessee Cash Rewards, BB&T Cash Rewards, Comerica EZ Perks, Fiserv UChoose Rewards, Fifth Third Prewards, and the Ally Perks programs, all as described herein;

c. A judgment and order requiring each Defendant to pay TuitionFund damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of the final Judgment with an accounting as needed;


d. A judgment and order requiring each Defendant to pay TuitionFund pre-judgment and post-judgment interest on the damages awarded;

- e. A judgment and order finding this to be an exceptional case and requiring each Defendant to pay the costs of this action (including all disbursements) and attorneys fees as provided by 35 U.S. C. § 285;
- f. Such other and further relief as the Court deems just and proper.

X. JURY DEMANDED

132. TuitionFund requests a jury trial of all issues triable of right by a jury.

Respectfully submitted,



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