

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**CARDSOFT (ASSIGNMENT FOR
THE BENEFIT OF CREDITORS),
LLC,**

Plaintiff,

v.

**FIRST DATA CORPORATION,
FIRST DATA MERCHANT
SERVICES CORPORATION, AND
TASQ TECHNOLOGY, INC.**

Defendants.

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Civil Action No. 2:13-cv-290

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff CARDSOFT (Assignment for the Benefit of Creditors), LLC (“CardSoft”) for its Complaint against Defendants, FIRST DATA CORPORATION, (“First Data”), FIRST DATA MERCHANT SERVICES CORPORATION (“FDMSC”), and TASQ TECHNOLOGY, INC. (“Tasq”) (collectively, “Defendants”), hereby alleges:

THE PARTIES

1. Plaintiff CardSoft (Assignment for the Benefit of Creditors), LLC is a limited liability corporation duly organized and existing under the laws of the state of California with a principal place of business at 1100 La Avenida Street, Bldg. A, Mountain View, California 94043, United States of America.

2. Upon information and belief, Defendant First Data is a limited liability company duly organized and existing under the laws of the state of Delaware with a principal place of

business at 5565 Glenridge Connector, N.E., Suite 2000, Atlanta, Georgia 30342, United States of America.

3. Upon information and belief, Defendant FDMSC is a limited liability company duly organized and existing under the laws of the state of Florida with a principal place of business at 5565 Glenridge Connector, N.E., Suite 2000, Atlanta, Georgia 30342, United States of America.

4. Upon information and belief, Defendant Tasq is a limited liability company duly organized and existing under the laws of the state of California with a principal place of business at 1169 Canton Road, Marietta, GA 30066, United States of America.

JURISDICTION

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

6. This Court has personal jurisdiction over Defendants in that Defendants have sold and/or offered for sale, and/or aided and abetted others in making, selling and/or offering for sale, electronic point-of-sale (“ePOS”) terminals and equipment solutions, as well as Mobile Payment solutions (including, for example and without limitation, First Data SourceConnect TSM and First Data uCommerce Solutions), which are used, offered for sale, sold, and have been purchased in Texas, including in this judicial district. This Court also has personal jurisdiction over Defendants in that Defendants have established sufficient minimum contacts with this judicial district as a result of business conducted within the State of Texas and within this judicial district. The exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice.

VENUE

7. Defendants do business in this district, including providing ePOS terminals and Mobile Payment solutions, which are used, offered for sale, sold, and have been purchased in Texas, including in this judicial district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1331, 1338(a), 1391(b), (c) and (d) and 1400(b).

INFRINGEMENT OF U.S. PATENT NO. 6,934,945

8. On August 23, 2005, United States Patent No. 6,934,945 (“the ’945 patent”) for a “Method and Apparatus for Controlling Communications” was duly and legally issued to Ian Charles Ogilvy. All rights and interest in the ’945 patent have been assigned to the plaintiff, CardSoft. A true and correct copy of the ’945 patent is attached hereto as Exhibit A.

9. Upon information and belief, Defendants First Data, FDSMC, and Tasq have infringed and continue to infringe the ’945 patent. The infringing acts include at least the manufacture, use, sale and/or offer for sale of ePOS terminals and equipment solutions and Mobile Payment solutions (including, for example and without limitation, First Data SourceConnect TSM and First Data uCommerce Solutions), and/or inducing and contributing to the manufacture, use, sale and/or offer for sale of ePOS terminals and equipment solutions and Mobile Payment solutions (including, for example and without limitation, First Data SourceConnect TSM and First Data uCommerce Solutions). Defendants are liable for infringement of the ’945 patent pursuant to 35 U.S.C. § 271 *et seq.*

10. On June 8, 2012, after a jury trial involving the ’945 patent, a jury rendered its verdict in the case in this district captioned CardSoft Inc. et al. v. VeriFone Holdings, Inc. et al. (08-0098)(RSP). The jury held that the ’945 patent was valid and infringed by Hypercom

Corporation, VeriFone Holdings, Inc. and VeriFone, Inc. The VeriFone products that were held to infringe the '945 patent are listed below:

VeriFone Systems, Inc. and VeriFone, Inc.
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Vx 800, Vx 810, Vx 810 Duet, Vx 810 Pinpad, Vx 820, Vx 820 Duet, Vx 700, Vx 610, Vx 670, Vx 680, Vx 570, Vx 510, Vx 510 GPRS, Vx 510 Ethernet, Vx 510 LE and Vx 520); V5 terminal;, Omni 3300, Omni 3300 SE, Omni 3350, Omni 3600, Omni 3600G, Omni 3705, Omni 3710, Omni 3730, Omni 3740 and Omni 3750; the MX family of terminals (including the MX 830 and MX 850 and MX 860 and MX 870 and MX 880)
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11. Since June 8, 2012, Defendants have continued to sell VeriFone products listed above that have been adjudicated to infringe the '945 patent, including but not limited to: VeriFone's Omni 3730, Omni 3750, Vx610, Vx570 and Vx510. These acts represent willful patent infringement by Defendants for which Cardsoft is entitled to damages.

10. Defendants' acts of infringement have caused damage to CardSoft, and CardSoft is entitled to recover from Defendants the damages sustained by CardSoft as a result of Defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement of CardSoft's rights under the '945 patent continues to cause damage to CardSoft's business.

11. Upon information and belief, Defendants' infringement of the '945 patent has been and continues to be willful and deliberate. As a result, CardSoft is entitled to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

INFRINGEMENT OF U.S. PATENT NO. 7,302,683

12. On November 27, 2007, United States Patent No. 7,302,683 ("the '683 patent") for a "Method and Apparatus for Controlling Communications" was duly and legally issued to

Ian Charles Ogilvy. All rights and interest in the '683 patent have been assigned to the plaintiff, CardSoft. A true and correct copy of the '683 patent is attached hereto as Exhibit B.

13. Upon information and belief, Defendants have infringed and continue to infringe the '683 patent. The infringing acts include at least the manufacture, use, sale and/or offer for sale of ePOS terminals and equipment solutions and Mobile Payment solutions (including, for example and without limitation, First Data SourceConnect TSM and First Data uCommerce Solutions), and/or inducing and contributing to the manufacture, use, sale and/or offer for sale of ePOS terminals and equipment solutions and Mobile Payment solutions (including, for example and without limitation, First Data SourceConnect TSM and First Data uCommerce Solutions). Defendants are liable for infringement of the '683 patent pursuant to 35 U.S.C. § 271 *et seq.*

14. On June 8, 2012, after a jury trial involving the '683 patent, a jury rendered its verdict in the case in this district captioned CardSoft Inc. et al. v. VeriFone Holdings, Inc. et al. (08-0098)(RSP). The jury held that the '683 patent was valid and infringed by Hypercom Corporation, VeriFone Holdings, Inc. and VeriFone, Inc. The VeriFone products that were found to infringe the '683 patent are listed below:

VeriFone Systems, Inc. and VeriFone, Inc.
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Vx 800, Vx 810, Vx 810 Duet, Vx 810 Pinpad, Vx 820, Vx 820 Duet, Vx 700, Vx 610, Vx 670, Vx 680, Vx 570, Vx 510, Vx 510 GPRS, Vx 510 Ethernet, Vx 510 LE and Vx 520); V5 terminal;, Omni 3300, Omni 3300 SE, Omni 3350, Omni 3600, Omni 3600G, Omni 3705, Omni 5 3710, Omni 3730, Omni 3740 and Omni 3750; the MX family of terminals (including the MX 830 and MX 850 and MX 860 and MX 870 and MX 880)
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15. Since June 8, 2012, Defendants have continued to sell VeriFone products listed above that have been adjudicated to infringe the '683 patent, including but not limited to: VeriFone's Omni 3730; Omni 3750; Vx610; Vx570; and Vx510. These acts represent willful patent infringement by Defendants for which Cardsoft is entitled to damages.

16. Defendants' acts of infringement have caused damage to CardSoft, and CardSoft is entitled to recover from Defendants the damages sustained by CardSoft as a result of Defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement of CardSoft's rights under the '683 patent continues to cause damage to CardSoft's business.

17. Upon information and belief, Defendants' infringement of the '683 patent has been and continues to be willful and deliberate. As a result, CardSoft is entitled to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, CardSoft prays for judgment and seeks relief against the Defendants as follows:

- (a) For judgment that the claims of the '945 patent and the '683 patent have been and/or continue to be infringed by such Defendants;
- (b) For an accounting of all damages sustained by CardSoft as the result of such Defendants' acts of infringement;
- (c) For actual damages together with, prejudgment interest, according to proof;
- (d) For enhanced damages pursuant to 35 U.S.C. § 284;
- (e) For an award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;
- (f) For all costs of suit; and
- (g) For such other and further relief as the Court may deem just and proper.

Date: September 30, 2013

Respectfully submitted:

By: /s/ William E. Davis, III
William E. Davis, III
Texas State Bar No. 24047416
THE DAVIS FIRM, PC
111 West Tyler Street
Longview, Texas 75601
Telephone: (903) 230-9090
Facsimile: (903) 230-9661
Email: bdavis@bdavisfirm.com

Barry Golob
COZEN O'CONNOR
The Army and Navy Building
1627 I Street, NW, Suite 1100
Washington, D.C. 20006
Email: bgolob@cozen.com

**ATTORNEY FOR PLAINTIFF CARDSOFT
(ASSIGNMENT FOR BENEFIT OF
CREDITORS), LLC**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 30th day of September, 2013.

/s/ William E. Davis, III
William E. Davis, III