

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

TYLER DIVISION

SECURE AXCESS, LLC,

Plaintiff,

v.

**SANTANDER BANK, N.A., f/k/a/
SOVEREIGN BANK, NATIONAL
ASSOCIATION,**

Defendant.

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Civil Action No. 6:13-CV-723

JURY TRIAL DEMANDED

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff Secure Axxess, L.L.C. (“Secure Axxess”) and files this Amended Complaint for Patent Infringement against Defendant Santander Bank, N.A., f/k/a/ Sovereign Bank, National Association, 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 **Secure Axxess, L.L.C.** is a Texas limited liability company that maintains its principal place of business in Plano, Texas.

3. Defendant **Santander Bank, N.A.** is a nationally chartered banking association that does business in Texas and maintains its principal place of business in Boston,

Massachusetts. On or about October 17, 2013, Sovereign Bank, National Association changed its name to Santander Bank, N.A. (“Santander Bank”).

III. JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has specific personal jurisdiction over Santander Bank pursuant to due process and the Texas Long Arm Statute because Santander Bank, directly or through intermediaries, has conducted and does conduct substantial business in this forum, such substantial business including but not limited to: (i) at least a portion of the infringements alleged herein; (ii) purposefully and voluntarily placing one or more infringing products or services into the stream of commerce with the expectation that they will be purchased by consumers in this forum; and/or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(d) and 1400(b) for the reasons set forth above. Furthermore, venue is proper because Santander Bank, directly or through intermediaries, solicits and establishes online banking relationships with individuals in this District and, through those online banking relationships, provides infringing products or services as discussed below. Each of Santander Bank’s directly or indirectly infringing acts in this District gives rise to proper venue.

IV. BACKGROUND

7. This cause of action asserts infringement of United States Patent No. 7,631,191 B2 entitled “System and Method for Authenticating a Web Page” (the “’191 Patent” or the “Patent-in-Suit”), a true and correct copy of which is attached hereto as Exhibit A.

8. Secure Axxess is the current owner of all rights, title, and interest in and under the ’191 Patent, which duly and legally issued on December 8, 2009, with Elliott Glazer, Dirk White, David Armes, Fred Alan Bishop, and Michael Barrett as the named inventors. United States Patent Application No. 11/423,340, which resulted in the ’191 Patent, is a continuation of United States Patent Application No. 09/656,074, which resulted in United States Patent No. 7,203,838 B1 (the “’838 Patent”). The ’191 Patent is subject to a terminal disclaimer. Secure Axxess has standing to sue for the infringement of the ’191 Patent.

9. On December 16, 2010, Secure Axxess asserted the ’191 Patent in this Court against 33 defendants in *Secure Axxess, LLC v. Bank of America Corp., et al.*, Case No. 6:10-cv-670-LED (E.D. Tex.) (the “*Bank of America* case”).

10. On July 9, 2012, this Court issued a Memorandum Opinion and Order in the *Bank of America* case, construing the disputed claim terms of the ’191 Patent. A true and correct copy of that Order is attached hereto as Exhibit B.

11. The Court held its pre-trial conference in the *Bank of America* case on April 30, 2013 and scheduled jury selection and trial for May 13, 2013. However, on May 7, 2013, Secure Axxess notified the Court that all parties had reached agreements in principle that would resolve all pending claims in that case, and the *Bank of America* case was dismissed with prejudice on July 15, 2013.

12. Santander Bank offers banking services to individuals and businesses in the United States including Texas, and particularly within this District. Santander Bank provides online banking services via electronic means including, but not limited to, the website www.santanderbank.com (formerly www.sovereignbank.com), which incorporates features referred to as “Santander Secure Access with personalized image and phrase” and as “Sovereign Secure Access Personal Security Image and Phrase.” In connection with these online banking services, Santander Bank makes and uses a system and method for authenticating a web page that infringe at least claim 1 of the ’191 Patent.

V. CLAIMS

13. Based on the above-described services and products, Secure Axxess asserts several causes of action against Santander Bank. These causes of action are detailed as follows.

A. Direct Patent Infringement

14. The allegations of paragraphs 1-13 above are incorporated by reference as if fully set forth herein.

15. Santander Bank has directly infringed and continues to infringe at least claim 1 of the ’191 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling, and/or offering to sell in the United States, without Secure Axxess’s authority, its online banking services website that uses the patented systems and methods for authenticating a web site. Santander Bank’s use of website authenticity, including but not limited to the features referred to as “Santander Secure Access with personalized image and phrase” and as “Sovereign Secure Access Personal Security Image and Phrase,” infringes at least claim 1 of the ’191 Patent. Santander Bank’s online banking services website is directed to and accessible from this District.

B. Inducement of Patent Infringement

16. The allegations of paragraphs 1-15 above are incorporated by reference as if fully set forth herein.

17. Further and in the alternative, at least since the filing of this Complaint, Santander Bank has been and now is actively inducing infringement of at least claim 1 of the '191 Patent in violation of 35 U.S.C. § 271(b). Santander Bank's inducements include, without limitation and with specific intent to encourage the infringement, providing its online banking services website that uses, without authority, the patented systems and methods and requiring users of its website to use and instructing its users how to use the features referred to as "Santander Secure Access with personalized image and phrase" and as "Sovereign Secure Access Personal Security Image and Phrase," which Santander Bank knows or should know infringe at least claim 1 of the '191 Patent.

VI. VICARIOUS LIABILITY

18. The allegations of paragraphs 1-17 above are incorporated by reference as if fully set forth herein.

19. In addition to liability for its own independent conduct, Santander Bank is also liable for the conduct of its subsidiaries, affiliates, and related entities under the doctrines of alter ego and single business enterprise, and under applicable state and federal statutes and regulations.

VII. NOTICE

20. The allegations of paragraphs 1-19 above are incorporated by reference as if fully set forth herein.

21. At least by filing and serving the Original Complaint for Patent Infringement, Secure Axxess has given Santander Bank written notice of its infringement.

VIII. DAMAGES

22. The allegations of paragraphs 1-21 above are incorporated by reference as if fully set forth herein.

23. For the above-described infringement, Secure Axxess has been injured and seeks damages to adequately compensate it for Santander Bank's infringement of the '191 Patent. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

PRAYER FOR RELIEF

Secure Axxess respectfully requests the following relief:

a. A judgment in favor of Secure Axxess that Santander Bank has directly or indirectly infringed the '191 Patent, whether literally or under the doctrine of equivalents, as described herein;

b. A judgment and order requiring Santander Bank to pay Secure Axxess its damages, costs, expenses, and pre-judgment and post-judgment interest for Santander Bank's infringement of the '191 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed; and

c. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff requests a jury trial of all issues triable of right by a jury.

Respectfully submitted,



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Counsel for Plaintiff Secure Access, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been delivered to all counsel of record via the Court's CM/ECF service on this 27th day of January, 2014.



Derek T. Gilliland