

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

2014 MAY 28 P 4:09

TLI COMMUNICATIONS LLC,

Plaintiff,

v.

CAPITAL ONE FINANCIAL CORPORATION,
CAPITAL ONE, N.A., and
CAPITAL ONE SERVICES, LLC

Defendants.

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA
Civil Action No. 2:14cv250 HCM

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff TLI Communications LLC (“TLI”) files this Complaint for Patent Infringement against Capital One Financial Corporation (“COFC”), Capital One, N.A. (“CONA”), and Capital One Services, LLC (“COSLLC”) (collectively “Capital One” or “Defendants”), wherein, pursuant to 35 U.S.C. §§ 271 and 281, Plaintiff seeks a judgment of infringement by Defendants of U.S. Patent Nos. 6,038,295 (the “’295 Patent”), damages resulting therefrom pursuant to 35 U.S.C. § 284, as well as a preliminary and permanent injunction of the infringing activity pursuant to 35 U.S.C. § 283, and such other relief as the Court deems just and proper, and in support thereof alleges as follows:

The Parties

1. Plaintiff TLI is a Delaware limited liability company with its principal place of business at 3422 Old Capitol Trail, Suite 72, Wilmington, Delaware 19808.

2. Defendant COFC is a corporation organized under the laws of the State of Delaware, with its principal place of business at 1680 Capital One Drive, McLean, Virginia 22102.

3. Defendant CONA is a National Association with its principal place of business at 1680 Capital One Drive, McLean, Virginia 22102. CONA is a wholly owned subsidiary of Defendant COFC.

4. Defendant COSLLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 1680 Capital One Drive, McLean, Virginia 22102. COSLLC is a wholly owned subsidiary of Defendant CONA.

Jurisdiction and Venue

5. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action concerns infringement of a United States patent.

7. This Court has personal jurisdiction over COFC because COFC is located in this district and it conducts substantial business in this district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business in this district, engaging in other persistent courses of conduct in this district, deriving substantial revenue from goods and services provided to individuals in this district, and/or maintaining continuous and systematic contacts with this district.

8. This Court has personal jurisdiction over CONA because CONA is located in this district and it conducts substantial business in this district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or

soliciting business in this district, engaging in other persistent courses of conduct in this district, deriving substantial revenue from goods and services provided to individuals in this district, and/or maintaining continuous and systematic contacts with this district.

9. This Court has personal jurisdiction over COSLLC because COSLLC is located in this district and it conducts substantial business in this district, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business in this district, engaging in other persistent courses of conduct in this district, deriving substantial revenue from goods and services provided to individuals in this district, and/or maintaining continuous and systematic contacts with this district.

10. Venue is proper in this judicial district as to Defendants pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, each is subject to personal jurisdiction in this district, each is located in this district, they each have facilities and employees in this district, and each has committed and continues to commit acts of patent infringement in this district. For example, Defendants have used, sold, offered for sale, and/or imported infringing products and services in this district. For example, Defendants provide infringing web pages and software in this district, and thus directly infringes the '295 Patent in this district, and, to the extent any claim is construed to require a system, (i) Defendants put that system into use in this district by providing infringing web pages and software in this district, and thus directly infringes the '295 Patent in this district and elsewhere, (ii) Defendants provide key components of the system to their customers in this district and thus contributorily infringes the '295 Patent in this district and elsewhere, and/or (iii) Defendants induce their customers to use the system and to put the system into use, and thus induces infringement of the '295 Patent in this district and elsewhere.

Joinder

11. Defendants CONA and COSLLC are each owned directly or indirectly by Defendant COFC.

12. Defendants are in the business of providing, among other things, direct internet banking services via websites including home.capitalone360.com. Defendants collectively offer customers the ability to upload images to Defendants' web servers. As explained in more detail below, Defendants collectively operate their web servers in a manner that infringes the '295 Patent, by archiving and storing digital images received from cellular telephones.

13. Defendants are properly joined under 35 U.S.C. §299(a)(1) because a right to relief is asserted against the parties jointly, severally, and in the alternative with respect to the same transactions, occurrences, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, and/or selling the same accused products, namely the operation of Defendants' image-uploading platforms.

14. Defendants are properly joined under 35 U.S.C. §299(a)(2). Questions of fact will arise that are common to all Defendants, including for example, whether Defendants' products have features that meet the features of one or more claims of the '295 Patent, the design, operation and maintenance of Defendants' servers, attributed revenues, advertising revenues, and what reasonable royalty will be adequate to compensate TLI for Defendants' infringement of the '295 Patent.

15. At least one right to relief is asserted against Defendants jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences related to the making, using, importing into the United States, offering for sale, or selling of the same accused product and/or process.

The Patent-in-Suit

16. TLI is the owner of the '295 Patent entitled "Apparatus and Method for Recording, Communicating and Administering Digital Images," which the United States Patent & Trademark Office lawfully and duly issued on March 14, 2000. A true and correct copy of the '295 Patent is attached hereto as Exhibit A.

Factual Background

17. Dr. Heinz Mattes is the named inventor of the '295 patent.

18. The '295 patent has a priority date of June 17, 1996. The '295 patent was originally assigned to Siemens Aktiengesellschaft of Munich, Germany. TLI is the current owner of the '295 patent via assignment.

19. In the mid 1990's, Dr. Mattes, while working as a scientist for Siemens, recognized that mobile telephony and digital photography, each then in their infancy, would likely become more and more popular. Dr. Mattes recognized that mobile telephones could be integrated with digital cameras, resulting in a proliferation of the quantity of digital images that could and would be taken.

20. Dr. Mattes invented a revolutionary way of communicating and recording such digital images, which allowed numerous images to be simply and quickly recorded, tracked, accessed and transmitted.

21. In 1996, Dr. Mattes' invention was among the winners of a Siemens idea competition, leading to Siemens initiating a project to develop a cellular telephone with an integrated camera.

22. The '295's patented inventions are applicable to the uploading and organization of digital images from a telephone. Over the past few years, smart cellular telephones that

incorporate sophisticated digital cameras have exploded in popularity, as have websites and mobile applications provided by retail banks that allow their customers to deposit checks by taking digital images of those checks and uploading them to bank servers. Today, thousands of digital images of checks are uploaded onto retail bank computer servers every day, including onto Capital One servers. Capital One's products use the '295's patented technology, without license or authority, to classify those images so that they can be easily uploaded, stored, organized and retrieved.

Capital One's Infringing Products

23. Capital One owns and operates Capital One 360, an Internet bank that is accessible, for example, on the World Wide Web at the web address home.capitalone360.com and through mobile applications on smart telephones. Capital One offers CheckMate, which is a service that allows Capital One 360 customers to deposit checks into Capital One 360 accounts by using a mobile telephone to upload a digital image of a check onto Capital One servers.¹ Capital One's revenues are attributed to, among other things, fees and investments generated from retail banking products which include checking accounts, savings accounts, home loans, and investment management.

24. Capital One purports that "Capital One 360 [is] the nation's largest direct bank..."² Capital One further purports that as of June 11, 2013 Capital One 360 has 7.5 million savings account customers.³

¹ See <https://home.capitalone360.com/lp-deposits> ("Whether you're at home or on the go, deposit your checks directly into your Capital One 360 accounts...Use our mobile app to snap a picture of your check.")

² [http://phx.corporate-ir.net/phoenix.zhtml?c=70667&p=irol-newsArticle_Print&ID=1900753&highlight=.](http://phx.corporate-ir.net/phoenix.zhtml?c=70667&p=irol-newsArticle_Print&ID=1900753&highlight=)

³ See <https://home.capitalone360.com/savings-account-demo>.

25. Capital One offers websites, software and downloadable applications, especially designed for mobile devices having telephones, including iPhone and Android mobile telephones, and other mobile telephone platforms, which allow telephone users to easily characterize and upload digital images to Capital One servers. Capital One's website can be directly accessed from many mobile telephones, which allows the uploading of digital images characterized with user-information. In addition, Capital One provides downloadable applications, which also provide for uploading digital images to Capital One servers. Capital One entices its users to upload digital images by providing easy-to-use platforms and instructions, and Capital One stores and archives the digital images uploaded to its servers using the characterization information provided by its users. As a result, customers are attracted to bank with Capital One 360 where they can easily deposit checks by uploading images of those checks to Capital One servers, resulting in more customers choosing to bank with Capital One 360 and more deposits being made into accounts held by Capital One 360, and increased revenues to Capital One.

CLAIM FOR RELIEF

(Defendants' Infringement of the '295 Patent)

26. TLI incorporates by reference paragraphs 1 through 25 of the Complaint as if set forth here in full.

Direct Infringement

27. Capital One has been and is currently directly infringing one or more claims of the '295 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, the aforementioned platforms that upload and store digital images from mobile devices having telephones. For example, and without

limitation, Capital One has directly infringed and continues to directly infringe the '295 Patent in this judicial district and elsewhere in the United States. Capital One's infringement includes, without limitation, (i) making and using the apparatus of claim 1 and claims dependent thereon, and (ii) practicing the method of claim 17 and claims dependent thereon.

28. Specifically, Capital One's direct infringement includes, without limitation (i) its uploading of digital images from mobile devices having telephones onto Capital One servers (or onto servers operated on or for Capital One's behalf ("Capital One servers")), (ii) its testing of its Capital One products by uploading images from mobile devices having telephones onto Capital One servers within the United States, and (iii) its maintaining Capital One servers that categorize and store images that were uploaded via mobile devices having telephones. Capital One also directs and/or controls its employees, executives, customers and agents to use the aforementioned digital image uploading platforms to upload images from mobile devices having telephones onto Capital One servers within the United States.

29. To the extent that claim 1 of the '295 Patent is construed to require a system with a claim element not practiced by Capital One, Capital One would also directly infringe claim 1 at least because it directs and/or controls the practicing of all claim elements or because it places the invention into service. For example, Capital One provides platforms and software to mobile telephone users that provide and enable image uploading, thereby putting the invention into service.⁴ Moreover, Capital One directs and/or controls the practicing of all claim elements, as shown for example, by Capital One entering into contracts with its users, Capital One instructing its users how to upload digital images from mobile devices having telephones, Capital One uploading digital images from mobile devices having telephones onto its servers during testing,

⁴ See, e.g., <https://itunes.apple.com/us/app/capital-one-mobile/id407558537?mt=8> ("Capital One 360 Customers: Make mobile check deposits with CheckMate").

Capital One automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and Capital One automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

30. To the extent that claim 17 of the '295 Patent is construed to require a method with a step not practiced by Capital One, Capital One would also directly infringe claim 17 at least because it directs and/or controls the practicing of all claimed steps. Capital One directs and/or controls the practicing of all claim elements, as shown for example, by Capital One entering into contracts with its users, Capital One instructing its users how to upload digital images from mobile devices having telephones, Capital One uploading digital images from mobile devices having telephones onto its servers during testing, Capital One automatically tagging digital images that it uploads onto its servers from mobile devices having telephones with characterization information of the users, and Capital One automatically archiving the digital images that it uploads onto its servers with characterization information of the users.

31. At least as a result of the computer software and hardware that performs these activities, Capital One is liable for literal direct infringement of the '295 Patent pursuant to 35 U.S.C. § 271(a).

32. To the extent that any fact finder deems any of the elements of the '295 patent claims not literally satisfied by the structure or use of the Capital One platform, these elements are satisfied under the doctrine of equivalents.

Indirect Infringement

33. Alternatively, and in addition to its liability for direct infringement of the '295 Patent, Capital One is also liable for indirectly infringing the '295 Patent in this judicial district

and elsewhere in the United States by inducing direct infringement in violation of 35 U.S.C. § 271(b) and contributing to direct infringement in violation of 35 U.S.C. § 271(c).

34. Upon Capital One's knowledge of the '295 patent (at least since the filing date of this Complaint), Capital One is inducing and contributing to the infringement of the '295 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, agents and affiliates to make, use, sell and/or offer for sale its digital uploading platforms and software in a manner that constitutes infringement of one or more claims of the '295 Patent. Upon Capital One gaining knowledge of the '295 patent, it was, or became, apparent to Capital One that the operation of its digital image uploading platforms and software resulted in infringement of the '295 Patent. On information and belief, Capital One has continued to engage in the aforementioned activities constituting inducement of infringement, notwithstanding its knowledge (or willful blindness thereto) that the activities it was inducing result in infringement of the '295 patent.

35. Upon Capital One's knowledge of the '295 patent (at least since the filing date of this Complaint), the direct infringement induced and contributed to by Capital One includes at least the uploading of digital images from mobile devices having telephones to Capital One servers by end users acting alone or in combination with Capital One. For example, and without limitation, to the extent that claim 1 is construed to require a system with the system placed into service by a user who uploads digital images from a mobile device having a telephone (and it is determined that Capital One does not direct and/or control that user), the user would be considered to be a direct infringer of claim 1. Capital One knows that these users are infringing the '295 Patent and Capital One has specific intent to encourage the users to infringe the '295 Patent. As another example, to the extent that claim 17 is construed to require a method with

steps performed by one or more entities other than Capital One, for example, a user (and it is determined that Capital One does not direct and/or control these entities), Capital One induces those entities to perform those infringing acts, knowing that the acts constitute infringement of the '295 Patent and with specific intent to encourage those acts and encourage infringement.

36. Upon Capital One's knowledge of the '295 patent (at least since the filing date of this Complaint), Capital One encourages direct infringement of the '295 Patent at least by widely publicizing its mobile check deposit service, by providing image-uploading software, by automatically tagging images uploaded from mobile devices having telephones, by automatically characterizing images with user information when uploaded from mobile devices having telephones, by providing image storage, by storing images uploaded from mobile devices having telephones according to user-characterization information, by providing image-uploading, downloadable applications for mobile devices having telephones, and by providing instructions for conducting the directly infringing use of uploading digital images from mobile devices.⁵

37. Upon Capital One's knowledge of the '295 patent (at least since the filing date of this Complaint), Capital One induces infringement at least by encouraging, facilitating and instructing users to use the '295 Patent's inventions by uploading digital images to Capital One servers from mobile devices having telephones. Capital One does this by providing image uploading software and platforms (including downloadable applications for mobile devices having telephones) to its users, and by instructing its users how to upload images to Capital One servers, thereby inducing the use of the claimed inventions.

⁵ See, e.g., <https://helpcenter.capitalone360.com/bnk/Topic.aspx?category=MOBILEBAS> (Capital One 360's help center which provides instructions on how to deposit checks by taking a digital image of the check using a mobile device).

38. Upon Capital One's knowledge of the '295 patent (at least since the filing date of this Complaint), Capital One is inducing infringement of the '295 Patent by, among other things, knowingly and with specific intent, actively encouraging its customers, suppliers, agents and affiliates to make, use, sell and/or offer for sale the aforementioned Capital One image uploading platforms in a manner that constitutes infringement of one or more claims of the '295 Patent, knowing that such activities infringe at least one claim of the '295 Patent, and with the knowledge and specific intent to encourage, direct and facilitate those infringing activities, including through the creation and dissemination of promotional and marketing materials, instructional materials, product materials and technical materials.⁶

39. By continuing to induce its customers', suppliers', users', agents' and affiliates' use of the methods claimed in the '295 Patent and their making and/or using the aforementioned Capital One image uploading platforms, Capital One is indirectly infringing under 35 U.S.C. § 271(b) one or more claims of the '295 Patent, either literally or under the doctrine of equivalents.

40. Upon Capital One's knowledge of the '295 patent (at least since the filing date of this Complaint), Capital One contributes to the '295 Patent's direct infringement by, among other things, knowingly and with specific intent, actively encouraging its customers, suppliers, agents, users and affiliates to make, use, sell and/or offer for sale Capital One's aforementioned image uploading platforms and services that constitutes infringement of at least claims 1 and 17 of the '295 Patent. For example, to the extent that any claim is construed to require a system, Capital One provides components, including image-uploading, downloadable applications, for

⁶ See, e.g., <http://www.youtube.com/watch?v=3slpniNu-V4> (Video instructions provided by Capital One 360 demonstrating how "easy it is" to deposit checks by taking a digital image of a check, characterizing that check by adding a memo, and uploading the digital image to Capital One by using Capital One's mobile app).

use in systems, which facilitate the uploading of digital images from mobile devices having telephones. Capital One knows that such products constitute a material part of the inventions of the '295 Patent, knows those products to be especially made or adapted to infringe the '295 Patent, and knows that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use. Capital One knows that by providing such components to its customers, its customers will infringe at least one claim of the '295 Patent, and Capital One knows that its customers do infringe the '295 Patent. Capital One image uploading software has no substantial non-infringing uses. For example, it is not possible for a user to upload an image to a Capital One server that lacks characterization information, or for Capital One to store the image without using characterization information.

41. By continuing to contribute to its customers', suppliers', agents', users' and affiliates' use of the methods claimed in the '295 Patent and their making and/or using the aforementioned Capital One image uploading platforms, Capital One is indirectly infringing under 35 U.S.C. § 271(c) one or more claims of the '295 Patent, either literally or under the doctrine of equivalents.

271(f) Infringement

42. Capital One is liable for infringement under 35 U.S.C. § 271(f) when the end user is outside the United States by supplying its software components for combination outside the United States.

Joint Infringement

43. Alternatively, the actions alleged above establish joint infringement of at least claims 1 and 17 by Capital One and its customers, users, suppliers, agents and affiliates for which they should be found jointly and severally liable.

Remedy for Capital One's Infringement

44. As a result of Capital One's unlawful infringement of the '295 Patent, TLI has suffered and will continue to suffer damage. TLI is entitled to recover from Capital One the damages adequate to compensate for such infringement, which have yet to be determined.

45. Capital One will continue to infringe the '295 Patent unless and until it is enjoined by this Court.

46. Capital One's acts of infringement have caused and will continue to cause irreparable harm to TLI unless and until Capital One is enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, TLI prays for a Judgment in favor of TLI and against Defendants as follows:

- A. That Defendants have directly infringed the '295 Patent;
- B. That Defendants have indirectly infringed the '295 Patent;
- C. That Defendants and their customers, users, suppliers, agents and affiliates have jointly infringed the '295 Patent;
- D. Preliminarily and permanently enjoining Defendants and their affiliates, subsidiaries, officers, directors, employees, agents, representatives, licensees, successors, assigns, and all those acting for them and on their behalf, or acting in concert with them directly or indirectly, from further acts of infringement of the '295 Patent;
- E. A full accounting for and an award of damages to TLI for Defendants' infringement of the '295 Patent; including enhanced damages pursuant to 35 U.S.C. § 284, together with pre- and post-judgment interest;
- F. That this case is "exceptional" within the meaning of 35 U.S.C. § 285;

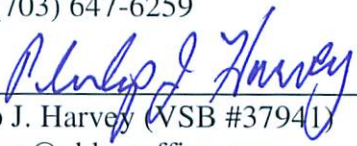
- G. An award of TLI's reasonable attorneys' fees, expenses, and costs; and
- H. A grant of such other and further equitable or legal relief as this Court deems proper.

DEMAND FOR JURY TRIAL

TLI hereby demands trial by jury on all issues so triable.

Dated: May 28, 2014

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