

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

**OLIVISTAR LLC,**

**Plaintiff,**

**v.**

**PNC BANK, N.A.,**

**Defendant.**

**CIVIL ACTION NO. 2:15-cv-330**

**JURY TRIAL DEMANDED**

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**PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff Olivistar LLC (“Plaintiff” or “Olivistar”), by and through its undersigned counsel, files this First Amended Complaint against Defendant PNC Bank, N.A. (“Defendant” or “PNC”) as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action to stop Defendant’s infringement of United States Patent No. 7,606,843 (“the ‘843 patent”, a copy of which is attached hereto as Exhibit A) entitled “System and Method for Customizing the Storage and Management of Device Data in a Networked Environment” and United States Patent No. 8,239,347 (“the ‘347 patent” a copy of which is attached hereto as Exhibit B) entitled “System and Method for Customizing the Storage and Management of Device Data in a Networked Environment”. Plaintiff is the owner by assignment of the ‘843 and ‘347 patents. Plaintiff seeks monetary damages and injunctive relief.

**PARTIES**

2. Plaintiff is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff maintains its principal place of business at 2150 S. Central Expressway, Suite 200, McKinney, Texas 75070.

3. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at One PNC Plaza, 249 Fifth Avenue, 21<sup>st</sup> Floor, Pittsburgh, Pennsylvania 15222. Defendant can be served with process through its registered agent Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

### **JURISDICTION AND VENUE**

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant because: Defendant is present within or has minimum contacts within the State of Texas and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

6. More specifically, Defendant, directly and/or through intermediaries, ships, distributes, uses, offers for sale, sells, and/or advertises products and services in the United States, the State of Texas, and the Eastern District of Texas including but not limited to the Accused Instrumentalities as detailed below. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits and has solicited customers in the State of Texas and in the Eastern District of

Texas. Defendant has paying customers who are residents of the State of Texas and the Eastern District of Texas and who each use and have used the Defendants' products and services in the State of Texas and in the Eastern District of Texas.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b). On information and belief, Defendant has transacted business in this district, and has directly committed acts of patent infringement in this district.

**COUNT I – INFRINGEMENT OF PATENT 7,606,843**

8. Plaintiff refers to and incorporates herein the allegations of Paragraphs 1-7 above.

9. The '843 patent was duly and legally issued by the United States Patent and Trademark Office on October 20, 2009 after full and fair examination. Plaintiff is the owner by assignment of the '843 patent and possesses all rights of recovery under the '843 patent, including the exclusive right to sue for infringement and recover past damages and obtain injunctive relief.

10. Defendant owns, uses, operates, advertises, controls, sells, and otherwise provides methods and/or systems that infringe the '843 patent. The '843 patent provides, among other things, "In a system including monitoring devices generating monitoring device data, an archive server processing the archival of monitoring device data and a client computer, a method of selectively archiving monitoring device data based on an archival profile, the method comprising: (1) obtaining incoming monitoring device data, wherein the incoming monitoring device data is characterized by one or more archival attributes; (2) obtaining an archival profile for selectively archiving the incoming monitoring device data; (3) determining whether the archival profile is associated with one or more archival attributes of the incoming monitoring device data; (4) if the archival profile is associated with one or more archival attributes:

processing the incoming monitoring device data having one or more archival attributes that match the archived profile into a compressed format; (5) and selectively storing the incoming monitoring device data in the compressed format on a storage medium; (6) wherein the archival attribute from which the archival profile selectively stores incoming monitoring device data is one selected from the group of file type, monitoring device identifier, and monitoring device type that collected the incoming monitoring device data.”

11. Defendant directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products that infringed one or more claims of the ‘843 patent in this district and elsewhere in the United States. Particularly, Defendant makes, uses, provides, offers for sale, and sells their service and product entitled Online/Mobile Check Deposit System (“Accused Instrumentality”) which directly infringes the ‘843 patent.

12. Defendant’s aforesaid activities have been without authority and/or license from Plaintiff.

13. In addition to what is required for pleadings under Form 18 for direct infringement in patent cases, and to the extent any marking was required by 35 U.S.C. § 287, Plaintiff and all predecessors in interest to the ‘843 patent complied with all marking requirements under 35 U.S.C. § 287.

14. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of the Defendant’s wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**COUNT II – INFRINGEMENT OF PATENT 8,239,347**

15. Plaintiff refers to and incorporates herein the allegations of Paragraphs 1-14 above.

16. The '347 patent August 7, 2012 after full and fair examination. Plaintiff is the owner by assignment of the '347 patent and possesses all rights of recovery under the '347 patent, including the exclusive right to sue for infringement and recover past damages and obtain injunctive relief.

17. Defendant owns, uses, operates, advertises, controls, sells, and otherwise provides methods and/or systems that infringe the '347 patent. The '347 patent provides, among other things, "A computer-readable medium having computer executable instructions for selectively archiving monitoring device data based on an archival profile, the instructions performing a method of: (1) obtaining incoming monitoring device data, wherein the incoming monitoring device data is characterized by one or more archival attributes; (2) obtaining an archival profile for selectively archiving the incoming monitoring device data; (3) determining whether the archival profile is associated with one or more archival attributes of the incoming monitoring device data; (4) if the archival profile is associated with one or more archival attributes: processing the incoming monitoring device data having one or more archival attributes that match the archived profile into a compressed format; (5) and selectively storing the incoming monitoring device data in the compressed format on a storage medium."

18. Defendant directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products that infringed one or more claims of the '347 patent in this district and elsewhere in the United States. Particularly, Defendant makes, uses, provides, offers for sale, and sells their service and product entitled

Online/Mobile Check Deposit System (“Accused Instrumentality”) which directly infringes the ‘347 patent.

19. Defendant’s aforesaid activities have been without authority and/or license from Plaintiff.

20. In addition to what is required for pleadings under Form 18 for direct infringement in patent cases, and to the extent any marking was required by 35 U.S.C. § 287, Plaintiff and all predecessors in interest to the ‘347 patent complied with all marking requirements under 35 U.S.C. § 287.

21. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of the Defendant’s wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

### **JURY DEMAND**

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

### **PRAYER FOR RELIEF**

Plaintiff respectfully requests that the Court find in its favor and against the Defendant, and that the Court grant Plaintiff the following relief:

- A. A judgment in favor of Plaintiff that Defendant has infringed one or more of the claims, directly, and/or jointly, of the ‘843 patent and/or the ‘347 patents;
- B. A permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and their officers, directors, agents servants, affiliates, employees, divisions, branches,

subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '843 patent and/or the '347 patent, or such other equitable relief the Court determines is warranted;

- C. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- D. That, should Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- E. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285; and
- F. Any further relief that this Court deems just and proper.

Dated: May 26, 2015

Respectfully submitted,

By: /s/ Austin Hansley  
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