

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

NATIONAL BANK	§	
d/b/a THE NATIONAL BANK OF	§	
CENTRAL TEXAS	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION No. 6:15-cv-00249
	§	
PLANO ENCRYPTION TECHNOLOGIES,	§	
LLC	§	
	§	
Defendant.	§	

ORIGINAL COMPLAINT

National Bank, d/b/a The National Bank of Central Texas (“NATIONAL BANK”), Plaintiff, brings this action against Plano Encryption Technologies (“PET”), Defendant, for declaratory judgment of non-infringement and invalidity of U.S. Patent rights.

I.
PARTIES

1. NATIONAL BANK, a national banking association, has a principal place of business at 905 East Main Street, Gatesville, Texas 76528.

2. PET is a Texas Limited Liability Company, with a principle place of business at 903 18th Street, Suite 224, Plano, Texas 75074 and may be served by their registered agent Bradley Liddle at the same address.

II.
JURISDICTION AND VENUE

3. This is an action for declaratory judgment, pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 in that the action arises under the Patent Laws of the United States, Title 35, United States Code.

5. This Court has personal jurisdiction over PET, at least in part because PET has asserted claims and rights against NATIONAL BANK in this District and Division, as set forth in more detail hereafter. Venue lies properly within this District pursuant to 28 U.S.C. § 1391, et seq.

III. **FACTS**

6. NATIONAL BANK is involved in the business of banking.

7. On information and belief, PET contacted NATIONAL BANK for the first time on July 10, 2015 alleging ownership of U.S. Patents 5,974,550, 5,991,399, and 6,587,858, (“PET Patents”) and infringement by NATIONAL BANK of various claims of the PET Patents.

8. A true and correct copy of PET’s infringement allegation letter of July 10, 2015 (“PET Letter”) is attached hereto as **Exhibit A**. A true and correct copy of U.S. Patent 5,974,550 is attached hereto as **Exhibit B** (“ ‘550 Patent”), U.S. Patent 5,991,399 is attached hereto as **Exhibit C** (“ ‘399 Patent”), and U.S. Patent 6,587,858 is attached hereto as **Exhibit D** (“ ‘858 Patent”).

9. On information and belief, NATIONAL BANK had no knowledge of the PET Patents or any prior suits by PET related thereto prior to receiving the PET Letter.

10. The PET Letter states PET “actively licenses and enforces its patent rights,” including recently filing a lawsuit against “Citizens National Bank for infringement of the technology covered by these patents. *Plano Encryption Technologies, LLC v. Citizens National*

Bank, Civ. No. 2:15-cv-1168 (E.D. Tex.).” Citizens National Bank is unrelated to the present Plaintiff, NATIONAL BANK.

11. PET specifically alleges NATIONAL BANK’s mobile apps infringe at least claims 1, 9, 29, and 37 of the ‘399 Patent, claims 14-17 of the ‘550 Patent, and claim 6 of the ‘858 Patent, as illustrated by a claim chart included in the PET Letter.

12. PET alleges “there is a good faith basis to believe that [NATIONAL BANK] is infringing the claims as illustrated in the Exhibits to this letter.”

13. PET has performed cost and royalty calculations in preparation for filing a patent infringement lawsuit to the extent PET claims a non-exclusive license “would be a fraction of a reasonable royalty calculation [PET] would otherwise be entitled to as damages for patent infringement.”

14. PET’s Letter creates an immediate apprehension on NATIONAL BANK’s part of impending litigation and other actions which threaten its business, its reputation in the marketplace, and ability to further expand and develop its business and market.

15. On information and belief, each of the PET Patents and their respective claims are invalid and/or unenforceable upon one or more bases, including, without limitation: (a) covering only an abstract idea (and, therefore, purporting to cover non-patentable subject matter pursuant to 35 U.S.C. § 101); (b) failing to claim any novel invention pursuant to 35 U.S.C. § 102; (c) failing to claim any unobvious invention pursuant to 35 U.S.C. § 103; (d) failing to provide an enabling disclosure and/or definite claims in compliance with 35 U.S.C. § 112; and/or (e) failure by inventors, counsel of record and/or owners of beneficial interests to comply with their respective duties of candor to the United States Patent & Trademark Office.

IV.
COUNTS

COUNT I -- DECLARATORY JUDGMENT OF NON-INFRINGEMENT

16. NATIONAL BANK repeats, incorporates by reference, and re-alleges paragraphs 1-15, above, as though fully set forth herein.

17. NATIONAL BANK hereby requests a declaratory judgment that no product made, sold, provided to any third party, acquired or otherwise related in any manner to NATIONAL BANK infringes either literally or under any application of the doctrine of equivalents, any valid claim of any patent owned by PET, inclusive of the '399, '550 and '858 Patents, nor supports any claim for inducement of infringement or any claim for contributory infringement of any claim of any such patent owned by PET, inclusive of the '399, '550 and '858 Patents.

18. NATIONAL BANK hereby requests a declaratory judgment that no activity now or heretofore carried out by or on behalf of NATIONAL BANK, infringes either literally or under any application of the doctrine of equivalents, any valid claim of any patent owned by PET, inclusive of the '399, '550 and '858 Patents, nor supports any claim for inducement of infringement or any claim for contributory infringement of any claim of any such patents owned by PET, inclusive of the '399, '550 and '858 Patents.

COUNT II -- DECLARATORY JUDGMENT OF INVALIDITY AND/OR UNENFORCEABILITY

19. NATIONAL BANK repeats, incorporates by reference, and re-alleges paragraphs 1-15, above, as though fully set forth herein.

20. NATIONAL BANK hereby requests a declaratory judgment that each of the '399, '550 and '858 Patents and their respective claims are invalid and/or unenforceable upon one or

more bases, including, without limitation: (a) covering only an abstract idea (and, therefore, purporting to cover non-patentable subject matter pursuant to 35 U.S.C. § 101); (b) failing to claim any novel invention pursuant to 35 U.S.C. § 102; (c) failing to claim any unobvious invention pursuant to 35 U.S.C. § 103; (d) failing to provide an enabling disclosure and/or definite claims in compliance with 35 U.S.C. § 112; and/or (e) failure by inventors, counsel of record and/or owners of beneficial interests to comply with their respective duties of candor to the United States Patent & Trademark Office.

JURY TRIAL DEMAND

In accordance with Rules 38 and 39 of the Federal Rules of Civil Procedure, NATIONAL BANK assert its rights under the Seventh Amendment of the United States Constitution and demands a trial by jury on all issues triable to a jury.

V. **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff, NATIONAL BANK, prays that the court enter judgement against PET as follows:

A. Declaring that no product made, sold, provided to any third party, acquired or otherwise related in any manner to NATIONAL BANK, and no activity now or heretofore carried out by or on behalf of NATIONAL BANK infringes either literally or under any application of the doctrine of equivalents, any valid claim of any patent owned by PET, inclusive of the '399, '550 and '858 Patents, nor supports any claim for inducement of infringement or any claim for contributory infringement of any claim of any such patent owned by PET, inclusive of the '399, '550 and '858 Patents.

B. Declaring that each of the '399, '550 and '858 Patents and their respective claims are invalid and/or unenforceable upon one or more bases, including, without limitation 35 U.S.C.

§§ 101, 102, 103, 112, and/or application of the duty of candor.

C. Declaring that PET has suffered no damage as a result of any act or omission of NATIONAL BANK.

D. Award NATIONAL BANK its expenses, costs, and attorneys' fees pursuant to 35 U.S.C. § 285.

E. Award such other and further relief as the Court deems just and proper.

Respectfully Submitted

By: /s/ David G. Henry, Sr.

David G. Henry, Sr.
State Bar No. 09479355
dhenry@grayreed.com
Michael D. Ellis
State Bar No. 24081586
mellis@grayreed.com
1300 Post Oak Blvd., Suite 2000
Houston, Texas 77056
(713) 986-7000
(713) 986-7100 (Facsimile)
GRAY REED & MCGRAW, P.C.

**ATTORNEYS FOR PLAINTIFF,
NATIONAL BANK**