

and is being further brought under the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202. An actual, substantial and continuing justiciable controversy of sufficient immediacy and reality exists between Broadway and PET that requires a declaration of rights by this Court.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over PET. On information and belief, PET is a Texas limited liability company with a principal place of business in Plano, Texas; it has purposefully availed itself of the privileges of conducting business in the State of Texas; and it has sought protection and benefit from the laws of the State of Texas. Further, PET has asserted claims and rights against Broadway in this District, as set forth in more detail below.

6. Venue is proper in the Western District of Texas under 28 U.S.C. §1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in, and a substantial part of property that is the subject of the action is situated in the Western District of Texas. Alternatively, venue is also proper in the Western District of Texas under 28 U.S.C. §1391(b)(1), because PET is subject to personal jurisdiction in Texas and the Western District of Texas with respect to the claim.

FACTS

7. Broadway is involved in the business of banking. Broadway has 39 branches in the Austin/San Antonio south central Texas area.

8. On information and belief, PET is a patent licensing company that neither makes nor sells any products or services.

9. On information and belief, PET purports to be the owner of U.S. Patent No. 5,991,399 (the "'399 Patent"). The '399 Patent is entitled "Method for Securely Distributing a

Conditional Use Private Key to a Trusted Entity on a Remote System.” A copy of the ’399 Patent is attached as **Exhibit A**.

10. On information and belief, PET purports to be the owner of U.S. Patent No. 5,974,550 (the “’550 Patent”). The ’550 Patent is entitled “Method for Strongly Authenticating Another Process in a Different Address Space.” A copy of the ’550 Patent is attached as **Exhibit B**.

11. On information and belief, PET purports to be the owner of U.S. Patent No. 6,587,858 (the “’858 Patent”). The ’858 Patent is entitled “Systems and Methods for the Control of Dynamic Data and Request Criteria in a Data Repository.” A copy of the ’858 Patent is attached as **Exhibit C**.

12. Collectively, the ’399 Patent, ’550 Patent and ’858 Patent will be referred to as the “Patents-in-Suit.”

13. In a letter directed to Broadway, dated July 10, 2015, PET alleged ownership of the Patents-in-Suit and accused Broadway of allegedly infringing various claims of the Patents-in-Suit. A true and correct copy of PET’s infringement allegation letter of July 10, 2015 (“PET’s Letter”) and the included exhibits to such letter are attached hereto as **Exhibit D**. In this letter, PET asserted that Broadway’s “mobile apps” infringe at least claims 1, 9, 29, and 37 of the ’399 Patent and at least claims 14-17 of the ’550 Patent and that Broadway’s “online banking features” infringe at least claim 6 of the ’858 Patent. PET’s Letter further alleges that “there is a good faith basis to believe that [Broadway] is infringing the claims as illustrated in the Exhibits to this letter.”

14. PET’s letter states that PET “actively licenses and enforces its patent rights and has recently filed 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.).” And, on information and belief, PET has since filed lawsuits against three other banks, alleging infringement of the ’399 Patent and the ’550 Patent: *Plano Encryption Technologies, LLC v. American Bank of Texas*, Civ. No. 2:15-cv-1273 (E.D. Tex.); *Plano Encryption Technologies, LLC v. Independent Bank*, Civ. No. 2:15-cv-1382 (E.D. Tex.); and *Plano Encryption Technologies, LLC v. Guaranty Bank & Trust, N.A.*, Civ. No. 2:15-cv-1480 (E.D. Tex.).

15. Broadway has not and does not infringe any of the Patents-in-Suit.

16. The foregoing facts and circumstances give rise to a reasonable apprehension of litigation on the part of Broadway. There is now existing an actual, substantial justiciable controversy between the parties with respect to the alleged infringement of the Patents-in-Suit.

COUNT 1: NON-INFRINGEMENT OF THE ’399 PATENT

17. Broadway hereby incorporates by reference its allegations contained in paragraphs 1 through 16 of this Complaint as though fully set forth herein.

18. Broadway does not infringe the ’399 Patent, directly or indirectly, either literally or under the doctrine of equivalents.

19. An actual, substantial and justiciable controversy exists regarding the alleged infringement of the ’399 Patent by Broadway. Broadway seeks a declaration that it does not infringe, directly or indirectly, either literally or under the doctrine of equivalents, any claim of the ’399 Patent.

20. A judicial declaration is necessary and appropriate at this time in order that Broadway may ascertain its rights and duties with respect to the ’399 Patent.

COUNT 2: NON-INFRINGEMENT OF THE '550 PATENT

21. Broadway hereby incorporates by reference its allegations contained in paragraphs 1 through 16 of this Complaint as though fully set forth herein.

22. Broadway does not infringe the '550 Patent, directly or indirectly, either literally or under the doctrine of equivalents.

23. An actual, substantial and justiciable controversy exists regarding the alleged infringement of the '550 Patent by Broadway. Broadway seeks a declaration that it does not infringe, directly or indirectly, either literally or under the doctrine of equivalents, any claim of the '550 Patent.

24. A judicial declaration is necessary and appropriate at this time in order that Broadway may ascertain its rights and duties with respect to the '550 Patent.

COUNT 3: NON-INFRINGEMENT OF THE '858 PATENT

25. Broadway hereby incorporates by reference its allegations contained in paragraphs 1 through 16 of this Complaint as though fully set forth herein.

26. Broadway does not infringe the '858 Patent, directly or indirectly, either literally or under the doctrine of equivalents.

27. An actual, substantial and justiciable controversy exists regarding the alleged infringement of the '858 Patent by Broadway. Broadway seeks a declaration that it does not infringe, directly or indirectly, either literally or under the doctrine of equivalents, any claim of the '858 Patent.

28. A judicial declaration is necessary and appropriate at this time in order that Broadway may ascertain its rights and duties with respect to the '858 Patent.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38, Broadway demands a trial by jury on all issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Broadway prays for a judgment against PET as follows:

- A. A declaration that Broadway has not and does not infringe any claim of the Patents-in-Suit, directly or indirectly, literally or under the doctrine of equivalents;
- B. A declaration that this case is exceptional within the meaning of 35 U.S.C § 285;
- C. An award of costs and attorneys' fees and expenses to Broadway; and
- D. Such other and further relief as the Court deems just and proper.

Dated: November 20, 2015

Respectfully submitted,

By: /s/ Steven Sprinkle

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