

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

RUBY SANDS LLC,

Plaintiff,

v.

TEXAS CAPITAL BANK, N.A.,

Defendant.

Case No.

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Ruby Sands LLC (“Ruby Sands”) demands a jury trial and complains against Defendant Texas Capital Bank, N.A. (“Texas Capital”).

THE PARTIES

1. Ruby Sands is a limited liability company organized and existing under the laws of the State of Texas, conducting business in this judicial district.

2. Upon information and belief, Texas Capital is a company organized and existing under the laws of the State of Texas having its headquarters located at 2000 McKinney Avenue, Suite 700, Dallas, Texas 75201, and conducting business in this judicial district.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States of America, Title 35 of the United States Code. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

4. Ruby Sands is informed and believes, and based thereon alleges, that Texas Capital is doing business and committing acts of infringement of the patent identified below in this judicial district, and is subject to personal jurisdiction in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENTS

6. On May 10, 2005, U.S. Patent No. 6,891,633 (“the ‘633 Patent”) was duly and legally issued to Xerox Corporation, naming Ken Hayward, Marc J. Krolczyk, Dawn M. Marchionda, Thomas L. Wolf and James S. Laird as the inventors. The ‘633 Patent claims an invention entitled “Image Transfer System”. On November 25, 2015, Xerox assigned all right, title and interest in and to the ‘633 Patent to Ruby Sands. A copy of the ‘633 Patent is attached to this Complaint as Exhibit 1.

7. The ‘633 Patent is directed to a novel image transfer system comprising a transfer device which can be operably connected to a computer. The system includes a reader for reading an image on a first medium, and a display for displaying an image transfer menu for effecting transfer of the image to perform a selected function. For example, the reader can be a mobile electronic device used to take a photograph of a first medium, i.e., check, and then offer on the display of the mobile electronic device a menu of different actions that can be selected to effect a particular task, e.g. deposit the check into a particular bank account.

COUNT I

DIRECT INFRINGEMENT BY TEXAS CAPITAL

8. Ruby Sands repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 7 above.

9. Ruby Sands is informed and believes, and based thereon alleges, that Texas Capital makes, uses, tests, markets and sells or otherwise provides an image transfer system that

uses a reader for reading an image on a first medium, and a display for displaying an image transfer menu to perform a selected function, i.e., the Texas Capital BankDirect Mobile App.

10. Ruby Sands is informed and believes, and based thereon alleges, that the Texas Capital BankDirect Mobile App is designed to read and transfer images using a reader for reading an image on a first medium, and a display for displaying an image transfer menu to effectuate a particular banking task.

11. Ruby Sands is informed and believes, and based thereon alleges, that the Texas Capital BankDirect Mobile App infringes claims of the '633 Patent, including without limitation at least claims 1 and 12, literally and/or under the doctrine of equivalents, in violation of Ruby Sands' rights.

COUNT II

TEXAS CAPITAL'S INDIRECT INFRINGEMENT

12. Ruby Sands repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 11 above.

13. Ruby Sands is informed and believes, and based thereon alleges, that the Texas Capital BankDirect Mobile App is designed specifically to read and transfer images in a manner that infringes the claims of the '633 Patent, including without limitation at least claims 1 and 12 thereof.

14. Ruby Sands is informed and believes, and based thereon alleges, that the Texas Capital BankDirect Mobile App is material for reading and transferring images in a manner that infringes the claims of the '633 Patent.

15. Ruby Sands is informed and believes, and based thereon alleges, that the Texas Capital BankDirect Mobile App uses an assembly for reading and transferring images that infringes the claims of the '633 Patent.

16. Ruby Sands is informed and believes, and based thereon alleges, that the Texas Capital BankDirect Mobile App does not have substantial non-infringing uses.

17. At <https://play.google.com/store/apps/details?id=com.texascapitalbankbankdirect3359.mobile.production>, Texas Capital advertises how its BankDirect Mobile App can be used to “[d]eposit checks with your phone or tablet.”

18. Ruby Sands is informed and believes, and based thereon alleges, that Texas Capital has investigated the '633 Patent and became aware, or should have become aware, that the Texas Capital BankDirect Mobile App infringes the '633 Patent.

19. Ruby Sands is informed and believes, and based thereon alleges, that Texas Capital has been advertising and offering for use by its customers the infringing the Texas Capital BankDirect Mobile App after it became aware that it infringed the '633 Patent, and will continue with such infringing activities.

20. Ruby Sands is informed and believes, and based thereon alleges, that Texas Capital has been selling or otherwise providing the Texas Capital BankDirect Mobile App to its customers with the specific knowledge of the '633 Patent and the specific knowledge that the Texas Capital BankDirect Mobile App is and will be used to infringe the '633 Patent, and that Texas Capital will continue such infringing activities.

21. Texas Capital is jointly responsible with each of its customers for the infringement of the '633 Patent, through the use of the Texas Capital BankDirect Mobile App.

22. Texas Capital contributes to the infringement and induces infringement of the '633 Patent based on its marketing, sale, distribution and teaching to its customers how to use the Texas Capital BankDirect Mobile App, and Texas Capital's own actions in assisting its customers in the operation of the Texas Capital BankDirect Mobile App.

23. Texas Capital has been and is actively inducing the infringement of the '633 Patent by encouraging its customers to use the Texas Capital BankDirect Mobile App, that has no substantial non-infringing use and is material for enabling delivery of emergency messages over disparate networks in a manner that constitutes direct infringement of the claims of the '633 Patent. Texas Capital has been and continues doing so with knowledge of the '633 Patent and with the specific intent that its customers use the Texas Capital BankDirect Mobile App in a manner that constitutes direct infringement of the claims of the '633 Patent.

24. Texas Capital has been and is contributorily infringing the '633 Patent by providing to its customers its BankDirect Mobile App, which has no substantial non-infringing use and is material for enabling delivery of emergency messages over disparate networks in a manner that constitutes direct infringement of the claims of the '633 Patent. Texas Capital has been and continues doing so with knowledge of the '633 Patent and with the specific intent that its customers use the Texas Capital BankDirect Mobile App in a manner that constitutes direct infringement of the claims of the '633 Patent.

25. Texas Capital customers have been using the Texas Capital BankDirect Mobile App in a manner that constitutes infringement of the claims of the '633 Patent.

26. Texas Capital assists its customers with their infringing uses of the Texas Capital BankDirect Mobile App, including without limitation teaching its customer how to operate the

Texas Capital BankDirect Mobile App, supporting its operation and providing testing, support and maintenance for the Texas Capital BankDirect Mobile App.

27. Ruby Sands has been and is being damaged by the foregoing activities of Texas Capital and its customers which infringe the '633 Patent, and will be irreparably harmed unless such infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ruby Sands prays for judgment against Defendant Texas Capital on all the counts and for the following relief:

- A. Declaration that the Ruby Sands is the owner of the right to sue and to recover for infringement of the '633 Patent being asserted in this action;
- B. Declaration that Texas Capital has directly infringed, actively induced the infringement of, and/or contributorily infringed the '633 Patent;
- C. Declaration that Texas Capital and its customers are jointly or severally responsible for the damages from infringement of the '633 Patent through the use of the Texas Capital BankDirect Mobile App;
- D. Declaration that Texas Capital is responsible jointly or severally with its customers for the damages caused by the infringement of the '633 Patent through the use of the Texas Capital BankDirect Mobile App, by the Texas Capital's customers;
- E. A preliminary and permanent injunction against Texas Capital, each of its officers, agents, servants, employees, and attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons acting in active concert or participation with them, including distributors, enjoining them from continuing

acts of direct infringement, active inducement of infringement, and contributory infringement of the '633 Patent;

- F. An accounting for damages under 35 U.S.C. § 284 for infringement of the '633 Patent by Texas Capital, and the award of damages so ascertained to Ruby Sands together with interest as provided by law;
- G. Award of Ruby Sands' costs and expenses;
- H. Award of Ruby Sands' attorney fees; and
- I. Such other and further relief as this Court may deem proper, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff Ruby Sands demands a trial by jury of all issues properly triable by jury in this action.

Dated: November 30, 2015

Respectfully submitted,

By: /s/Jean-Marc Zimmerman
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