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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

	)	
FIRST DATA CORPORATION and FRANK	)	<b>Civil Action No.: 2:15-cv-08301-KM-JBC</b>
BISIGNANO,	)	
	)	ECF Case
Plaintiffs,	)	
v.	)	<b>FIRST AMENDED COMPLAINT AND</b>
	)	<b>DEMAND FOR TRIAL BY JURY</b>
ERIC INSELBERG and INSELBERG	)	
INTERACTIVE, LLC,	)	<b>Document electronically filed</b>
	)	
Defendants.	)	
	)	

Plaintiffs, First Data Corporation and Frank Bisignano (collectively “Plaintiffs”), through their undersigned attorneys, by way of First Amended Complaint against Defendants, Eric Inselberg and Inselberg Interactive, LLC (collectively “Defendants”), allege as follows:

**THE PARTIES**

1. Plaintiff First Data Corporation (“First Data”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 5565 Glenridge Connector NE, Suite 2000, Atlanta, GA 30342.

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\* *Pro hac vice* applications to be submitted.

2. Plaintiff Frank Bisignano (“Bisignano”), an individual, is a resident of the State of New Jersey and the County of Somerset, residing at 20 Jared Court, Watchung, NJ 07069. Bisignano is currently the Chief Executive Officer of First Data.

3. On information and belief, Defendant Eric Inselberg (“Inselberg”), an individual, is a resident of the State of New Jersey and the County of Hudson, residing at 26 Avenue at Port Imperial, West New York, NJ 07093.

4. On information and belief, Defendant Inselberg Interactive, LLC (“Interactive”) is a limited liability company organized and existing under the laws of the State of New Jersey, having a mailing address at P.O. Box 833, Short Hills, NJ 07078. On information and belief, Inselberg is the Managing Member of Interactive.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over the matters asserted herein under 28 U.S.C. §§ 1331 and 1338(a) because this action involves a claim arising under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, relating to the patent laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has subject matter jurisdiction over the remaining claims asserted herein under 28 U.S.C. § 1367 because they form part of the same case or controversy.

6. This Court has personal jurisdiction over Inselberg because he resides in New Jersey.

7. This Court has personal jurisdiction over Interactive because it is a limited liability company organized and existing under the laws of New Jersey.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391 because all Defendants reside or are located in this district and a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this district.

**FACTUAL BACKGROUND**

**I. BISIGNANO’S \$500,000 LOAN TO INTERACTIVE**

9. On or about August 17, 2010, Bisignano entered into a series of agreements with Interactive and Inselberg under which Bisignano agreed to loan \$500,000 to Interactive.

10. A true and correct copy of the Loan Agreement between Bisignano and Interactive and Inselberg is attached as Exhibit 1.

11. A true and correct copy of the Note between Bisignano and Interactive is attached as Exhibit 2.

12. A true and correct copy of the Guaranty between Bisignano and Interactive and Inselberg is attached as Exhibit 3.

13. A true and correct copy of the Security Agreement on Patents between Bisignano and Interactive is attached as Exhibit 4. On information and belief, the Security Agreement on Patents was recorded at the United States Patent and Trademark Office on September 7, 2010.

14. As set forth in the Loan Agreement, the Note, the Guaranty, and the Security Agreement identified above (collectively, the “Loan Documents”), Bisignano’s loan to Interactive (the “Loan”) was secured by, *inter alia*, several U.S. patents purportedly owned by Interactive and all reissues, continuations, continuations-in-part, and extensions of those patents (“the Inselberg Patents”).

15. The Inselberg Patents currently consist of the following issued U.S. patents:

- 1) U.S. Patent Number 6,434,398 (“the ‘398 patent”);
- 2) U.S. Patent Number 6,650,903 (“the ‘903 patent”);
- 3) U.S. Patent Number 6,760,595 (“the ‘595 patent”);
- 4) U.S. Patent Number 6,975,878 (“the ‘878 patent”);
- 5) U.S. Patent Number 6,996,413 (“the ‘413 patent”);

- 6) U.S. Patent Number 7,123,930 (“the ‘930 patent”);
- 7) U.S. Patent Number 7,248,888 (“the ‘888 patent”);
- 8) U.S. Patent Number 7,263,378 (“the ‘378 patent”);
- 9) U.S. Patent Number 7,424,304 (“the ‘304 patent”);
- 10) U.S. Patent Number 7,522,930 (“the ‘930 patent”);
- 11) U.S. Patent Number 7,587,214 (“the ‘214 patent”);
- 12) U.S. Patent Number 7,693,532 (“the ‘532 patent”);
- 13) U.S. Patent Number 7,792,539 (“the ‘539 patent”);
- 14) U.S. Patent Number 7,797,005 (“the ‘7005 patent”);
- 15) U.S. Patent Number 7,856,242 (“the ‘242 patent”);
- 16) U.S. Patent Number 7,860,523 (“the ‘523 patent”);
- 17) U.S. Patent Number 8,023,977 (“the ‘977 patent”);
- 18) U.S. Patent Number 8,131,279 (“the ‘279 patent”);
- 19) U.S. Patent Number 8,213,975 (“the ‘975 patent”);
- 20) U.S. Patent Number 8,412,172 (“the ‘172 patent”);
- 21) U.S. Patent Number 8,423,005 (“the ‘3005 patent”); and
- 22) U.S. Patent Number 9,143,828 (“the ‘828 patent”).

## **II. INTERACTIVE DEFAULTS ON THE LOAN AND ASSIGNS THE INSELBERG PATENTS TO BISIGNANO**

16. At some point after Bisignano made the Loan to Interactive as alleged in this Complaint, Inselberg was indicted for mail fraud. Thereafter, Interactive failed to make payments on the Loan in accordance with his obligations under the Loan Documents. The indictment against Inselberg was subsequently dismissed; however, Interactive remains in default of its obligations under the Loan Documents.

17. Following Interactive's default on the Loan, Bisignano, Interactive, and Inselberg entered into an Agreement effective as of April 2, 2012 ("the Assignment Agreement") whereby Interactive and Inselberg assigned the Inselberg patents to Bisignano in partial payment and satisfaction of Interactive's indebtedness under the Loan Documents.

18. A true and correct copy of the Assignment Agreement is attached as Exhibit 5.

19. In the Assignment Agreement, Interactive and Inselberg acknowledged that the "Agreement effects a complete and unconditional transfer of such patents and patent applications," thereby extinguishing and waiving any obligations owed by Bisignano to Inselberg by virtue of the prior collateral assignment resulting from Interactive's default.

20. Interactive and Inselberg further represented in the Assignment Agreement that "Interactive is the owner of all right, title, and interest in, to, and under the Transferred IP [the Inselberg Patents] free and clear of all security interests, liens, claims and other encumbrances except for any security interest held by Bisignano" and that "no transfer has been made to any third party of any right, title, or interest in, to, or under the Transferred IP, including, without limitation, any license whether exclusive or non-inclusive."

21. Pursuant to the terms of the Assignment Agreement, Interactive executed a patent Assignment ("the Assignment") that assigned to Bisignano the entire right, title, and interest in and to the Inselberg Patents. The Assignment was made effective as of April 2, 2012, and was recorded at the United States Patent and Trademark Office on May 21, 2013.

22. A true and correct copy of the Assignment is attached as Exhibit 6.

23. As of the April 2, 2012 effective date of the Assignment, pursuant to the express terms of the Assignment and the Assignment Agreement, Bisignano owned the entire right, title

and interest in and to the Inselberg Patents. These rights included the right to license the Inselberg Patents.

24. Thereafter, Bisignano learned that Interactive and Inselberg's representation in the Assignment Agreement that "no transfer has been made to any third party of any right, title, or interest in, to, or under the Transferred IP, including, without limitation, any license whether exclusive or non-inclusive" was false. On information and belief, when the Assignment Agreement was executed, Inselberg was the exclusive licensee of the Inselberg Patents within a defined field.

25. Accordingly, Inselberg and Interactive entered into an Agreement to Amend and Terminate Patent Portfolio License Agreement ("the License Termination"). On information and belief, the License Termination was designed to cure Inselberg's false representation in the Assignment Agreement. The License Termination was not signed until February 24, 2015, but was made effective as of April 2, 2012.

26. A true and correct copy of the License Termination is attached as Exhibit 7.

27. The License Termination states, "[A]n Assignment of Licensor's [Interactive's] Patent Portfolio, effective as of April 2, 2012, was signed by Licensee [Inselberg] in his capacity as Managing Member of Licensor on January 29, 2013, transferring all rights and title to the Patent Portfolio to a third-party assignee." Thus, as of February 24, 2015, both Inselberg and Interactive acknowledged that the Assignment Agreement and Assignment transferred to Bisignano all rights and title to the Inselberg Patents.

### **III. INSELBERG AND INTERACTIVE ALLEGE OWNERSHIP OF THE INSELBERG PATENTS AND INFRINGEMENT BY FIRST DATA**

28. Although Inselberg and Interactive willingly executed the Assignment Agreement and Assignment, conveying all ownership and interest in the Inselberg Patents to Bisignano,

Inselberg subsequently disputed the validity of the Assignment Agreement, alleging that (1) the Assignment Agreement is invalid under New Jersey law; (2) Inselberg and Interactive, and not Bisignano, currently own, and at all times since April 2, 2012 have owned, the Inselberg Patents; and (3) First Data and its wholly owned subsidiary, Perka, Inc., infringe the Inselberg Patents (presumably in an effort to threaten Bisignano and First Data).

29. On October 31, 2014, Inselberg met with Bisignano. During that meeting, Inselberg alleged that First Data practiced the Inselberg Patents and proposed that First Data purchase or seek an exclusive license to the Inselberg Patents.

30. Thereafter, on November 18, 2014, Inselberg sent First Data a “claim chart” purporting to show how First Data and its subsidiaries infringe the ‘975 patent.

31. Notwithstanding Inselberg’s allegations, First Data does not and has never practiced or infringed any of the Inselberg Patents.

32. Nevertheless, after Inselberg made those allegations, in order to secure First Data’s legal rights with respect to the Inselberg Patents, Bisignano exercised his right, as the undisputed owner by assignment of the Inselberg Patents, to grant a royalty-free license in the Inselberg Patents to First Data and its subsidiaries (the “First Data License”).

33. Inselberg, however, contended that the Assignment Agreement and the First Data License were void. On December 3, 2014, Inselberg, through his counsel Brian C. Brook (“Brook”), sent a letter to First Data, stating, “I do not believe the patent assignment Agreement (the ‘Agreement’) between Eric and Mr. Bisignano is valid.” Brook alleged that the Agreement is invalid “[u]nder black letter New Jersey contract law” and “as a matter of law, void.” The letter further stated, “Any attempts by Mr. Bisignano to assign or license the patents unilaterally without

Eric's approval would be voidable by Eric. The same goes for any attempts to waive or release claims for past or ongoing infringement.”

34. On December 14, 2014, Brook sent a second letter to First Data, reiterating his position that “the previous agreement [the Assignment Agreement] needs to be clarified because its present form is not valid.” Nevertheless, Brook did not pursue the issue further at that time because he was “confident that this is in the process of being resolved amicably.”

35. On September 18, 2015, Brook again contacted First Data regarding attempts to monetize the Inselberg Patents, this time with threats to sue both Bisignano and First Data. The September 18 letter again expressed Brook's view that the Assignment Agreement has “severe problems” and “would likely be deemed void *ab initio*,” and threatened to “proceed to file a lawsuit against Mr. Bisignano on behalf of Mr. Inselberg and Inselberg Interactive.” In particular, Brook threatened to seek “a declaratory judgment that any and all licenses authorized by Mr. Bisignano without Mr. Inselberg's express consent are null and void. I am of course referring primarily to the license that Mr. Bisignano issued to First Data, *free of charge*.” Brook closed the letter by requesting a response by September 25, 2015 “if Mr. Bisignano and/or First Data wish to avoid being named as a defendant in the near future.”

36. In an October 2, 2015 e-mail, Brook again raised the issue of the First Data License, claiming that First Data “was identified as an infringing party and potential licensee,” and that Bisignano “is therefore liable for damages amounting to *at least* 1/3 of the fair market value of the license.”



#### **IV. INSELBERG AND INTERACTIVE SERVE DRAFT COMPLAINTS AGAINST BISIGNANO AND FIRST DATA**

37. Following unsuccessful attempts to resolve the dispute without judicial intervention, on October 9, 2015, Inselberg and Interactive's counsel sent Bisignano and First Data a draft complaint (the "October Complaint"), captioned in the Superior Court of New Jersey.

38. The October Complaint restated the assertions previously voiced by Brook that "the Assignment Agreement is invalid, and should be declared null and void." The October Complaint thus requested a "judicial declaration that the Assignment Agreement is invalid, null and void, or voidable" and that "Plaintiffs are the true and rightful owners of the Patents, with all of the exclusive rights and privileges attendant thereto, including the right to sue for patent infringement."

39. In addition to the claims against Bisignano, the October Complaint included claims against First Data, requesting a judicial declaration "that the First Data License was null and void or voidable by Plaintiffs, that the First Data License has been actually or constructively voided by Plaintiffs, [and] that the First Data License does not insulate First Data or any of its subsidiaries or affiliates from potential past, present or future liability...."

40. The October Complaint also included a claim against First Data and/or its subsidiaries for infringement of the '975 patent, based on the claim chart previously provided to First Data by Inselberg, seeking money damages and an injunction.

41. On November 19, 2015, Inselberg and Interactive's counsel sent Bisignano and First Data a second draft complaint (the "November Complaint"), to be filed in the Superior Court of New Jersey. Inselberg and Interactive's counsel stated that he intended to file the November Complaint on November 30, 2015.

42. The November Complaint reiterated the allegation that the Assignment Agreement was invalid and “should be declared null and void” and that “Inselberg and Interactive had continuing interests in the Patents” notwithstanding the agreement. The November Complaint further alleged that Bisignano breached a fiduciary duty to Inselberg and Interactive by failing “to protect the Patents’ Owner’s rights and remedies against infringers.”

43. The November Complaint further asserts several causes of action and alleges that Inselberg and Interactive are entitled to damages for “the loss of reasonable royalties from the First Data license” and “overall diminution in the sale value of the Patents,” including the potential reduction in “a ‘reasonable royalty’ that a court would award as damages for infringement of the Patents by other infringing parties.” Specifically, the November Complaint alleges that Inselberg and Interactive are entitled to between \$570 million and \$798 million in reasonable royalties attributable to the First Data license. The November Complaint acknowledges that such damages are “based on the factors frequently considered by federal courts for purposes of calculating patent infringement damages based on a hypothetical reasonable royalty rate.”

44. On December 2, 2015, days after this action was filed, Inselberg and Interactive filed a complaint in the Superior Court of New Jersey (the “December Complaint”). The core allegations of the December Complaint mirror those of the November Complaint. Notably, the December Complaint maintains that the Assignment Agreement is “null and void,” that “Plaintiffs have retained an interest in the Patents at all times since they were assigned to Bisignano,” and that Inselberg and Interactive are entitled to damages reflecting “the loss of reasonable royalties from the First Data License” and the potential reduction in “a ‘reasonable royalty’ that a court would award as damages for infringement of the Patents by other infringing parties.”

45. As demonstrated by Inselberg and Interactive's draft complaints, an actual case or controversy exists between the parties regarding the validity of the Assignment Agreement and the First Data License, the ownership of the Inselberg Patents, the alleged infringement of the Inselberg Patents, and any reasonable royalties owed for that infringement.

## **V. THE INSELBERG PATENTS**

46. On August 13, 2002, the United States Patent and Trademark Office issued the '398 patent, entitled "Method and apparatus for interactive audience participation at a live spectator event." The '398 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '398 patent is attached as Exhibit 8. Interactive and Inselberg have alleged that they have an ongoing interest in the '398 patent.

47. On November 18, 2003, the United States Patent and Trademark Office issued the '903 patent, entitled "Method and apparatus for interactive audience participation at a live spectator event." The '903 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '903 patent is attached as Exhibit 9. Interactive and Inselberg have alleged that they have an ongoing interest in the '903 patent.

48. On July 6, 2004, the United States Patent and Trademark Office issued the '595 patent, entitled "Method and apparatus for interactive audience participation at a live spectator event." The '595 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '595 patent is attached as Exhibit 10. Interactive and Inselberg have alleged that they have an ongoing interest in the '595 patent.

49. On December 13, 2005, the United States Patent and Trademark Office issued the '878 patent, entitled "Method and apparatus for interactive audience participation at a live spectator event." The '878 patent lists Eric Inselberg as the sole inventor. A true and correct copy

of the '878 patent is attached as Exhibit 11. Interactive and Inselberg have alleged that they have an ongoing interest in the '878 patent.

50. On February 7, 2006, the United States Patent and Trademark Office issued the '413 patent, entitled "Method and apparatus for interactive audience participation at a live spectator event." The '413 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '413 patent is attached as Exhibit 12. Interactive and Inselberg have alleged that they have an ongoing interest in the '413 patent.

51. On October 17, 2006, the United States Patent and Trademark Office issued the '930 patent, entitled "Method and apparatus for interactive audience participation at a live spectator event." The '930 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '930 patent is attached as Exhibit 13. Interactive and Inselberg have alleged that they have an ongoing interest in the '930 patent.

52. On July 24, 2007, the United States Patent and Trademark Office issued the '888 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '888 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '888 patent is attached as Exhibit 14. Interactive and Inselberg have alleged that they have an ongoing interest in the '888 patent.

53. On August 28, 2007, the United States Patent and Trademark Office issued the '378 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '378 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '378 patent is attached as Exhibit 15. Interactive and Inselberg have alleged that they have an ongoing interest in the '378 patent.

54. On September 9, 2008, the United States Patent and Trademark Office issued the '304 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '304 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '304 patent is attached as Exhibit 16. Interactive and Inselberg have alleged that they have an ongoing interest in the '304 patent.

55. On April 21, 2009, the United States Patent and Trademark Office issued the '930 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '930 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '930 patent is attached as Exhibit 17. Interactive and Inselberg have alleged that they have an ongoing interest in the '930 patent.

56. On September 8, 2009, the United States Patent and Trademark Office issued the '214 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '214 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '214 patent is attached as Exhibit 18. Interactive and Inselberg have alleged that they have an ongoing interest in the '214 patent.

57. On April 6, 2010, the United States Patent and Trademark Office issued the '532 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '532 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '532 patent is attached as Exhibit 19. Interactive and Inselberg have alleged that they have an ongoing interest in the '532 patent.

58. On September 7, 2010, the United States Patent and Trademark Office issued the '539 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '539 patent lists Eric Inselberg as the sole inventor. A true and correct

copy of the '539 patent is attached as Exhibit 20. Interactive and Inselberg have alleged that they have an ongoing interest in the '539 patent.

59. On September 14, 2010, the United States Patent and Trademark Office issued the '7005 patent, entitled "Method, systems and apparatus for interactive audience participation at a live entertainment event." The '7005 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '7005 patent is attached as Exhibit 21. Interactive and Inselberg have alleged that they have an ongoing interest in the '7005 patent.

60. On December 21, 2010, the United States Patent and Trademark Office issued the '242 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '242 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '242 patent is attached as Exhibit 22. Interactive and Inselberg have alleged that they have an ongoing interest in the '242 patent.

61. On December 28, 2010, the United States Patent and Trademark Office issued the '523 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '523 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '523 patent is attached as Exhibit 23. Interactive and Inselberg have alleged that they have an ongoing interest in the '523 patent.

62. On September 20, 2011, the United States Patent and Trademark Office issued the '977 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '977 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '977 patent is attached as Exhibit 24. Interactive and Inselberg have alleged that they have an ongoing interest in the '977 patent.

63. On March 6, 2012, the United States Patent and Trademark Office issued the '279 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '279 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '279 patent is attached as Exhibit 25. Interactive and Inselberg have alleged that they have an ongoing interest in the '279 patent.

64. On July 3, 2012, the United States Patent and Trademark Office issued the '975 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '975 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '975 patent is attached as Exhibit 26. Interactive and Inselberg have alleged that they have an ongoing interest in the '975 patent.

65. On April 2, 2013, the United States Patent and Trademark Office issued the '172 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '172 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '172 patent is attached as Exhibit 27. Interactive and Inselberg have alleged that they have an ongoing interest in the '172 patent.

66. On April 16, 2013, the United States Patent and Trademark Office issued the '3005 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '3005 patent lists Eric Inselberg as the sole inventor. A true and correct copy of the '3005 patent is attached as Exhibit 28. Interactive and Inselberg have alleged that they have an ongoing interest in the '3005 patent.

67. On September 22, 2015, the United States Patent and Trademark Office issued the '828 patent, entitled "Method and apparatus for interactive audience participation at a live entertainment event." The '828 patent lists Eric Inselberg as the sole inventor. A true and correct

copy of the '828 patent is attached as Exhibit 29. Interactive and Inselberg have alleged that they have an ongoing interest in the '828 patent.

**CLAIMS FOR RELIEF**

**COUNT I: PLAINTIFFS' CLAIM FOR  
DECLARATORY JUDGMENT AS TO THE  
OWNERSHIP OF THE INSELBERG PATENTS**

68. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 67 of this Complaint as though fully set forth herein.

69. As described above, Inselberg and Interactive have alleged that the Assignment Agreement is invalid and null and void, and that the Inselberg Patents are and have been the property of Interactive.

70. Inselberg and Interactive's allegations regarding the validity of the Assignment Agreement and the ownership of the patents have the potential to affect First Data's rights under the First Data License.

71. Contrary to Inselberg and Interactive's allegations, the Assignment Agreement is valid.

72. Contrary to Inselberg and Interactive's allegations, Bisignano owns the entire right, title and interest in and to the Inselberg Patents as set forth in both the Assignment Agreement and the Assignment. Bisignano therefore had the full right and title to grant the First Data License.

73. As a result of Inselberg and Interactive's acts as described in this Complaint, there exists a substantial and actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between Plaintiffs and Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

74. Accordingly, a judicial declaration is necessary and appropriate so that Plaintiffs may ascertain the ownership of the Inselberg Patents.



**COUNT II: PLAINTIFFS' CLAIM FOR  
DECLARATORY JUDGMENT AS TO THE  
VALIDITY OF THE FIRST DATA LICENSE**

75. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 74 of this Complaint as though fully set forth herein.

76. As described above, Inselberg and Interactive have alleged that the First Data License is invalid and null and void, and that First Data may be liable to Inselberg and/or Interactive for infringement of the Inselberg Patents.

77. Inselberg and Interactive's allegations regarding the validity of the First Data License have the potential to affect First Data's rights with respect to the Inselberg Patents.

78. Contrary to Inselberg and Interactive's allegations, the First Data License is valid.

79. Contrary to Inselberg and Interactive's allegations, Bisignano owns the entire right, title and interest in and to the Inselberg Patents as set forth in both the Assignment Agreement and the Assignment. Bisignano therefore had the full right and title to grant the First Data License.

80. As a result of Inselberg and Interactive's acts as described in this Complaint, there exists a substantial and actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between Plaintiffs and Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

81. Accordingly, a judicial declaration is necessary and appropriate so that Plaintiffs may ascertain the ownership of the Inselberg Patents.

**COUNT III: FIRST DATA'S CLAIM FOR DECLARATORY JUDGMENT  
AS TO NONINFRINGEMENT OF THE INSELBERG PATENTS**

82. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 81 of this Complaint as though fully set forth herein.

83. As described above, Interactive and Inselberg have alleged that the Assignment Agreement and the First Data License are null and void, and that Interactive is and has been the owner of the Inselberg Patents.

84. Interactive and Inselberg have further alleged that First Data has infringed the Inselberg Patents. Interactive and Inselberg have separately threatened to file a lawsuit against First Data seeking hundreds of millions of dollars based on First Data's alleged use of the Inselberg Patents.

85. In the alternative, Interactive and Inselberg have alleged that Bisignano and First Data may be liable for damages corresponding to the fair market value of the First Data License, to be determined based upon reasonable royalty damages, as well as potential diminution in reasonable royalty damages that may be collected against third-party infringers.

86. Under the *Georgia-Pacific* factors adopted by federal courts in computing reasonable royalty damages under the patent laws, such damages depend on the extent to which the alleged infringer has made use of the claimed invention and the value of such use.

87. First Data has not infringed or made use of any claim of the '398 patent, the '903 patent, the '595 patent, the '878 patent, the '413 patent, the '930 patent, the '888 patent, the '378 patent, the '304 patent, the '930 patent, the '214 patent, the '532 patent, the '539 patent, the '7005 patent, the '242 patent, the '523 patent, the '977 patent, the '279 patent, the '975 patent, the '712 patent, the '3005 patent, or the '828 patent.

88. As a result of Inselberg and Interactive's acts as described in this Complaint, there exists a substantial and actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between First Data on the one hand and Defendants on the other, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

89. Accordingly, a judicial declaration is necessary and appropriate so that First Data may ascertain its rights regarding the '878 patent, the '413 patent, the '930 patent, the '888 patent, the '378 patent, the '304 patent, '930 patent, '214 patent, the '532 patent, the '539 patent, the '7005 patent, the '242 patent, the '523 patent, the '977 patent, the '279 patent, the '975 patent, the '712 patent, the '3005 patent, and the '828 patent.

#### **COUNT IV: BISIGNANO'S CLAIM FOR BREACH OF CONTRACT**

90. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 89 of this Complaint as though fully set forth herein.

91. Interactive and Inselberg have defaulted on their obligations to repay Bisignano according to the terms of the Loan Documents. Accordingly, Interactive has breached its contractual obligations as set forth in the Loan Documents.

92. Inselberg has personally guaranteed Interactive's obligations to Bisignano as set forth in the Loan Documents. Accordingly, Inselberg is liable for Interactive's breach of those contractual obligations.

93. Inselberg and Interactive have further harmed Bisignano by seeking to prevent him from executing his security interests set forth in the Loan Documents by, *inter alia*, threatening to file a lawsuit seeking to challenge the validity of the Assignment Agreement and prevent Bisignano from disposing of the sports memorabilia in his possession.

94. Bisignano's damages include, *inter alia*, the outstanding principal, interest, fees (including attorneys' fees), costs, and other expenses incurred in enforcing his rights under the Loan Documents.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request:

1. A judgment declaring that the Assignment Agreement is valid;

2. A judgment declaring that the First Data License is valid;
3. A judgment declaring that Bisignano owns the entire right, title and interest in and to the Inselberg Patents;
4. A judgment declaring that First Data has not made use of or infringed, contributed to the infringement of, or induced others to infringe, either directly or indirectly, any claim of the '878 patent, the '413 patent, the '930 patent, the '888 patent, the '378 patent, the '304 patent, the '930 patent, the '214 patent, the '532 patent, the '539 patent, the '7005 patent, the '242 patent, the '523 patent, the '977 patent, the '279 patent, the '975 patent, the '712 patent, the '3005 patent, or the '828 patent;
5. A judgment that Interactive and Inselberg have breached the agreement memorialized in the Loan Documents;
6. An award of compensatory damages in an amount to be determined at trial plus interest for Interactive and Inselberg's breach of contract;
7. That the case be found exceptional under 35 U.S.C. § 285;
8. Attorneys' fees;
9. Costs and expenses in this action; and
10. Such other and further relief as the Court may deem just and proper under the circumstances.

Dated: December 26, 2015  
Chatham, NJ

Respectfully submitted,

**MARINO, TORTORELLA & BOYLE, P.C.**

*/s/ Kevin H. Marino*

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**DEMAND FOR TRIAL BY JURY**

Plaintiffs, First Data Corporation and Frank Bisignano, hereby demand a trial by jury as to all issues so triable in this case.

Dated: December 26, 2015  
Chatham, NJ

Respectfully submitted,

**MARINO, TORTORELLA & BOYLE, P.C.**

*/s/ Kevin H. Marino*

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