

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

PUBLISHING TECHNOLOGIES LLC

Plaintiff,

vs.

BANK OF AMERICA CORPORATION
d/b/a MERRILL EDGE

Defendant.

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Case No:

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Publishing Technologies, LLC (“Plaintiff” or “PT”), by and through its attorneys, files this Complaint against Bank of America Corporation d/b/a Merrill Edge (“Defendant” or “BofA”) for infringement of United States Patent Nos. 7,908,342 (“the ‘342 Patent”).

PARTIES AND JURISDICTION

1. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff is a Texas limited liability company with its office located at 825 Watters Creek Blvd., Bldg. M, Suite 250, Allen, TX 75013.

4. Upon information and belief, Defendant is a Delaware corporation with a place of business at Bank of America Corporate Center, 100 North Tryon St., Charlotte, NC 28255. On

information and belief, Defendant can be served through its registered agent, The Corporation Trust Company, Corporation Trust Center 1209 Orange St., Wilmington, DE 19801. This Court has personal jurisdiction over Defendant because Defendant has committed, and continues to commit, acts of infringement in this District, has conducted business in this District, and/or has engaged in continuous and systematic activities in this District.

5. Upon information and belief, Defendant's instrumentalities that are alleged herein to infringe were and continue to be used, imported, offered for sale, and/or sold in this District.

VENUE

6. On information and belief, venue is proper in this District pursuant to 28 U.S.C. § 1400(b). Acts of infringement are occurring in this District and Defendant has a regular and established place of business in this District. For example, on information and belief, Defendant provides the infringing product and/or service through a business unit known as Merrill Edge. On information and belief the Merrill Edge product/service is provided through Defendant's subsidiary Merrill Lynch. Merrill Lynch has a regular and established place of business at 2301 Eldorado Pkwy, McKinney, TX 75070 and 6751 Old Jacksonville Hwy, Tyler, TX 75703. Defendant also has regular and established places of business at 2400 Central Expy, Plano, TX 75074 and 3301 Golden Rd, Tyler, TX 75701. On information and belief, Defendant has other regular and established places of business in this District.

COUNT I

(INFRINGEMENT OF UNITED STATES PATENT NO. 7,908,342)

7. Plaintiff incorporates paragraphs 1 through 6 herein by reference.

8. This cause of action arises under the patent laws of the United States and, in particular, under 35 U.S.C. §§ 271, *et seq.*

9. Plaintiff is the owner by assignment of the ‘342 Patent with sole rights to enforce the ‘342 Patent and sue infringers.

10. A copy of the ‘342 Patent, titled “Method, apparatus and system for management of information content for enhanced accessibility over wireless communication networks,” is attached hereto as Exhibit A.

11. The ‘342 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

12. Upon information and belief, Defendant has infringed and continues to infringe one or more claims, including at least Claim 17, of the ‘342 Patent by making, using, importing, selling, and/or offering for sale an online trading platform and system, which is covered by one or more claims of the ‘342 Patent. Defendant has infringed and continues to infringe the ‘342 Patent directly in violation of 35 U.S.C. § 271.

13. Regarding Claim 17, Defendant provides an apparatus for use in managing information content in a network-based communication system. For example, Defendant provides an online trading platform known as Merrill Edge (“Product”) that is implemented using at least one server used in managing information content. The server is connected to the Internet, through which it communicates with computing clients such as customers’ computers and mobile smartphone/tablet devices. Certain aspects of the foregoing are illustrated in the screenshots below.

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From linking your Bank of America banking and Merrill Edge investing accounts to customizing your portfolio holdings and making trades anywhere, anytime—investing with Merrill Edge is easy and convenient.



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- Independent ratings, rankings
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<https://www.merrilledge.com/research-and-insights>

14. The Product’s servers have processing elements comprising a processor coupled to a memory. The Product’s servers, for example, execute instructions in response to user requests for content, order placement and dashboard configuration using a processor. Further, the Product’s servers comprise a volatile memory (such as RAM) used for executing the instructions using the processor. Further, the Product’s servers also comprise a non-volatile memory that stores user preferences, order history, dashboard and portfolio information. Certain aspects of the foregoing are illustrated in the screenshots below.



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<https://www.merrilledge.com/dashboard>

How to get Merrill Edge MarketPro

1. **Open An Account**
2. Trade just 15 times per quarter. Or, maintain total combined balances of \$50,000 or more in your Bank of America banking and Merrill Edge investment accounts.

Simple Flat-Rate Pricing

\$6.95

Online stock & ETF trades.
No investment minimum.
Other fees may apply¹
Qualify for \$0 trades

Questions & Answers

What are the system requirements for Merrill Edge MarketPro?

- Java 1.5 or higher. To install the latest version of Java, go to java.com.
- Pop-ups must be enabled to allow the platform to launch from merrilledge.com.

Does Merrill Edge MarketPro offer Level II quotes?

Yes. NASDAQ Level II quotes and Market Depth are available to Merrill Edge self-directed investors who trade at least 30 times per quarter or maintain total combined balances of \$1,000,000 or more in their Bank of America banking and Merrill Lynch investment accounts.

[Merrill Edge MarketPro User Guide](#)

[Merrill Edge MarketPro Fact Sheet](#)

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As of 02/17/2017 04:15:00 PM ET

Last Price	Day's Change	Bid x Size	Ask x Size	Day's Volume	Day's Range
\$135.72	+\$0.38 +0.28%	\$135.70 x 1	\$135.72 x 22	22,198,197	\$135.10 - \$135.83

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Open	\$135.10	EPS	8.35
Previous Close	\$135.35	P/E	16.25
52-Week Range	\$89.47 - \$136.27	Dividend	\$2.28
Avg. Volume (10 days)	27,311,660	Dividend Yield	1.68%
Market Cap.	712.06B	Ex-Dividend Date	02/09/2017
Shares Outstanding	5,246,540,000	Dividend Pay Date	02/16/2017
Shares Short	46,931,380	BoAML 12 Month Objective	\$145.00
Short Interest (%)	0.89%	BoAML 5 Yr Est. Growth	+13.19%
Beta	1.03		

Day | Week | Month | 3 Months | YTD | Year | More Charts

Volume (millions)

Rating Announcement Last Updated 02/17/2017 04:15 PM ET

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February 20, 2017 01:05 PM ET Reuters

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February 16, 2017
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15. The processors provide at least a portion of a content management website identified by a first uniform resource locator that can be accessed over the Internet using a web browser. For example, the Product's content management website is accessible to a user and is identified by the URL <https://www.merrilledge.com/>. The Product allows users to designate one or more stock symbols using the "full" website (the claimed "content management website") and add the stock symbols to one or more "watch lists." Once a stock symbol has been added to a watch list, a user clicks on the stock symbol via a hyperlink and accesses information associated with that stock symbol from external data sources, including but not limited to news, quotes and analysis charts associated with the stock symbol. Only stock symbols designated by the user are added and accessible through such watch lists. Therefore, by designating one or more stock

symbols to be added into watch lists on the Product's content management website, a user designates the external data sources that provide information including but not limited to news, quotes and analysis charts associated with that stock symbol. Certain aspects of the foregoing are illustrated in the screen shots below.

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<table style="width: 100%; border-collapse: collapse;"> <tr><td>Open</td><td style="text-align: right;">\$135.10</td></tr> <tr><td>Previous Close</td><td style="text-align: right;">\$135.35</td></tr> <tr><td>52-Week Range</td><td style="text-align: right;">\$89.47 - \$136.27</td></tr> <tr><td>Avg. Volume (10 days)</td><td style="text-align: right;">27,311,660</td></tr> <tr><td>Market Cap.</td><td style="text-align: right;">712.06B</td></tr> <tr><td>Shares Outstanding</td><td style="text-align: right;">5,246,540,000</td></tr> <tr><td>Shares Short</td><td style="text-align: right;">46,931,380</td></tr> <tr><td>Short Interest(%)</td><td style="text-align: right;">0.89%</td></tr> <tr><td>Beta</td><td style="text-align: right;">1.03</td></tr> </table>	Open	\$135.10	Previous Close	\$135.35	52-Week Range	\$89.47 - \$136.27	Avg. Volume (10 days)	27,311,660	Market Cap.	712.06B	Shares Outstanding	5,246,540,000	Shares Short	46,931,380	Short Interest(%)	0.89%	Beta	1.03	<table style="width: 100%; border-collapse: collapse;"> <tr><td>EPS</td><td style="text-align: right;">8.35</td></tr> <tr><td>P/E</td><td style="text-align: right;">16.25</td></tr> <tr><td>Dividend</td><td style="text-align: right;">\$2.20</td></tr> <tr><td>Dividend Yield</td><td style="text-align: right;">1.68%</td></tr> <tr><td>Ex-Dividend Date</td><td style="text-align: right;">02/09/2017</td></tr> <tr><td>Dividend Pay Date</td><td style="text-align: right;">02/16/2017</td></tr> <tr><td>BofAML 12 Month Objective</td><td style="text-align: right;">\$145.00</td></tr> <tr><td>BofAML 5 Yr. Est. Growth</td><td style="text-align: right;">+13.19%</td></tr> </table>	EPS	8.35	P/E	16.25	Dividend	\$2.20	Dividend Yield	1.68%	Ex-Dividend Date	02/09/2017	Dividend Pay Date	02/16/2017	BofAML 12 Month Objective	\$145.00	BofAML 5 Yr. Est. Growth	+13.19%
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The screenshot displays the Merrill Edge website interface. At the top, there is a blue header with the Merrill Edge logo, contact information, and a search bar. Below the header are navigation tabs for Accounts, Trade, Research, Products, Guidance & Retirement, and Help & Support. A dropdown menu is open, showing various categories: Markets (U.S. Markets, Foreign Markets, News, Market Events), Investment Research (Stocks, Options, ETFs, Mutual Funds, Fixed Income), Screeners (Stock Screener, ETF Screener, Mutual Fund Screener, Fixed Income Screener), Investing Tools (Options Strategy Builder, Technical Analysis, Portfolio X-Ray, Asset Allocation), Research & Insights (BoFA Merrill Lynch Global Research, Investing Insights, Our Perspectives), Investing Resources (Alerts, Watchlists, Streaming Quotes, Investor Education), and Simplified Investing (Merrill Edge Select Funds, Merrill Edge Select ETFs, Merrill Edge Select Portfolios). On the left, there is a 'Dow' index showing 17,020.60 with a +76.70 change. Below this is a 'My Accounts Total' section showing a balance of \$0.00. To the right, there is an 'Options' section with a commission of \$6.95 per trade and \$0.75 per contract. At the bottom of the screenshot, there is a URL: <https://www.brokerage-review.com/better-compare/vanguard-vs-merrilledge-review.aspx>

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54 matching funds available for account CMA-Edge Save criteria

Showing all funds. Use the filters from the left to narrow your matching funds results.
Showing: Status: Open to new investors; Morningstar category: World Bond

Pre-defined screens

- No load, no transaction fee funds
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- Socially responsible funds
- Morningstar 4 and 5-star

INVESTCO INTL TOTAL RETURN FD (A) AUBAX
As of 04/13/2016

Market Price (NAV)	Day's Change	52 Week Range
\$10.35	-\$0.06 -0.58%	\$9.46 - \$10.42

Month | Year | More Charts

Max Offering Price: \$10.61

Dividend Frequency: Quarterly

Dividend Amount: \$0.0290

Yield (TTM): 1.15%

30-Day SEC Yield: 2.27%

Load Type: Front-End Load

Load Percentage: 4.25

Expense Ratio: 1.68

Total Net Assets (Millions): \$25.00

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<p>AUBCX INVESTCO INTL TO ...</p>	<p>2</p>	<p>★ ★ ★ ★</p>	<p>As of 3/31/2016</p>

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Investing tools

Asset Allocator™

Find out if your current investment allocations match your target based on your investment style, time horizon and tolerance for risk.

Portfolio X-Ray

Use this tool to review your investments, perform an in-depth analysis and measure risk and exposure levels.

ETF Cost Comparison Calculator

Determine how exchange-traded fund costs compare to the costs of a mutual fund.

Inflation Adjusted Returns

See if your savings strategy is keeping pace with inflation.

Bond Income Calculator

Take a look at your payment schedule and the estimated income you can potentially expect from a bond or CD.

Taxable equivalent yield

Compare the yield between tax-free and taxable bonds based on an after-tax comparison of bonds with different tax treatments.

Annuity Contribution Calculator

This tool calculates how much you will need to contribute to a tax-deferred annuity to pursue your retirement goals.

Annuity Accumulation and Payout

Calculate the value at retirement of an annuity and the annual payment that can be expected over a 20-year period.

Annuity Tax Savings

Calculate the tax savings that could accrue by investing in a tax-deferred annuity instead of a taxable account.

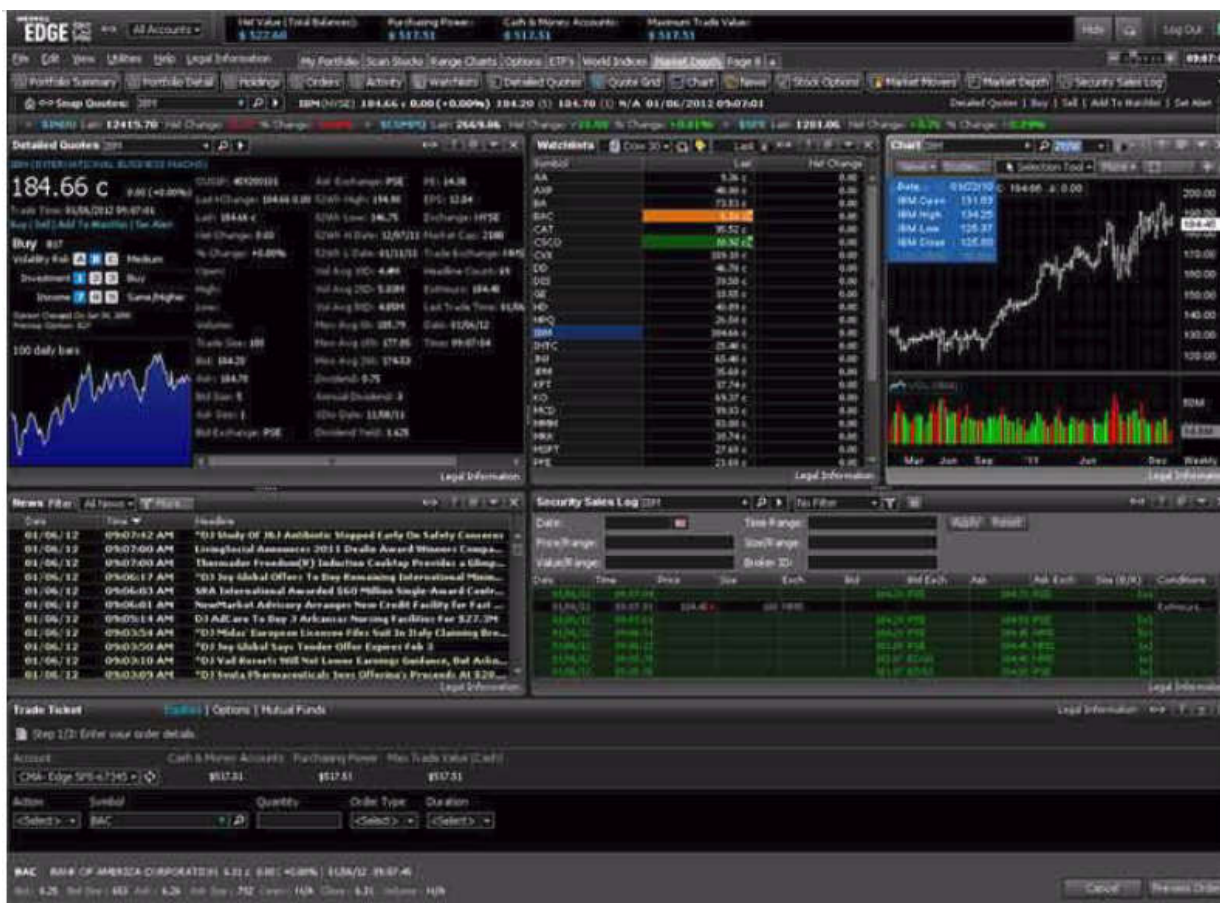
Benchmark Return Calculator

Use this tool to calculate the returns of a benchmark and the growth of an investment in that benchmark over a specified period of time.

After-Tax Return

View the historical after-tax rate of return for different asset classes based on an individual's tax rate.

<https://www.merrilledge.com/guidance/tools>



<https://www.merrilledge.com/dashboard-modal>



<https://www.merrilledge.com/dashboard>

16. The processor also generates a mobile website identified by a second uniform resource locator different than the first uniform resource locator, the mobile web site being accessible independently of the content management web site via one or more mobile devices. For example, the Product's mobile trading platform (the claimed "mobile web site") is accessible via the URL <https://www.merrilledge.com/m/pages/mobile/home-mobile.aspx>. This is distinct and easily distinguished from the "full" website (the claimed "content management website") accessible via the URL https://www.merrilledge.com/?src_cd=PB. Users access the mobile web trading platform using a mobile browser application installed on their mobile devices. The Product's mobile app trading platform is thus accessible independently of the "full" website. Further, the watch lists, stock symbols designated by the user to be added in the watch lists, and the information including but not limited to news, quotes and analysis charts associated with the designated stock symbols are also made accessible to the user via the mobile web trading platform (the claimed "mobile web site"). Further, the mobile web trading platform (the claimed "mobile web site") receives the information including, but not limited to, news, quotes and analysis charts associated with the designated stock symbols directly from the external data sources that provide the aforementioned information. These external data sources include at least one or more news publishers (for news and articles), stock exchange servers (for price quotes) and Defendant and/or third party servers that process and store historical prices and analyst research (for charts), each of which are external to the "full" website and external to the mobile web trading platform. Certain aspects of the foregoing are illustrated in the screenshots below.

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anywhere across all your mobile devices.

Access anytime, anywhere—see your Merrill Edge[®] investment and Bank of America[®] bank accounts online and on your mobile device. The Merrill Edge app gives you access to the tools to help you make more informed investing decisions on your iPhone[®], iPad[®] or Android[™] device.

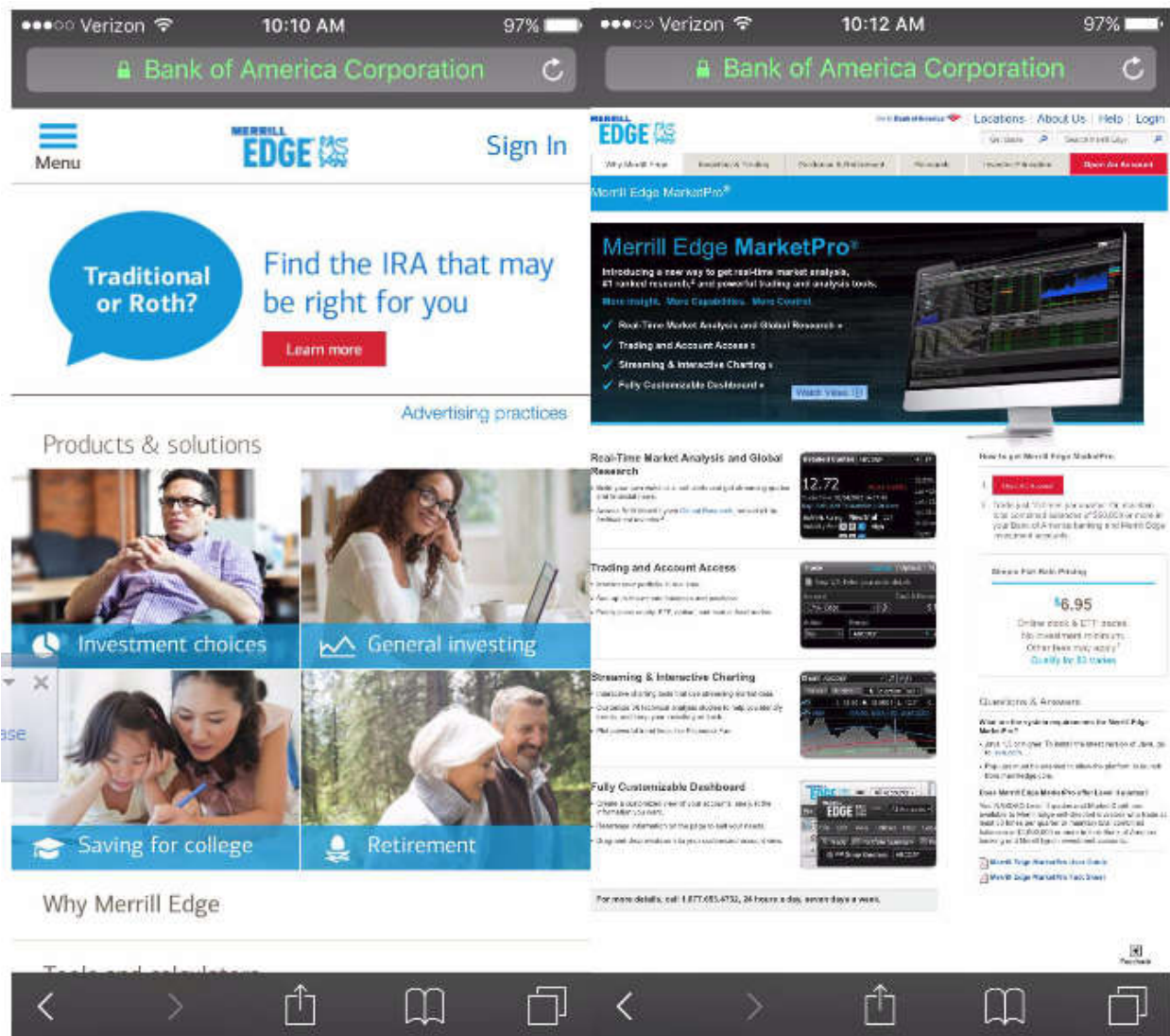
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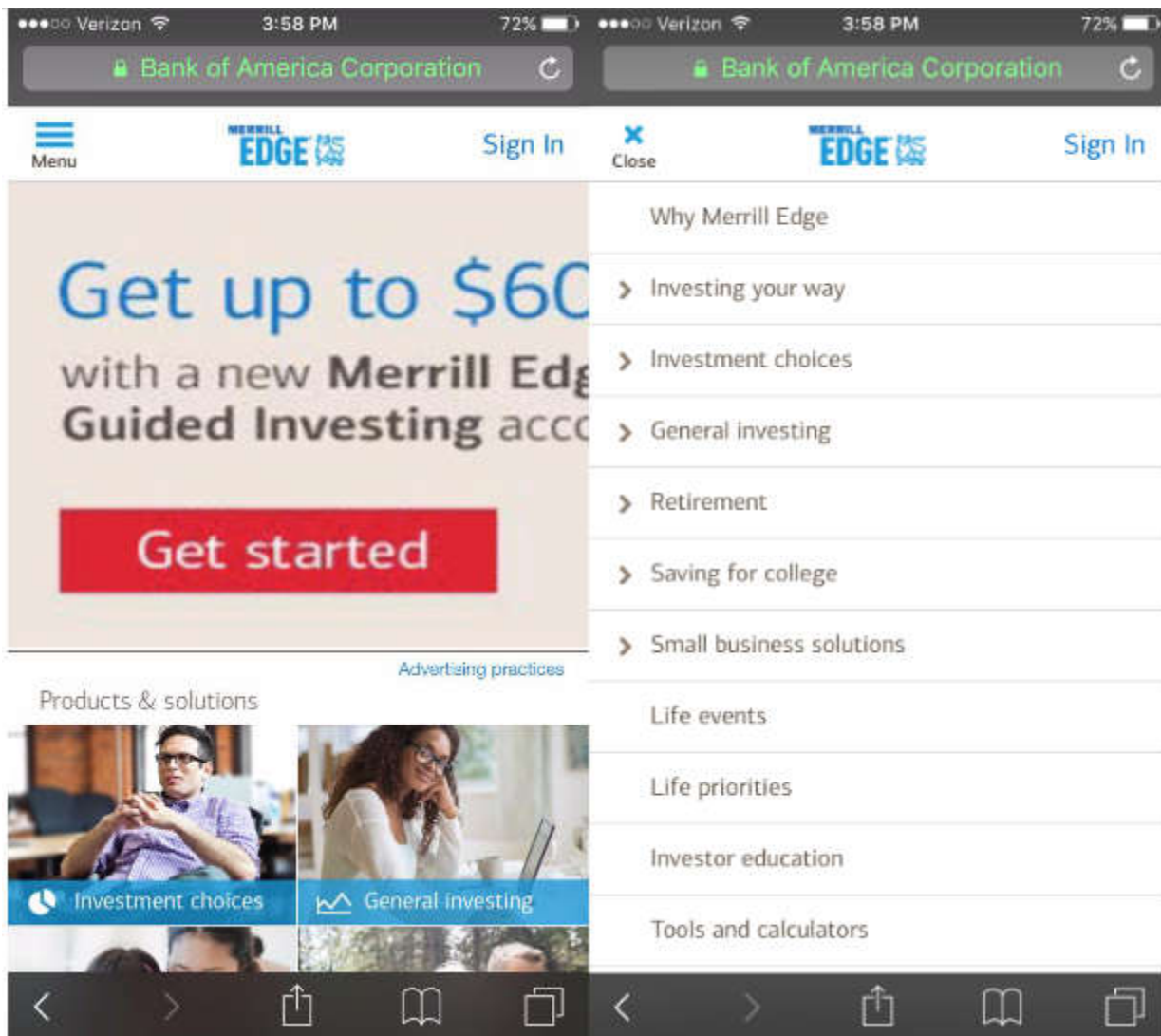
<https://www.merrilledge.com/mobile-investing>

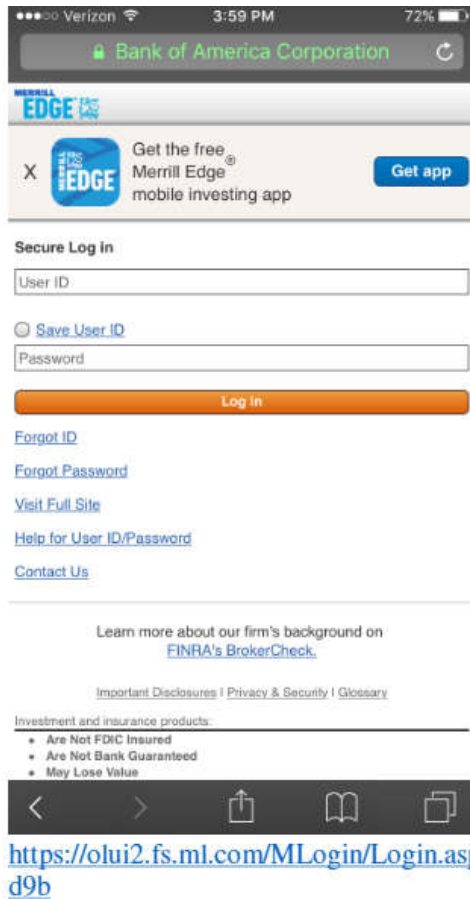
Don't own an iPhone, iPad or Android device? Visit the Merrill Edge mobile website from your smartphone's internet browser at [merrilledge.com](https://www.merrilledge.com). No app required.

<https://www.merrilledge.com/mobile-investing>









17. Additionally, to the extent users access the trading platform not through the mobile web trading platform (using a mobile web browser installed on their mobile device), but instead through one of a plurality of mobile apps offered by Defendant, these mobile apps also practice the claim limitation under doctrine of equivalents. The mobile apps are applications that can be installed on a user's Android/iOS mobile device much like a mobile browser – and provide an interface for the user to view the same stock symbols and the associated information from external data sources as described above. Upon information and belief, the interface is generated at least in part using information received from the same URLs as the mobile web trading platform. Defendant offers at least the following such mobile apps each for Android and iOS mobile devices:

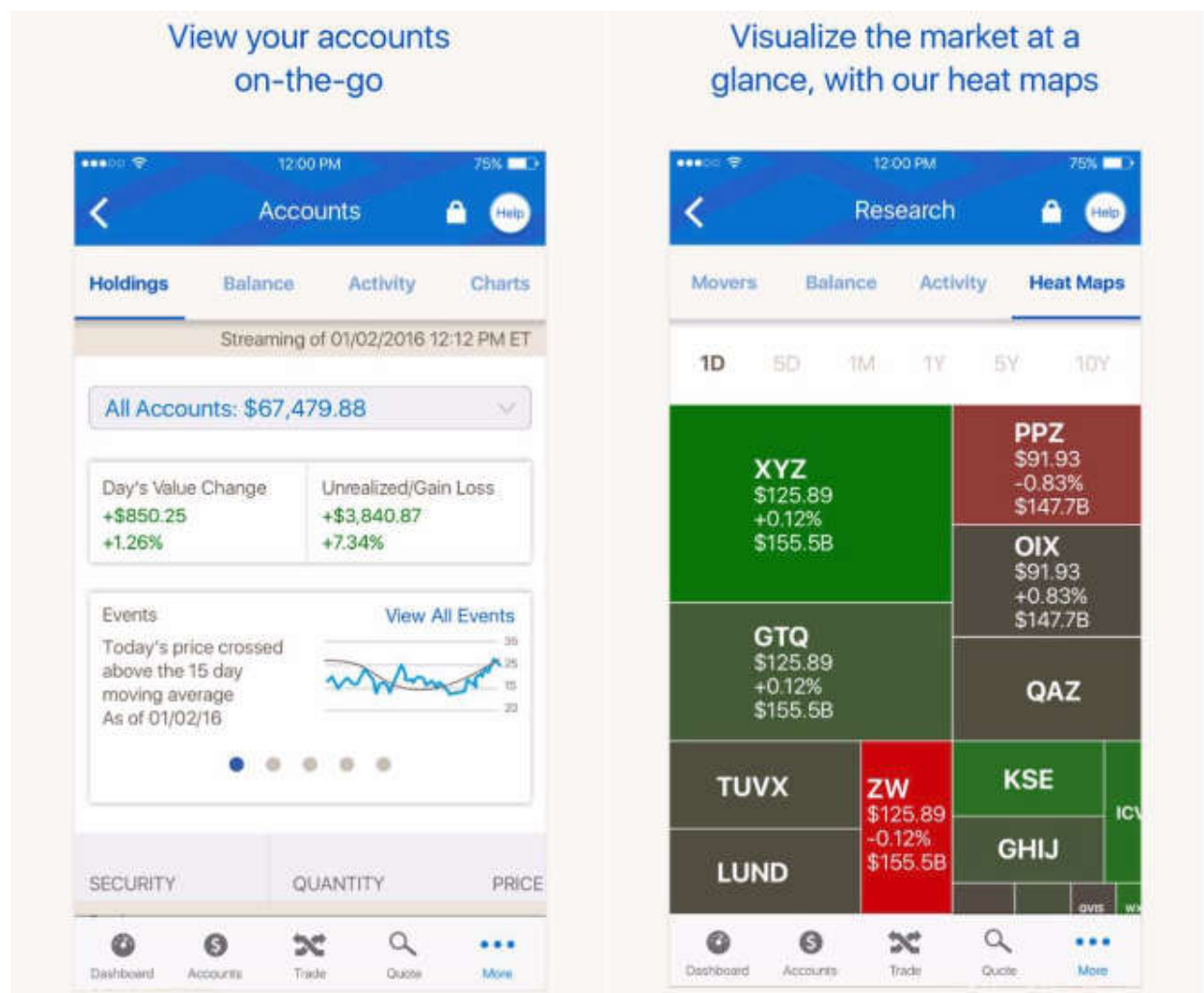
- Merrill Edge for Android

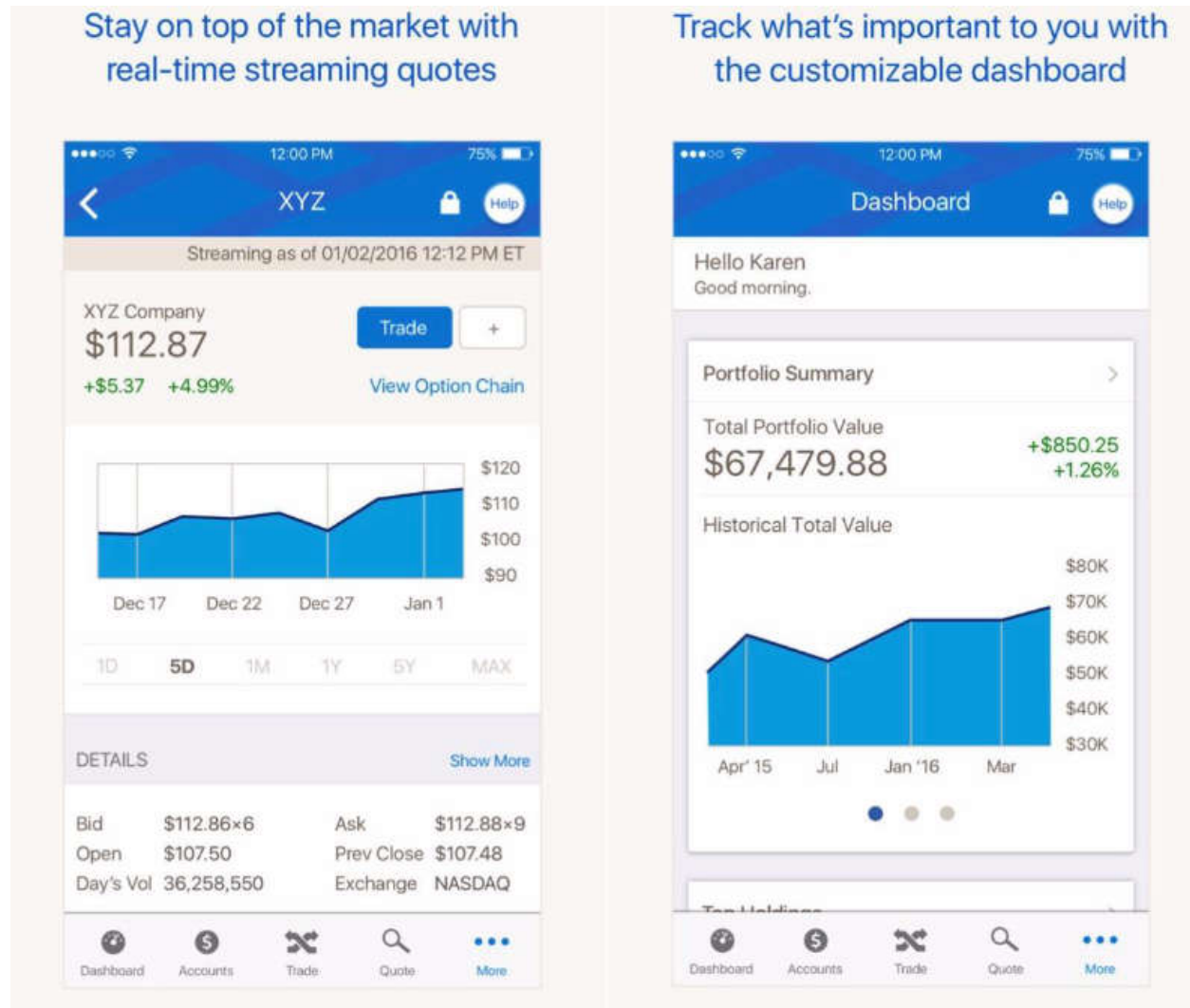
<https://play.google.com/store/apps/details?id=com.ml.mobile.edge&hl=en>

- Merrill Edge for iOS, iPhone, iPad, Apple Watch

<https://itunes.apple.com/us/app/merrill-edge-for-iphone/id420496625?mt=8>

The following screenshots from the Merrill Edge app for iOS as an exemplary mobile app show the interface provided to the user for viewing stock symbols designated in one or more watch lists and the associated information such as news, quotes and charts received directly from external data sources.





18. Defendant's actions complained of herein will continue unless Defendant is enjoined by this court.

24. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

25. Plaintiff is in compliance with 35 U.S.C. § 287.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks the Court to:

(a) Enter judgment for Plaintiff on this Complaint on all causes of action asserted

herein;

(b) Award Plaintiff past and future damages, costs, and expenses resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;

(c) Award Plaintiff pre-judgment and post-judgment interest and costs; and

(d) Award Plaintiff such further relief to which the Court finds Plaintiff entitled under law or equity.

Dated: October 25, 2017

Respectfully submitted,

/s/ Jay Johnson

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State Bar No. 24067322

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A