

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

ELECTRONIC RECEIPTS DELIVERY
SYSTEMS, LLC,

Plaintiff,

vs.

THE HOME DEPOT U.S.A, INC.

Defendant.

§
§
§
§
§
§
§
§
§
§
§

Case No: 2:17-cv-632

PATENT CASE

PLAINTIFF'S FIRST AMENDED COMPLAINT

Pursuant to Federal Rules of Civil Procedure 15(a)(1)(B), Plaintiff Electronic Receipts Delivery Systems, LLC ("Plaintiff" or "ERDS") files this First Amended Complaint against The Home Depot U.S.A., Inc. ("Defendant" or "Home Depot") for infringement of United States Patent No. 8,534,551 (hereinafter "the '551 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 an office located at 1400 Preston Rd., Suite 400, Plano, TX 75093.

4. Upon information and belief, Defendant is a Delaware corporation with a principal place of business at 2455 Paces Ferry Road, Atlanta, GA 30339. 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. Venue is proper in this District pursuant to 28 U.S.C. §§ 1400(b) because acts of infringement are occurring in this District and because Defendant has a regular and established place of business in this District. For example, on information and belief, Defendant has a place of business located at 411 E Loop 281, Longview, TX 75605. On information and belief, Defendant has other regular and established places of business in this District.

COUNT I **(INFRINGEMENT OF UNITED STATES PATENT NO. 8,534,551)**

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 '551 Patent with sole rights to enforce the '551 Patent and sue infringers.

10. A copy of the '551 Patent, titled "System and Method for Issuing Digital Receipts for Purchase Transactions Over a Network," is attached hereto as Exhibit A.

11. The '551 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 11, of the ‘551 patent by using payment systems that issue digital receipts to customers upon completion of a payment transaction in a manner covered by one or more claims of the ‘551 Patent. Specifically, Defendant uses point of sale terminals (the “System”), operating in conjunction with a customer account platform called My Account, which issue digital receipts. Defendant has infringed and continues to infringe the ‘551 patent either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

13. Regarding Claim 11, the System uses a terminal (e.g. card reader and or POS) for issuing a digital receipt to the user after a purchase transaction (e.g., payment information). Certain aspects of this element are illustrated below:



Your Next Purchase

At checkout, pay with any of your registered cards at the card reader. You will usually get 3 receipts: a digital receipt in your account, one sent to your email by request, and a thermal paper receipt will print out at checkout. Your digital receipts will now appear in your regular Home Depot account for any tracked transactions!

<https://www.greenback.com/blog/how-to-automate-your-online-instore-home-depot-receipts/2>



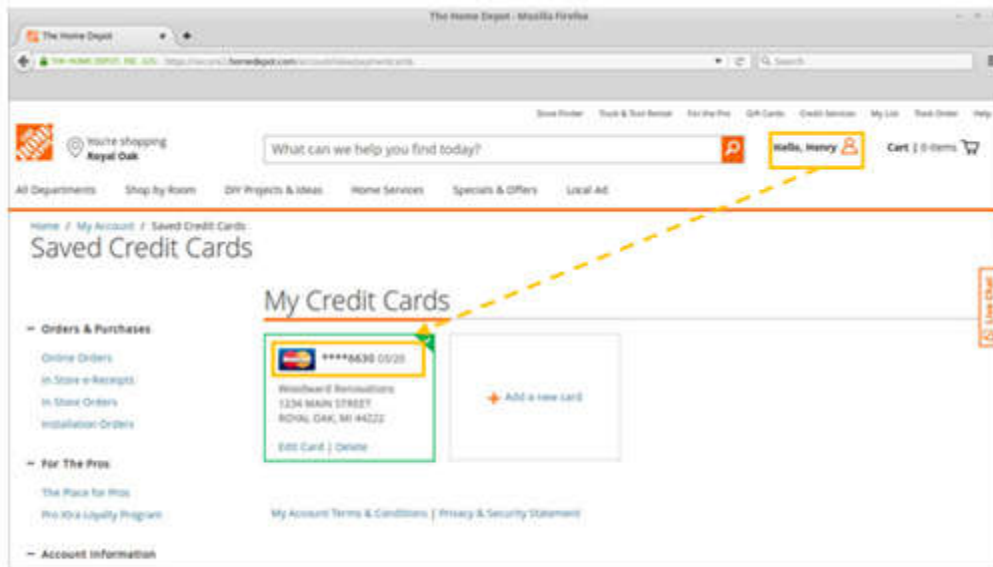
<https://www.wsj.com/articles/home-depot-breach-bigger-than-targets-1411073571>

14. The System comprises a communication mechanism (e.g., card reader and/or Internet) to receive information identifying a first credit card account of a customer (e.g., credit card number) and information about a transaction (e.g., payment information/amount charged) from a POS terminal (e.g., card reader) via a network (e.g., Internet). Certain aspects of this element are illustrated below:



The Staff Systems Engineer develops, maintains, and supports The Home Depot's technical infrastructure that includes network, hardware, database, and system software components.

<https://careers.homedepot.com/job/7771386/staff-systems-engineer-enterprise-monitoring-atlanta-ga/>



<https://www.greenback.com/blog/how-to-automate-your-online-instore-home-depot-receipts/2>

Your Next Purchase

At checkout, pay with any of your registered cards at the card reader. You will usually get 3 receipts: a digital receipt in your account, one sent to your email by request, and a thermal paper receipt will print out at checkout. Your digital receipts will now appear in your regular Home Depot account for any tracked transactions!

<https://www.greenback.com/blog/how-to-automate-your-online-instore-home-depot-receipts/2>

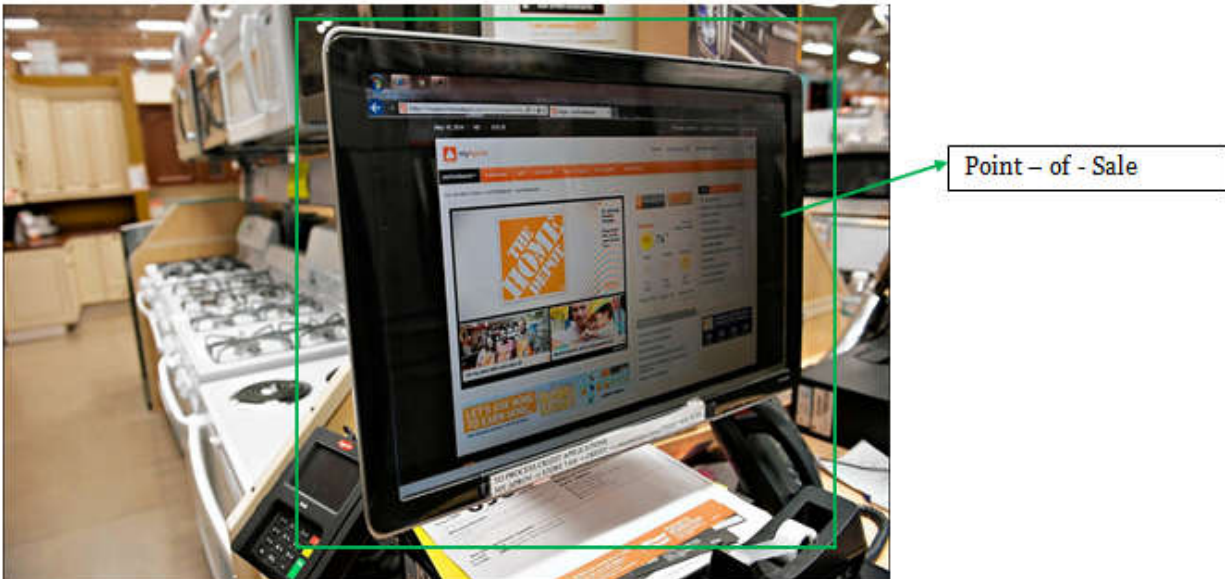
Payment Information

When you make a purchase we collect your payment information, including information from your credit or debit card, check, PayPal account or gift card. If you apply for a The Home Depot credit card or a home improvement loan, we might collect information related to your application.

https://www.homedepot.com/c/Privacy_Security#Information_Collect

Credit cards are sometimes declined because the customer's information doesn't match what the credit card company has on file. This is often the result of a simple typographical error. Of course, the card may be declined if the amount being charged exceeds the credit limit. The problem could also be an issue with the internal The Home Depot credit processing system, rather than with your card.

https://www.homedepot.com/c/SF_MS_SV_FAQ_Credit_Card_Declination



<https://www.wsj.com/articles/home-depot-breach-bigger-than-targets-1411073571>

15. The System comprises at least one database (e.g., server database) to store at least a first credit card account record (e.g., credit/debit card number) and at least one associated customer record/user content (e.g., customer purchase history, phone number, billing and shipping addresses) which include an indication of a destination (e.g. My account and/or customer E-mail address) associated with the customer for sending digital receipts. Certain aspects of this element are illustrated below:



The Staff Systems Engineer develops, maintains, and supports The Home Depot's technical infrastructure that includes network, hardware, database, and system software components.

<https://careers.homedepot.com/job/7771386/staff-systems-engineer-enterprise-monitoring-atlanta-ga/>

The Home Depot values and respects the privacy of its customers and visitors. The purpose of this Privacy and Security Statement is to provide you with information about how The Home Depot collects, uses, and shares the information we collect from our customers and visitors. It also describes the choices you can make about our use of your information. Our collection efforts are designed to improve the shopping experience of our customers and to provide customers relevant information about our products, services, and promotions.

Contact Information

We may collect the names and user names of our customers and other visitors. Additionally, we may collect your purchase history, billing and shipping addresses, phone numbers, email addresses, and other digital contact information. We may also collect information that you provide us about others.

http://www.homedepot.com/c/Privacy_Security#Information_Collect

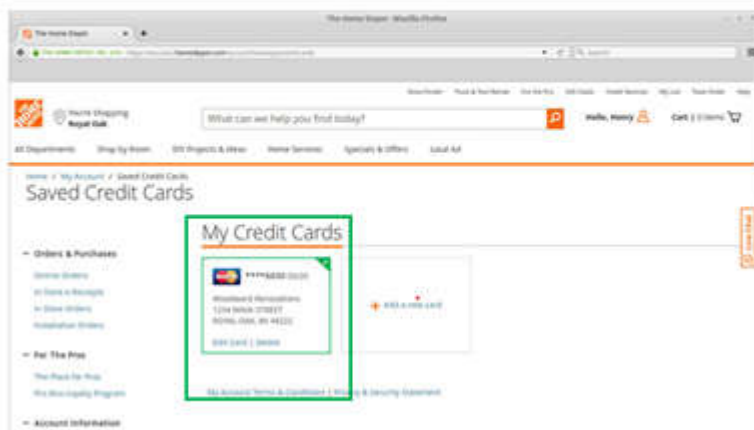
My Account Terms and Conditions

When you register for a My Account you gain access to many helpful online tools such as Express Checkout, Address Book, My Lists, My Project Guides, Manage Interests, My Store Settings, Manage Email, My Reminders, My Calculator Results, Online Orders and In Store eReceipts, My Ratings and Reviews, and much more. To use these tools you may be asked to provide additional information about you and your home improvement projects. The information that you provide as a registered My Account user is sometimes referred to as "User Content". As a My Account user you also have the opportunity to register your credit cards to help make your online shopping on our website quicker and easier. When you sign-up for a My Account we help you track and record your purchases on our website. If you register a credit card in your My Account (each a "Registered Card") we help you track and record purchases made with such Registered Card in our stores. These tracked and recorded purchases are called your "Purchase History". Your registration and use of your My Account is governed at all times by our My Account Terms and Conditions, our **Privacy and Security Statement** and our **Terms of Use**. From time to time we may change the My Account Terms and Conditions. We will notify you of any material changes to our My Account Terms and Conditions by posting an updated copy on our website. Please check our website periodically for updates.

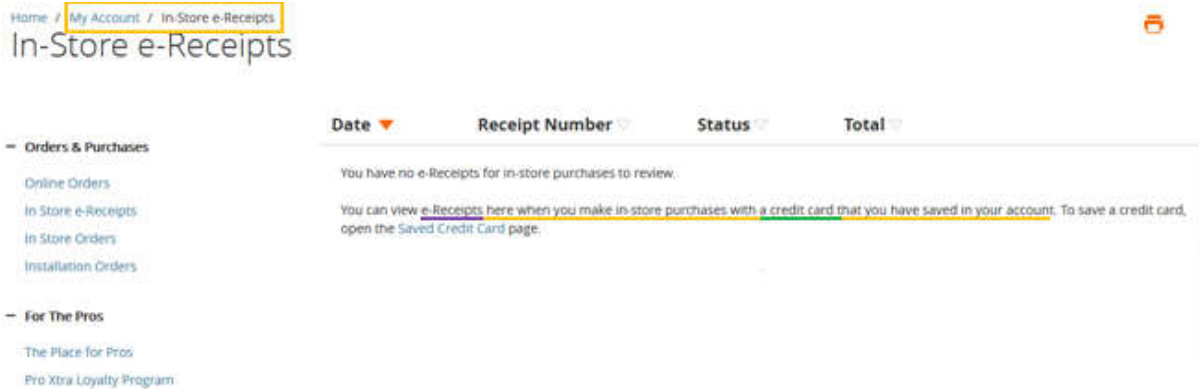
https://www.homedepot.com/c/PH_MyAccount

2. Add Your Credit/Debit Cards

Locate your Account Profile by going to "Welcome", "Hello..." or "My Account" and then "Account Profile". You may be asked to sign in again.



https://www.homedepot.com/c/Privacy_Security#Information_Collect



<https://secure2.homedepot.com/account/view/ereceipt/summary>

At checkout, pay with any of your registered cards at the card reader. You will usually get 3 receipts: a digital receipt in your account, one sent to your email by request, and a thermal paper receipt will print out at checkout. Your digital receipts will now appear in your regular Home Depot account for any tracked transactions!

<https://www.greenback.com/blog/how-to-automate-your-online-instore-home-depot-receipts/2>

16. The System comprises one or more computing device (e.g., server and/or POS processor) to verify the first credit card account (e.g., authorize customer credit card information) for an amount of transaction (e.g., balance due). Certain aspects of this element are illustrated below:

Payment Information

When you make a purchase we collect your payment information, including information from your credit or debit card, check, PayPal account or gift card. If you apply for a The Home Depot credit card or a home improvement loan, we might collect information related to your application.

https://www.homedepot.com/c/Privacy_Security#Information_Collect

WHY WAS MY CREDIT CARD DECLINED?

For your protection and security, we run each credit card order through an authorization process before any amount is charged to the card to prevent unauthorized purchases. Sometimes a credit card is declined; there are several reasons why this may happen.

Credit cards are sometimes declined because the customer's information doesn't match what the credit card company has on file. This is often the result of a simple typographical error. Of course, the card may be declined if the amount being charged exceeds the credit limit. The problem could also be an issue with the internal The Home Depot credit processing system, rather than with your card.

https://www.homedepot.com/c/SF_MS_SV_FAQ_Credit_Card_Declination

17. The first customer record (e.g., user content) is retrieved from the at least one database (e.g., server database) based on the information identifying the first credit card account (e.g., identification by swiping the credit card at card reader and/or matching the credit card information to the user's account) and then determine the destination (e.g., My Account and/or user E-mail address) associated with the customer. Certain aspects of this element are illustrated below:

3. Your Next Purchase

At checkout, pay with any of your registered cards at the card reader. You will usually get 3 receipts: a digital receipt in your account, one sent to your email by request, and a thermal paper receipt will print out at checkout. Your digital receipts will now appear in your regular Home Depot account for any tracked transactions!

Need to track receipts for purchases made by cash or check? If you have the original receipt, Home Depot will let you manually add them to a Pro-version account. Check out our [Home Depot Pro Tutorial](#) for more info.

<https://www.greenback.com/blog/how-to-automate-your-online-instore-home-depot-receipts/2>

Information We Collect

Contact Information

We may collect the names and user names of our customers and other visitors. Additionally, we may collect your purchase history, billing and shipping addresses, phone numbers, email addresses, and other digital contact information. We may also collect information that you provide us about others.

My Account Terms and Conditions

When you register for a My Account you gain access to many helpful online tools such as Express Checkout, Address Book, My Lists, My Project Guides, Manage Interests, My Store Settings, Manage Email, My Reminders, My Calculator Results, Online Orders and In Store eReceipts, My Ratings and Reviews, and much more. To use these tools you may be asked to provide additional information about you and your home improvement projects. The information that you provide as a registered My Account user is sometimes referred to as "User Content". As a My Account user you also have the opportunity to register your credit cards to help make your online shopping on our website quicker and easier. When you sign-up for a My Account we help you track and record your purchases on our website. If you register a credit card in your My Account (each a "Registered Card") we help you track and record purchases made with such Registered Card in our stores. These tracked and recorded purchases are called your "Purchase History". Your registration and use of your My Account is governed at all times by our My Account Terms and Conditions, our **Privacy and Security Statement** and our **Terms of Use**. From time to time we may change the My Account Terms and Conditions. We will notify you of any material changes to our My Account Terms and Conditions by posting an updated copy on our website. Please check our website periodically for updates.

Purchase History

Your Purchase History may include such details as product description, product image, units purchased, purchase price, purchase or order date, store details where the product was purchased, shipping updates, order number, or product manuals, warranties and instructions. The Purchase History for each of your online purchases or in-store purchases made with a Registered Card will be available for review in your My Account. If we have a Purchase History for purchases made by you prior to 2013, we may also make this information available to you in your My Account. However, please note any in-store Purchase History provided to you will only be available for two years from the date of purchase.

You understand that the Purchase History for each in-store transaction you make with a Registered Card will automatically be made available in your My Account regardless of whether you elect to receive an eReceipt via email at the time of purchase. If you do not wish to have your in-store Purchase History made available in your My Account you must edit your My Account to remove the Registered Card information you provided. All information related to your Purchase History is solely owned by us at all times, but may be made available to you in our sole discretion for your review within your My Account. Regardless of the availability of your Purchase History, all product returns are still governed by our **Returns Policy**.

https://www.homedepot.com/c/PH_MyAccount

Destination associated with the customer

Home / My Account Sign In

My Account Sign In

Please sign in to view your online orders and in-store purchases, create and save multiple project lists, and sign up or manage email subscriptions from Home Depot.

Email

Password

[Forgot your password?](#)

Sign In

Create your Home Depot account
Please take a few moments to create your account and enjoy the many benefits of a Home Depot account.

Register

Orders & Purchases
My Credit Card Account
Account Profile
My Lists
Find a List

Access your Home Depot credit account
Through Credit Center you can login to your Home Depot credit card account to check balances and make payments.

[Credit Center](#)

<https://secure2.homedepot.com/account/view/login>

My Account Registration

Do more with an account.
Keep track of your orders, check out faster, and save products into lists.

Email

Password

☐ Show Password

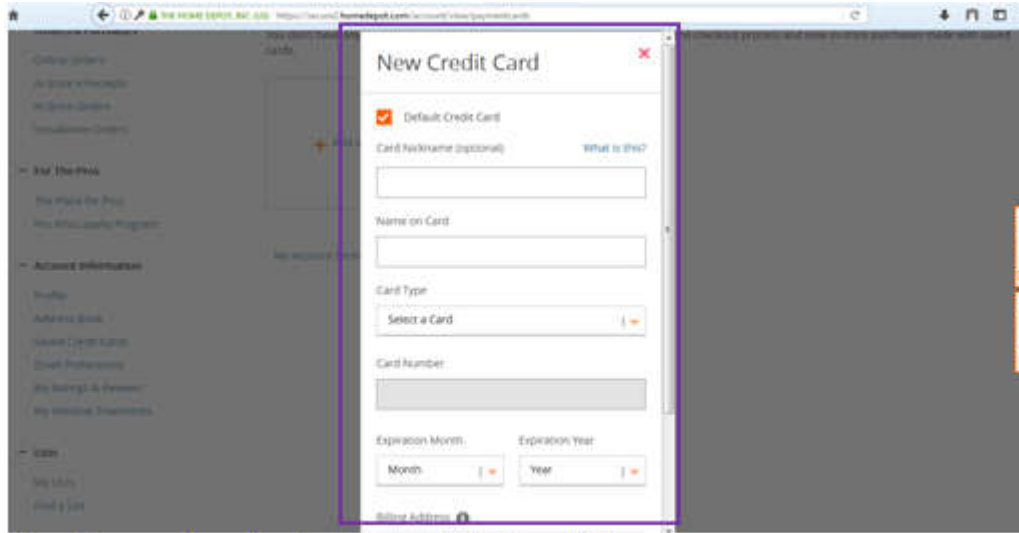
Confirm Password

Zip Code

☐ I'm a Pro customer (i.e. Making purchase for my business)

[My Account Terms & Conditions](#) | [Privacy & Security Statement](#)

<https://secure2.homedepot.com/account/view/login>



<https://secure2.homedepot.com/account/view/ereceipt/summary>

18. The terminal (e.g., POS and/or card reader) automatically transmits a digital receipt (e.g., eReceipt) for the transaction (e.g., payment amount) to the destination (e.g., E-mail address in My Account) associated with the customer without input from the customer. Certain aspects of this element are illustrated below:

3. Your Next Purchase

At checkout, pay with any of your registered cards at the card reader. You will usually get 3 receipts: a digital receipt in your account, one sent to your email by request, and a thermal paper receipt will print out at checkout. Your digital receipts will now appear in your regular Home Depot account for any tracked transactions!

Need to track receipts for purchases made by cash or check? If you have the original receipt, Home Depot will let you manually add them to a Pro-version account. Check out our [Home Depot Pro Tutorial](#) for more info.

<https://www.greenback.com/blog/how-to-automate-your-online-instore-home-depot-receipts/2>

Purchase History

Your Purchase History may include such details as product description, product image, units purchased, purchase price, purchase or order date, store details where the product was purchased, shipping updates, order number, or product manuals, warranties and instructions. The Purchase History for each of your online purchases or in-store purchases made with a Registered Card will be available for review in your My Account. If we have a Purchase History for purchases made by you prior to 2013, we may also make this information available to you in your My Account. However, please note any in-store Purchase History provided to you will only be available for two years from the date of purchase.

You understand that the Purchase History for each in-store transaction you make with a Registered Card will automatically be made available in your My Account regardless of whether you elect to receive an eReceipt via email at the time of purchase. If you do not wish to have your in-store Purchase History made available in your My Account you must edit your My Account to remove the Registered Card information you provided. All information related to your Purchase History is solely owned by us at all times, but may be made available to you in our sole discretion for your review within your My Account. Regardless of the availability of your Purchase History, all product returns are still governed by our **Returns Policy**.

https://www.homedepot.com/c/PH_MyAccount

Home / **My Account** / In-Store e-Receipts

In-Store e-Receipts

Orders & Purchases

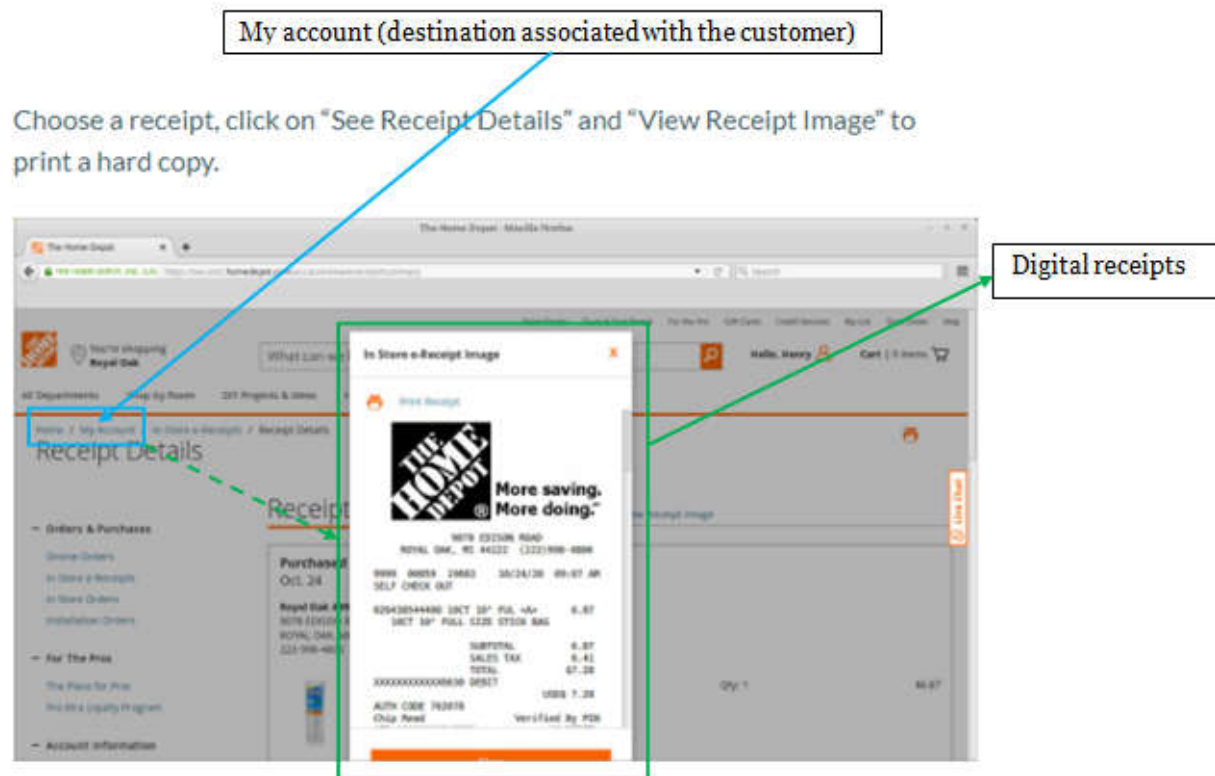
- Online Orders
- In-Store e-Receipts
- In-Store Orders
- Installation Orders

For The Pros

- The Place for Pros
- Pro Xtra Loyalty Program

Date ▼	Receipt Number ▼	Status ▼	Total ▼
You have no e-Receipts for in-store purchases to review.			
You can view e-Receipts here when you make in-store purchases with a credit card that you have saved in your account. To save a credit card, open the Saved Credit Card page.			

<https://secure2.homedepot.com/account/view/ereceipt/summary>



<https://www.greenback.com/blog/how-to-automate-your-online-instore-home-depot-receipts/2>

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

20. 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.

21. 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) Enter an Order enjoining Defendant, its agents, officers, servants, employees,

attorneys, and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 8,534,551 (or, in the alternative, awarding Plaintiff running royalties from the time of judgment going forward);

(c) Award Plaintiff damages resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;

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

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

Dated: December 5, 2017

Respectfully submitted,

/s/ Jay Johnson

JAY JOHNSON

State Bar No. 24067322

BRAD KIZZIA

State Bar No. 11547550

KIZZIA & JOHNSON PLLC

1910 Pacific Ave., Suite 13000

Dallas, Texas 75201

(214) 451-0164

Fax: (214) 451-0165

jay@kjpllc.com

bkizzia@kjpllc.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on December 5, 2017.

/s/ Jay Johnson

Jay Johnson

EXHIBIT A