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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

**MILLENNIUM COMMERCE, LLC**  
**Plaintiff,**  
**v.**  
**BROOKFIELD EQUINOX, LLC**  
**Defendant**

**No. CV-18-00200-PHX-BSB**  
**JURY TRIAL DEMANDED**

**COMPLAINT (FIRST AMENDED) FOR PATENT INFRINGEMENT**

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 et seq. in which Plaintiff Millennium Commerce, LLC (“Millennium” or “Plaintiff”) files this action against Defendant Brookfield Equinox LLC dba Equinox Payments (“Equinox Payments” or “Defendant”) for infringing U.S. Patent No. 7,954,701 (“the ‘701 Patent” or “patent-in-suit”).

**BACKGROUND**

1. Plaintiff Millennium is a Texas Limited Liability Company and is the assignee of the right, title, and interest in and to the ‘701 Patent, including the right to assert all causes of action arising under the ‘701 Patent and the right to remedies for infringement thereof.
2. Companies including Equinox have adopted the inventions disclosed in the ‘701

1 Patent. The ‘701 Patent has been cited in patents and patent applications filed by companies  
2 including Texas Instruments, IBM, Toshiba, Hitachi, NCR Corporation, and MasterCard  
3 International.

4 3. The ‘701 Patent relates back to U.S. Patent Application No. 08/421,486 filed on  
5 April 13, 1995, now U.S. Pat. No. 5,546,523.

6 4. The technologies recited in the claims of the ‘701 Patent provide inventive  
7 concepts and do not claim an abstract idea. The inventive concepts of the ‘701 Patent are directed  
8 to a technical solution to solve a problem unique to point-of-sale (“POS”) terminals, by greatly  
9 enhancing and facilitating the operation of POS terminal systems through use of hardware and  
10 software.

11 5. For example, the POS terminal according to the claimed invention is a hardware  
12 device, configured to receive financial information from a card associated with an account, in  
13 connection with requesting authorization of a purchase transaction. The claimed invention further  
14 recites an input device – also a hardware device – configured to receive a request for a select cash  
15 amount in excess of an amount of the purchase transaction. It further recites a control system  
16 configured to request authorization for payment of the amount of the purchase transaction and the  
17 select cash amount on the account. This improves the functioning of the POS system, for example,  
18 by improving the functioning of the user interface for the selection of transactions and transaction  
19 parameters. (‘701 Patent, col. 1, lines 21-26). Without the claimed invention, POS terminals would  
20 require more user inputs and would be more complex. (*Id.*, col. 2, lines 35-53.)

21 6. The technology claimed in the ‘701 Patent presented new and unique advantages  
22 over the state of the art at the time. Although the inventions taught in the claims of the ‘701 Patent  
23 have by today been widely adopted by leading businesses, at the time of the invention, the  
24 technologies were innovative.

25 7. For example, during prosecution of the application that issued as the ‘701 Patent,  
26 the Examiner at the United States Patent and Trademark Office attempted to apply as prior art U.S.  
27 Patent Publication No. 2005/0187843 to Lapsley et al. (“Lapsley”) to the pending claims. The  
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1 Applicant explained that the language including a description of “cash back” such as paragraph  
2 [0033] of Lapsley was first introduced in an application filed on August 29, 1996, *after* the claimed  
3 priority date. Thus, the Applicant explained that this portion of Lapsley is “not prior art with  
4 respect to the instant application.” In contrast, Applicant had described receiving cash back in a  
5 specification filed no later than April 13, 1995.

6 8. The claims of the ‘701 Patent are not directed to a “method of organizing human  
7 activity,” “fundamental economic practice long prevalent in our system of commerce,” or “a  
8 building block of the modern economy.” Instead, they are limited to the narrow set of systems for  
9 POS terminals.

10 9. The technology claimed in the ‘701 Patent does not preempt all ways for setting  
11 up and managing a POS terminal. For example, the claims apply only to a specific type of terminal  
12 comprising a combination of financial information reader, an input device, and a control system.  
13 A POS terminal need not include all of these components, or may include different components.  
14 For example, a POS terminal may separate the financial information reader from the input device  
15 and control system. Moreover, the components must be configured in the specific manner claimed  
16 in the ‘701 Patent. For example, the input device must be configured to receive a request for a  
17 select cash amount in excess of an amount of the purchase transaction. Other ways of configuring  
18 the input device are possible, such as configuring it to request authorization for only the purchase  
19 transaction, and not more.

20 10. It follows that Defendant could choose to set up and manage POS terminals  
21 without infringing the ‘701 Patent. For example, the prior art cited on the face of the ‘701 Patent  
22 remains available for practice by the Defendant, and the ‘701 Patent claims do not preempt practice  
23 any of those prior art systems or methods.

24 11. The ‘701 Patent claims cannot be practiced by a human alone and there exists no  
25 human analogue to the methods claimed in the ‘701 Patent. The claims are specifically directed to  
26 a POS terminal equipped to receive financial information from a card and a control system to  
27 request authorization. Components such as a terminal, card, and control system exist only in the  
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1 context of computer-based financial systems, and cannot be practiced by a human alone.

2 **PARTIES**

3 12. Millennium is a Texas Limited Liability Company with a principal place of  
4 business at 1400 Preston Road, Suite 400, Plano, Texas 75093.

5 13. Defendant Equinox Payments is an Delaware limited liability company with its  
6 principal place of business at 9045 E. Pima Center Pkwy, Suite 3, Scottsdale, Arizona 85258.  
7 Defendant may be served with process by delivering a summons and a true and correct copy of  
8 this complaint to its registered agent for receipt of service of process, Corporation Service  
9 Company, 2338 W. Royal Palm Rd., Ste J, Phoenix, AZ 85021.

10 **JURISDICTION AND VENUE**

11 14. This action arises under the patent laws of the United States, Title 35 of the United  
12 States Code. Accordingly, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and  
13 1338(a).

14 15. This Court has personal jurisdiction over Defendant because, among other  
15 reasons, Defendant has established minimum contacts with the forum state of Arizona. Defendant,  
16 directly or through third-party intermediaries, also make, use, import, offer for sale, or sell products  
17 or services within the state of Arizona, and particularly within this District. Defendant has  
18 purposefully availed themselves of the benefits of doing business in the State of Arizona and the  
19 exercise of jurisdiction over Defendant would not offend traditional notions of fair play and  
20 substantial justice.

21 16. Venue is proper in this District under 1400(b) because Defendant has a regular  
22 and established place of business in this District and has committed acts of patent infringement in  
23 this District.

24 **COUNT I**

25 **INFRINGEMENT OF U.S. PATENT NO. 7,954,701**

26 17. Plaintiff incorporates by reference each of the allegations in the foregoing  
27 paragraphs, and further alleges as follows:  
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1            18.        On June 7, 2011, the United States Patent and Trademark Office issued the ‘701  
2 Patent for inventions covering a POS terminal. In one claimed embodiment, the terminal  
3 comprises a financial information reader configured to receive financial information from a card  
4 associated with an account, in connection with requesting authorization of a purchase transaction;  
5 an input device configured to receive a request for a select cash amount in excess of an amount of  
6 the purchase transaction; and a control system configured to request authorization for payment of  
7 the amount of the purchase transaction and the select cash amount on the account. A true and  
8 correct copy of the ‘701 Patent is attached as Exhibit A.

9            19.        Defendant has been and is now directly infringing one or more claims of the ‘701  
10 Patent, in this judicial District and elsewhere in the United States.

11           20.        For example, Defendant infringes the ‘701 Patent by making, selling, importing  
12 and using infringing POS terminals. For example, Defendant makes, sells, imports, offers for sale,  
13 and uses POS terminals, including but not limited to models T4205, T4210, T4230, M4230,  
14 M4240, L4200, L5000, L5200, and L5300 (“Equinox POS Terminals”).”

15           21.        Equinox POS Terminals are configured to receive financial information from a  
16 card associated with an account, in connection with requesting authorization of a purchase  
17 transaction. For example, Equinox POS Terminals receive financial information from a credit or  
18 debit card in connection with authorizing a purchase transaction.

19           22.        Equinox POS Terminals have an input device configured to receive a request for  
20 a select cash amount in excess of an amount of the purchase transaction. For example, Equinox  
21 POS Terminals have an input device (e.g., button pad) configured to receive a request for a cash  
22 amount in excess of the amount of a purchase transaction (e.g., tip or cash back).

23           23.        Equinox POS Terminals system configured to request authorization for payment  
24 of the amount of the purchase transaction and the select cash amount on the account. For example,  
25 Equinox POS Terminals are configured to request authorization for payment of the amount of the  
26 purchase transaction and the select cash amount from the account.

27           24.        Equinox POS Terminals are terminals wherein the input device comprises a  
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1 display having a graphical user interface. For example, Equinox’s POS Terminals have a graphical  
2 user interface.

3 25. Equinox POS Terminals further comprise a communication device configured to  
4 transmit the request for authorization from the control system to a remote financial services  
5 provider and receive a response from the remote financial services provider. For example, Equinox  
6 POS Terminals communicate with remote financial services providers using, e.g., a network  
7 connection.

8 26. Equinox POS Terminals further comprise a display configured to display details  
9 of the purchase transaction. For example, Equinox POS Terminals have a display that shows the  
10 details of the purchase transaction.

11 27. By making, selling, importing, offering for sale and using Equinox POS products  
12 and/or services infringing the claims of the ’701 Patent, Defendant has injured Millennium and is  
13 liable to Millennium for direct infringement of the claims of the ’701 Patent pursuant to 35 U.S.C.  
14 § 271(a).

15 28. As a result of Defendant’s infringement of the ’701 Patent, Millennium has  
16 suffered harm and seeks monetary damages in an amount adequate to compensate for Defendant’s  
17 infringement, but in no event less than a reasonable royalty for the use made of the invention by  
18 Defendant, together with interest and costs as fixed by the Court.

19 **PRAYER FOR RELIEF**

20 Plaintiff respectfully requests the following relief from the Court:

- 21 1. That Defendant has directly infringed the ‘701 Patent;
- 22 2. That Defendant be ordered to pay damages to Millennium, together with costs,  
23 expenses, pre-judgment, interest and post-judgment interest as allowed by law;
- 24 3. That the Court enter judgment against Defendant, and in favor of Millennium in  
25 all respects; and
- 26 4. For any such other and further relief as the Court deems just and equitable.

27 **JURY TRIAL DEMANDED**

1 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Millennium requests a trial by jury  
2 of any issues so triable by right.

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4 Dated: March 15, 2018

5 Respectfully submitted,

6 /s/ Steven J. Miller

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