

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Sapphire Crossing LLC,

Plaintiff,

v.

Xero, Inc.

Defendant.

Case No. _____

Patent Case

Jury Trial Demanded

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Sapphire Crossing LLC (“Sapphire Crossing”), through its attorney, Isaac Rabicoff, complains against Xero, Inc. (“Xero”) and alleges the following:

PARTIES

1. Plaintiff Sapphire Crossing LLC is a corporation organized and existing under the laws of Texas and maintains its principal place of business at 5570 FM 423 Suite 250, #2008, Frisco, TX 75034.

2. Defendant Xero, Inc. is a corporation organized and existing under the laws of Delaware and maintains its principal place of business at 101 Green St., Level 5, San Francisco, CA 94111.

JURISDICTION

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

4. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Xero because it has engaged in systematic and continuous business activities in the District of Delaware. Specifically, Xero resides in this District as it is incorporated in Delaware and provides its full range of services to residents in this District. As described below, Xero has committed acts of patent infringement giving rise to this action within this District.

VENUE

6. Venue is proper in this District under 28 U.S.C. § 1400(b) because Xero has committed acts of patent infringement in this District and resides in this District. Specifically, Xero is incorporated in this District and provides its full range of services to residents in this District. In addition, Sapphire Crossing has suffered harm in this District.

PATENT-IN-SUIT

7. On May 10, 2005, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,891,633 (“the ’633 Patent”) to Xerox Corporation (“Xerox”), naming Ken Hayward, Marc J. Krolczyk, Dawn M. Marchionda, Thomas L. Wolf and James S. Laird as the inventors. The ’633 Patent is titled “Image Transfer System”. A copy of the ’633 Patent is attached to this Complaint as Exhibit A.

8. Claims 19–20 of the ’633 Patent are valid and enforceable. The Patent Trial and Appeal Board denied institution of claims 19-20 and further denied Petitioner’s request for a rehearing.

9. On November 25, 2015, Xerox assigned all right, title, and interest in and to the ’633 Patent to Ruby Sands LLC, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the ’633 Patent.

10. On March 26, 2018, Ruby Sands LLC assigned all right, title, and interest in and to the '633 Patent to Sapphire Crossing LLC, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the '633 Patent. Accordingly, Sapphire Crossing possesses the exclusive right and standing to prosecute the present action for infringement of the '633 Patent by Xero.

11. The '633 Patent is directed to a novel image transfer system comprising a transfer device which can be operably connected to a computer. The system includes a reader for reading an image on a first medium, and a display for displaying an image transfer menu for effecting transfer of the image to perform a selected function. For example, the reader can be a mobile electronic device used to take a photograph of a first medium (for example, a receipt), and then offer on the display of the mobile electronic device a menu of different actions that can be selected to accomplish a particular task: for example, get cash rebates from digital coupons based on scanned receipts. A downloadable app can transform the mobile device into the claimed image transfer device. Without the app, the mobile device cannot display the first type of menu, read the receipt, establish a connection with a computer, transfer the image to the computer, or display the second type of menu.

12. Claim 19 of the '633 patent is directed to a method for transferring information from a first medium wherein the method provides an image transfer device having a scanner for reading an image on the first medium (for example a smartphone); the image transfer device reads the image on the first medium with the scanner (for example taking a picture with the smartphone); the image transfer device then uploads the electronic data including at least a portion of an image transfer menu to be displayed by the image

transfer device to the transfer device from a computer connected to the transfer device; and a processor of the image transfer device automatically merges the electronic data with the image read by the scanner and transfers the merged image by the transfer device to a second medium (for example servers).

XERO'S INFRINGING SYSTEM AND METHOD

13. Sapphire Crossing incorporates the above paragraphs herein by reference.

14. Xero performs the steps of the method found in the preamble of claim 19: “transferring information from a first medium.” For example, Xero’s Expenses app (“Accused Instrumentality” or ‘Expenses’) uses a reader for reading an image on a first medium, and a display for displaying an image transfer menu to perform a selected function. See <https://itunes.apple.com/nz/app/xero-expenses/id1106018845?mt=8>; Figure 1.



Xero Expenses 4+

Xero Ltd

#121 in Business

★ ★ ★ ★ ☆ 2.7, 6 Ratings

Free

iPhone Screenshots

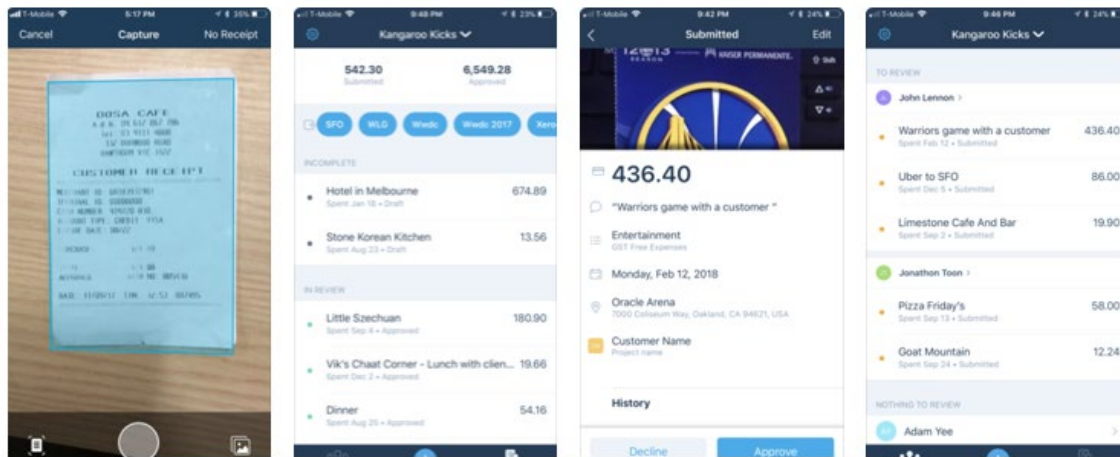


Figure 1. Xero provides a downloadable app for use on mobile devices that transforms such devices into the Accused Instrumentality.

See also <https://central.xero.com/s/article/Create-a-new-expense-AU#iOS>; Figure 2.

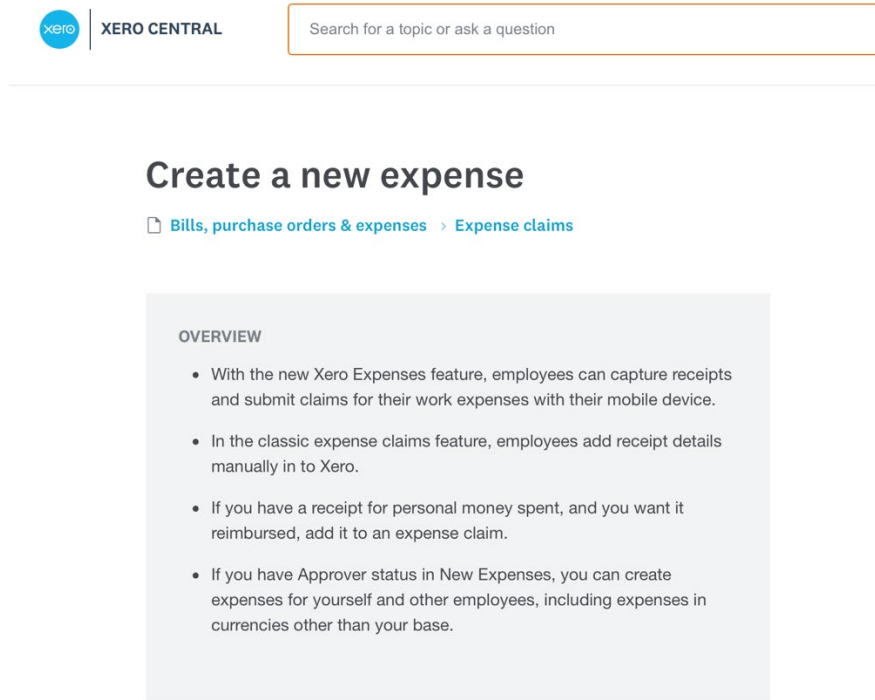


Figure 2. Xero's Expenses uses the camera on the user's smartphone to read images.

15. Xero's Expenses performs the steps found in claim 19(a): "providing an image transfer device having a scanner for reading an image on the first medium." For example, Xero's Expenses scans an image on a first medium, such as the barcode on a paper receipt through a camera. See <https://central.xero.com/s/article/Create-a-new-expense-AU#iOS>; Figure 3.

Classic expense claims

[Web](#) [iOS](#) [Android](#)

- 1 Either:
 - From the Dashboard, tap +, then tap **Add Receipt**.
 - From a contact, tap **Options**, tap **Add New...**, then tap **Receipt**.
- 2 Complete the **What was it for?**, **Where'd you spend?** and **Spent today** fields.
- 3 Tap **How did you pay?**
- 4 Tap **I want to be repaid**.
- 5 Complete the account, tracking, amount and tax rate fields.
- 6 Tap **Optional details** if you need to assign the expense to a customer, enter multiple lines or add a reference.
- 7 Tap **Attach files**, then select one of these options:
 - **Take photo** to take a photo of your receipt.
 - **Choose Photo** to add a photo that is saved on your device.
 - **Choose from Xero Files** to select a file from your Xero Files Inbox.
- 8 Tap **Add**.

You can view attached files by tapping the attachment icon in the bill detail view.

Figure 3. Xero's Expenses uses the camera on the user's smartphone to scan an image on a first medium.

16. Xero's Expenses performs the steps found in claim 19(b): "reading the image on the first medium with the scanner." For example, Xero's Expenses uses the camera on the user's smartphone to read an image of a receipt. *See* Figure 3.

17. Xero's Expenses performs the steps of claim 19(c): "automatically uploading electronic data including at least a portion of an image transfer menu to be displayed by the image transfer device to the transfer device from a computer connected to the transfer device." For example, Xero's Expenses uploads and displays an image transfer validation menu from the communication channels found in Xero's computers and gives users the option to deposit the receipt. *See* Figure 1 and Figure 3.

18. Xero's Expenses performs the steps of claim 19(d): "with a processor of the image transfer device, automatically merging the electronic data with the image read by the scanner." For example, Xero's Expenses merges the data found in the electronic image of the scanned receipt that can be stored on Xero's servers. *See* Figure 3.

19. Xero's Expenses performs the steps of claim 19(e): "transferring the merged image by the transfer device to a second medium." For example, Xero's Expenses transfers the merged image to its server(s). *See* Figure 3 and <https://central.xero.com/s/article/Create-a-new-expense-AU#iOS>; Figure 4.

Account	Select the account from your chart of accounts that the purchase is to be assigned to. If you're unsure which account to use, click on the tip icon display a list of the available accounts. If a suitable account does not exist in the chart of accounts, depending on your user role, you can create one now by clicking +Add . You can add an account code to the list that is available for expense claims, by selecting the Show in Expense Claims option for the account code in your chart of accounts.
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Figure 4. Xero's Expenses transmits the merged information from the mobile device to a server.

COUNT I: DIRECT INFRINGEMENT

20. Sapphire Crossing incorporates the above paragraphs herein by reference.

21. As a result of making, using (including having its employees internally test and use the Accused Instrumentality as alleged below), marketing, and providing the Accused Instrumentality, Xero has and continues to directly infringe at least Claim 19 of

the '633 Patent literally or under the doctrine of equivalents.

22. As set forth above, the Accused Instrumentality is specifically designed to perform every step of at least Claim 19 of the '633 Patent, and each use of the Accused Instrumentality will result in infringement of at least that claim.

23. Upon information and belief, Xero has and continues to directly infringe at least Claim 19 of the '633 Patent when it internally tested and used the Accused Instrumentality.

24. Upon information and belief, Xero's employees or individuals under Xero's control use the Accused Instrumentality to test the operation of the Accused Instrumentality and its various functions, in the infringing manner described here, and thereby infringes at least Claim 19 of the '633 Patent. Sapphire Crossing therefore alleges that Xero has and continues to directly infringe the '633 Patent by using the Accused Instrumentality to perform at least the method of Claim 19.

25. Upon information and belief, Xero also has and continues to directly infringe at least Claim 19 of the '633 Patent when its employees use the Accused Instrumentality. Upon information and belief, Xero's employees or individuals under Xero's control use the Accused Instrumentality in an infringing manner and described in detail in the above section (INFRINGING SYSTEM AND METHOD). Sapphire Crossing therefore alleges that Xero directly infringes the '633 Patent by using the Accused Instrumentality to perform the method of at least Claim 19.

26. Since at least the date that this Complaint was filed, Xero has willfully infringed at least Claim 19 of the '633 Patent by directly infringing the patent with knowledge of the patent and despite an objectively high likelihood that its actions

constituted infringement of the '633 Patent.

27. Sapphire Crossing has suffered damages as a result of Xero's direct infringement of the '633 Patent.

28. Sapphire Crossing is entitled to recover damages adequate to compensate it for such infringement in an amount no less than a reasonable royalty under 35 U.S.C. § 284.

29. Sapphire Crossing will continue to be injured, and thereby caused irreparable harm, unless and until this Court enters an injunction prohibiting further infringement.

COUNT II: INDIRECT INFRINGEMENT

30. Sapphire Crossing incorporates the above paragraphs herein by reference.

31. **Contributory Infringement.** Xero has also contributed to the infringement of at least Claim 19 of the '633 Patent by providing the Accused Instrumentality to, among others, its customers, and by advertising, promoting, encouraging, instructing and aiding others to use the Accused Instrumentality in an infringing manner.

32. Xero has engaged in these activities knowing that the Accused Instrumentality is especially made and adapted for use, and is in fact used, in a manner that constitutes infringement of at least Claim 19 of the '633 Patent. The Accused Instrumentality is not a staple article or commodity of commerce that is suitable for substantial non-infringing uses.

33. Since at least the filing date of this Complaint, Xero has known that the use of the Accused Instrumentality infringes the '633 Patent, and that such combination of components has no substantial non-infringing use.

34. Sapphire Crossing has suffered damages as a result of Xero's indirect infringement of the '633 Patent.

35. Sapphire Crossing is entitled to recover damages adequate to compensate it for such infringement in an amount no less than a reasonable royalty under 35 U.S.C. § 284.

36. Sapphire Crossing will continue to be injured, and thereby caused irreparable harm, unless and until this Court enters an injunction prohibiting further infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Sapphire Crossing prays for judgment against Xero on all the counts and for the following relief:

- A. A declaration that Sapphire Crossing is the owner of the right to sue and to recover for infringement of the '633 Patent being asserted in this action;
- B. A declaration that Xero has directly infringed, actively induced the infringement of, or contributorily infringed the '633 Patent;
- C. A declaration that Xero and its customers are jointly or severally responsible for the damages from infringement of the '633 Patent through the use of the Xero's Mobile app;
- D. A declaration that Xero is responsible jointly or severally with its customers for the damages caused by the infringement of the '633 Patent through the use of the Xero Mobile app by Xero's customers;
- E. An award of damages to compensate Sapphire Crossing for HealthEquity's direct infringement of the Patent-in-Suit, including an accounting of all

damages not presented at trial;

- F. An award of Sapphire Crossing's costs and expenses;
- G. A declaration that Xero's actions constitute as exceptional conduct in bad faith, and an award of Sapphire Crossing's attorney fees; and
- H. Such other and further relief as this Court may deem proper, just and equitable.

Dated: December 28, 2018

Respectfully submitted,

/s/ Timothy Devlin

Timothy Devlin
Delaware Bar No. 4241
DEVLIN LAW FIRM LLC
1306 N. Broom Street, 1st Floor
Wilmington, DE 19806
Phone: (302) 449-9010
tdevlin@devlinlawfirm.com

Isaac Rabicoff
(*Pro Hac Vice Admission Pending*)
isaac@rabilaw.com
Kenneth Matuszewski
(*Pro Hac Vice Admission Pending*)
kenneth@rabilaw.com
Rabicoff Law LLC
73 W Monroe
Chicago, IL 60603
(773) 669-4590

Counsel for Plaintiff