

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

BLACKBIRD TECH LLC d/b/a
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

HSBC BANK USA, N.A.,

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies”) hereby alleges against Defendant HSBC Bank USA, N.A. (“HSBC”), on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its principal place of business located at 200 Baker Ave., Ste. 203, Concord, MA 01742.

2. HSBC is a national association organized under the banking laws of the United States of America with a principal place of business at 1800 Tysons Blvd., Ste. 50, McLean, VA 22102. HSBC may be served with process at its registered agent, The Corporation Trust Incorporated, 2405 York Road, Suite 201, Lutherville-Timonium, MD 21093-2264.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*

4. This Court has subject matter jurisdiction over this action per 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. This Court has personal jurisdiction over HSBC because HSBC is subject to at least specific jurisdiction in Delaware. HSBC has established minimum contacts with this forum. HSBC owns and/or operates at least one bank branch in Delaware (*e.g.*, 300 Delaware Ave., Ste. 1400, Wilmington, DE 19801). HSBC has also established an interactive website (*e.g.*, www.us.hsbc.com) through which it provides banking products and services to persons located in Delaware. Through at least this interactive website, HSBC has also marketed the accused instrumentalities to persons located in Delaware. Upon information and belief, HSBC has issued debit and credit cards to persons located in Delaware, has processed transactions involving such cards taking place in Delaware, has sent authorization communications for transactions to persons located in Delaware, and/or has received approval communications for transactions from persons located in Delaware. The exercise of personal jurisdiction comports with HSBC's right to due process because, as described herein, HSBC has purposefully availed itself of the privilege of conducting activities within Delaware such that it should reasonably anticipate being haled into court here. As alleged herein, acts by HSBC in this District have caused injury to Blackbird Technologies.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) at least because HSBC has committed acts of infringement in this District and has a regular and established place of business in this District, as alleged in at least the preceding paragraph.

THE PATENTS-IN-SUIT

7. U.S. Patent No. 7,958,214 (the "'214 patent") entitled, "Method for Secure Transactions Utilizing Physically Separated Computers," was duly and legally issued by the U.S. Patent and Trademark Office on June 7, 2011. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the '214 patent, including all right to recover

for any and all infringement thereof. The '214 patent is valid and enforceable. A true and correct copy of the '214 patent is attached as Exhibit A.

8. U.S. Patent No. 8,285,832 (the "'832 patent") entitled, "Method for Secure Transactions Utilizing Physically Separated Computers," was duly and legally issued by the U.S. Patent and Trademark Office on October 9, 2012. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the '832 patent, including all right to recover for any and all infringement thereof. The '832 patent is valid and enforceable. A true and correct copy of the '832 patent is attached as Exhibit B.

9. U.S. Patent No. 9,424,848 (the "'848 patent") entitled, "Method for Secure Transactions Utilizing Physically Separated Computers," was duly and legally issued by the U.S. Patent and Trademark Office on August 23, 2016. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the '848 patent, including all right to recover for any and all infringement thereof. The '848 patent is valid and enforceable. A true and correct copy of the '848 patent is attached as Exhibit C.

10. The claims of the '214, '832, and '848 patents address authorization of a transaction apart from the transaction itself – a challenge particular to modern, advanced electronic network communications. The claimed inventions solve a problem created in the Internet world (*i.e.*, identity theft and cybercrime), where network communications take place in a "closed loop" structure to ensure transaction integrity. Prior to the claimed inventions, the authorization and approval of online transactions did not involve establishing or accessing a verification site, sending authorization communications from the verification site to holders of pre-existing identification information, such as credit card information, or transmitting approval communications by the holders of such information. The claimed inventions improve security

for networked transactions by introducing an unconventional technological solution (*e.g.*, a network architecture including a verification site used to verify the authenticity of transactions through a unique sequence of information-specific network communications).

COUNT I – INFRINGEMENT OF THE '214 PATENT

11. Blackbird Technologies reasserts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

12. HSBC infringes one or more claims of the '214 patent, including at least claim 1, by performing a secure transaction method as part of its Fraud Alerts service.

13. HSBC “establish[es] an electronically accessible verification site authorized by the holder of a credit card,” as claimed.

14. HSBC issues credit cards, including Mastercard credit cards, to its customers. (*See* Exhibit D – HSBC, “Compare Credit Cards”). To receive and use an HSBC credit card, a customer must meet certain requirements established by HSBC, including entering into a cardmember agreement with HSBC. (*See, e.g.*, Exhibit E – HSBC, “Cardmember Agreement and Disclosure Statement”). According to this agreement, “[HSBC] may ... require [its] Authorization before allowing a transaction” on the credit card. (*Id.*).

15. HSBC owns and/or operates fraud detection and communication systems that identify potentially fraudulent transactions involving credit cards issued by HSBC and that send text alerts to the holders of those credit cards. For instance, according to HSBC, “HSBC will use short code 97808 to send you SMS alerts when we have detected potential fraudulent transactions on your HSBC credit and/or debit card account(s).” (*See* Exhibit F – HSBC, “HSBC Card Fraud Alerts SMS Terms of Service”). To participate in the HSBC Fraud Alert service, holders of HSBC credit cards agree to terms of service with HSBC. (*See id.*). HSBC

conditions customers' use of HSBC credit cards, including their participation in the HSBC Fraud Alert service, upon the customer authorizing HSBC to send the customer text alerts through HSBC communication systems.

16. HSBC at least directs or controls merchants to “receiv[e] a request for goods or services by a merchant using the credit card, but wherein the card is not required to be physically presented to the merchant,” as claimed.

17. HSBC customers use their HSBC credit card to purchase goods or services from online merchants, over an electronic communication link, without physically presenting the credit card to the merchant. (*See* Exhibit G – HSBC, “Fraud Alerts Frequently Asked Questions” (referring to online purchases); Exhibit H – Mastercard, “A Typical Transaction”). In such transactions, a merchant receives an electronic request for goods or services from a customer, which is electronically forwarded to HSBC as the bank that issued the credit card. (*See* Exhibit H). If the transaction is authorized, HSBC routes an electronic authorization response to the merchant. (*See id.*). In order to accept credit cards issued by HSBC and receive authorization responses from HSBC, and ultimately to receive payment, merchants must receive requests for goods and services conforming to the standards for credit cards issued by HSBC.

18. HSBC at least directs or controls merchants to “access[] the verification site by the merchant to determine whether the request for goods or services is an authorized transaction,” as claimed.

19. Upon receiving from a merchant an electronic request for goods or services paid for using an HSBC credit card, HSBC electronically accesses its fraud detection systems to determine if the request is potentially fraudulent. For example:

How will I be notified of suspicious activity on my Account? ^

HSBC may notify you by free text message¹ or email if we detect suspicious transaction activity on your HSBC Debit or Credit Card Account.

(See Exhibit G; see also Exhibits F & I, HSBC, “How We Protect Consumers”). HSBC conditions its approval of a transaction upon the merchant forwarding the request for goods and services to HSBC’s fraud detection systems.

20. HSBC “send[s] an electronic authorization communication by the verification site to the holder of the credit card, the message including information indicative of the transaction,” as claimed.

21. If HSBC’s fraud detection systems determine a transaction is potentially fraudulent, HSBC sends a text message to the customer through its communication systems, asking the customer to verify the purchase. For example:

How do I respond to a Fraud Alert? ^

You can verify the purchase and continue using your card, or report it if it’s fraud. If it’s your transaction there’s no need to call.

For Text Alerts: respond ‘Yes’ or ‘No’ to the message we send you.

For email alerts: click the ‘No Fraud’ or ‘Fraud’ button in the email we send you.

(See Exhibit G; see also Exhibit F). The text message includes information about the transaction so that the customer can identify the transaction and determine whether it is authorized.

22. HSBC at least directs or controls customers to “transmit[], by the holder of the credit card, an approval communication if the transaction is approved by the card holder,” as claimed.

23. The customer responds to the text message from HSBC by sending a responsive text message to HSBC verifying or rejecting the transaction. For example:

HSBC will use short code 97808 to send you SMS alerts when we have detected potential fraudulent transactions on your HSBC credit and/or debit card account(s). SMS alerts will be sent to the mobile phone number we have on file for you. The messages you receive will ask you to verify whether or not a transaction being attempted is legitimate.

(See Exhibit F; *see also* Exhibit G). HSBC conditions its approval of a transaction on the customer sending a responsive approval communication.

COUNT II – INFRINGEMENT OF THE '832 PATENT

24. Blackbird Technologies reasserts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

25. HSBC infringes one or more claims of the '832 patent, including at least claim 1, by performing a secure transaction method as part of its Fraud Alerts service.

26. HSBC “establish[es] an electronically accessible verification site authorized by the holder of a set of pre-existing identification credentials,” as claimed. (*See* Paragraphs 14 & 15).

27. HSBC at least directs or controls merchants to “receiv[e] at a merchant location, via an electronic communication link, a request for goods from, or services by, a merchant using the identification credentials, but wherein the identification credentials are not required to be physically presented to the merchant,” as claimed. (*See* Paragraph 17).

28. HSBC at least directs or controls merchants to “access[] the verification site by the merchant, via an electronic communication link, to determine whether the request for goods or services is an authorized transaction,” as claimed. (*See* Paragraph 19).

29. HSBC “send[s] an electronic authorization communication from the verification site to the holder of the identification credentials, the communication including information indicative of the transaction,” as claimed. (*See* Paragraph 21).

30. HSBC at least directs or controls holders of identification credentials to “transmit[], by the holder of the identification credentials, an electronic approval communication if the transaction is approved by the holder of the identification credentials,” as claimed. (*See* Paragraph 23).

COUNT III – INFRINGEMENT OF THE '848 PATENT

31. Blackbird Technologies reasserts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

32. HSBC infringes one or more claims of the '848 patent, including at least claim 1, by performing a secure transaction method as part of its Fraud Alerts service.

33. HSBC “establish[es] an electronically accessible verification site authorized for a holder of pre-existing identification (ID) information,” as claimed. (*See* Paragraphs 14 & 15).

34. HSBC at least directs or controls merchants to “receiv[e] at a merchant location, via a first electronic network communication, a request for goods from, or services by, a merchant using the ID information, but wherein the ID information is not physically presented to the merchant,” as claimed. (*See* Paragraph 17).

35. HSBC at least directs or controls merchants to “access[] the verification site by the merchant, via a second electronic network communication, to determine whether the request for goods or services is an authorized transaction,” as claimed. (*See* Paragraph 19).

36. HSBC “send[s] an electronic authorization communication from the verification site to the holder of the ID information, via a third electronic communication, the communication including information indicative of the transaction,” as claimed. (*See* Paragraph 21).

37. HSBC at least directs or controls holders of pre-existing ID information to “transmit[], by the holder of the identification credential via a fourth electronic network communication, an approval communication if the transaction is approved by the holder of the identification credential,” as claimed. (*See* Paragraph 23).

DAMAGES

38. Blackbird Technologies has sustained damages as a direct and proximate result of HSBC’s infringement of the ’214, ’832, and ’848 patents.

39. As a consequence of HSBC’s past infringement of the ’214, ’832, and ’848 patents, Blackbird Technologies is entitled to the recovery of past damages in the form of, at a minimum, a reasonable royalty.

40. As a consequence of HSBC’s continued and future infringement of the ’214, ’832, and ’848 patents, Blackbird Technologies is entitled to royalties for its infringement of the ’214, ’832, and ’848 patents on a going-forward basis.

PRAYER FOR RELIEF

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A. Adjudging that Defendant has infringed the '214, '832, and '848 patents, in violation of 35 U.S.C. § 271(a);

B. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284 and, if necessary to adequately compensate Blackbird Technologies for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

C. Ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '214, '832, and '848 patents on a going-forward basis;

D. Awarding that this case be exceptional under 35 U.S.C. § 285 and awarding costs, expenses, and attorneys' fees to Blackbird Technologies;

E. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages; and

F. Granting Blackbird Technologies such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: March 5, 2019

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