

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

BLACKBIRD TECH LLC d/b/a
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

WELLS FARGO & COMPANY,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies”) hereby alleges against Defendant Wells Fargo & Company (“Wells Fargo”), 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. Wells Fargo is a Delaware corporation with its principal place of business located at 420 Montgomery St., San Francisco, CA 94163. Wells Fargo may be served with process at its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801.

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 Wells Fargo at least because Wells Fargo is a citizen of the State of Delaware, being incorporated in the State of Delaware. Wells Fargo transacts business in the State of Delaware, and also transacts business with citizens of the State of Delaware. Wells Fargo maintains at least 17 banks and 33 automatic teller machines throughout the State of Delaware. Wells Fargo also maintains an interactive website (wellsfargo.com) accessible to citizens of the State of Delaware. Wells Fargo has previously consented to personal jurisdiction in the State of Delaware, including in patent infringement lawsuits, in the District of Delaware. Wells Fargo has committed acts of patent infringement in the State of Delaware, as explained further below.

6. Venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1400(b) at least because Wells Fargo resides in the District of Delaware, being incorporated in the State of Delaware. In addition, Wells Fargo commits acts of infringement in Delaware and has 17 banks there, which are regular and established places of business.

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. Wells Fargo infringes one or more claims of the ‘214 patent, including at least claim 1, by performing a secure transaction method as part of its suspicious card activity alerts service.

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

14. Wells Fargo customers authorize text communication systems established by Wells Fargo. Wells Fargo issues credit cards to its customers. (*See* Exhibit D – Wells Fargo, “Credit Card Categories”). To receive and use a Wells Fargo credit card, and to use online services related to such credit cards, a customer must meet certain requirements established by Wells Fargo, including accepting a cardholder agreement, among other terms and conditions. (*See, e.g.*, Exhibit E – Wells Fargo, “Cash Wise Visa Card Terms and Conditions,” & Exhibit F

– Wells Fargo, “Alerts Questions”). According to at least one exemplary set of account terms and conditions established by Wells Fargo, “[b]y providing us with any telephone number, you are expressly consenting permission to contact you at that number about all of your Wells Fargo accounts.” (Exhibit E at 2). In addition, Wells Fargo instructs its customers, “[t]o receive text message alerts, you must first enroll your mobile number(s) for text messages” and “[a]ccept the Consent to Receive Text Messages.” (Exhibit F at 1).

15. Wells Fargo owns and/or operates fraud detection and communication systems that identify potentially fraudulent transactions involving credit cards issued by Wells Fargo and that send text alerts to the holders of those credit cards. For instance, according to Wells Fargo, as part of its suspicious card activity alerts service, customers can receive and respond to alerts regarding suspicious activity on their Wells Fargo credit cards. (*See, e.g.*, Exhibit G – Wells Fargo, Suspicious Card Activity Alerts Commercial; *see also* <https://www.ispot.tv/ad/wyvw/wells-fargo-app-suspicious-card-activity-alerts-cat>). Wells Fargo conditions customers’ use of Wells Fargo credit cards, including their participation in the Wells Fargo suspicious card activity alerts service, upon the customer authorizing Wells Fargo to send the customer text alerts through Wells Fargo communication systems.

16. Wells Fargo 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. Wells Fargo customers use their Wells Fargo credit cards to purchase goods or services from online merchants, over an electronic communication link, without physically presenting the credit card to the merchant. In such transactions, a merchant receives an electronic request for goods or services from a customer, which is electronically forwarded to

Wells Fargo as the bank that issued the credit card. If the transaction is authorized, Wells Fargo routes an electronic authorization response to the merchant. In order to accept credit cards issued by Wells Fargo and receive authorization responses from Wells Fargo, and ultimately to receive payment, merchants must receive requests for goods and services conforming to the standards for credit cards issued by Wells Fargo.

18. Wells Fargo 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 a Wells Fargo credit card, Wells Fargo electronically accesses its fraud detection systems to determine if the request is potentially fraudulent. For example, according to Wells Fargo, “[w]e’re looking out for you with suspicious card activity alerts.” (*See* Ex. G). Wells Fargo conditions its approval of a transaction upon the merchant forwarding the request for goods and services to Wells Fargo’s fraud detection systems.

20. Wells Fargo “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 Wells Fargo’s suspicious card activity systems determine a transaction is potentially fraudulent, Wells Fargo sends a text message to the customer through its communication systems, asking the customer to verify the purchase. For example, according to a Wells Fargo television commercial, Wells Fargo sends a text message to a customer including information about the transaction so that the customer can identify the transaction and determine whether it is authorized, as shown below:

(See Ex. G).

22. Wells Fargo 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 Wells Fargo by sending a responsive text message to Wells Fargo verifying or rejecting the transaction. For example, according to the Wells Fargo television commercial excerpted above, the customer can “[r]ePLY CONFIRM if valid or DENY if suspicious.” (See Ex. G). Wells Fargo conditions its approval of a transaction on the customer sending a responsive approval communication.

24. Wells Fargo also offers its suspicious card activity alerts service in connection with debit cards. (See, e.g., Exhibit H – Wells Fargo, “Debit Card Alerts” (“We regularly monitor for unauthorized transactions and may alert you if we detect suspicious card activity. We may reach out to you directly by phone or text to as you to verify transactions.”) & Exhibit I – Wells Fargo, “24/7 Fraud Monitoring and Account Alerts” (“We detect potential unusual debit

card activity with our new Suspicious Card Activity Alert. You can also reply by text to confirm whether you recognize the transaction.”)).

COUNT II – INFRINGEMENT OF THE ‘832 PATENT

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

26. Wells Fargo infringes one or more claims of the ‘832 patent, including at least claim 1, by performing a secure transaction method as part of its suspicious card activity alerts service.

27. Wells Fargo “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).

28. Wells Fargo 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).

29. Wells Fargo 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).

30. Wells Fargo “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).

31. Wells Fargo 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

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

33. Wells Fargo infringes one or more claims of the ‘848 patent, including at least claim 1, by performing a secure transaction method as part of its suspicious card activity alerts service.

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

35. Wells Fargo 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).

36. Wells Fargo 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).

37. Wells Fargo “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).

38. Wells Fargo 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

39. Blackbird Technologies has sustained damages as a direct and proximate result of Wells Fargo’s infringement of the ‘214, ‘832, and ‘848 patents.

40. As a consequence of Wells Fargo’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.

41. As a consequence of Wells Fargo’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: June 18, 2018

STAMOULIS & WEINBLATT LLC

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