

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

KIOBA PROCESSING LLC,

Plaintiff,

v.

BANK OF AMERICA CORPORATION,

Defendant.

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C.A. No. ____

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Kioba Processing LLC (“Kioba” or “Plaintiff”) files this Complaint against Defendant Bank of America Corporation (“Bank of America” or “Defendant”) for infringement of U.S. Patent No. 6,917,902 (the “’902 patent”), U.S. Patent No. 6,931,382 (the “’382 patent”), U.S. Patent No. 7,110,792 (the “’792 patent”), U.S. Patent No. 7,107,078 (the “’078 patent”), and U.S. Patent No. 8,442,915 (the “’915 patent”) (collectively the “asserted patents” or the “patents-in-suit”).

THE PARTIES

1. Kioba is a Georgia limited liability company with its principal place of business in Alpharetta, GA.
2. On information and belief, Bank of America is a Delaware corporation with its principal place of business at 100 North Tyron Street, Charlotte, North Carolina 28255. Defendant can be served with process by serving C T Corporation System, 160 Mine Lake Ct. Ste. 200 Raleigh, NC 27615-6417.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others.

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

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(b). Bank of America does business in the State of Texas and in this District. Additionally, Bank of America has regular and established places of business in this District, and upon information and belief, Bank of America has individually transacted business in this District and committed acts of patent infringement in this District. Defendant maintains brick and mortar offices all over the country including but not limited to the Eastern District of Texas some of which are located at, 7001 Independence Pkwy, Plano, Texas, 2015 Coit Rd. Plano, Texas, 7150 Virginia Pkwy, McKinney, Texas, 1851 S. Interstate 35 E. Denton, Texas 76205.

6. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this State and judicial district, including: (A) at least part of its own infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from infringing goods offered for sale, sold, and imported and services provided to Texas residents vicariously through and/or in concert with its subsidiaries, intermediaries, and/or agents. Bank of America has conducted and does conduct business within the Eastern District of Texas. Bank of America, directly or through subsidiaries or intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and/or advertises (including through its web pages) its products and services (including products and/or services that infringe the Asserted Patents, as described more particularly below) in the United

States, the State of Texas, and the Eastern District of Texas. Bank of America, directly and through subsidiaries or intermediaries (including distributors, retailers, and others), has purposefully and voluntarily placed one or more infringing products and/or services, as described below, into the stream of commerce with the expectation that they will be acquired and/or used by consumers in the Eastern District of Texas. These infringing products and/or services have been and continue to be acquired and/or used by consumers in the Eastern District of Texas. Bank of America has committed acts of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

THE ASSERTED PATENTS

7. The '902 patent lawfully issued on July 12, 2005.
8. The named inventor of the '902 patent is Bruce Alexander.
9. Each claim in the '902 patent is presumed valid.
10. Each claim in the '902 patent is directed to patent eligible subject matter under 35 U.S.C. § 101.
11. The specification of the '902 patent discloses shortcomings in the prior art and then explains, in detail, the technical way the inventions claimed by the '902 patent resolve or overcome those shortcomings. The '902 patent explains “[s]ome monitoring systems, such as security monitoring devices, have begun to incorporate biometric data monitoring devices, such as fingerprint scanners, retinal scanners, or facial recognition devices as part of a monitoring process. Although biometric monitoring devices can potentially facilitate the identification of individuals, objects and/or events, many traditional monitoring systems have not incorporated various biometric monitoring devices as part of an integrated monitoring process.” '902 patent, 1:42-50. The '902 patent further explains that “some incoming biometric data is incompatible with the typical reference sources and/or processing rules. Thus, the use of biometric identification devices

as part of an overall monitoring process is still limited. In addition to the lack of ability to integrate biometric data processing as part of a monitoring process, many traditional monitoring systems do not provide or support robust data sources required by the traditional biometric identification devices. One skilled in the relevant art will appreciate that biometric identification tools require the use of data templates and data rules that are used to process biometric sample data coming in from the monitoring devices.” *Id.* at 1:54-66. At the time of the invention, “many closed monitoring systems [could not] efficiently support various biometric identification devices” or could not “utilize an external data template source if the data is maintained in an incompatible format.” *Id.* at 2:3-9. The ’902 patent recognized this drawback and solved the “need for a system and method for centrally processing and distributing biometric data templates and data rules to one or more processing systems,” as well as the “need for a system and method for processing specific instances and types of biometric data.” *Id.* at 2:13-17. The techniques for monitoring and processing device data disclosed and claimed by the ’902 patent were not routine or conventional at the time of their invention.

12. The ’382 patent is titled “Payment instrument authorization technique.” The inventions claimed in the ’382 patent generally relate to a new and novel approach to protect against fraudulent credit and debit card activity.

13. The ’382 patent lawfully issued on August 16, 2005.

14. The named inventors of the ’382 patent are Dominic P. Laage and Maria T. Laage.

15. Each claim in the ’382 patent is presumed valid.

16. Each claim in the ’382 patent is directed to patent eligible subject matter under 35 U.S.C. § 101.

17. The specification of the '382 patent discloses shortcomings in the prior art and then explains, in detail, the technical way the inventions claimed by the '382 patent resolve or overcome those shortcomings. The '382 patent explains online commerce creates numerous security risks associated with the storage of "sensitive financial data." '382 patent, 2:7-17. Online commerce presents numerous risks for both consumers and merchants. *Id.* Among other things, merchants face risks associated with fraudulent and unauthorized use. *See, e.g., id.* at 2:24-58. Similarly, consumers face risks associated with unauthorized access to their financial data. *See, e.g., id.* at 2:59-63. The '382 patent recognized these problems and the need for "a system and method for providing assurance to the merchant that the person attempting to make a purchase with a payment instrument is in fact the authorized user of the instrument. There also exists a need for a system and method that allows a merchant to prove that the authorized cardholder actually made the transaction. There also exists a need for a system and method for reducing the likelihood of a cardholder's issuing bank authorizing a fraudulent online transaction." *Id.* at 2:64-3:5. After identifying shortcomings in the prior art, the '382 patent provides technical solutions for preventing fraud and unauthorized transactions. More specifically, the patent discloses "technique[s] for strongly authenticating the owner of [a] payment instrument[]" and "a process by which owners of payment instruments [] have control over the usage of their payment instruments by giving them the ability selectively to block and unblock their payment instruments." *See, e.g., id.* at 3:8-21. The techniques for selectively blocking and unblocking payment instruments disclosed by the '382 patent were not routine or conventional at the time of their invention.

18. The '792 patent is titled "Apparatus and method for increased security of wireless transactions." The inventions claimed in the '792 patent generally relate to a new and novel approach to wireless payment systems.

19. The '792 patent lawfully issued on September 19, 2006.

20. The named inventor of the '792 patent is Einar Rosenberg.

21. Each claim in the '792 patent is presumed valid.

22. Each claim in the '792 patent is directed to patent eligible subject matter under 35 U.S.C. § 101.

23. The specification of the '792 patent recognized the need to secure communications in contactless payment systems. *See, e.g.*, '792 patent at 3:29-42. In particular, the '792 patent recognized that prior art contactless payment systems could be used by anyone in possession of a smartcard or other device with a smart chip, even though the possessor might not be the owner. *Id.* The '792 patent addresses this shortcoming by disclosing and claiming new methods and apparatus for securing such devices, including (for example) new systems and methods whereby a "smartcard chip" transaction is authenticated using a mobile device. *See, e.g., id.* at 3:45-4:60.

24. The '078 patent is titled "Method and system for the effecting payments by means of a mobile station." The inventions claimed in the '078 patent generally relate to a new and novel user interfaces and methods for effecting mobile payments.

25. The '078 patent lawfully issued on September 12, 2006.

26. The named inventor of the '078 patent is Mariette Lehto.

27. Each claim in the '078 patent is presumed valid.

28. Each claim in the '078 patent is directed to patent eligible subject matter under 35 U.S.C. § 101.

29. The specification of the '078 patent discloses shortcomings in the prior art and then explains, in detail, the technical way the inventions claimed by the '078 patent resolve or overcome those shortcomings. The '078 patent recognized that the burgeoning mobile payment systems did not allow for a convenient “way to select the method of payment for a particular situation that has arisen based on current circumstances or the user’s wishes.” *See, e.g.*, '078 patent, 1:36-47. The '078 patent “makes it possible to offer the user a variety of user-selectable alternatives, suitable for the particular purchase, for making a payment.” *Id.* at 3:12-15. The '078 patent overcame this shortcoming by providing a secure interface for a user to select a preferred payment method. Additionally, the '078 patent recognized the benefits of using a network application to store user-specific information relating to payments, such as credit card numbers and encryption data. *Id.* at 3:21-25. Among other things, this solution provides the user with the ability to select a secure payment method, while avoiding the risks associated with storing payment information on a mobile terminal. The techniques for securely storing and presenting payment information disclosed by the '078 patent were not routine or conventional at the time of their invention.

30. The '915 patent is titled “Modifiable authentication levels in authentication systems for transactions.” The inventions claimed in the '915 patent generally relate to a new and novel technique for authenticating customers in a credit or debit card transaction.

31. The '915 patent lawfully issued on May 14, 2013.

32. The named inventors of the '915 patent are Sunao Takatori and Hisanori Kiyomatsu.

33. Each claim in the '915 patent is presumed valid.

34. Each claim in the '915 patent is directed to patent eligible subject matter under 35 U.S.C. § 101.

35. The specification of the '915 patent identifies the need in the prior art and details a technical solution to meet those needs. *See, e.g.*, '915 patent, 1:25-55. For example, the patent recognized that commercial transactions over the Internet resulted in an increased amount of fraud. *Id.* As such, there was a need to verify users without causing inconvenience. *Id.* The inventors of the '915 patent recognized that a more secure, but convenient approach to authentication could be achieved by way of the user's mobile communication device. *See, e.g., id.* at 2:57-3:53.

COUNT I
(Infringement of U.S. Patent No. 6,917,902)

36. Plaintiff incorporates paragraphs 1 through 35 herein by reference.

37. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

38. Plaintiff is the owner of the '902 patent with all substantial rights to the '902 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement.

39. The '902 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. §271(a))

40. Defendant has infringed one or more claims of the '902 patent in this judicial district and elsewhere in Texas and the United States.

41. On information and belief, Defendant has either by itself or via an agent, infringed at least claim 1 of the '902 patent by, among other things, performing the method of claim 1 via at least its facilitating biometric login through its mobile applications ("the '902 Accused Services").

42. Attached hereto as Exhibit A, and incorporated herein by reference, is a claim chart detailing how the '902 Accused Services infringe the '902 patent.

43. Defendant is liable for these infringements of the '902 patent pursuant to 35 U.S.C. § 271.

44. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Court. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

45. Plaintiff has complied with the requirements of 35 U.S.C. § 287 and is entitled to collect pre- and post-filing damages for Defendant's infringements of the '902 patent.

WILLFUL INFRINGEMENT

46. Prior to the filing of this action Defendant was aware of the '902 patent.

47. Plaintiff sent Defendant a claim chart, like the one attached hereto as Exhibit A, detailing Defendant's infringement of the '902 patent in April 2020.

48. Defendant has been, or should have been, aware of its infringement of the '902 patent since at least its receipt and review of the April 2020 communication.

49. On information and belief, despite being aware of the '902 patent and its infringement of the '902 patent, Defendant has not changed or otherwise altered the '902 Accused Services or its practices in an effort to avoid infringing the '902 patent. Rather, despite having notice of the '902 patent, Defendant has, and continues to, infringe the '902 patent in disregard to Plaintiff's patent rights.

50. Defendant has acted recklessly and/or egregiously, and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '902 patent, justifying a finding of willful infringement and an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

COUNT II
(Infringement of U.S. Patent No. 6,931,382)

51. Plaintiff incorporates paragraphs 1 through 50 herein by reference.

52. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

53. Plaintiff is the owner of the '382 patent with all substantial rights to the '382 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement.

54. The '382 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. §271(a))

55. Defendant has infringed one or more claims of the '382 patent in this judicial district and elsewhere in Texas and the United States.

56. On information and belief, Defendant has either by itself or via an agent, infringed at least claim 6 of the '382 patent by, among other things, performing the method of claim 6 via at least its testing and implementation of its "Lock/Unlock" service ("the '382 Accused Services").

57. Attached hereto as Exhibit B, and incorporated herein by reference, is a claim chart detailing how the '382 Accused Services infringe the '382 patent.

58. To the extent Defendant contends that the step of claim 6 that recites "communicating by the authorized instrument holder, prior to a transaction or multiple transactions, with an authentication function to subject the authorized instrument holder to authentication and to request that the payment instrument be unblocked for future payment authorizations" (or some other step of the asserted claims) is performed by Defendant's customers or end users of, Plaintiff contends that Defendant is responsible for such performance; Defendant directs and controls such performance because Defendant conditions a benefit to its customers and end users (e.g., the ability

to prevent unauthorized use of Bank of America credit or debit cards) based on its customers' and end users' performance of steps that were established by Defendant (e.g., the series of steps required by Defendant's websites and/or apps for customers/end users to log in to a Bank of America website or app and unblock a Bank of America card), and which Defendant does not allow its customers and end users to alter.

59. Defendant is liable for these infringements of the '382 patent pursuant to 35 U.S.C. § 271.

60. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

61. Plaintiff has complied with the requirements of 35 U.S.C. § 287 and is entitled to collect pre- and post-filing damages for Defendant's infringements of the '382 patent.

WILLFUL INFRINGEMENT

62. Prior to the filing of this action Defendant was aware of the '382 patent.

63. Plaintiff sent Defendant a claim chart, like the one attached hereto as Exhibit B, detailing Defendant's infringement of the '382 patent in April 2020.

64. Defendant has been, or should have been, aware of its infringement of the '382 patent since at least its receipt and review of the April 2020 communication.

65. On information and belief, despite being aware of the '382 patent and its infringement of the '382 patent, Defendant has not changed or otherwise altered the '382 Accused Services or its practices in an effort to avoid infringing the '382 patent. Rather, despite having

notice of the '382 patent, Defendant has, and continues to, infringe the '382 patent in disregard to Plaintiff's patent rights.

66. Defendant has acted recklessly and/or egregiously, and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '382 patent, justifying a finding of willful infringement and an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

COUNT III
(Infringement of U.S. Patent No. 7,110,792)

67. Plaintiff incorporates paragraphs 1 through 66 herein by reference.

68. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

69. Plaintiff is the owner of the '792 patent with all substantial rights to the '792 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement.

70. The '792 patent is valid, enforceable and was duly issued in fully compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

71. Defendant has, and continues to, infringe one or more claims of the '792 patent in this judicial district and elsewhere in Texas and the United States.

72. On information and belief, Defendant has either by itself or via an agent, infringed at least claim 1 of the '792 patent by, among other things, providing the apparatus of claim 8 via at least its testing of its payment cards in a digital wallet (“the '792 Accused Products”).

73. Attached hereto as Exhibit C, and incorporated herein by reference, is a claim chart detailing how the '792 Accused Products infringe the '792 patent.

74. Defendant is liable for these infringements of the '792 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT (35 U.S.C. § 271(b))

75. Based on the information presently available to Plaintiff, absent discovery, and in the alternative to direct infringement, Plaintiff contends that Defendant has, and continues to, indirectly infringe one or more claims of the '792 patent by inducing direct infringement by end users of the Accused Products.

76. Defendant has had knowledge of the '792 patent since at least April 2020, when Defendant was notified via email of the '792 patent and its infringement of the '792 patent. Specifically, in April 2020, Defendant received a claim chart detailing its infringement of the '792 patent.

77. On information and belief, despite having knowledge of the '792 patent, Defendant specifically intended for persons who use the '792 Accused Products, including Defendant's customers and end consumers, to do so in a way that infringes the '792 patent, including at least claim 1, and Defendant knew or should have known that its actions were inducing infringement.

78. Defendant instructs and encourages users to use the '792 Accused Products in a manner that infringes the '792 patent. For example, Defendant's website includes instructions on how to locate and use cardless ATMs. *See, e.g.*, <https://www.bankofamerica.com/deposits/atm-fees-faqs/>. Also, Defendant's website includes instructions on how to use a Bank of America card in a digital wallet. *See, e.g.*, <https://promo.bankofamerica.com/digitalwallets>.

79. Furthermore, Defendant has not provided any information or indication that it has implemented a design around or otherwise taken any remedial action with respect to the '792 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Plaintiff will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

80. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

81. Plaintiff has complied with the requirements of 35 U.S.C. § 287 and is entitled to collect pre- and post-filing damages for Defendant's infringements of the '792 patent.

WILLFUL INFRINGEMENT

82. Prior to the filing of this action Defendant was aware of the '792 patent

83. As detailed above, Defendant received multiple correspondences from Plaintiff. Included in Plaintiff's correspondence were claim charts detailing Defendant's infringement of the '792 patent.

84. Defendant has been, or should have been, aware of its infringement of the '792 patent since at least its receipt and review of the April 2020 communication.

85. On information and belief, despite being aware of the '792 patent and its infringement of the '792 patent, Defendant has not changed or otherwise altered its products in an effort to avoid infringing the '792 patent. Rather, despite having notice of the '792 patent, Defendant continues to infringe the '792 patent, directly and/or indirectly, in deliberate disregard to Plaintiff's patent rights.

86. Defendant has acted recklessly and/or egregiously, and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '792 patent, justifying a finding of willful infringement and an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

COUNT IV
(Infringement of U.S. Patent No. 7,107,078)

87. Plaintiff incorporates paragraphs 1 through 86 herein by reference.

88. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

89. Plaintiff is the owner of the '078 patent with all substantial rights to the '078 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement.

90. The '078 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. §271(a))

91. Defendant has infringed one or more claims of the '078 patent in this judicial district and elsewhere in Texas and the United States.

92. On information and belief, Defendant has either by itself or via an agent, infringed at least claim 6 of the '078 patent by, among other things, making and using, including via at least its testing of, systems that support payment functionality for the Bank of America Mobile App (“the '078 Accused Systems”).

93. Attached hereto as Exhibit D, and incorporated herein by reference, is a claim chart detailing how the '078 Accused Systems infringe the '078 patent.

94. Defendant is liable for these infringements of the '078 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT (INDUCEMENT - 35 U.S.C. §271(b))

95. Based on the information presently available to Plaintiff, absent discovery, and in the alternative to direct infringement, Plaintiff contends that Defendant has indirectly infringed

one or more claims of the '078 patent by inducing direct infringement by end users of the '078 Accused Systems.

96. Defendant had knowledge of the '078 patent since at least as August 2020, when Defendant was notified via email of the '078 patent and its infringement of the '078 patent. Specifically, in August 2020, Plaintiff's counsel sent Defendant a detailed claim chart, like the one attached hereto as Exhibit D, detailing Defendant's infringement of the '078 patent.

97. On information and belief, despite having knowledge of the '078 patent, Defendant specifically intended for persons who use the '078 Accused Systems, including Defendant's customers and end consumers, to make and use such systems in a way that infringes the '078 patent, including at least claim 6, and Defendant knew or should have known that its actions were inducing infringement.

98. Defendant instructs and encourages users to make and use the '078 Accused Systems in a manner that infringes the '078 patent. For example, Defendant's website includes advertising and instructions encouraging customers to use the '078 Accused Systems, including, for example, <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/bill-pay/>.

99. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

100. Plaintiff has complied with the requirements of 35 U.S.C. § 287 and is entitled to collect pre- and post-filing damages for Defendant's infringements of the '078 patent.

WILLFUL INFRINGEMENT

101. Prior to the filing of this action Defendant was aware of the '078 patent

102. As detailed above, Defendant received correspondences from Plaintiff. Included in Plaintiff's correspondence were claim charts detailing Defendant's infringement of the '078 patent.

103. Defendant has been, or should have been, aware of its infringement of the '078 patent since at least its receipt and review of the August 2020 communication.

104. On information and belief, despite being aware of the '078 patent and its infringement of the '078 patent, Defendant has not changed or otherwise altered its products in an effort to avoid infringing the '078 patent. Rather, despite having notice of the '078 patent, Defendant continues to infringe the '078 patent, directly and/or indirectly, in deliberate disregard to Plaintiff's patent rights.

105. Defendant has acted recklessly and/or egregiously, and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '078 patent, justifying a finding of willful infringement and an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

COUNT V
(Infringement of U.S. Patent No. 8,442,915)

106. Plaintiff incorporates paragraphs 1 through 105 herein by reference.

107. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

108. Plaintiff is the owner of the '915 patent with all substantial rights to the '915 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement.

109. The '915 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. §271(a))

110. Defendant has infringed one or more claims of the '915 patent in this judicial district and elsewhere in Texas and the United States.

111. On information and belief, Defendant has either by itself or via an agent, infringed at least claim 7 of the '915 patent by, among other things, performing the method of claim 7 via at least its testing of the SafePass systems (“the '915 Accused Services”).

112. Attached hereto as Exhibit E, and incorporated herein by reference, is a claim chart detailing how the '915 Accused Services infringe the '915 patent.

113. Defendant is liable for these infringements of the '915 patent pursuant to 35 U.S.C. § 271.

INDIRECT INFRINGEMENT (INDUCEMENT - 35 U.S.C. §271(b))

114. Based on the information presently available to Plaintiff, absent discovery, and in the alternative to direct infringement, Plaintiff contends that Defendant has indirectly infringed one or more claims of the '915 patent by inducing direct infringement by end users of the '915 Accused Services.

115. Defendant had knowledge of the '915 patent since at least August 2020, when Defendant was notified via email of the '915 patent and its infringement of the '915 patent. Specifically, in August 2020, Plaintiff’s counsel sent Defendant a detailed claim chart, like the one attached hereto as Exhibit E, detailing Defendant’s infringement of the '915 patent.

116. On information and belief, despite having knowledge of the '915 patent, Defendant specifically intended for persons who use the '915 Accused Services, including Defendant’s customers and end consumers, to use such services in a way that infringes the '915 patent,

including at least claim 7, and Defendant knew or should have known that its actions were inducing infringement.

117. Defendant instructs and encourages users to use the '915 Accused Services in a manner that infringes the '915 patent. For example, Defendant's website includes advertising and instructions encouraging customers to use the '915 Accused Services, including, for example, [https://www.bankofamerica.com/security-center/online mobile banking privacy/safepass/](https://www.bankofamerica.com/security-center/online-mobile-banking-privacy/safepass/).

118. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

119. Plaintiff has complied with the requirements of 35 U.S.C. § 287 and is entitled to collect pre- and post-filing damages for Defendant's infringements of the '915 patent.

WILLFUL INFRINGEMENT

120. Prior to the filing of this action Defendant was aware of the '915 patent

121. As detailed above, Defendant received correspondences from Plaintiff. Included in Plaintiff's correspondence were claim charts detailing Defendant's infringement of the '915 patent.

122. Defendant has been, or should have been, aware of its infringement of the '915 patent since at least its receipt and review of the August 2020 communication.

123. On information and belief, despite being aware of the '915 patent and its infringement of the '915 patent, Defendant has not changed or otherwise altered its products in an effort to avoid infringing the '915 patent. Rather, despite having notice of the '915 patent, Defendant continues to infringe the '915 patent, directly and/or indirectly, in deliberate disregard to Plaintiff's patent rights.

124. Defendant has acted recklessly and/or egregiously, and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '915 patent, justifying a finding of willful infringement and an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

JURY DEMAND

Plaintiff requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff asks that the Court find in its favor and against Defendant and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the asserted patents have been infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- b. Judgment that one or more claims of the asserted patents have been willfully infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- c. Judgment that Defendant account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein, including an accounting for any sales or damages not presented at trial;
- d. Judgment that Defendant account for and pay to Plaintiff a reasonable, ongoing, post judgment royalty because of Defendant's infringing activities, including continuing infringing activities, and other conduct complained of herein;
- e. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- f. Find this case exceptional under the provisions of 35 U.S.C. § 285 and award enhanced damages; and
- g. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: October 9, 2020

Respectfully submitted,

/s/ Jonathan H. Rastegar

Jonathan H. Rastegar
Texas Bar No. 24064043
T. William Kennedy Jr.
Texas Bar No. 24055771

BRAGALONE CONROY PC

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