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NANTWORKS, LLC and NANT HOLDINGS IP, LLC

12  
13 UNITED STATES DISTRICT COURT  
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
15

16 NANTWORKS, LLC, a Delaware  
17 limited liability company, and NANT  
HOLDINGS IP, LLC, a Delaware  
18 limited liability company,

19 Plaintiffs,

20 vs.

21 BANK OF AMERICA  
CORPORATION, a Delaware  
22 corporation, and BANK OF  
AMERICA, N.A., a national banking  
23 association,

24 Defendants.

CASE NO. 2:20-cv-7872-GW-PVC

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT,  
COPYRIGHT INFRINGEMENT,  
TRADE SECRET  
MISAPPROPRIATION, AND  
BREACH OF CONTRACT**

**JURY TRIAL DEMANDED**

Trial Date: None Set

1 Plaintiffs NantWorks, LLC and Nant Holdings IP, LLC (“Nant IP”)  
2 (collectively, “NantWorks” or “Plaintiffs”), through their attorneys and for their  
3 claims against Defendants Bank of America Corporation (“BAC”) and Bank of  
4 America, N.A. (“BNA”) (collectively, “BoA” or “Defendants”), allege as follows:

5 **THE PARTIES**

6 1. Plaintiff NantWorks, LLC is a Delaware limited liability company with  
7 its principal place of business at 9920 Jefferson Boulevard, Culver City, CA 90232.

8 2. Plaintiff Nant Holdings IP, LLC is a Delaware limited liability company  
9 with its principal place of business at 9920 Jefferson Boulevard, Culver City, CA  
10 90232.

11 3. Upon information and belief, Defendant Bank of America Corporation  
12 is a Delaware corporation with its principal place of business at Bank of America  
13 Corporate Center, 100 N. Tryon Street, Charlotte, NC 28255.

14 4. Upon information and belief, Defendant Bank of America, N.A. is a  
15 federally chartered national banking association organized and existing under the laws  
16 of the United States and a wholly owned subsidiary of Bank of America Corporation,  
17 with its principal place of business at Bank of America Corporate Center, 100 N.  
18 Tryon Street, Charlotte, NC 28255.

19 **JURISDICTION AND VENUE**

20 5. This civil action contains claims for patent infringement arising under  
21 the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

22 6. This civil action contains claims for copyright infringement arising under  
23 the copyright laws of the United States, 17 U.S.C. § 1 *et seq.*

24 7. This civil action contains claims for trade secret misappropriation arising  
25 under the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836 *et seq.*

26 8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and  
27 1338(a) because this action arises under the patent laws of the United States, 35  
28 U.S.C. § 1 *et seq.*, the copyright laws of the United States, 17 U.S.C. § 1 *et seq.*, and

1 the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836 *et seq.*

2 9. This Court has supplemental jurisdiction over NantWorks' state law  
3 claims pursuant to 28 U.S.C. §1367(a).

4 10. This Court has personal jurisdiction over BoA because it has committed  
5 acts in this District that give rise to all acts of infringement and misappropriation  
6 asserted herein. This Court also has personal jurisdiction over BoA because it has  
7 substantial, systematic and continuous contacts with this District. BoA has a regular  
8 and established place of business in the State of California and in this District,  
9 including operating hundreds of bank branches and ATMs in California and in this  
10 judicial District, and conducts business with its customers residing in this District both  
11 through its bank branches and ATMs and its online and mobile banking services.

12 11. BoA has committed and continues to commit acts of infringement in  
13 violation of 35 U.S.C. § 271, and has made, used, marketed, distributed, offered for  
14 sale, sold, and/or imported infringing products in the State of California, including in  
15 this District, and engaged in infringing conduct within and directed at or from this  
16 District. For example, on information and belief, BoA has numerous customers who  
17 utilize BoA's mobile check deposit software for mobile check deposit, thereby  
18 infringing and causing BoA to infringe the Asserted Patents.

19 12. Venue is proper in this District under the provisions of 28 U.S.C.  
20 §§ 1391 and 1400(b) at least because a substantial part of the events or omissions  
21 giving rise to the claims occurred in this judicial district, and because BoA has  
22 committed acts of infringement in this District and has a regular and established place  
23 of business in this District.

24 **INTRODUCTION**

25 13. This dispute is based on BoA's unauthorized use and misappropriation  
26 of NantWorks' pioneering image recognition technology in BoA's widely used  
27 mobile check deposit solution.

28 14. In early 2010, Matt Calman, a BoA executive, witnessed a demonstration

1 of NantWorks’ image recognition technology.<sup>1</sup> He was “very impressed” by  
2 NantWorks’ technology and approached NantWorks regarding a partnership  
3 involving image recognition solutions for mobile devices. The companies then  
4 entered into a series of agreements that would allow BoA to evaluate NantWorks’  
5 image recognition technology and for both companies to collaborate in  
6 commercializing this technology in new and impactful applications, including mobile  
7 check deposit.

8 15. Pursuant to their agreements, during 2011 and 2012 NantWorks  
9 developed mobile check deposit software that vastly outperformed BoA’s then  
10 existing solution. BoA was intrigued by the performance of NantWorks’ mobile  
11 check deposit software and led NantWorks to believe that BoA would incorporate  
12 NantWorks’ mobile check deposit software into the commercial version of BoA’s  
13 Mobile Banking application and compensate NantWorks for the use of its technology.  
14 After delivering a complete version of NantWorks’ software and related confidential  
15 technical information, however, NantWorks did not receive further updates on the  
16 project. NantWorks assumed that BoA decided to pursue its existing technology.

17 16. Several years later, NantWorks uncovered information demonstrating  
18 that BoA not only continued to use NantWorks’ software without authorization, but  
19 that BoA had incorporated NantWorks’ proprietary image recognition technology and  
20 NantWorks’ intellectual property into its mobile check deposit solution. As explained  
21 below, BoA’s actions give rise to NantWorks’ claims for patent infringement,  
22 copyright infringement, trade secret misappropriation, and breach of contract.

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26 <sup>1</sup> Formed in 2011, NantWorks (through predecessor companies) acquired a  
27 number of image recognition companies, including IPPLEX in August 2010 and  
28 Evryx in February 2011. Reference to Nantworks in this Complaint refers to both  
Nantworks and its predecessor entities including IPPLEX and Evryx.

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**FACTUAL BACKGROUND**

**NantWorks, Evryx, and IPPLEX**

17. NantWorks was formed in 2011 to, among other things, develop solutions to real-world machine vision and image recognition challenges. NantWorks recognized the benefits of using mobile devices to recognize features in digital images and the application of such technology to numerous industries, including financial services. To expand its depth in this field, NantWorks (through predecessor companies) acquired a number of image recognition companies, including IPPLEX in August 2010 and Evryx in February 2011.

18. Evryx had developed and patented fundamental image recognition technology in the early 2000s. Its technology allowed mobile devices to capture images/video, recognize specific features in the images/video, and provide information associated with the recognized features to users. Evryx’s technology was years ahead of its time, being developed well before the introduction of the first iPhone in 2007 and other early smartphones. Indeed, Evryx’s technology was developed when mobile phones had very limited functionality and certainly nothing approaching the image recognition technologies that are in use today. For example, one of the most successful mobile phones released in the early 2000s was the Nokia 3310 shown below, which did not include any capability for image recognition technology, let alone an integrated camera<sup>2</sup>:

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<sup>2</sup> [https://en.wikipedia.org/wiki/Nokia\\_3310#/media/File:Nokia\\_3310\\_blue.jpg](https://en.wikipedia.org/wiki/Nokia_3310#/media/File:Nokia_3310_blue.jpg)

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19. In 2006, IPPLEX was formed to develop innovative image recognition technologies. By April 2010, IPPLEX had developed its Money Reader application, which allowed the visually impaired to use smartphones to, for example, recognize and identify U.S. currency. IPPLEX’s products were the subject of significant industry acclaim. For example, IPPLEX’s products were awarded first place in the Cellular Telecommunications and Internet Association’s Emerging Technology Awards for 2010, and also selected as the winner of the Federal Communications Commission’s Chairman’s Awards for Advancements in Accessibility in 2011.

**BoA’s Evaluation of NantWorks’  
Image Recognition Technology**

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3       20. After the introduction of the iPhone in 2007 and the widespread adoption  
4 of smartphones in the late 2000s, the banking industry began to recognize the  
5 importance of mobile banking. Banks soon realized that one of the most important  
6 mobile banking offerings was the ability to deposit checks using mobile devices. By  
7 eliminating the need for customers to deposit checks at brick and mortar branches,  
8 banks and their customers could save significant time and money using mobile check  
9 deposits. BoA has specifically attributed its mobile banking growth to its ability to  
10 achieve savings by closing branches and reducing headcount.<sup>3</sup> Indeed, BoA’s CEO  
11 Brian Moynihan recently described mobile check deposits as offering “tenfold”  
12 savings to BoA over physical deposits.<sup>4</sup>

13       21. In April 2010, NantWorks<sup>5</sup> demonstrated its image recognition  
14 technology to attendees of an industry conference. Matt Calman – a Senior Vice  
15 President and Research and Development Executive at BoA who was involved in  
16 developing new banking applications – attended the conference and witnessed  
17 NantWorks’ demonstration. Immediately after the demonstration, Mr. Calman called  
18 NantWorks’ image recognition technology “very impressive.”

19       22. That same month, Mr. Calman reached out to NantWorks and expressed  
20 interest in having NantWorks develop image recognition technologies for BoA. At  
21 that time, on information and belief, the mobile check deposit solution BoA was  
22 developing suffered from significant performance issues.

23       23. Shortly after Mr. Calman reached out to NantWorks, the parties entered  
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25       <sup>3</sup> [https://www.businessinsider.com/bank-branches-around-the-world-are-](https://www.businessinsider.com/bank-branches-around-the-world-are-shrinking-in-favor-of-digital-models-2016-10)  
26 [shrinking-in-favor-of-digital-models-2016-10](https://www.businessinsider.com/bank-branches-around-the-world-are-shrinking-in-favor-of-digital-models-2016-10)

27       <sup>4</sup> [https://www.nasdaq.com/articles/bank-america-corp-bac-q1-2019-earnings-](https://www.nasdaq.com/articles/bank-america-corp-bac-q1-2019-earnings-call-transcript-2019-04-16?amp)  
28 [call-transcript-2019-04-16?amp](https://www.nasdaq.com/articles/bank-america-corp-bac-q1-2019-earnings-call-transcript-2019-04-16?amp)

28       <sup>5</sup> NantWorks completed its acquisition of IPPLEX in August 2010.

1 into the first of a series of agreements that enabled BoA to evaluate NantWorks'  
2 image recognition technology for potential use by BoA in its mobile check deposit  
3 software. These agreements allowed BoA to use confidential technical information  
4 provided by NantWorks in a very limited way – that is, only for the purpose of  
5 evaluating NantWorks' technology for potential use in BoA's mobile check deposit  
6 solution. The agreements prohibited BoA from using NantWorks' technology and  
7 confidential information for any other purpose. The agreements also prohibited BoA  
8 from using NantWorks' confidential information for any purpose following the end  
9 of the evaluation.

10         24. As the partnership between BoA and NantWorks progressed, they  
11 entered into a collaboration agreement dated October 31, 2011. This agreement,  
12 which included limited use restrictions like BoA and NantWorks' earlier agreements,  
13 made clear that NantWorks maintained all rights to all image recognition technology  
14 that it developed in connection with its partnership with BoA as well as its preexisting  
15 image recognition technology. It also required BoA to return or destroy any  
16 confidential information disclosed by NantWorks upon termination of the agreement.  
17 The collaboration agreement had a term of two years and any rights granted to the  
18 parties terminated upon its expiration.

19         25. In November 2011, BoA and NantWorks met to discuss next steps under  
20 their collaboration agreement. NantWorks agreed to begin development of a mobile  
21 check deposit solution that addressed the issues exhibited by BoA's existing solution.  
22 During the course of this development effort, BoA's input was limited to describing  
23 issues with BoA's existing mobile check deposit solution and identifying high-level  
24 user experience features they desired. NantWorks understood that if it was able to  
25 develop a mobile check deposit solution that performed better than BoA's mobile  
26 check deposit solution, BoA would incorporate NantWorks' solution into its mobile  
27 banking application and compensate NantWorks for the use of its technology and  
28 intellectual property.



1           26. By March 2012, NantWorks had developed the first version of its  
2 proprietary mobile check deposit software. Over the next several months NantWorks  
3 continued its development efforts, improving its mobile check deposit software to  
4 greatly increase its processing speed, consumer usability, and overall reliability. By  
5 June 2012, NantWorks' software included fast and reliable optical character  
6 recognition ("OCR") for routing and account numbers on paper checks and a video-  
7 based image viewfinder that automatically captured paper check images ("auto-  
8 capture") of sufficient quality for processing. NantWorks' software also consistently  
9 detected errors that BoA's existing mobile check deposit solution had failed to detect  
10 with sufficient accuracy for consumer use. These included error detection for  
11 overlapping check images and verification that a user was attempting to deposit U.S.-  
12 based checks.

13           27. To enable BoA to evaluate NantWorks' mobile check deposit solution,  
14 NantWorks provided BoA with complete demonstration applications which included  
15 NantWorks proprietary mobile check deposit technology.

16           28. In June and July of 2012, BoA performed testing of NantWorks' mobile  
17 check deposit software against its own mobile check deposit software. This testing  
18 revealed the superiority of NantWorks' technology and showed that BoA's software  
19 relied on an image capture method that was slow, unreliable, and too cumbersome for  
20 its customers to consider useful. For example, BoA's testing showed that NantWorks'  
21 software was able to process a check image over ten times faster than BoA's existing  
22 solution. BoA also determined that NantWorks' software provided a much more  
23 accurate check screening mechanism, with a lower proportion of checks falsely  
24 accepted and falsely declined compared to BoA's solution. Based on its testing  
25 results, BoA expressed serious concerns about the viability of its mobile check deposit  
26 software for consumer use.

27           29. Upon information and belief, in July of 2012, even though it knew its  
28 existing solution was far inferior to NantWorks' solution, BoA released the first

1 commercial version of its Mobile Banking application which included its mobile  
2 check deposit software. Upon information and belief, BoA did so because it was  
3 under pressure to remain competitive with other banks that had already released  
4 commercial mobile check deposit capabilities to their customers.

5 30. During the remainder of 2012, BoA continued to express its desire to  
6 implement NantWorks' mobile check deposit software in BoA's Mobile Banking  
7 application. For example, BoA informed NantWorks that it was looking closely at  
8 NantWorks' software, that BoA hoped to put that software into production, and  
9 reached out to NantWorks to begin commercial licensing discussions.

10 31. In early 2013, NantWorks continued to believe that BoA intended to  
11 implement its mobile check deposit software in BoA's Mobile Banking application.  
12 NantWorks' shared additional information about its mobile check deposit solution  
13 with BoA, including developer manuals and header files. The headers files included  
14 information that allowed BoA to incorporate NantWorks' mobile check deposit  
15 technology into its own mobile checking application. The source code and algorithms  
16 implemented in NantWorks' mobile check deposit software was and is extremely  
17 sensitive and included NantWorks' trade secrets. And as had been the case  
18 throughout 2011 and 2012, the information NantWorks shared was only to be used  
19 for evaluation purposes.

20 32. After providing this additional information regarding NantWorks'  
21 mobile check deposit software to BoA in early 2013, BoA began to express less  
22 interest and ultimately ceased communications with NantWorks about the project.

23 **BoA's Improper and Unauthorized Acquisition and Use of NantWorks'**  
24 **Image Recognition Technology**

25 33. After 2013, NantWorks believed that BoA had decided to continue to  
26 develop its own mobile check deposit technology. Consequently, NantWorks  
27 believed that BoA would honor its agreements to cease all use of and return or destroy  
28 NantWorks' confidential information pursuant to the parties' agreements.

1           34. In the Spring of 2018, however, NantWorks discovered that the mobile  
2 check deposit software it provided in 2013 to BoA continued to be used by BoA after  
3 the conclusion of prior work between NantWorks and BoA. Several months before  
4 this discovery, NantWorks began an investigation to determine whether companies,  
5 including BoA, may be using its patented technologies. As part of its investigation  
6 of BoA, NantWorks reviewed materials relating to its prior collaboration with BoA,  
7 including the mobile check deposit software NantWorks had provided BoA. This  
8 review led to the discovery, in early 2018, of a software development database that  
9 was used for testing and debugging purposes during the development of NantWorks'  
10 mobile check deposit software several years earlier. This development database  
11 recorded certain reports when NantWorks' software was being accessed and used,  
12 including the date and time of each access and use, and information about the network  
13 from which each access and use originated. Because development of NantWorks'  
14 mobile check deposit software had ceased in 2013, NantWorks had no reason to  
15 access this development database after that time and accordingly had not accessed the  
16 database since that time.

17           35. In its subsequent examination in 2018 of the development database,  
18 NantWorks discovered a large number of reports that occurred during 2014, 2015,  
19 2016, 2017 and 2018. Upon further investigation, NantWorks determined that these  
20 reports originated from the mobile check deposit software that it provided to BoA  
21 under the parties' prior agreements based in part on information within the reports  
22 indicating that the use of NantWorks' software originated from BoA networks.

23           36. Upon information and belief, BoA improperly accessed and improperly  
24 used NantWorks' mobile check deposit software hundreds of times during 2014,  
25 2015, 2016, 2017 and 2018 to gain an understanding of how NantWorks' software  
26 functioned and acquire trade secrets within NantWorks' software. Upon information  
27 and belief, BoA then incorporated and used the NantWorks trade secrets it improperly  
28 accessed, acquired, and used during 2014, the NantWorks trade secrets it improperly

1 accessed, acquired, and used during 2015, the NantWorks trade secrets it improperly  
2 accessed, acquired, and used during 2016, the NantWorks trade secrets it improperly  
3 accessed, acquired, and used during 2017, and the NantWorks trade secrets it  
4 improperly accessed, acquired, and used during 2018 in different versions of its own  
5 mobile check deposit solution, including the commercially available versions of its  
6 mobile check deposit software that BoA has provided to its customers from 2014 to  
7 the present.

8 37. NantWorks also investigated the timing of the reports in relation to  
9 changes made to BoA's mobile check deposit software. This analysis revealed that  
10 there were several periods of time where a high number of reports originated from  
11 BoA or BoA affiliated networks followed thereafter by changes to BoA's software  
12 that significantly improved its mobile check deposit functionality for users. For  
13 example, following the 2014 unauthorized use of NantWorks' mobile check deposit  
14 software as reflected in the development database, BoA implemented automatic  
15 image capture and confirmation features, which were developed by NantWorks and  
16 found in NantWorks' proprietary mobile check deposit software.

17 38. The software development database continued to receive reports into the  
18 Spring of 2018. The reports permanently stopped, however, after NantWorks  
19 discovered the reports in the Spring of 2018 and subsequently requested a meeting  
20 with BoA to discuss its unauthorized use of NantWorks' intellectual property.

### 21 **The Importance of BoA's Mobile Check Deposit Solution**

22 39. Mobile check deposits have become a critical aspect of BoA's business.  
23 For example, BoA's press releases touted the fact that by the first quarter of 2016 its  
24 customers "used their mobile devices to deposit more than 254,000 checks daily"<sup>6</sup> a  
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26  
27 <sup>6</sup> [https://newsroom.bankofamerica.com/press-releases/consumer-banking/fess-  
28 majority-americans-deny-their-smartphone-behaviors](https://newsroom.bankofamerica.com/press-releases/consumer-banking/fess-majority-americans-deny-their-smartphone-behaviors)

1 figure which rose to over 340,000 checks daily by the second quarter of 2017.<sup>7</sup> By  
2 the fourth quarter of 2018, BoA’s customers were depositing over 390,000 checks via  
3 mobile devices daily<sup>8</sup> and in 2019, BoA’s CEO Brian Moynihan noted on an earnings  
4 call that “77% of [BoA’s] deposit transactions are now done through digital means.”<sup>9</sup>

### 5 NantWorks’ Image Recognition Patents

6 40. NantWorks has developed a patent portfolio in the field of image  
7 recognition, currently numbering over 120 issued patents. These patents originated  
8 with Evryx and are based on Evryx’s fundamental image recognition technology.  
9 NantWorks’ imaging recognition patent portfolio includes the following United  
10 States Patents that are being asserted in this case (“Asserted Patents”).

11 41. The United States Patent Office issued U.S. Patent No. 7,881,529, titled  
12 “Data capture and identification system and process” (the “’529 patent”). The ’529  
13 patent issued on February 1, 2011. A true and correct copy of the ’529 patent is  
14 attached hereto as Exhibit A.

15 42. The United States Patent Office issued U.S. Patent No. 7,899,252, titled  
16 “Object information derived from object images” (the “’252 patent”). The ’252 patent  
17 issued on March 1, 2011. A true and correct copy of the ’252 patent is attached hereto  
18 as Exhibit B.

19 43. The United States Patent Office issued U.S. Patent No. 8,326,038, titled  
20 “Object information derived from object images” (the “’038 patent”). The ’038 patent  
21 issued on December 4, 2012. A true and correct copy of the ’038 patent is attached  
22 hereto as Exhibit C.

23  
24 \_\_\_\_\_  
25 <sup>7</sup> <https://newsroom.bankofamerica.com/press-releases/consumer-banking/keeping-digital-natives>

26 <sup>8</sup> <https://newsroom.bankofamerica.com/press-releases/consumer-banking/bank-americas-ericar-surpasses-6-million-users>

27 <sup>9</sup> <https://www.nasdaq.com/articles/bank-america-corp-bac-q1-2019-earnings-call-transcript-2019-04-16?amp>  
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1           44. The United States Patent Office issued U.S. Patent No. 8,463,030, titled  
2 “Image capture and identification system and process” (the “’030 patent”). The ’030  
3 patent issued on June 11, 2013. A true and correct copy of the ’030 patent is attached  
4 hereto as Exhibit D.

5           45. The United States Patent Office issued U.S. Patent No. 8,478,036, titled  
6 “Image capture and identification system and process” (the “’036 patent”). The ’036  
7 patent issued on July 2, 2013. A true and correct copy of the ’036 patent is attached  
8 hereto as Exhibit E.

9           46. The United States Patent Office issued U.S. Patent No. 8,520,897, titled  
10 “Object information derived from object images” (the “’897 patent”). The ’897 patent  
11 issued on August 27, 2013. A true and correct copy of the ’897 patent is attached  
12 hereto as Exhibit F.

13           47. The United States Patent Office issued U.S. Patent No. 9,031,278, titled  
14 “Image capture and identification system and process” (the “’278 patent”). The ’278  
15 patent issued on May 12, 2015. A true and correct copy of the ’278 patent is attached  
16 hereto as Exhibit G.

17           48. The United States Patent Office issued U.S. Patent No. 9,324,004, titled  
18 “Image capture and identification system and process” (the “’004 patent”). The ’004  
19 patent issued on April 26, 2016. A true and correct copy of the ’004 patent is attached  
20 hereto as Exhibit H.

21           49. The Asserted Patents identify Wayne C. Boncyk and Ronald H. Cohen  
22 as inventors.

23           50. The claims of the Asserted Patents are directed to technological  
24 improvements in the way mobile computing systems operate. Specifically, the claims  
25 relate to improved machine vision techniques that enable mobile computing systems  
26 to capture images of physical objects, process those images, and then return  
27 information relating to those objects to the user of the mobile computing system based  
28 solely on remotely acquired data associated with the physical object. *See, e.g.,* ’529

1 patent at 3:56-64 (“The present invention includes a novel process whereby  
2 information such as Internet content is presented to a user based solely on a remotely  
3 acquired data of a physical object. Although coded information can be included in  
4 the remotely acquired image, it is not required since no additional information about  
5 a physical object, other than its image, needs to be encoded in the linked object. There  
6 is no need for any additional code or device, radio, optical or otherwise, to be  
7 embedded in or affixed to the object.”). As the specifications of the Asserted Patents  
8 explain, various prior art techniques were used to associate physical objects with  
9 digital information, such as applying a barcode or a radio or optical transceiver to the  
10 object to locate the information. *E.g., id.* at 2:13-19 (“Traditional methods for linking  
11 objects to digital information, including applying a barcode, radio or optical  
12 transceiver or transmitter, or some other means of identification to the object, or  
13 modifying the data or object so as to encode detectable information in it, are not  
14 required because the data or object can be identified solely by its visual  
15 appearance.”). Unlike the inventions described in the Asserted Patents, these  
16 techniques required the physical manipulation of the physical object to allow linking  
17 of information to the object. For example, in the case of a barcode, the barcode is  
18 physically applied to the object, requiring time and effort to allow the object to be  
19 identifiable. Such modification of an object may also be undesirable as it may  
20 disfigure the desired appearance of the object. *E.g., id.* at 1:32-34 (“There is a need  
21 to identify an object that has been digitally captured from a database of images  
22 without requiring modification or disfiguring of the object”).

23         51. In addition, the claims of the Asserted Patents involve novel  
24 combinations of elements relating to machine vision techniques and specific  
25 applications of those techniques, not merely the recitation of well-understood, routine,  
26 or conventional technologies or components. The use of these machine vision  
27 techniques to identify physical objects and subsequently associate such physical  
28 objects to information relating to the object based solely on remotely acquired data

1 associated with the object was not well-known, understood, or routine at the time of  
2 the inventions of the Asserted Patents and provided a specific improvement over prior  
3 art systems and methods.

4 52. Nant IP is the owner of all rights, title, and interest in and to the Asserted  
5 Patents, with the full and exclusive right to bring suit to enforce the Asserted Patents,  
6 including the right to recover for past damages.

7 53. The Asserted Patents are valid and enforceable under the United States  
8 Patent Laws.

9 **BoA's Accused Products**

10 54. Through its Bank of America Mobile Banking application, BoA offers  
11 its mobile check deposit feature to its customers, including individuals and business.  
12 On information and belief, BoA controls and operates various computers, servers,  
13 software, and other infrastructure that operates and supports its Mobile Banking  
14 application and mobile check deposit feature. The Bank of America Mobile Banking  
15 application, its mobile check deposit feature, and the computers, servers, software,  
16 and other infrastructure related to the Bank of America Mobile Banking application  
17 and its mobile check deposit feature are referred to herein as the "BoA Accused  
18 Products."

19 **BoA's Knowledge of the Asserted Patents Prior to This Case**

20 55. On information and belief, BoA had knowledge of each of the Asserted  
21 Patents prior to the filing of this Complaint.

22 56. For example, on November 2, 2011, NantWorks notified nine BoA  
23 employees, including Matt Calman, that "NantWorks owns patents covering linking  
24 objects to content via mobile phones and visual identification, including image  
25 recognition, barcodes, QR codes, other symbols, optical character recognition, and  
26 augmented reality" and specifically identified, among others, the '529 and '252  
27 patents as patents that "cover capturing an image of an object, identifying the object  
28 based on image/object recognition, barcode, or symbol recognition, providing an



1 information address related to the object, and accessing information at that address.”  
2 BoA was thus well aware of these patents and their applicability to their and their  
3 customers’ use of their mobile check deposit feature. In fact, BoA cited the same  
4 patents that NantWorks identified on November 2, 2011 during the prosecution of  
5 patents BoA was pursuing at that time relating to their mobile check deposit feature.  
6 Specifically, BoA cited these patents in an Information Disclosure Statement for a  
7 patent application naming Matt Calman as an inventor submitted to the United States  
8 Patent and Trademark Office on January 1, 2012 – just two months after NantWorks  
9 informed Mr. Calman and others at BoA of its patents. Thus, Mr. Calman – a Senior  
10 Vice President and Research and Development Executive at BoA who was involved  
11 in developing new banking applications – was well aware of these patents and their  
12 applicability to BoA’s mobile check deposit solution.

13 57. In October 2016, NantWorks informed BoA of all of the asserted patents,  
14 including the ’529 and ’252 patents it had previously identified to BoA on November  
15 2, 2011 as well as additional NantWorks patents from the same family of image  
16 recognition patents that issued after November 2, 2011. Those patents included the  
17 ’038, ’030, ’036, ’897, ’278, and ’004 patents. As a result, BoA had knowledge of  
18 each of the Asserted Patents by October 2016, and knowledge that each of the  
19 Asserted Patents, including the ’529 and ’252 patents that it had been aware of since  
20 at least 2011, were applicable to BoA’s mobile check deposit solution.

21 58. On July 23, 2018, representatives for NantWorks met with  
22 representatives for BoA to present the issues of BoA’s misappropriation of  
23 NantWorks’ intellectual property and BoA’s breaches of its prior agreements. At that  
24 time NantWorks made BoA aware of its infringement of various patents within  
25 NantWorks’ patent portfolio directed to computer image recognition, including the  
26 ’252 and ’004 patents.

### 27 **NantWorks’ Attempts to Resolve This Dispute**

28 59. NantWorks attempted to resolve this dispute without resorting to

1 litigation. Specifically, NantWorks scheduled and attended several in-person  
2 meetings with BoA to discuss BoA's unlawful misappropriation and use of  
3 NantWorks' intellectual property and BoA's breaches of its contractual obligations.  
4 Despite NantWorks' efforts to reach an amicable resolution, the parties were unable  
5 to reach a resolution.

6 60. Through this litigation, NantWorks seeks redress for the harm caused by  
7 BoA's unlawful use of NantWorks' intellectual property and BoA's breach of its  
8 contractual obligations.

9 **COUNT I:**

10 **Infringement of United States Patent No. 7,881,529**

11 61. NantWorks re-alleges and incorporates by reference the allegations of  
12 the preceding paragraphs of this Complaint as if fully set forth herein.

13 62. In violation of 35 U.S.C. § 271, BoA has infringed and is currently  
14 infringing, directly and/or through intermediaries, the '529 patent by making, using,  
15 selling, offering for sale, and/or importing into the United States, without authority,  
16 the BoA Accused Products that practice at least claim 1 of the '529 patent. The BoA  
17 Accused Products meet each and every element this claim. BoA has infringed and is  
18 currently infringing this claim literally and/or under the doctrine of equivalents.

19 63. Exemplary claim 1 of the '529 patent states:

20 1. A system comprising:

21 a camera that captures an image;

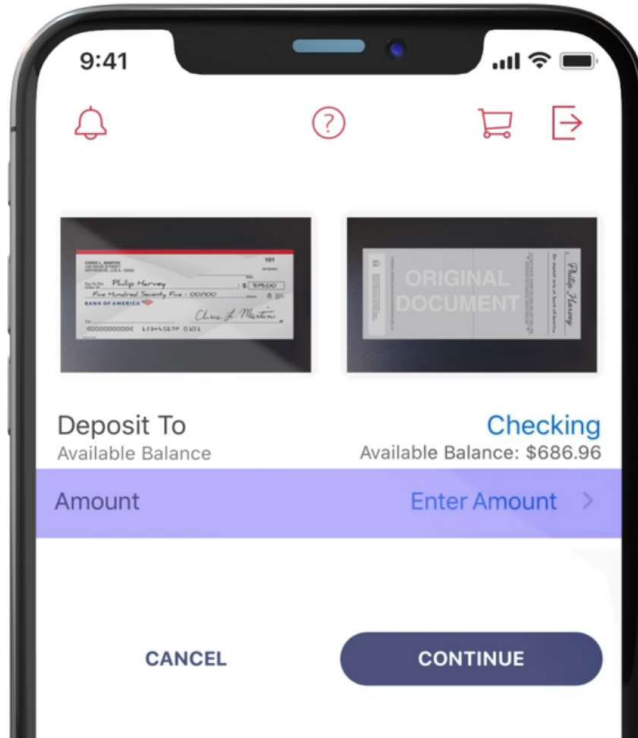
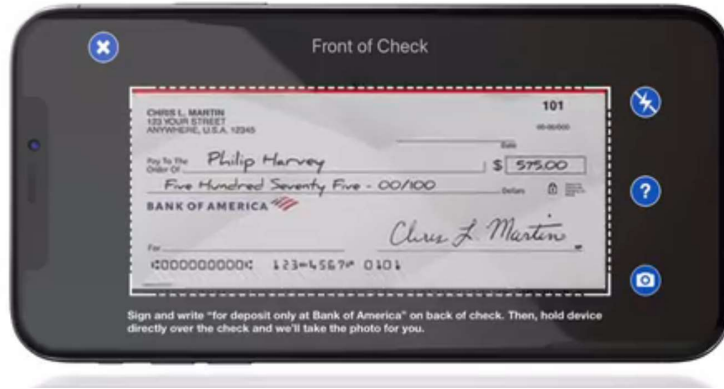
22 a network-enabled device that conducts a data processing operation on  
23 at least a portion of the image to produce data, and sends the data to a service;  
24 the service programmed to receive the data; identify an object within the  
25 image;

26 distinguish an object present in the image from others using a database  
27 that stores data characteristics of target objects; associate the object with  
28 information; and

1 return the information to the network-enabled device; and  
2 the network-enabled device further programmed to present the  
3 information related to the object to a user.

4 information related to the object to a user.

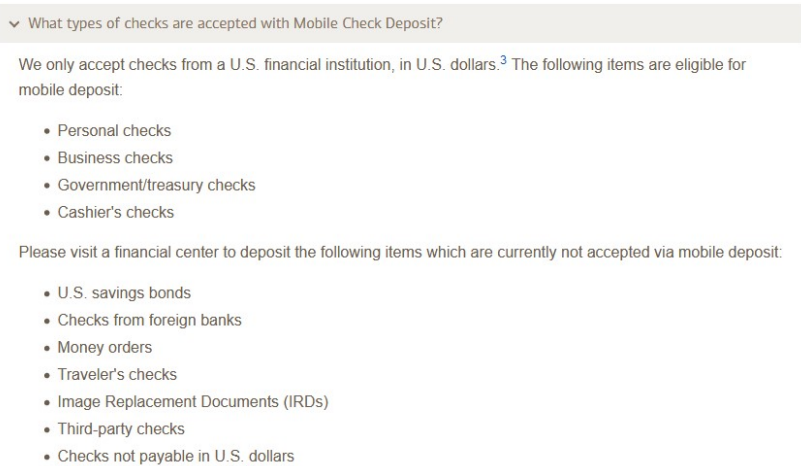
5 64. The BoA Accused Products operate, in part, on a BoA customer's mobile  
6 device, such as a mobile phone or tablet. The BoA Accused Products operate to  
7 capture video and image data of a check that the customer wishes to deposit using a  
8 camera associated with the mobile device, as exemplified in the images below.



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28 <https://www.bankofamerica.com/online-banking/mobile-and-online-banking->

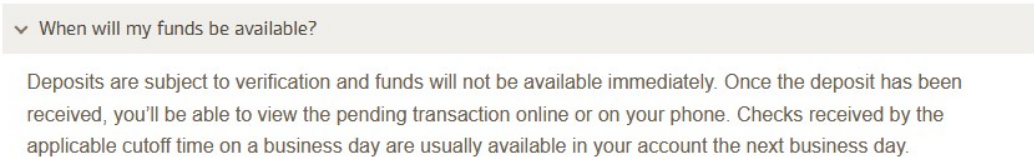
1 features/mobile-check-deposit/

2 65. On information and belief, the BoA Accused Products operate to identify  
3 an object within the captured video/image data and distinguish the object present in  
4 the video/image from others based on features of the object in the captured  
5 video/image. For example, on information and belief, the BoA Accused Products  
6 identify and distinguish the specific type of the check, as described in the below  
7 image, as well as components thereof, such as writing, signatures, and alphanumeric  
8 characters.



17 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

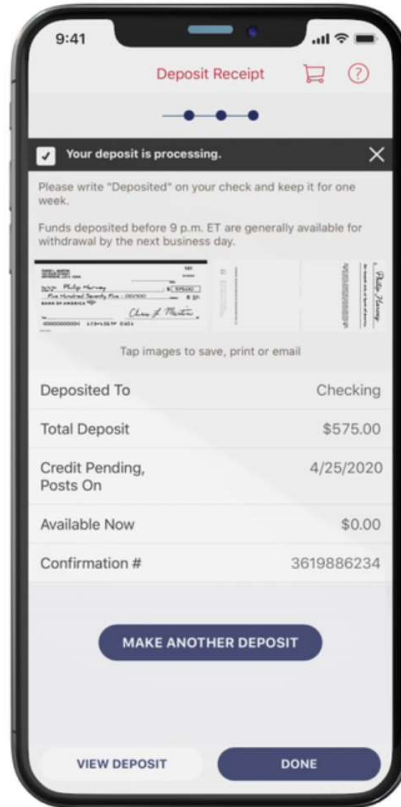
18 66. BoA's Accused Products perform validation and verification of the  
19 captured check image and perform a check deposit transaction with the BoA  
20 customer's checking account, as described in the image below.



24 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

25 67. On information and belief, BoA's Accused Products associate identified  
26 objects from the captured check image with relevant information associated with the  
27 captured check, including, for example, information concerning monetary amount and  
28 parties associated with the check, authorization and validity of the check, the date and

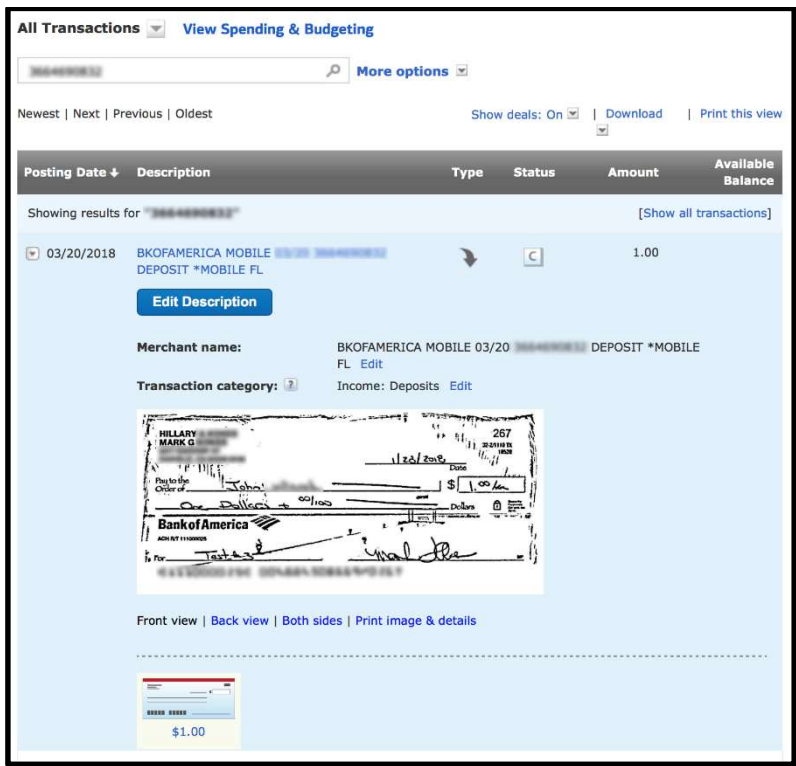
1 status of the checking transaction, and a confirmation number. BoA's Accused  
2 Products provide this information to the customer's device, whereon the information  
3 is presented to the a user, as exemplified in the images below.



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17 [https://www.bankofamerica.com/online-banking/mobile-and-online-banking-](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)  
18 [features/mobile-check-deposit/](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)

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68. On information and belief, BoA has had actual knowledge of its infringement of the '529 patent since November 2, 2011, but no later than the filing date of this Complaint.

69. On information and belief, BoA had actual knowledge of its and its customers' infringement of the '529 patent or was willfully blind thereto as of the issue date of the '529 patent. For example:

- NantWorks and BoA collaborated closely as part of BoA's evaluation of NantWorks' computer image recognition technologies.
- As part of their relationship, NantWorks made BoA aware of NantWorks' patent portfolio covering computer image recognition and processing, including the '529 patent.
- BoA's patent applications and patents cite the '529 patent and numerous NantWorks patents in the prosecution family of the '529 patent.
- BoA directly and wrongfully appropriated and incorporated NantWorks' confidential image recognition and processing technology into BoA's mobile check deposit software. On information and belief, BoA knew

1 or had reason to know that NantWorks owned patent rights covering the  
2 appropriated technology or that NantWorks would attain patent rights  
3 covering those technologies.

4 70. Notwithstanding BoA's actual notice of infringement, BoA has provided  
5 and continues to provide the BoA Accused Products to its customers that make or use  
6 the BoA Accused Products with knowledge of or willful blindness to the fact that its  
7 actions will induce others, including those customers, to directly infringe the '529  
8 patent. BoA induces others including its customers to infringe the '529 patent in  
9 violation of 35 U.S.C. § 271(b) by encouraging and facilitating others to perform  
10 actions that BoA knows to be acts of infringement of the '529 patent with intent that  
11 those performing the acts infringe the '529 patent, or with willful blindness to such  
12 facts. On information and belief, BoA, directly and/or through intermediaries,  
13 advertises and distributes the BoA Accused Products, publishes instruction materials,  
14 specifications and promotional literature describing the operation of the BoA Accused  
15 Products, and offers technical assistance, training, and/or consulting services  
16 regarding the BoA Accused Products to its customers.<sup>10</sup> At least BoA's customers and  
17 other end users of these BoA Accused Products then directly infringe the '529 patent  
18 by making or using, without NantWorks' authority, the BoA Accused Products.

19 71. On information and belief, BoA knows that the BoA Accused Products  
20 are especially made or especially adapted for use in the infringement of the '529  
21 patent. The infringing components of these products are not staple articles or  
22 commodities of commerce suitable for substantial noninfringing use, and the  
23 infringing components of these products are a material part of the invention of the  
24 '529 patent. Accordingly, in violation of 35 U.S.C. § 271(c), BoA is also contributing  
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26 <sup>10</sup> See, e.g., <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>;  
27 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>;  
28 <https://promo.bankofamerica.com/mobile-check-deposit/>

1 to the direct infringement of the '529 patent by at least its customers and/or end users  
2 of these BoA Accused Products. The customers and/or end users of these BoA  
3 Accused Products directly infringe the '529 patent by making or using, without  
4 NantWorks' authority, the BoA Accused Products.

5 72. As a result of BoA's infringement of the '529 patent, NantWorks has  
6 suffered, and will continue to suffer, substantial damages. Accordingly, BoA is liable  
7 to NantWorks for damages adequate to compensate for BoA's acts of infringement,  
8 in an amount to be proved at trial but in no event less than a reasonable royalty for the  
9 use made of NantWorks' invention by BoA under 35 U.S.C. § 284.

10 73. In addition, BoA's acts of infringement have caused NantWorks  
11 irreparable harm that is not compensable by monetary damages. The hardships that  
12 an injunction would impose are less than those faced by NantWorks should an  
13 injunction not issue. The public interest would be served by issuance of an injunction.  
14 Thus, NantWorks is entitled to a preliminary and a permanent injunction against  
15 further infringement. Therefore NantWorks is entitled to injunctive relief under 35  
16 U.S.C. § 283.

17 74. BoA's acts of infringement constitute willful, egregious misconduct, and  
18 consequently NantWorks is entitled to a discretionary increase of its damages award  
19 up to three times the amount found or assessed, costs, and attorney's fees under 35  
20 U.S.C. § 284.

21 75. Based on the foregoing facts, NantWorks requests that this Court declare  
22 this an exceptional case, and award Plaintiffs their costs and attorney's fees under 35  
23 U.S.C. § 285.

24 **COUNT II:**

25 **Infringement of United States Patent No. 7,899,252**

26 76. NantWorks re-alleges and incorporates by reference the allegations of  
27 the preceding paragraphs of this Complaint as if fully set forth herein.

28 77. In violation of 35 U.S.C. § 271, BoA has infringed and is currently



1 infringing, directly and/or through intermediaries, the '252 patent by making, using,  
2 selling, offering for sale, and/or importing into the United States, without authority,  
3 the BoA Accused Products that practice at least claim 18 of the '252 patent. The BoA  
4 Accused Products meet each and every element this claim. BoA has infringed and is  
5 currently infringing this claim literally and/or under the doctrine of equivalents.

6 78. Exemplary claim 18 of the '252 patent states:

7 18. A method for retrieving information from image processing, the  
8 method comprising:

9 providing a mobile device having a camera the mobile device configured  
10 to capture an image and configured to transmit data relating to the image an  
11 image processing platform;

12 configuring the image processing platform to receive the data relating to  
13 the image and to conduct image processing, including:

14 operating on the data relating to the image to determine if the image  
15 contains one or more recognizable symbols; and

16 decoding the recognizable symbols to extract symbol information by  
17 analyzing the recognizable symbols according to type;

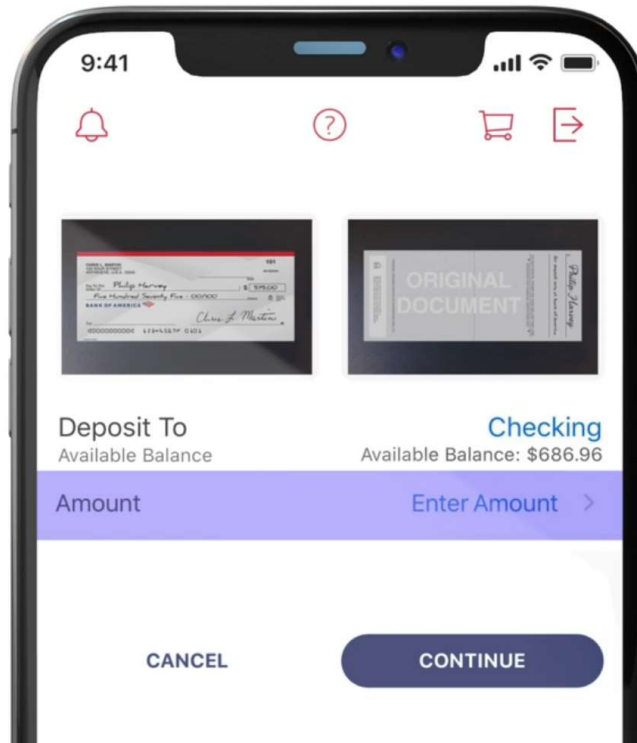
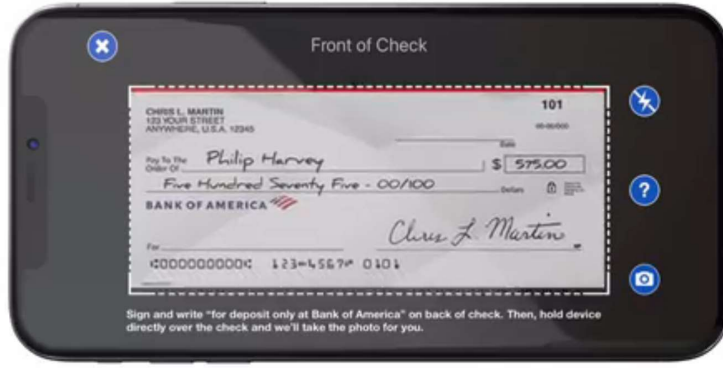
18 providing access to a distal server configured to use a database to identify  
19 pertinent information associated with the recognizable symbols based on the  
20 symbol information; and

21 allowing the mobile device to receive the pertinent information over a  
22 network.

23 79. The BoA Accused Products operate, in part, on a BoA customer's mobile  
24 device, such as a mobile phone or tablet. The BoA Accused Products operate to  
25 capture video and image data of a check that the customer wishes to deposit using a  
26 camera associated with the mobile device, as exemplified in the images below.

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<https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>

80. With regard to steps performed on a customer’s mobile device, BoA conditions the customer’s use of the mobile check deposit functionality of the BoA’s mobile banking application, and receipt of associated benefits (e.g., the ability to remotely deposit checks using a mobile device), on the customer’s performance of such steps. For example, BoA conditions the customer’s use of the mobile banking application through its Mobile Check Deposit Terms and Conditions, which are provided to each customer upon the customer’s enrollment to the BoA mobile banking

1 application, and which the customer must accept in order to utilize the application.  
2 The Mobile Check Deposit Terms and Conditions dictate the hardware and software  
3 to be utilized by the customer and dictates the responsibilities of a customer with  
4 regard to capturing an image of a check using a camera-enabled mobile device and  
5 transferring such an image to BoA for image processing. The customer's use of the  
6 mobile banking application is further conditioned due to the design and functionality  
7 of the BoA Accused Products. For example, actions performed at a customer's mobile  
8 device, such as capturing an image of a check and transferring such an image are  
9 necessary technological prerequisites in the customer's participation in BoA's mobile  
10 deposit services. BoA also establishes the manner and timing of performance by  
11 which a customer utilizes the BoA mobile banking application to perform mobile  
12 check deposits. BoA establishes such manner and timing of performance through its  
13 Mobile Check Deposit Terms and Conditions and through BoA's design of the  
14 functionality of the BoA mobile banking application, as described in this paragraph.  
15 BoA further establishes the manner and timing of its customers' performance by  
16 providing detailed, step-by-step instructions for a customer to perform to perform  
17 certain steps at the customer's mobile device to perform a mobile check deposit and  
18 receive the associated benefits of BoA's mobile banking services. *See e.g.*,  
19 [https://www.bankofamerica.com/online-banking/mobile-and-online-banking-](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)  
20 [features/mobile-check-deposit/](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/); [https://www.youtube.com/watch?v=-cGT\\_khFQsQ](https://www.youtube.com/watch?v=-cGT_khFQsQ).

21 81. On information and belief, the BoA Accused Products operate to identify  
22 an object within the captured video/image data and distinguish the object present in  
23 the video/image from others based on features of the object in the captured  
24 video/image. For example, on information and belief, the BoA Accused Products  
25 identify and distinguish the specific type of the check, as described in the below  
26 image, as well as components thereof, such as writing, signatures, and alphanumeric  
27 characters.

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▼ What types of checks are accepted with Mobile Check Deposit?

We only accept checks from a U.S. financial institution, in U.S. dollars.<sup>3</sup> The following items are eligible for mobile deposit:

- Personal checks
- Business checks
- Government/treasury checks
- Cashier's checks

Please visit a financial center to deposit the following items which are currently not accepted via mobile deposit:

- U.S. savings bonds
- Checks from foreign banks
- Money orders
- Traveler's checks
- Image Replacement Documents (IRDs)
- Third-party checks
- Checks not payable in U.S. dollars

<https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

82. BoA's Accused Products perform validation and verification of the captured check image and perform a check deposit transaction with the BoA customer's checking account, as described in the image below.

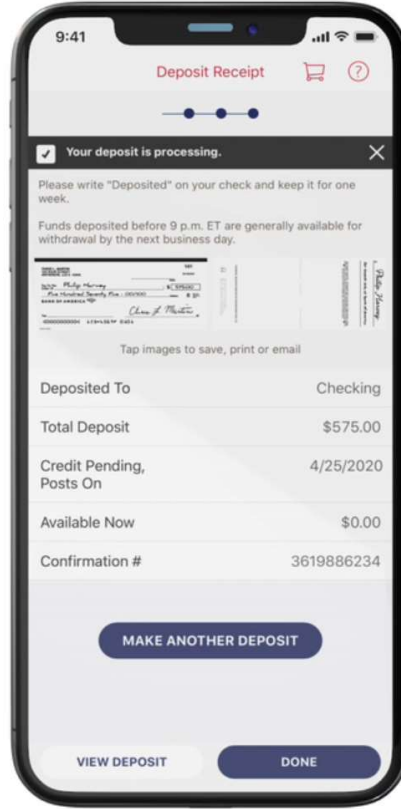
▼ When will my funds be available?

Deposits are subject to verification and funds will not be available immediately. Once the deposit has been received, you'll be able to view the pending transaction online or on your phone. Checks received by the applicable cutoff time on a business day are usually available in your account the next business day.

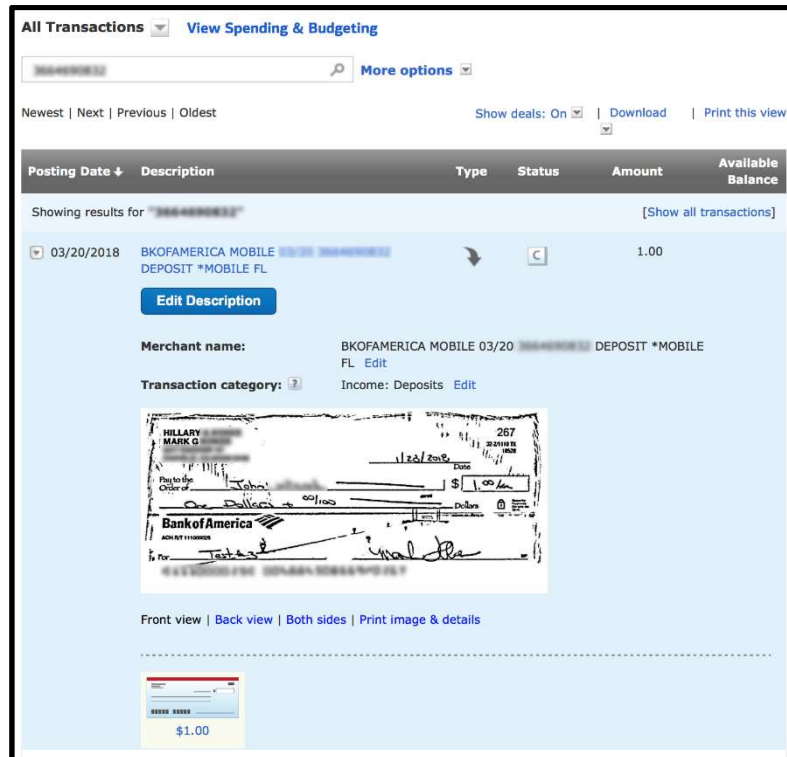
<https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

83. On information and belief, BoA's Accused Products associate identified objects from the captured check image with relevant information associated with the captured check, including, for example, information concerning monetary amount and parties associated with the check, authorization and validity of the check, the date and status of the checking transaction, and a confirmation number. BoA's Accused Products provide this information to the customer's device, whereon the information is presented to the a user, as exemplified in the images below.

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<https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>



1           84. On information and belief, BoA has had actual knowledge of its  
2 infringement of the '252 patent since November 2, 2011, but no later than the filing  
3 date of this Complaint.

4           85. On information and belief, BoA had actual knowledge of its and its  
5 customers' infringement of the '252 patent or was willfully blind thereto as of the  
6 issue date of the '252 patent. For example:

- 7           • NantWorks and BoA collaborated closely as part of BoA's evaluation of  
8 NantWorks' computer image recognition technologies.
- 9           • As part of their relationship, NantWorks made BoA aware of  
10 NantWorks' patent portfolio covering computer image recognition and  
11 processing, including the '252 patent.
- 12           • BoA's patent applications and patents cite the '252 patent and numerous  
13 NantWorks patents in the prosecution family of the '252 patent.
- 14           • BoA directly and wrongfully appropriated and incorporated NantWorks'  
15 confidential image recognition and processing technology into BoA's  
16 mobile check deposit software. On information and belief, BoA knew  
17 or had reason to know that NantWorks owned patent rights covering the  
18 appropriated technology or that NantWorks would attain patent rights  
19 covering those technologies.

20           86. Notwithstanding BoA's actual notice of infringement, BoA has provided  
21 and continues to provide the BoA Accused Products to its customers that make or use  
22 the BoA Accused Products with knowledge of or willful blindness to the fact that its  
23 actions will induce others, including those customers, to directly infringe the '252  
24 patent. BoA induces others including its customers to infringe the '252 patent in  
25 violation of 35 U.S.C. § 271(b) by encouraging and facilitating others to perform  
26 actions that BoA knows to be acts of infringement of the '252 patent with intent that  
27 those performing the acts infringe the '252 patent, or with willful blindness to such  
28 facts. On information and belief, BoA, directly and/or through intermediaries,

1 advertises and distributes the BoA Accused Products, publishes instruction materials,  
2 specifications and promotional literature describing the operation of the BoA Accused  
3 Products, and offers technical assistance, training, and/or consulting services  
4 regarding the BoA Accused Products to its customers.<sup>11</sup> At least BoA's customers and  
5 other end users of these BoA Accused Products then directly infringe the '252 patent  
6 by making or using, without NantWorks' authority, the BoA Accused Products.

7       87. On information and belief, BoA knows that the BoA Accused Products  
8 are especially made or especially adapted for use in the infringement of the '252  
9 patent. The infringing components of these products are not staple articles or  
10 commodities of commerce suitable for substantial noninfringing use, and the  
11 infringing components of these products are a material part of the invention of the  
12 '252 patent. Accordingly, in violation of 35 U.S.C. § 271(c), BoA is also contributing  
13 to the direct infringement of the '252 patent by at least its customers and/or end users  
14 of these BoA Accused Products. The customers and/or end users of these BoA  
15 Accused Products directly infringe the '252 patent by making or using, without  
16 NantWorks' authority, the BoA Accused Products.

17       88. As a result of BoA's infringement of the '252 patent, NantWorks has  
18 suffered, and will continue to suffer, substantial damages. Accordingly, BoA is liable  
19 to NantWorks for damages adequate to compensate for BoA's acts of infringement,  
20 in an amount to be proved at trial but in no event less than a reasonable royalty for the  
21 use made of NantWorks' invention by BoA under 35 U.S.C. § 284.

22       89. In addition, BoA's acts of infringement have caused NantWorks  
23 irreparable harm that is not compensable by monetary damages. The hardships that  
24 an injunction would impose are less than those faced by NantWorks should an  
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26       <sup>11</sup> See, e.g., <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>;  
27 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>;  
28 <https://promo.bankofamerica.com/mobile-check-deposit/>

1 injunction not issue. The public interest would be served by issuance of an injunction.  
2 Thus, NantWorks is entitled to a preliminary and a permanent injunction against  
3 further infringement. Therefore NantWorks is entitled to injunctive relief under 35  
4 U.S.C. § 283.

5 90. BoA's acts of infringement constitute willful, egregious misconduct, and  
6 consequently NantWorks is entitled to a discretionary increase of its damages award  
7 up to three times the amount found or assessed, costs, and attorney's fees under 35  
8 U.S.C. § 284.

9 91. Based on the foregoing facts, NantWorks requests that this Court declare  
10 this an exceptional case, and award Plaintiffs their costs and attorney's fees under 35  
11 U.S.C. § 285.

12 **COUNT III:**

13 **Infringement of United States Patent No. 8,326,038**

14 92. NantWorks re-alleges and incorporates by reference the allegations of  
15 the preceding paragraphs of this Complaint as if fully set forth herein.

16 93. In violation of 35 U.S.C. § 271, BoA has infringed and is currently  
17 infringing, directly and/or through intermediaries, the '038 patent by making, using,  
18 selling, offering for sale, and/or importing into the United States, without authority,  
19 the BoA Accused Products that practice at least claim 1 of the '038 patent. The BoA  
20 Accused Products meet each and every element this claim. BoA has infringed and is  
21 currently infringing this claim literally and/or under the doctrine of equivalents.

22 94. Exemplary claim 1 of the '038 patent states:

23 1. An interactive system comprising:

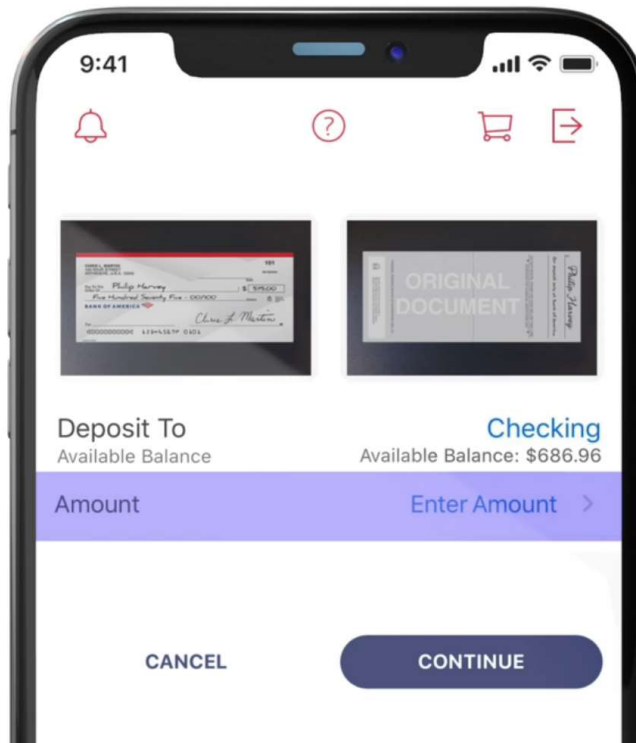
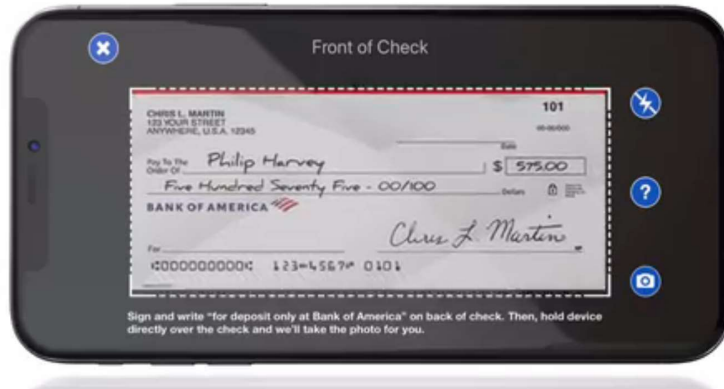
24 an optical sensor capable of capturing image information from a  
25 displayed image on a portable device display screen; and

26 an image processing platform coupled with the optical sensor and  
27 configured to:  
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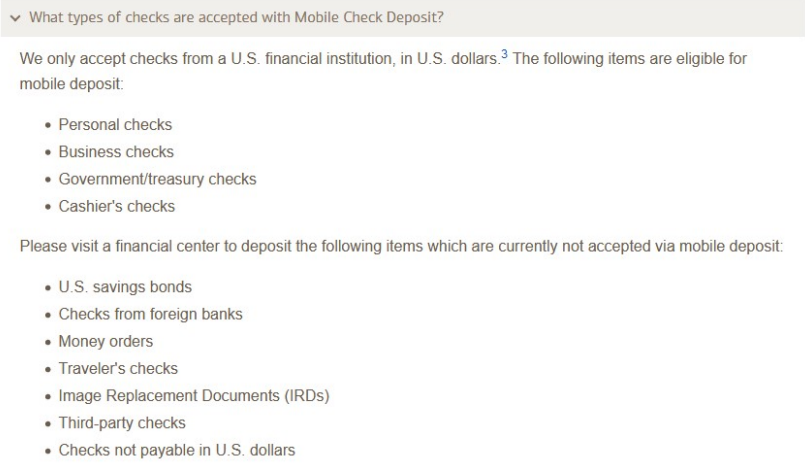
- 1 identify features from the image information relating to the displayed
- 2 image;
- 3 recognize a target based on the features;
- 4 associate the target with target information pertinent to the target; and
- 5 enable a transaction with an account based on the target information.

6 95. The BoA Accused Products operate, in part, on a BoA customer's mobile  
7 device, such as a mobile phone or tablet. The BoA Accused Products operate to  
8 capture video and image data of a check that the customer wishes to deposit using a  
9 camera associated with the mobile device, as exemplified in the images below.



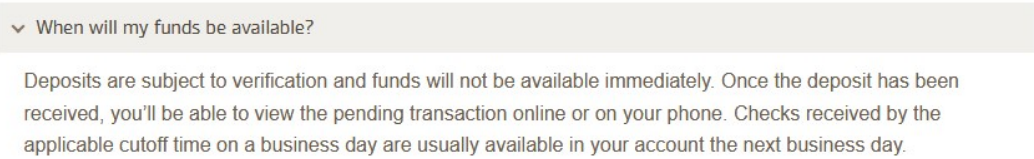
1 <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>

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3 96. On information and belief, the BoA Accused Products operate to identify  
4 an object within the captured video/image data and distinguish the object present in  
5 the video/image from others based on features of the object in the captured  
6 video/image. For example, on information and belief, the BoA Accused Products  
7 identify and distinguish the specific type of the check, as described in the below  
8 image, as well as components thereof, such as writing, signatures, and alphanumeric  
9 characters.



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18 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

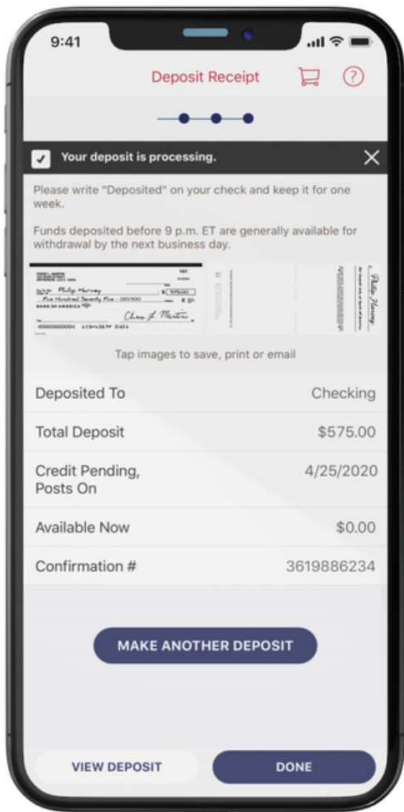
19 97. BoA's Accused Products perform validation and verification of the  
20 captured check image and perform a check deposit transaction with the BoA  
21 customer's checking account, as described in the image below.



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25 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

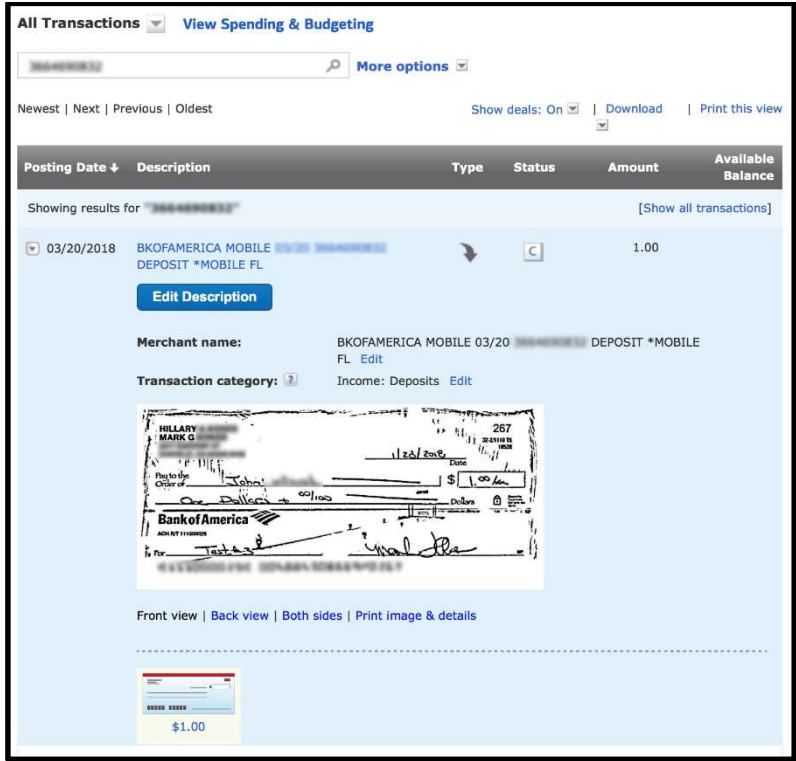
26 98. On information and belief, BoA's Accused Products associate identified  
27 objects from the captured check image with relevant information associated with the  
28 captured check, including, for example, information concerning monetary amount and

1 parties associated with the check, authorization and validity of the check, the date and  
2 status of the checking transaction, and a confirmation number. BoA's Accused  
3 Products provide this information to the customer's device, whereon the information  
4 is presented to the a user, as exemplified in the images below.



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18 [https://www.bankofamerica.com/online-banking/mobile-and-online-banking-](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)  
19 [features/mobile-check-deposit/](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)

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99. On information and belief, BoA has had actual knowledge of its infringement of the '038 patent since October 2016, but no later than the filing date of this Complaint.

100. On information and belief, BoA had actual knowledge of its and its customers' infringement of the '038 patent or was willfully blind thereto as of the issue date of the '038 patent. For example:

- NantWorks and BoA collaborated closely as part of BoA's evaluation of NantWorks' computer image recognition technologies.
- As part of their relationship, NantWorks made BoA aware of NantWorks' patent portfolio covering computer image recognition and processing.
- BoA's patent applications and patents cite numerous NantWorks patents in the prosecution family of the '038 patent.
- BoA directly and wrongfully appropriated and incorporated NantWorks' confidential image recognition and processing technology into BoA's mobile check deposit software. On information and belief, BoA knew

1 or had reason to know that NantWorks owned patent rights covering the  
2 appropriated technology or that NantWorks would attain patent rights  
3 covering those technologies.

4 101. Notwithstanding BoA's actual notice of infringement, BoA has provided  
5 and continues to provide the BoA Accused Products to its customers that make or use  
6 the BoA Accused Products with knowledge of or willful blindness to the fact that its  
7 actions will induce others, including those customers, to directly infringe the '038  
8 patent. BoA induces others including its customers to infringe the '038 patent in  
9 violation of 35 U.S.C. § 271(b) by encouraging and facilitating others to perform  
10 actions that BoA knows to be acts of infringement of the '038 patent with intent that  
11 those performing the acts infringe the '038 patent, or with willful blindness to such  
12 facts. On information and belief, BoA, directly and/or through intermediaries,  
13 advertises and distributes the BoA Accused Products, publishes instruction materials,  
14 specifications and promotional literature describing the operation of the BoA Accused  
15 Products, and offers technical assistance, training, and/or consulting services  
16 regarding the BoA Accused Products to its customers.<sup>12</sup> At least BoA's customers and  
17 other end users of these BoA Accused Products then directly infringe the '038 patent  
18 by making or using, without NantWorks' authority, the BoA Accused Products.

19 102. On information and belief, BoA knows that the BoA Accused Products  
20 are especially made or especially adapted for use in the infringement of the '038  
21 patent. The infringing components of these products are not staple articles or  
22 commodities of commerce suitable for substantial noninfringing use, and the  
23 infringing components of these products are a material part of the invention of the  
24 '038 patent. Accordingly, in violation of 35 U.S.C. § 271(c), BoA is also contributing  
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26 <sup>12</sup> See, e.g., <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>;  
27 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>;  
28 <https://promo.bankofamerica.com/mobile-check-deposit/>

1 to the direct infringement of the '038 patent by at least its customers and/or end users  
2 of these BoA Accused Products. The customers and/or end users of these BoA  
3 Accused Products directly infringe the '038 patent by making or using, without  
4 NantWorks' authority, the BoA Accused Products.

5 103. As a result of BoA's infringement of the '038 patent, NantWorks has  
6 suffered, and will continue to suffer, substantial damages. Accordingly, BoA is liable  
7 to NantWorks for damages adequate to compensate for BoA's acts of infringement,  
8 in an amount to be proved at trial but in no event less than a reasonable royalty for the  
9 use made of NantWorks' invention by BoA under 35 U.S.C. § 284.

10 104. In addition, BoA's acts of infringement have caused NantWorks  
11 irreparable harm that is not compensable by monetary damages. The hardships that  
12 an injunction would impose are less than those faced by NantWorks should an  
13 injunction not issue. The public interest would be served by issuance of an injunction.  
14 Thus, NantWorks is entitled to a preliminary and a permanent injunction against  
15 further infringement. Therefore NantWorks is entitled to injunctive relief under 35  
16 U.S.C. § 283.

17 105. BoA's acts of infringement constitute willful, egregious misconduct, and  
18 consequently NantWorks is entitled to a discretionary increase of its damages award  
19 up to three times the amount found or assessed, costs, and attorney's fees under 35  
20 U.S.C. § 284.

21 106. Based on the foregoing facts, NantWorks requests that this Court declare  
22 this an exceptional case, and award Plaintiffs their costs and attorney's fees under 35  
23 U.S.C. § 285.

24 **COUNT IV:**

25 **Infringement of United States Patent No. 8,463,030**

26 107. NantWorks re-alleges and incorporates by reference the allegations of  
27 the preceding paragraphs of this Complaint as if fully set forth herein.

28 108. In violation of 35 U.S.C. § 271, BoA has infringed and is currently

1 infringing, directly and/or through intermediaries, the '030 patent by making, using,  
2 selling, offering for sale, and/or importing into the United States, without authority,  
3 the BoA Accused Products that practice at least claim 1 of the '030 patent. The BoA  
4 Accused Products meet each and every element this claim. BoA has infringed and is  
5 currently infringing this claim literally and/or under the doctrine of equivalents.

6 109. Exemplary claim 1 of the '030 patent states:

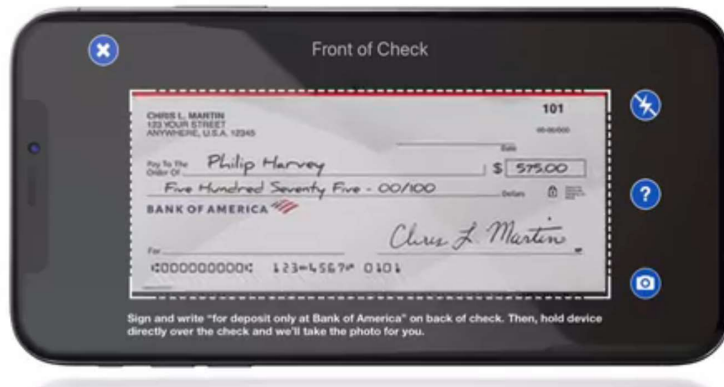
7 1. A transaction system comprising:

8 a mobile device configured to acquire data related to an object;

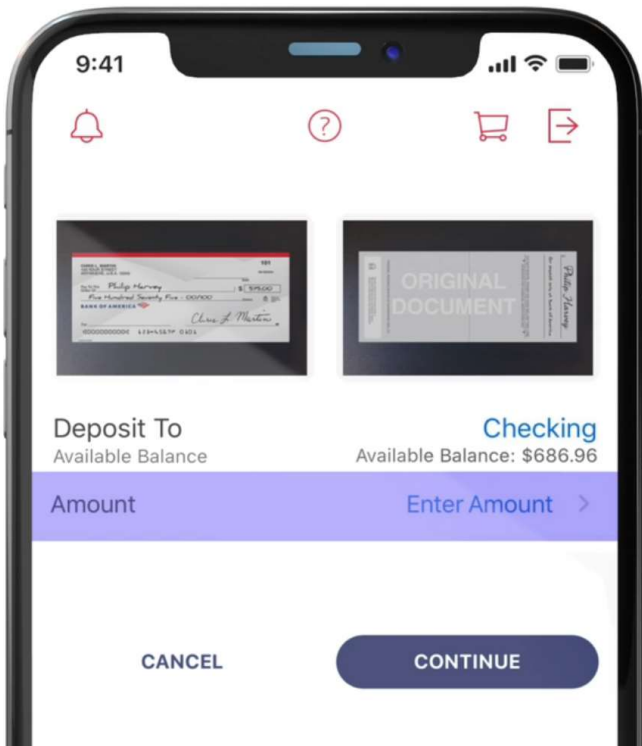
9 an object identification platform configured to obtain the acquired data,  
10 recognize the object as a target object based on the acquired data, and determine  
11 object information associated with the target object; and

12 a content platform configured to obtain the object information, and  
13 initiate a transaction associated with the target object with a selected account  
14 over a network based on the object information.

15 110. The BoA Accused Products operate, in part, on a BoA customer's mobile  
16 device, such as a mobile phone or tablet. The BoA Accused Products operate to  
17 capture video and image data of a check that the customer wishes to deposit using a  
18 camera associated with the mobile device, as exemplified in the images below.



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<https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>

111. On information and belief, the BoA Accused Products operate to identify an object within the captured video/image data and distinguish the object present in the video/image from others based on features of the object in the captured video/image. For example, on information and belief, the BoA Accused Products identify and distinguish the specific type of the check, as described in the below image, as well as components thereof, such as writing, signatures, and alphanumeric characters.



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▼ What types of checks are accepted with Mobile Check Deposit?

We only accept checks from a U.S. financial institution, in U.S. dollars.<sup>3</sup> The following items are eligible for mobile deposit:

- Personal checks
- Business checks
- Government/treasury checks
- Cashier's checks

Please visit a financial center to deposit the following items which are currently not accepted via mobile deposit:

- U.S. savings bonds
- Checks from foreign banks
- Money orders
- Traveler's checks
- Image Replacement Documents (IRDs)
- Third-party checks
- Checks not payable in U.S. dollars

<https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

112. BoA's Accused Products perform validation and verification of the captured check image and perform a check deposit transaction with the BoA customer's checking account, as described in the image below.

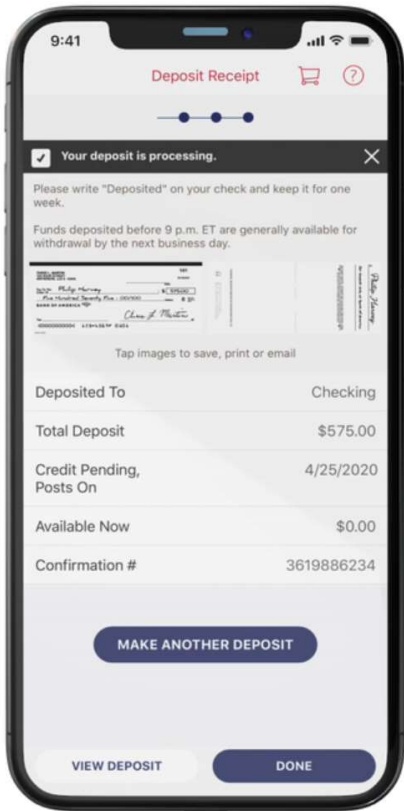
▼ When will my funds be available?

Deposits are subject to verification and funds will not be available immediately. Once the deposit has been received, you'll be able to view the pending transaction online or on your phone. Checks received by the applicable cutoff time on a business day are usually available in your account the next business day.

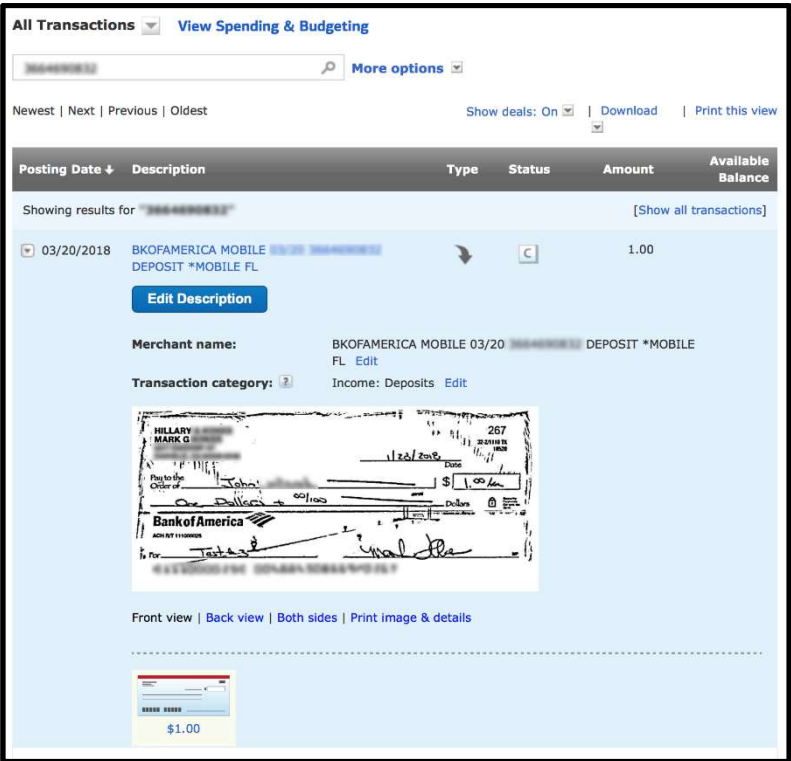
<https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

113. On information and belief, BoA's Accused Products associate identified objects from the captured check image with relevant information associated with the captured check, including, for example, information concerning monetary amount and parties associated with the check, authorization and validity of the check, the date and status of the checking transaction, and a confirmation number. BoA's Accused Products provide this information to the customer's device, whereon the information is presented to the a user, as exemplified in the images below.

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<https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>



1 114. On information and belief, BoA has had actual knowledge of its  
2 infringement of the '030 patent since October 2016, but no later than the filing date  
3 of this Complaint.

4 115. On information and belief, BoA had actual knowledge of its and its  
5 customers' infringement of the '030 patent or was willfully blind thereto as of the  
6 issue date of the '030 patent. For example:

- 7 • NantWorks and BoA collaborated closely as part of BoA's evaluation of  
8 NantWorks' computer image recognition technologies.
- 9 • As part of their relationship, NantWorks made BoA aware of  
10 NantWorks' patent portfolio covering computer image recognition and  
11 processing.
- 12 • BoA's patent applications and patents cite numerous NantWorks patents  
13 in the prosecution family of the '030 patent.
- 14 • BoA directly and wrongfully appropriated and incorporated NantWorks'  
15 confidential image recognition and processing technology into BoA's  
16 mobile check deposit software. On information and belief, BoA knew  
17 or had reason to know that NantWorks owned patent rights covering the  
18 appropriated technology or that NantWorks would attain patent rights  
19 covering those technologies.

20 116. Notwithstanding BoA's actual notice of infringement, BoA has provided  
21 and continues to provide the BoA Accused Products to its customers that make or use  
22 the BoA Accused Products with knowledge of or willful blindness to the fact that its  
23 actions will induce others, including those customers, to directly infringe the '030  
24 patent. BoA induces others including its customers to infringe the '030 patent in  
25 violation of 35 U.S.C. § 271(b) by encouraging and facilitating others to perform  
26 actions that BoA knows to be acts of infringement of the '030 patent with intent that  
27 those performing the acts infringe the '030 patent, or with willful blindness to such  
28 facts. On information and belief, BoA, directly and/or through intermediaries,

1 advertises and distributes the BoA Accused Products, publishes instruction materials,  
2 specifications and promotional literature describing the operation of the BoA Accused  
3 Products, and offers technical assistance, training, and/or consulting services  
4 regarding the BoA Accused Products to its customers.<sup>13</sup> At least BoA's customers and  
5 other end users of these BoA Accused Products then directly infringe the '030 patent  
6 by making or using, without NantWorks' authority, the BoA Accused Products.

7 117. On information and belief, BoA knows that the BoA Accused Products  
8 are especially made or especially adapted for use in the infringement of the '030  
9 patent. The infringing components of these products are not staple articles or  
10 commodities of commerce suitable for substantial noninfringing use, and the  
11 infringing components of these products are a material part of the invention of the  
12 '030 patent. Accordingly, in violation of 35 U.S.C. § 271(c), BoA is also contributing  
13 to the direct infringement of the '030 patent by at least its customers and/or end users  
14 of these BoA Accused Products. The customers and/or end users of these BoA  
15 Accused Products directly infringe the '030 patent by making or using, without  
16 NantWorks' authority, the BoA Accused Products.

17 118. As a result of BoA's infringement of the '030 patent, NantWorks has  
18 suffered, and will continue to suffer, substantial damages. Accordingly, BoA is liable  
19 to NantWorks for damages adequate to compensate for BoA's acts of infringement,  
20 in an amount to be proved at trial but in no event less than a reasonable royalty for the  
21 use made of NantWorks' invention by BoA under 35 U.S.C. § 284.

22 119. In addition, BoA's acts of infringement have caused NantWorks  
23 irreparable harm that is not compensable by monetary damages. The hardships that  
24 an injunction would impose are less than those faced by NantWorks should an  
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26 <sup>13</sup> See, e.g., <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>;  
27 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>;  
28 <https://promo.bankofamerica.com/mobile-check-deposit/>

1 injunction not issue. The public interest would be served by issuance of an injunction.  
2 Thus, NantWorks is entitled to a preliminary and a permanent injunction against  
3 further infringement. Therefore NantWorks is entitled to injunctive relief under 35  
4 U.S.C. § 283.

5 120. BoA's acts of infringement constitute willful, egregious misconduct, and  
6 consequently NantWorks is entitled to a discretionary increase of its damages award  
7 up to three times the amount found or assessed, costs, and attorney's fees under 35  
8 U.S.C. § 284.

9 121. Based on the foregoing facts, NantWorks requests that this Court declare  
10 this an exceptional case, and award Plaintiffs their costs and attorney's fees under 35  
11 U.S.C. § 285.

12 **COUNT V:**

13 **Infringement of United States Patent No. 8,478,036**

14 122. NantWorks re-alleges and incorporates by reference the allegations of  
15 the preceding paragraphs of this Complaint as if fully set forth herein.

16 123. In violation of 35 U.S.C. § 271, BoA has infringed and is currently  
17 infringing, directly and/or through intermediaries, the '036 patent by making, using,  
18 selling, offering for sale, and/or importing into the United States, without authority,  
19 the BoA Accused Products that practice at least claim 1 of the '036 patent. The BoA  
20 Accused Products meet each and every element this claim. BoA has infringed and is  
21 currently infringing this claim literally and/or under the doctrine of equivalents.

22 124. Exemplary claim 1 of the '036 patent states:

23 1. A content provisioning system comprising:

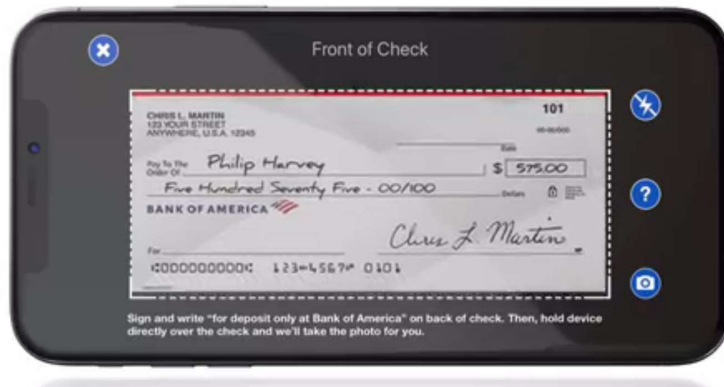
24 a target database storing known targets of different types and recognition  
25 parameters associated with the known targets;

26 an identification platform coupled with the target database, and that:

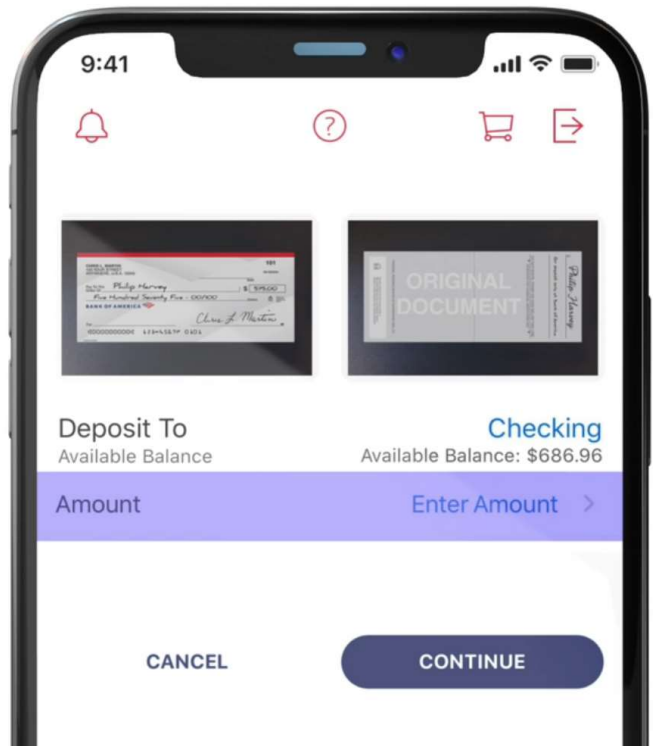
27 communicates with a mobile device capable of acquiring a digital  
28 representation of a scene containing at least a portion of a target;

1 receives the digital representation from the mobile device; and  
2 recognizes the target as a known target from the target database based on  
3 comparing parameters derived from the digital representation to recognition  
4 parameters associated with the known targets; and  
5 a content service coupled with the identification platform, and that:  
6 obtains content information related to the known target; and  
7 sends the content information to at least one of the identification platform  
8 and the mobile device.

9 125. The BoA Accused Products operate, in part, on a BoA customer's mobile  
10 device, such as a mobile phone or tablet. The BoA Accused Products operate to  
11 capture video and image data of a check that the customer wishes to deposit using a  
12 camera associated with the mobile device, as exemplified in the images below.



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<https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>

126. On information and belief, the BoA Accused Products operate to identify an object within the captured video/image data and distinguish the object present in the video/image from others based on features of the object in the captured video/image. For example, on information and belief, the BoA Accused Products identify and distinguish the specific type of the check, as described in the below image, as well as components thereof, such as writing, signatures, and alphanumeric characters.

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▼ What types of checks are accepted with Mobile Check Deposit?

We only accept checks from a U.S. financial institution, in U.S. dollars.<sup>3</sup> The following items are eligible for mobile deposit:

- Personal checks
- Business checks
- Government/treasury checks
- Cashier's checks

Please visit a financial center to deposit the following items which are currently not accepted via mobile deposit:

- U.S. savings bonds
- Checks from foreign banks
- Money orders
- Traveler's checks
- Image Replacement Documents (IRDs)
- Third-party checks
- Checks not payable in U.S. dollars

<https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

127. BoA's Accused Products perform validation and verification of the captured check image and perform a check deposit transaction with the BoA customer's checking account, as described in the image below.

▼ When will my funds be available?

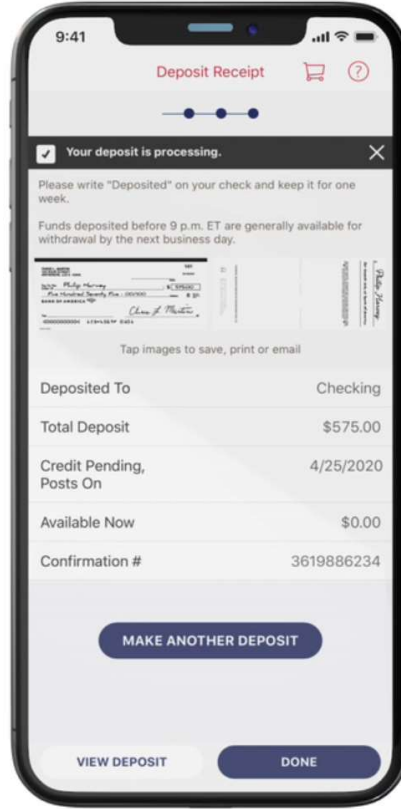
Deposits are subject to verification and funds will not be available immediately. Once the deposit has been received, you'll be able to view the pending transaction online or on your phone. Checks received by the applicable cutoff time on a business day are usually available in your account the next business day.

<https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

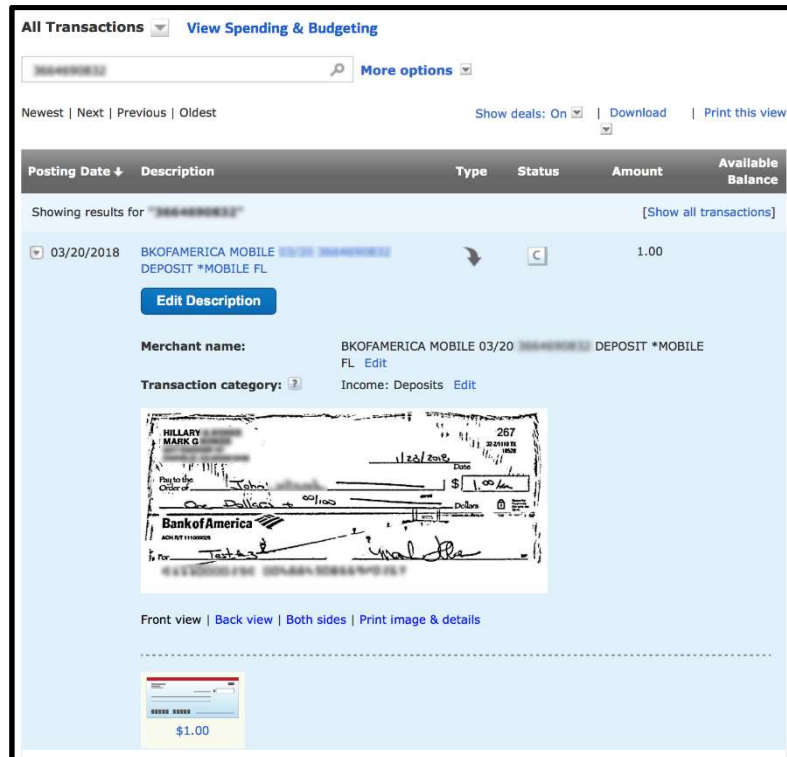
128. On information and belief, BoA's Accused Products associate identified objects from the captured check image with relevant information associated with the captured check, including, for example, information concerning monetary amount and parties associated with the check, authorization and validity of the check, the date and status of the checking transaction, and a confirmation number. BoA's Accused Products provide this information to the customer's device, whereon the information is presented to the a user, as exemplified in the images below.



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<https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>



1           129. On information and belief, BoA has had actual knowledge of its  
2 infringement of the '036 patent since October 2016, but no later than the filing date  
3 of this Complaint..

4           130. On information and belief, BoA had actual knowledge of its and its  
5 customers' infringement of the '036 patent or was willfully blind thereto as of the  
6 issue date of the '036 patent. For example:

- 7           • NantWorks and BoA collaborated closely as part of BoA's evaluation of  
8 NantWorks' computer image recognition technologies.
- 9           • As part of their relationship, NantWorks made BoA aware of  
10 NantWorks' patent portfolio covering computer image recognition and  
11 processing.
- 12           • BoA's patent applications and patents cite numerous NantWorks patents  
13 in the prosecution family of the '036 patent.
- 14           • BoA directly and wrongfully appropriated and incorporated NantWorks'  
15 confidential image recognition and processing technology into BoA's  
16 mobile check deposit software. On information and belief, BoA knew  
17 or had reason to know that NantWorks owned patent rights covering the  
18 appropriated technology or that NantWorks would attain patent rights  
19 covering those technologies.

20           131. Notwithstanding BoA's actual notice of infringement, BoA has provided  
21 and continues to provide the BoA Accused Products to its customers that make or use  
22 the BoA Accused Products with knowledge of or willful blindness to the fact that its  
23 actions will induce others, including those customers, to directly infringe the '036  
24 patent. BoA induces others including its customers to infringe the '036 patent in  
25 violation of 35 U.S.C. § 271(b) by encouraging and facilitating others to perform  
26 actions that BoA knows to be acts of infringement of the '036 patent with intent that  
27 those performing the acts infringe the '036 patent, or with willful blindness to such  
28 facts. On information and belief, BoA, directly and/or through intermediaries,

1 advertises and distributes the BoA Accused Products, publishes instruction materials,  
2 specifications and promotional literature describing the operation of the BoA Accused  
3 Products, and offers technical assistance, training, and/or consulting services  
4 regarding the BoA Accused Products to its customers.<sup>14</sup> At least BoA's customers and  
5 other end users of these BoA Accused Products then directly infringe the '036 patent  
6 by making or using, without NantWorks' authority, the BoA Accused Products.

7 132. On information and belief, BoA knows that the BoA Accused Products  
8 are especially made or especially adapted for use in the infringement of the '036  
9 patent. The infringing components of these products are not staple articles or  
10 commodities of commerce suitable for substantial noninfringing use, and the  
11 infringing components of these products are a material part of the invention of the  
12 '036 patent. Accordingly, in violation of 35 U.S.C. § 271(c), BoA is also contributing  
13 to the direct infringement of the '036 patent by at least its customers and/or end users  
14 of these BoA Accused Products. The customers and/or end users of these BoA  
15 Accused Products directly infringe the '036 patent by making or using, without  
16 NantWorks' authority, the BoA Accused Products.

17 133. As a result of BoA's infringement of the '036 patent, NantWorks has  
18 suffered, and will continue to suffer, substantial damages. Accordingly, BoA is liable  
19 to NantWorks for damages adequate to compensate for BoA's acts of infringement,  
20 in an amount to be proved at trial but in no event less than a reasonable royalty for the  
21 use made of NantWorks' invention by BoA under 35 U.S.C. § 284.

22 134. In addition, BoA's acts of infringement have caused NantWorks  
23 irreparable harm that is not compensable by monetary damages. The hardships that  
24 an injunction would impose are less than those faced by NantWorks should an  
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26 <sup>14</sup> See, e.g., <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>;  
27 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>;  
28 <https://promo.bankofamerica.com/mobile-check-deposit/>

1 injunction not issue. The public interest would be served by issuance of an injunction.  
2 Thus, NantWorks is entitled to a preliminary and a permanent injunction against  
3 further infringement. Therefore NantWorks is entitled to injunctive relief under 35  
4 U.S.C. § 283.

5 135. BoA's acts of infringement constitute willful, egregious misconduct, and  
6 consequently NantWorks is entitled to a discretionary increase of its damages award  
7 up to three times the amount found or assessed, costs, and attorney's fees under 35  
8 U.S.C. § 284.

9 136. Based on the foregoing facts, NantWorks requests that this Court declare  
10 this an exceptional case, and award Plaintiffs their costs and attorney's fees under 35  
11 U.S.C. § 285.

12 **COUNT VI:**

13 **Infringement of United States Patent No. 8,520,897**

14 137. NantWorks re-alleges and incorporates by reference the allegations of  
15 the preceding paragraphs of this Complaint as if fully set forth herein.

16 138. In violation of 35 U.S.C. § 271, BoA has infringed and is currently  
17 infringing, directly and/or through intermediaries, the '897 patent by making, using,  
18 selling, offering for sale, and/or importing into the United States, without authority,  
19 the BoA Accused Products that practice at least claim 25 of the '897 patent. The BoA  
20 Accused Products meet each and every element this claim. BoA has infringed and is  
21 currently infringing this claim literally and/or under the doctrine of equivalents.

22 139. Exemplary claim 25 of the '897 patent states:

23 25. A method of conducting a transaction with an interactive system, the  
24 method comprising

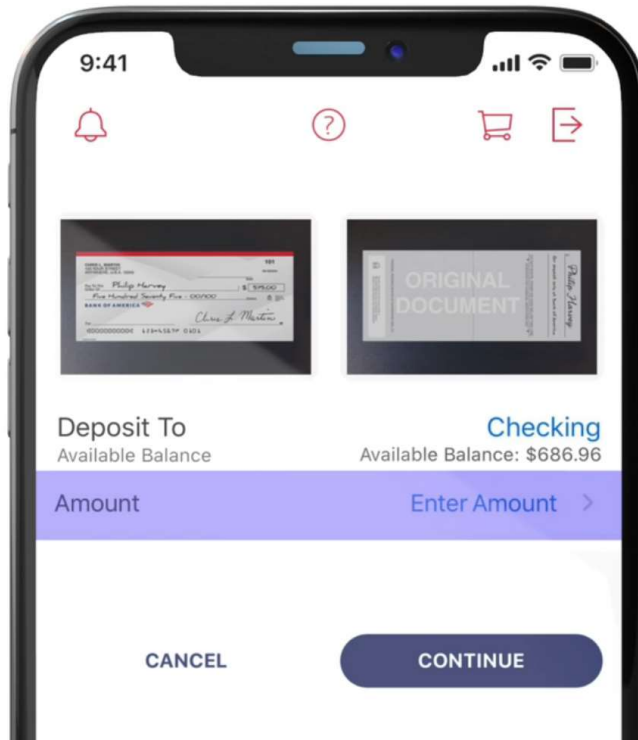
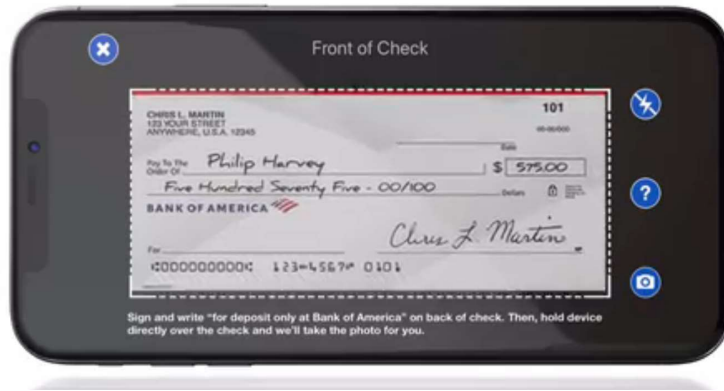
25 providing access to a device having a display;

26 displaying a displayed image on the display of the device;

27 presenting the displayed image proximate to an optical sensor; and  
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1 enabling, via the interactive system, identification of features from the  
2 displayed image, recognition of a target based on the features, association of  
3 the target with target information pertinent to the target, and performance of a  
4 transaction based on the target information.

5 140. The BoA Accused Products operate, in part, on a BoA customer's mobile  
6 device, such as a mobile phone or tablet. The BoA Accused Products operate to  
7 capture video and image data of a check that the customer wishes to deposit using a  
8 camera associated with the mobile device, as exemplified in the images below.

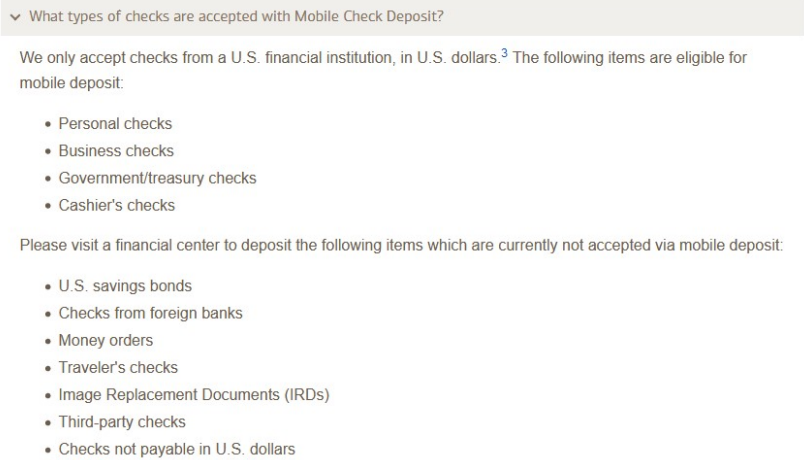


28 <https://www.bankofamerica.com/online-banking/mobile-and-online-banking->

1 features/mobile-check-deposit/

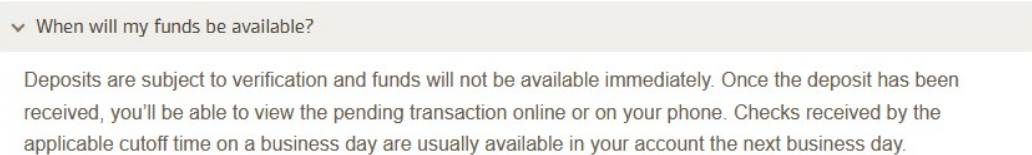
2 141. With regard to steps performed on a customer's mobile device, BoA  
3 conditions the customer's use of the mobile check deposit functionality of the BoA's  
4 mobile banking application, and receipt of associated benefits (e.g., the ability to  
5 remotely deposit checks using a mobile device), on the customer's performance of  
6 such steps. For example, BoA conditions the customer's use of the mobile banking  
7 application through its Mobile Check Deposit Terms and Conditions, which are  
8 provided to each customer upon the customer's enrollment to the BoA mobile banking  
9 application, and which the customer must accept in order to utilize the application.  
10 The Mobile Check Deposit Terms and Conditions dictate the hardware and software  
11 to be utilized by the customer and dictates the responsibilities of a customer with  
12 regard to capturing an image of a check using a camera-enabled mobile device and  
13 transferring such an image to BoA for image processing. The customer's use of the  
14 mobile banking application is further conditioned due to the design and functionality  
15 of the BoA Accused Products. For example, actions performed at a customer's mobile  
16 device, such as capturing an image of a check and transferring such an image are  
17 necessary technological prerequisites in the customer's participation in BoA's mobile  
18 deposit services. BoA also establishes the manner and timing of performance by  
19 which a customer utilizes the BoA mobile banking application to perform mobile  
20 check deposits. BoA establishes such manner and timing of performance through its  
21 Mobile Check Deposit Terms and Conditions and through BoA's design of the  
22 functionality of the BoA mobile banking application, as described in this paragraph.  
23 BoA further establishes the manner and timing of its customers' performance by  
24 providing detailed, step-by-step instructions for a customer to perform to perform  
25 certain steps at the customer's mobile device to perform a mobile check deposit and  
26 receive the associated benefits of BoA's mobile banking services. *See e.g.*,  
27 [https://www.bankofamerica.com/online-banking/mobile-and-online-banking-](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)  
28 [features/mobile-check-deposit/](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/); [https://www.youtube.com/watch?v=-cGT\\_khFQsQ](https://www.youtube.com/watch?v=-cGT_khFQsQ).

1 142. On information and belief, the BoA Accused Products operate to identify  
2 an object within the captured video/image data and distinguish the object present in  
3 the video/image from others based on features of the object in the captured  
4 video/image. For example, on information and belief, the BoA Accused Products  
5 identify and distinguish the specific type of the check, as described in the below  
6 image, as well as components thereof, such as writing, signatures, and alphanumeric  
7 characters.



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16 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

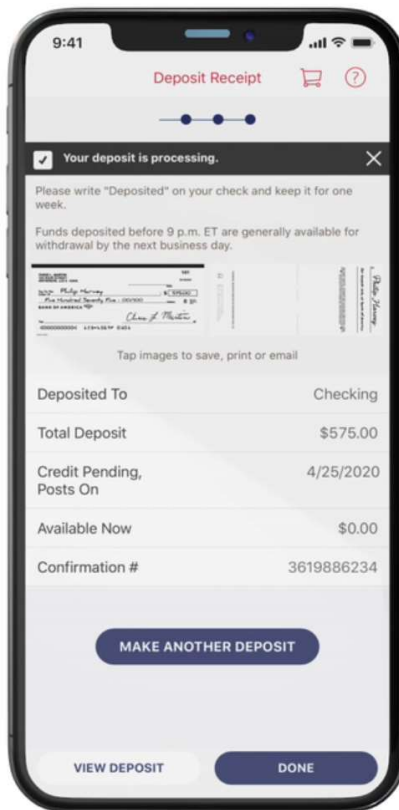
17 143. BoA's Accused Products perform validation and verification of the  
18 captured check image and perform a check deposit transaction with the BoA  
19 customer's checking account, as described in the image below.



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23 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

24 144. On information and belief, BoA's Accused Products associate identified  
25 objects from the captured check image with relevant information associated with the  
26 captured check, including, for example, information concerning monetary amount and  
27 parties associated with the check, authorization and validity of the check, the date and  
28 status of the checking transaction, and a confirmation number. BoA's Accused

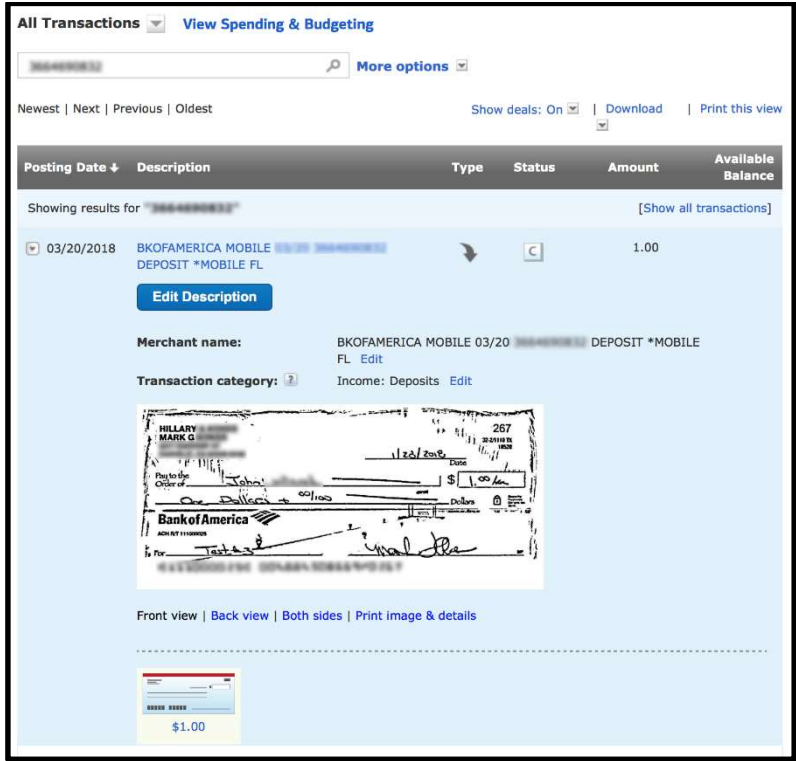
1 Products provide this information to the customer's device, whereon the information  
2 is presented to the a user, as exemplified in the images below.



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16 [https://www.bankofamerica.com/online-banking/mobile-and-online-banking-](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)  
17 [features/mobile-check-deposit/](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)



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145. On information and belief, BoA has had actual knowledge of its infringement of the '897 patent since October 2016, but no later than the filing date of this Complaint..

146. On information and belief, BoA had actual knowledge of its and its customers' infringement of the '897 patent or was willfully blind thereto as of the issue date of the '897 patent. For example:

- NantWorks and BoA collaborated closely as part of BoA's evaluation of NantWorks' computer image recognition technologies.
- As part of their relationship, NantWorks made BoA aware of NantWorks' patent portfolio covering computer image recognition and processing.
- BoA's patent applications and patents cite numerous NantWorks patents in the prosecution family of the '897 patent.
- BoA directly and wrongfully appropriated and incorporated NantWorks' confidential image recognition and processing technology into BoA's mobile check deposit software. On information and belief, BoA knew

1 or had reason to know that NantWorks owned patent rights covering the  
2 appropriated technology or that NantWorks would attain patent rights  
3 covering those technologies.

4 147. Notwithstanding BoA's actual notice of infringement, BoA has provided  
5 and continues to provide the BoA Accused Products to its customers that make or use  
6 the BoA Accused Products with knowledge of or willful blindness to the fact that its  
7 actions will induce others, including those customers, to directly infringe the '897  
8 patent. BoA induces others including its customers to infringe the '897 patent in  
9 violation of 35 U.S.C. § 271(b) by encouraging and facilitating others to perform  
10 actions that BoA knows to be acts of infringement of the '897 patent with intent that  
11 those performing the acts infringe the '897 patent, or with willful blindness to such  
12 facts. On information and belief, BoA, directly and/or through intermediaries,  
13 advertises and distributes the BoA Accused Products, publishes instruction materials,  
14 specifications and promotional literature describing the operation of the BoA Accused  
15 Products, and offers technical assistance, training, and/or consulting services  
16 regarding the BoA Accused Products to its customers.<sup>15</sup> At least BoA's customers and  
17 other end users of these BoA Accused Products then directly infringe the '897 patent  
18 by making or using, without NantWorks' authority, the BoA Accused Products.

19 148. On information and belief, BoA knows that the BoA Accused Products  
20 are especially made or especially adapted for use in the infringement of the '897  
21 patent. The infringing components of these products are not staple articles or  
22 commodities of commerce suitable for substantial noninfringing use, and the  
23 infringing components of these products are a material part of the invention of the  
24 '897 patent. Accordingly, in violation of 35 U.S.C. § 271(c), BoA is also contributing  
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26 <sup>15</sup> See, e.g., <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>;  
27 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>;  
28 <https://promo.bankofamerica.com/mobile-check-deposit/>

1 to the direct infringement of the '897 patent by at least its customers and/or end users  
2 of these BoA Accused Products. The customers and/or end of these BoA Accused  
3 Products directly infringe the '897 patent by making or using, without NantWorks'  
4 authority, the BoA Accused Products.

5 149. As a result of BoA's infringement of the '897 patent, NantWorks has  
6 suffered, and will continue to suffer, substantial damages. Accordingly, BoA is liable  
7 to NantWorks for damages adequate to compensate for BoA's acts of infringement,  
8 in an amount to be proved at trial but in no event less than a reasonable royalty for the  
9 use made of NantWorks' invention by BoA under 35 U.S.C. § 284.

10 150. In addition, BoA's acts of infringement have caused NantWorks  
11 irreparable harm that is not compensable by monetary damages. The hardships that  
12 an injunction would impose are less than those faced by NantWorks should an  
13 injunction not issue. The public interest would be served by issuance of an injunction.  
14 Thus, NantWorks is entitled to a preliminary and a permanent injunction against  
15 further infringement. Therefore NantWorks is entitled to injunctive relief under 35  
16 U.S.C. § 283.

17 151. BoA's acts of infringement constitute willful, egregious misconduct, and  
18 consequently NantWorks is entitled to a discretionary increase of its damages award  
19 up to three times the amount found or assessed, costs, and attorney's fees under 35  
20 U.S.C. § 284.

21 152. Based on the foregoing facts, NantWorks requests that this Court declare  
22 this an exceptional case, and award Plaintiffs their costs and attorney's fees under 35  
23 U.S.C. § 285.

24 **COUNT VII:**

25 **Infringement of United States Patent No. 9,031,278**

26 153. NantWorks re-alleges and incorporates by reference the allegations of  
27 the preceding paragraphs of this Complaint as if fully set forth herein.

28 154. In violation of 35 U.S.C. § 271, BoA has infringed and is currently

1 infringing, directly and/or through intermediaries, the '278 patent by making, using,  
2 selling, offering for sale, and/or importing into the United States, without authority,  
3 the BoA Accused Products that practice at least claim 1 of the '278 patent. The BoA  
4 Accused Products meet each and every element this claim. BoA has infringed and is  
5 currently infringing this claim literally and/or under the doctrine of equivalents.

6 155. Exemplary claim 1 of the '278 patent states:

7 1. A computer-assisted method, comprising:

8 receiving, via a mobile device, an image comprising a representation of  
9 at least a portion of a document;

10 determining that symbolic content is on the at least the portion of the  
11 document based on the image;

12 extracting symbol information based on the symbolic content according  
13 to symbol type;

14 determining a validity of the document based at least in part on the image  
15 and the symbol information; and

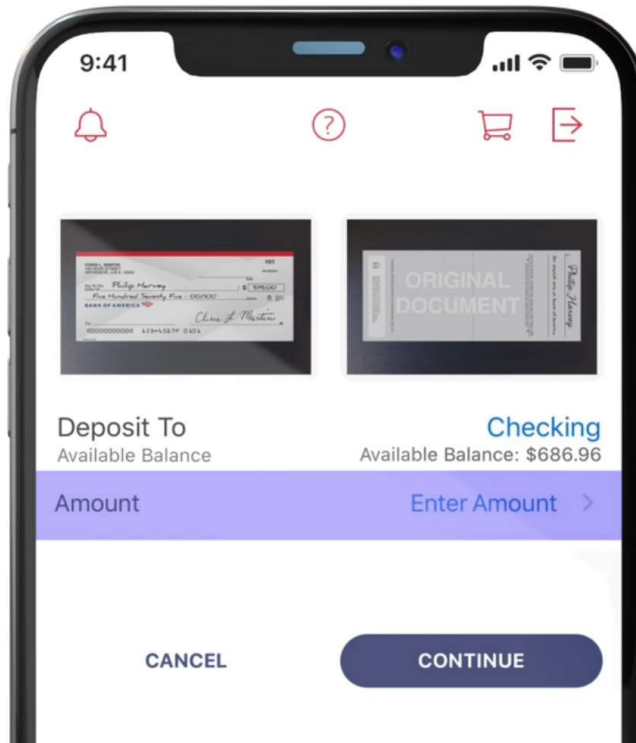
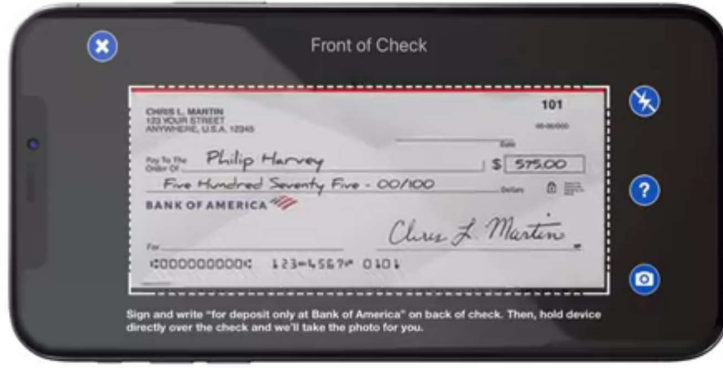
16 recognizing the document as a first target object based at least in part on  
17 the image, the symbol information, and a query of a database storing target  
18 object information associated with a plurality of target objects including the  
19 first target object;

20 receiving, via an address, first target object information associated with  
21 the first target object, wherein the first target object information comprises a  
22 response regarding the validity of the document.

23 156. The BoA Accused Products operate, in part, on a BoA customer's mobile  
24 device, such as a mobile phone or tablet. The BoA Accused Products operate to  
25 capture video and image data of a check that the customer wishes to deposit using a  
26 camera associated with the mobile device, as exemplified in the images below.

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<https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>

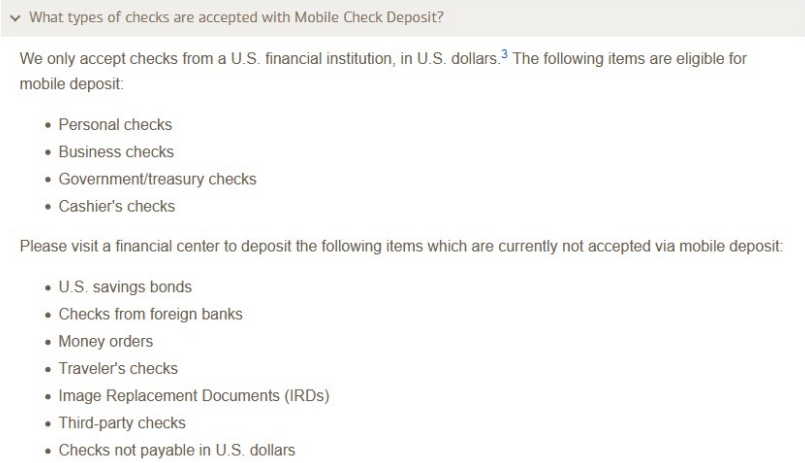
157. With regard to steps performed on a customer’s mobile device, BoA conditions the customer’s use of the mobile check deposit functionality of the BoA’s mobile banking application, and receipt of associated benefits (e.g., the ability to remotely deposit checks using a mobile device), on the customer’s performance of such steps. For example, BoA conditions the customer’s use of the mobile banking application through its Mobile Check Deposit Terms and Conditions, which are provided to each customer upon the customer’s enrollment to the BoA mobile banking

1 application, and which the customer must accept in order to utilize the application.  
2 The Mobile Check Deposit Terms and Conditions dictate the hardware and software  
3 to be utilized by the customer and dictates the responsibilities of a customer with  
4 regard to capturing an image of a check using a camera-enabled mobile device and  
5 transferring such an image to BoA for image processing. The customer's use of the  
6 mobile banking application is further conditioned due to the design and functionality  
7 of the BoA Accused Products. For example, actions performed at a customer's mobile  
8 device, such as capturing an image of a check and transferring such an image are  
9 necessary technological prerequisites in the customer's participation in BoA's mobile  
10 deposit services. BoA also establishes the manner and timing of performance by  
11 which a customer utilizes the BoA mobile banking application to perform mobile  
12 check deposits. BoA establishes such manner and timing of performance through its  
13 Mobile Check Deposit Terms and Conditions and through BoA's design of the  
14 functionality of the BoA mobile banking application, as described in this paragraph.  
15 BoA further establishes the manner and timing of its customers' performance by  
16 providing detailed, step-by-step instructions for a customer to perform to perform  
17 certain steps at the customer's mobile device to perform a mobile check deposit and  
18 receive the associated benefits of BoA's mobile banking services. *See e.g.*,  
19 [https://www.bankofamerica.com/online-banking/mobile-and-online-banking-](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)  
20 [features/mobile-check-deposit/](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/); [https://www.youtube.com/watch?v=-cGT\\_khFQsQ](https://www.youtube.com/watch?v=-cGT_khFQsQ).

21 158. On information and belief, the BoA Accused Products operate to identify  
22 an object within the captured video/image data and distinguish the object present in  
23 the video/image from others based on features of the object in the captured  
24 video/image. For example, on information and belief, the BoA Accused Products  
25 identify and distinguish the specific type of the check, as described in the below  
26 image, as well as components thereof, such as writing, signatures, and alphanumeric  
27 characters.

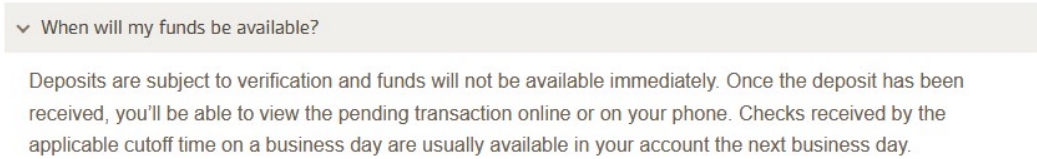
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<https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

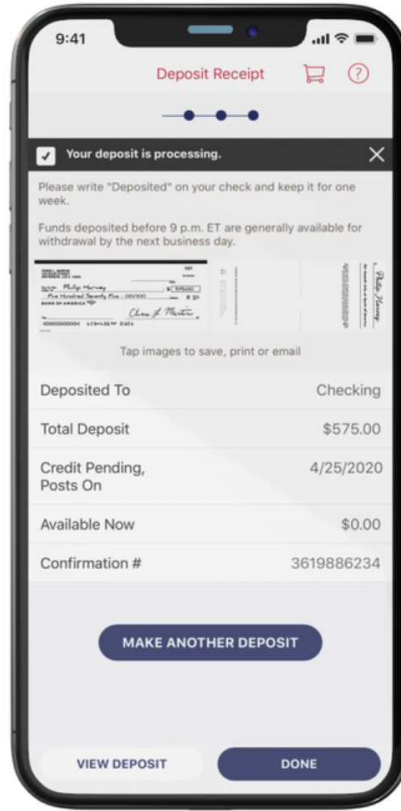
159. BoA's Accused Products perform validation and verification of the captured check image and perform a check deposit transaction with the BoA customer's checking account, as described in the image below.



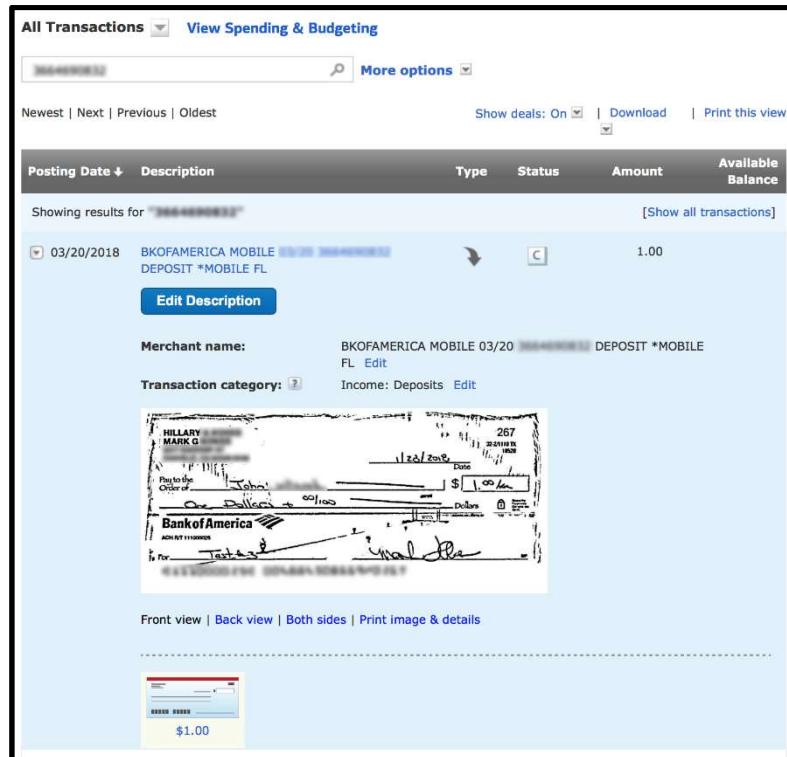
<https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

160. On information and belief, BoA's Accused Products associate identified objects from the captured check image with relevant information associated with the captured check, including, for example, information concerning monetary amount and parties associated with the check, authorization and validity of the check, the date and status of the checking transaction, and a confirmation number. BoA's Accused Products provide this information to the customer's device, whereon the information is presented to the a user, as exemplified in the images below.

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<https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>





1           161. On information and belief, BoA has had actual knowledge of its  
2 infringement of the '278 patent since October 2016, but no later than the filing date  
3 of this Complaint..

4           162. On information and belief, had actual knowledge of its and its customers'  
5 infringement of the '278 patent or was willfully blind thereto as of the issue date of  
6 the '278 patent. For example:

- 7           • NantWorks and BoA collaborated closely as part of BoA's evaluation of  
8 NantWorks' computer image recognition technologies.
- 9           • As part of their relationship, NantWorks made BoA aware of  
10 NantWorks' patent portfolio covering computer image recognition and  
11 processing.
- 12           • BoA's patent applications and patents cite numerous NantWorks patents  
13 in the prosecution family of the '278 patent.
- 14           • BoA directly and wrongfully appropriated and incorporated NantWorks'  
15 confidential image recognition and processing technology into BoA's  
16 mobile check deposit software. On information and belief, BoA knew  
17 or had reason to know that NantWorks owned patent rights covering the  
18 appropriated technology or that NantWorks would attain patent rights  
19 covering those technologies.

20           163. Notwithstanding BoA's actual notice of infringement, BoA has provided  
21 and continues to provide the BoA Accused Products to its customers that make or use  
22 the BoA Accused Products with knowledge of or willful blindness to the fact that its  
23 actions will induce others, including those customers, to directly infringe the '278  
24 patent. BoA induces others including its customers to infringe the '278 patent in  
25 violation of 35 U.S.C. § 271(b) by encouraging and facilitating others to perform  
26 actions that BoA knows to be acts of infringement of the '278 patent with intent that  
27 those performing the acts infringe the '278 patent, or with willful blindness to such  
28 facts. On information and belief, BoA, directly and/or through intermediaries,

1 advertises and distributes the BoA Accused Products, publishes instruction materials,  
2 specifications and promotional literature describing the operation of the BoA Accused  
3 Products, and offers technical assistance, training, and/or consulting services  
4 regarding the BoA Accused Products to its customers.<sup>16</sup> At least BoA's customers and  
5 other end users of these BoA Accused Products then directly infringe the '278 patent  
6 by making or using, without NantWorks' authority, the BoA Accused Products.

7       164. On information and belief, BoA knows that the BoA Accused Products  
8 are especially made or especially adapted for use in the infringement of the '278  
9 patent. The infringing components of these products are not staple articles or  
10 commodities of commerce suitable for substantial noninfringing use, and the  
11 infringing components of these products are a material part of the invention of the  
12 '278 patent. Accordingly, in violation of 35 U.S.C. § 271(c), BoA is also contributing  
13 to the direct infringement of the '278 patent by at least its customers and/or end users  
14 of these BoA Accused Products. The customers and/or end users of these BoA  
15 Accused Products directly infringe the '278 patent by making or using, without  
16 NantWorks' authority, the BoA Accused Products.

17       165. As a result of BoA's infringement of the '278 patent, NantWorks has  
18 suffered, and will continue to suffer, substantial damages. Accordingly, BoA is liable  
19 to NantWorks for damages adequate to compensate for BoA's acts of infringement,  
20 in an amount to be proved at trial but in no event less than a reasonable royalty for the  
21 use made of NantWorks' invention by BoA under 35 U.S.C. § 284.

22       166. In addition, BoA's acts of infringement have caused NantWorks  
23 irreparable harm that is not compensable by monetary damages. The hardships that  
24 an injunction would impose are less than those faced by NantWorks should an  
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26       <sup>16</sup> See, e.g., <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>;  
27 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>;  
28 <https://promo.bankofamerica.com/mobile-check-deposit/>

1 injunction not issue. The public interest would be served by issuance of an injunction.  
2 Thus, NantWorks is entitled to a preliminary and a permanent injunction against  
3 further infringement. Therefore NantWorks is entitled to injunctive relief under 35  
4 U.S.C. § 283.

5 167. BoA's acts of infringement constitute willful, egregious misconduct, and  
6 consequently NantWorks is entitled to a discretionary increase of its damages award  
7 up to three times the amount found or assessed, costs, and attorney's fees under 35  
8 U.S.C. § 284.

9 168. Based on the foregoing facts, NantWorks requests that this Court declare  
10 this an exceptional case, and award Plaintiffs their costs and attorney's fees under 35  
11 U.S.C. § 285.

12 **COUNT VIII:**

13 **Infringement of United States Patent No. 9,324,004**

14 169. NantWorks re-alleges and incorporates by reference the allegations of  
15 the preceding paragraphs of this Complaint as if fully set forth herein.

16 170. In violation of 35 U.S.C. § 271, BoA has infringed and is currently  
17 infringing, directly and/or through intermediaries, the '004 patent by making, using,  
18 selling, offering for sale, and/or importing into the United States, without authority,  
19 the BoA Accused Products that practice at least claim 1 of the '004 patent. The BoA  
20 Accused Products meet each and every element this claim. BoA has infringed and is  
21 currently infringing this claim literally and/or under the doctrine of equivalents.

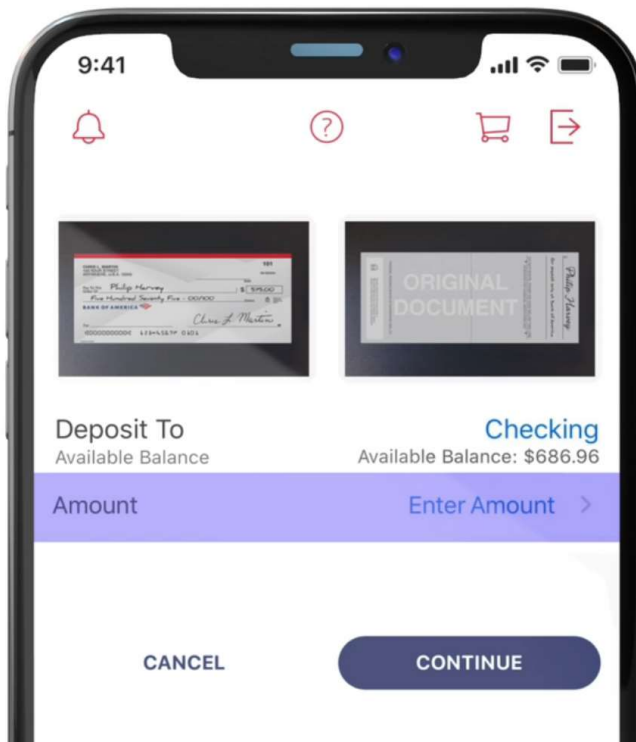
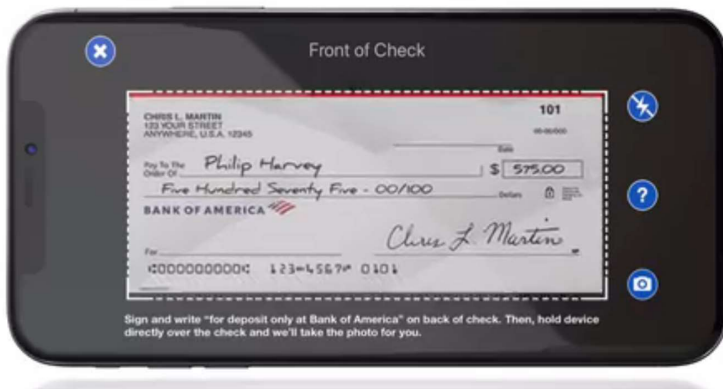
22 171. Exemplary claim 1 of the '004 patent states:

- 23 1. A method for processing a video stream, comprising:  
24 analyzing, via a mobile device, a scene represented by the video stream  
25 for at least one object;  
26 deriving at least one characteristic of the video stream;  
27 recognizing the at least one object in the scene as a target object based at  
28 least in part on the at least one characteristic of the video stream;

1 providing an indication upon recognizing the at least one object as the  
2 target object; and

3 presenting to a user, via an address, content information associated with  
4 the target object.

5 172. The BoA Accused Products operate, in part, on a BoA customer's mobile  
6 device, such as a mobile phone or tablet. The BoA Accused Products operate to  
7 capture video and image data of a check that the customer wishes to deposit using a  
8 camera associated with the mobile device, as exemplified in the images below.



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28 <https://www.bankofamerica.com/online-banking/mobile-and-online-banking->

1 features/mobile-check-deposit/

2       173. With regard to steps performed on a customer's mobile device, BoA  
3 conditions the customer's use of the mobile check deposit functionality of the BoA's  
4 mobile banking application, and receipt of associated benefits (e.g., the ability to  
5 remotely deposit checks using a mobile device), on the customer's performance of  
6 such steps. For example, BoA conditions the customer's use of the mobile banking  
7 application through its Mobile Check Deposit Terms and Conditions, which are  
8 provided to each customer upon the customer's enrollment to the BoA mobile banking  
9 application, and which the customer must accept in order to utilize the application.  
10 The Mobile Check Deposit Terms and Conditions dictate the hardware and software  
11 to be utilized by the customer and dictates the responsibilities of a customer with  
12 regard to capturing an image of a check using a camera-enabled mobile device and  
13 transferring such an image to BoA for image processing. The customer's use of the  
14 mobile banking application is further conditioned due to the design and functionality  
15 of the BoA Accused Products. For example, actions performed at a customer's mobile  
16 device, such as capturing an image of a check and transferring such an image are  
17 necessary technological prerequisites in the customer's participation in BoA's mobile  
18 deposit services. BoA also establishes the manner and timing of performance by  
19 which a customer utilizes the BoA mobile banking application to perform mobile  
20 check deposits. BoA establishes such manner and timing of performance through its  
21 Mobile Check Deposit Terms and Conditions and through BoA's design of the  
22 functionality of the BoA mobile banking application, as described in this paragraph.  
23 BoA further establishes the manner and timing of its customers' performance by  
24 providing detailed, step-by-step instructions for a customer to perform to perform  
25 certain steps at the customer's mobile device to perform a mobile check deposit and  
26 receive the associated benefits of BoA's mobile banking services. *See e.g.*,  
27 [https://www.bankofamerica.com/online-banking/mobile-and-online-banking-](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)  
28 [features/mobile-check-deposit/](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/); [https://www.youtube.com/watch?v=-cGT\\_khFQsQ](https://www.youtube.com/watch?v=-cGT_khFQsQ).

1 174.

2 175. On information and belief, the BoA Accused Products operate to identify  
3 an object within the captured video/image data and distinguish the object present in  
4 the video/image from others based on features of the object in the captured  
5 video/image. For example, on information and belief, the BoA Accused Products  
6 identify and distinguish the specific type of the check, as described in the below  
7 image, as well as components thereof, such as writing, signatures, and alphanumeric  
8 characters.

9   
▼ What types of checks are accepted with Mobile Check Deposit?

10 We only accept checks from a U.S. financial institution, in U.S. dollars.<sup>3</sup> The following items are eligible for  
mobile deposit:

- Personal checks
- Business checks
- Government/treasury checks
- Cashier's checks

11 Please visit a financial center to deposit the following items which are currently not accepted via mobile deposit:

- U.S. savings bonds
- Checks from foreign banks
- Money orders
- Traveler's checks
- Image Replacement Documents (IRDs)
- Third-party checks
- Checks not payable in U.S. dollars

12 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

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17 176. BoA's Accused Products perform validation and verification of the  
18 captured check image and perform a check deposit transaction with the BoA  
19 customer's checking account, as described in the image below.  
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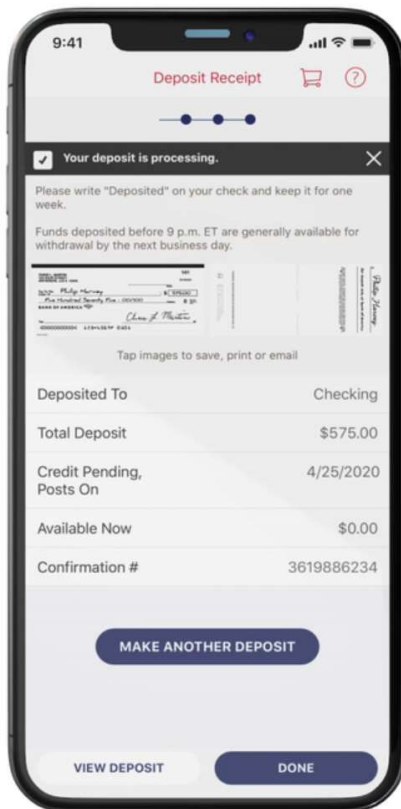
21   
▼ When will my funds be available?

22 Deposits are subject to verification and funds will not be available immediately. Once the deposit has been  
23 received, you'll be able to view the pending transaction online or on your phone. Checks received by the  
applicable cutoff time on a business day are usually available in your account the next business day.

24 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>

25 177. On information and belief, BoA's Accused Products associate identified  
26 objects from the captured check image with relevant information associated with the  
27 captured check, including, for example, information concerning monetary amount and  
28 parties associated with the check, authorization and validity of the check, the date and

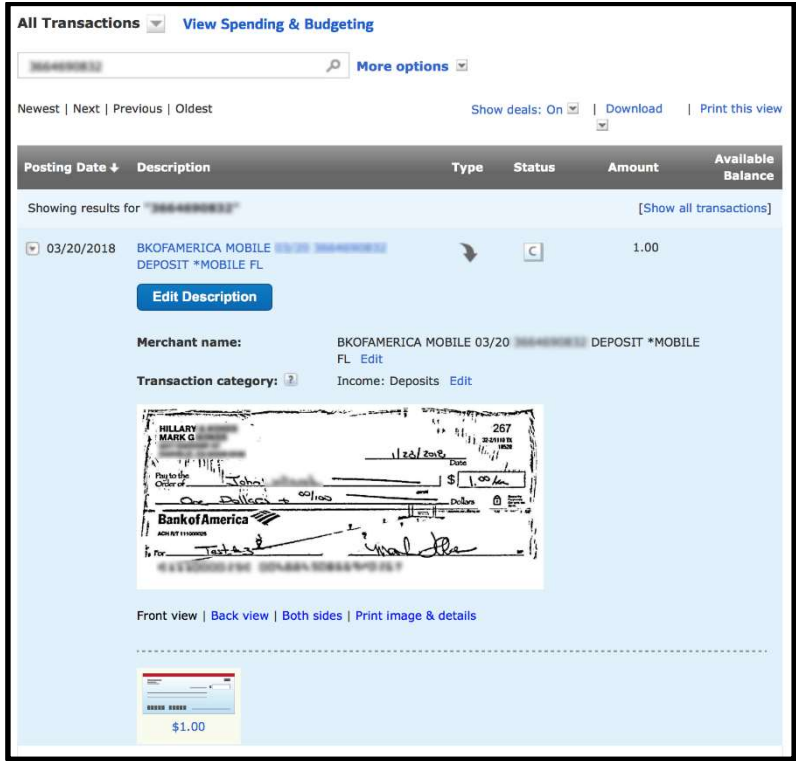
1 status of the checking transaction, and a confirmation number. BoA's Accused  
2 Products provide this information to the customer's device, whereon the information  
3 is presented to the a user, as exemplified in the images below.



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17 [https://www.bankofamerica.com/online-banking/mobile-and-online-banking-](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)  
18 [features/mobile-check-deposit/](https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/)

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178. On information and belief, BoA has had actual knowledge of its infringement of the '004 patent since October 2016, but no later than the filing date of this Complaint.

179. On information and belief, BoA had actual knowledge of its and its customers' infringement of the '004 patent or was willfully blind thereto as of the issue date of the '004 patent. For example:

- NantWorks and BoA collaborated closely as part of BoA's evaluation of NantWorks' computer image recognition technologies.
- As part of their relationship, NantWorks made BoA aware of NantWorks' patent portfolio covering computer image recognition and processing.
- BoA's patent applications and patents cite numerous NantWorks patents in the prosecution family of the '004 patent.
- BoA directly and wrongfully appropriated and incorporated NantWorks' confidential image recognition and processing technology into BoA's mobile check deposit software. On information and belief, BoA knew



1 or had reason to know that NantWorks owned patent rights covering the  
2 appropriated technology or that NantWorks would attain patent rights  
3 covering those technologies.

4 180. Notwithstanding BoA's actual notice of infringement, BoA has provided  
5 and continues to provide the BoA Accused Products to its customers that make or use  
6 the BoA Accused Products with knowledge of or willful blindness to the fact that its  
7 actions will induce others, including those customers, to directly infringe the '004  
8 patent. BoA induces others including its customers to infringe the '004 patent in  
9 violation of 35 U.S.C. § 271(b) by encouraging and facilitating others to perform  
10 actions that BoA knows to be acts of infringement of the '004 patent with intent that  
11 those performing the acts infringe the '004 patent, or with willful blindness to such  
12 facts. On information and belief, BoA, directly and/or through intermediaries,  
13 advertises and distributes the BoA Accused Products, publishes instruction materials,  
14 specifications and promotional literature describing the operation of the BoA Accused  
15 Products, and offers technical assistance, training, and/or consulting services  
16 regarding the BoA Accused Products to its customers.<sup>17</sup> At least BoA's customers and  
17 other end users of these BoA Accused Products then directly infringe the '004 patent  
18 by making or using, without NantWorks' authority, the BoA Accused Products.

19 181. On information and belief, BoA knows that the BoA Accused Products  
20 are especially made or especially adapted for use in the infringement of the '004  
21 patent. The infringing components of these products are not staple articles or  
22 commodities of commerce suitable for substantial noninfringing use, and the  
23 infringing components of these products are a material part of the invention of the  
24 '004 patent. Accordingly, in violation of 35 U.S.C. § 271(c), BoA is also contributing  
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26 <sup>17</sup> See, e.g., <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>;  
27 <https://www.bankofamerica.com/online-banking/mobile-check-deposit-faqs/>;  
28 <https://promo.bankofamerica.com/mobile-check-deposit/>

1 to the direct infringement of the '004 patent by at least its customers and/or end users  
2 of these BoA Accused Products. The customers and/or end users of these BoA  
3 Accused Products directly infringe the '004 patent by making or using, without  
4 NantWorks' authority, the BoA Accused Products.

5 182. As a result of BoA's infringement of the '004 patent, NantWorks has  
6 suffered, and will continue to suffer, substantial damages. Accordingly, BoA is liable  
7 to NantWorks for damages adequate to compensate for BoA's acts of infringement,  
8 in an amount to be proved at trial but in no event less than a reasonable royalty for the  
9 use made of NantWorks' invention by BoA under 35 U.S.C. § 284.

10 183. In addition, BoA's acts of infringement have caused NantWorks  
11 irreparable harm that is not compensable by monetary damages. The hardships that  
12 an injunction would impose are less than those faced by NantWorks should an  
13 injunction not issue. The public interest would be served by issuance of an injunction.  
14 Thus, NantWorks is entitled to a preliminary and a permanent injunction against  
15 further infringement. Therefore NantWorks is entitled to injunctive relief under 35  
16 U.S.C. § 283.

17 184. BoA's acts of infringement constitute willful, egregious misconduct, and  
18 consequently NantWorks is entitled to a discretionary increase of its damages award  
19 up to three times the amount found or assessed, costs, and attorney's fees under 35  
20 U.S.C. § 284.

21 185. Based on the foregoing facts, NantWorks requests that this Court declare  
22 this an exceptional case, and award Plaintiffs their costs and attorney's fees under 35  
23 U.S.C. § 285.

24 **COUNT IX:**

25 **Copyright Infringement**

26 186. NantWorks re-alleges and incorporates by reference the allegations of  
27 the preceding paragraphs of this Complaint as if fully set forth herein.

28 187. NantWorks, through its subsidiary NantMoble LLC, registered a version

1 of its mobile check deposit software (“Advanced Mobile Deposit Software v. 1.0”)  
2 with the United States Copyright Office. A copy of the record of registration,  
3 Copyright Registration No. TX0008852717, is attached as Exhibit I.

4 188. NantWorks LLC, owns and has a valid copyright in the NantWorks’  
5 Advanced Mobile Deposit Software v. 1.0. NantMobile assigned its ownership rights  
6 in the NantWorks’ Advanced Mobile Deposit Software v. 1.0 to NantWorks prior to  
7 the filing of this action.

8 189. When registering its copyright, NantWorks deposited a representative  
9 portion of the code relating to its Advanced Mobile Deposit Software v. 1.0 with the  
10 Copyright Office. NantWorks did not include in the deposit the portions of code  
11 relating to its Advanced Mobile Deposit Software v. 1.0 that included proprietary  
12 algorithms, source code, object code and libraries containing NantWorks’ trade  
13 secrets.

14 190. NantWorks source code, object code, and libraries for NantWorks’  
15 Advanced Mobile Deposit Software v. 1.0 are original literary works of authorship by  
16 NantWorks employed programmers.

17 191. NantWorks’ Advanced Mobile Deposit Software v. 1.0 was fixed in a  
18 tangible medium of expression when it was stored in non-volatile computer memory  
19 and/or media such as computer hard drives, CD, CD-R, DVD, or Blu-ray disks from  
20 which it may be perceived, reproduced, or otherwise communicated for a period of  
21 more than transitory duration. Accordingly, NantWorks’ Advanced Mobile Deposit  
22 Software v. 1.0 is a proper subject of copyright protection within the meaning of 17  
23 U.S.C. § 102.

24 192. BoA had access to portions of NantWorks’ mobile check deposit  
25 software including portions of NantWorks’ Advanced Mobile Deposit Software v. 1.0  
26 through its collaboration with NantWorks. During this collaboration, BoA was  
27 provided with multiple versions of NantWorks’ mobile check deposit software  
28 including portions of NantWorks’ Advanced Mobile Deposit Software v. 1.0 pursuant

1 to its agreements with NantWorks.

2 193. On information and belief, BoA utilized NantWorks' Advanced Mobile  
3 Deposit Software v. 1.0 provided to BoA in mobile check deposit features in its  
4 mobile application, including but not limited to, implementation of the NantWorks'  
5 Advanced Mobile Deposit Software v. 1.0 source code and/or algorithms derived  
6 from the source code in the source code underlying BoA's mobile check deposit  
7 solution in its Bank of America Mobile Banking application.

8 194. On information and belief, BoA has copied, publicly displayed, and  
9 distributed products (including versions of its Bank of America Mobile Banking  
10 application) derived from NantWorks' Advanced Mobile Deposit Software v. 1.0 in  
11 whole or in part, and will continue to do so.

12 195. BoA's products, such as versions of its Bank of America Mobile  
13 Banking application, are substantially similar to the protected elements of  
14 NantWorks' Advanced Mobile Deposit Software v. 1.0.

15 196. BoA has no license or any other form of permission to commercially  
16 copy, sell, license or distribute NantWorks' Advanced Mobile Deposit Software v.  
17 1.0.

18 197. On information and belief, users of BoA's mobile application must have  
19 obtained and used copyrightable portions of NantWorks' Advanced Mobile Deposit  
20 Software v. 1.0 or works derived therefrom to use the mobile check deposit feature in  
21 versions of BoA's Bank of America Mobile Banking application. BoA has thus  
22 induced, caused, and materially contributed to the infringing acts of others by  
23 encouraging, inducing, allowing and assisting others to use, copy, publically display,  
24 and distribute NantWorks' Advanced Mobile Deposit Software v. 1.0, and works  
25 derived therefrom.

26 198. On information and belief, BoA's acts of direct, contributory, and/or  
27 vicarious copyright infringement are willful, deliberate, and in utter disregard of  
28 NantWorks' copyrights, pursuant to the Copyright Act, 17 U.S.C. § 504.

1 199. BoA's acts of direct, contributory, and/or vicarious copyright  
2 infringement have caused and will continue to cause damage to NantWorks in an  
3 amount to be determined at trial.

4 **COUNT X:**

5 **Violation of the Defend Trade Secrets Act**

6 200. NantWorks re-alleges and incorporates by reference the allegations of  
7 the preceding paragraphs of this Complaint as if fully set forth herein.

8 201. The actions of BoA as described above constitute violations of one or  
9 more provisions of the Defend Trade Secrets Act of 2016 ("DTSA"), PL 114-153,  
10 May 11, 2016, 130 Stat 376, which amends the Economic Espionage Act, 18 U.S.C.  
11 § 1831 *et seq.*

12 202. NantWorks is the owner of trade secrets relating to digital image  
13 recognition and processing systems. NantWorks' trade secrets include proprietary  
14 algorithms and information relating to digital image recognition and processing  
15 systems, embodied, described and performed in software, documentation, and code,  
16 including but not limited to any version of NantWorks' Advanced Mobile Deposit  
17 Software v. 1.0.

18 203. NantWorks' trade secrets constitute independent economic value and are  
19 not generally known or readily ascertainable.

20 204. At all times, NantWorks has taken reasonable efforts to keep its trade  
21 secrets secret through the use of non-disclosure and confidentiality agreements,  
22 employment agreements, employee training, limiting employee access, and password  
23 protection and encryption.

24 205. NantWorks has also taken steps to protect the trade secrets relating to its  
25 Advanced Mobile Deposit Software v. 1.0 copyright (Registration No.  
26 TX0008852717). Specifically, when registering its copyright, NantWorks deposited  
27 a representative portion of the code relating to its Advanced Mobile Deposit Software  
28 v. 1.0 with the Copyright Office. NantWorks did not include in the deposit the

1 portions of code relating to its Advanced Mobile Deposit Software v. 1.0 that included  
2 proprietary algorithms, source code, object code and libraries containing NantWorks’  
3 trade secrets. Moreover, NantWorks maintained the secrecy of the portions of code  
4 relating to Advanced Mobile Deposit Software v. 1.0 that it deposited with the  
5 Copyright Office prior to making that deposit with the Copyright Office.

6 206. BoA acquired Plaintiff’s trade secrets through a relationship of trust and  
7 by way of an April 2010 non-disclosure agreement, the parties’ 2011 Collaboration  
8 Agreement, and a May 2013 non-disclosure agreement (collectively  
9 “NantWorks/BoA Agreements”), which imposed a duty upon BoA to maintain the  
10 confidentiality of NantWorks’ confidential information and trade secrets and to not  
11 improperly use and/or disclose confidential information and trade secrets belonging  
12 to NantWorks. At all relevant times, BoA knew about the confidential nature of  
13 NantWorks’ trade secrets.

14 207. BoA misappropriated NantWorks’ trade secrets by improper means in  
15 violation of the NantWorks/BoA Agreements by using them and continuing to use  
16 them for BoA’s own economic benefit. For example, as described above, upon  
17 information and belief, BoA misappropriated NantWorks’ trade secrets hundreds of  
18 times by improperly accessing and improperly using NantWorks’ mobile check  
19 deposit software hundreds of times during 2014, 2015, 2016, 2017 and 2018 to gain  
20 an understanding of how NantWorks’ software functioned and acquire trade secrets  
21 within NantWorks’ software. In addition, upon information and belief, BoA  
22 improperly accessed and improperly used documentation and other information  
23 relating to NantWorks’ mobile check deposit software it has obtained pursuant to the  
24 NantWorks/BoA Agreements during 2015, 2016, 2017 and 2018 to gain an  
25 understanding of how NantWorks’ software functioned and acquire trade secrets  
26 relating to NantWorks’ software. Upon information and belief, BoA then  
27 incorporated and used the NantWorks trade secrets it improperly accessed, acquired,  
28 and used during 2014, the NantWorks trade secrets it improperly accessed, acquired,

1 and used during 2015, the NantWorks trade secrets it improperly accessed, acquired,  
2 and used during 2016, the NantWorks trade secrets it improperly accessed, acquired,  
3 and used during 2017, and the NantWorks trade secrets it improperly accessed,  
4 acquired, and used during 2018 in different versions of its own mobile check deposit  
5 solution, including the commercially available versions of its mobile check deposit  
6 software that BoA has provided to its customers from 2014 to the present. On  
7 information and belief, BoA used NantWorks' trade secrets to inform the  
8 development of and implement features developed by NantWorks into BoA's mobile  
9 banking software.

10 208. BoA has intentionally, willfully and maliciously misused trade secrets  
11 and/or confidential or proprietary information or knowledge of NantWorks, and  
12 continues to do so, in violation of a confidential relationship.

13 209. As a consequence of the foregoing, NantWorks has suffered and will  
14 continue to suffer irreparable harm and loss.

15 **COUNT XI:**

16 **Misappropriation of Trade Secrets Under California Law**

17 210. NantWorks re-alleges and incorporates by reference the allegations of  
18 the preceding paragraphs of this Complaint as if fully set forth herein.

19 211. The actions of BoA as described above constitute violations of one or  
20 more provisions of the California Uniform Trade Secrets Act ("CUTSA"), Cal. Civ.  
21 Code § 3426, *et seq.*

22 212. NantWorks is the owner of trade secrets relating to digital image  
23 recognition and processing systems. NantWorks' trade secrets include proprietary  
24 algorithms and information relating to digital image recognition and processing  
25 systems, embodied, described and performed in software, documentation, and code,  
26 including but not limited to any version of NantWorks' Advanced Mobile Deposit  
27 Software v. 1.0.

28 213. NantWorks' trade secrets constitute independent economic value and are

1 not generally known or readily ascertainable.

2       214. At all times, NantWorks has taken reasonable efforts to keep its trade  
3 secrets secret through the use of non-disclosure and confidentiality agreements,  
4 employment agreements, employee training, limiting employee access, and password  
5 protection and encryption.

6       215. NantWorks has also taken steps to protect the trade secrets relating to its  
7 Advanced Mobile Deposit Software v. 1.0 copyright (Registration No.  
8 TX0008852717). Specifically, when registering its copyright, NantWorks deposited  
9 a representative portion of the code relating to its Advanced Mobile Deposit Software  
10 v. 1.0 with the Copyright Office. NantWorks did not include in the deposit portions  
11 of code relating to its Advanced Mobile Deposit Software v. 1.0 that included  
12 proprietary algorithms, source code, object code and libraries containing NantWorks'  
13 trade secrets. Moreover, NantWorks maintained the secrecy of the portions of code  
14 relating to Advanced Mobile Deposit Software v. 1.0 that it deposited with the  
15 Copyright Office prior to making that deposit with the Copyright Office.

16       216. BoA acquired Nantworks' trade secrets through a relationship of trust  
17 and by way of the NantWorks/BoA Agreements, which imposed a duty upon BoA to  
18 maintain the confidentiality of NantWorks' confidential information and trade secrets  
19 and to not improperly use and/or disclose confidential information and trade secrets  
20 belonging to NantWorks. At all relevant times, BoA knew about the confidential  
21 nature of NantWorks' trade secrets.

22       217. BoA misappropriated NantWorks' trade secrets by improper means in  
23 violation of the NantWorks/BoA Agreements by using them and continuing to use  
24 them for BoA's own economic benefit. For example, as described above, upon  
25 information and belief, BoA misappropriated NantWorks' trade secrets hundreds of  
26 times by improperly accessing and improperly using NantWorks' mobile check  
27 deposit software hundreds of times during 2014, 2015, 2016, 2017 and 2018 to gain  
28 an understanding of how NantWorks' software functioned and acquire trade secrets



1 within NantWorks' software. In addition, upon information and belief, BoA  
2 improperly accessed and improperly used documentation and other information  
3 relating to NantWorks' mobile check deposit software it has obtained pursuant to the  
4 NantWorks/BoA Agreements during 2015, 2016, 2017 and 2018 to gain an  
5 understanding of how NantWorks' software functioned and acquire trade secrets  
6 relating to NantWorks' software. Upon information and belief, BoA then  
7 incorporated and used the NantWorks trade secrets it improperly accessed, acquired,  
8 and used during 2014, the NantWorks trade secrets it improperly accessed, acquired,  
9 and used during 2015, the NantWorks trade secrets it improperly accessed, acquired,  
10 and used during 2016, the NantWorks trade secrets it improperly accessed, acquired,  
11 and used during 2017, and the NantWorks trade secrets it improperly accessed,  
12 acquired, and used during 2018 in different versions of its own mobile check deposit  
13 solution, including the commercially available versions of its mobile check deposit  
14 software that BoA has provided to its customers from 2014 to the present. On  
15 information and belief, BoA used NantWorks' trade secrets to inform the  
16 development of and implement features developed by NantWorks into BoA's mobile  
17 banking software.

18 218. BoA has intentionally, willfully and maliciously misused trade secrets  
19 and/or confidential or proprietary information or knowledge of NantWorks, and  
20 continues to do so, in violation of a confidential relationship.

21 219. As a consequence of the foregoing, NantWorks has suffered and will  
22 continue to suffer irreparable harm and loss.

## 23 **COUNT XII:**

### 24 **Breach of Contract under New York and California Law**

25 220. NantWorks re-alleges and incorporates by reference the allegations of  
26 the preceding paragraphs of this Complaint as if fully set forth herein.

27 221. Beginning in 2010, NantWorks entered into the NantWorks/BoA  
28 Agreements with BoA for the limited purpose of potentially assisting with the

1 development of the mobile checking deposit application that BoA was building for  
2 commercial use. As is relevant to the instant dispute, the NantWorks/BoA  
3 Agreements are governed by California and/or New York substantive law.

4 222. Under the NantWorks/BoA Agreements, the parties agreed that any trade  
5 secrets or other confidential information shall remain the property of the originating  
6 party. BoA had a duty to use care to prevent disclosure, publication or dissemination  
7 of NantWorks' confidential information and to use this confidential information only  
8 for the purposes of evaluating the proposed business venture.

9 223. Under the protection of the NantWorks/BoA Agreements, NantWorks  
10 disclosed trade secrets and other confidential information to BoA.

11 224. BoA breached the NantWorks/BoA Agreements by using and/or  
12 disclosing Plaintiff's trade secrets and other confidential information for its own  
13 benefit in a manner not permitted by the NantWorks/BoA Agreements. For example,  
14 as described above, upon information and belief, BoA breached the NantWorks/BoA  
15 Agreements hundreds of times by improperly accessing and improperly using  
16 NantWorks' mobile check deposit software hundreds of times during 2014, 2015,  
17 2016, 2017 and 2018 to gain an understanding of how NantWorks' software  
18 functioned and acquire trade secrets within NantWorks' software. In addition, upon  
19 information and belief, BoA improperly accessed and improperly used documentation  
20 and other information relating to NantWorks' mobile check deposit software it has  
21 obtained pursuant to the NantWorks/BoA Agreements during 2015, 2016, 2017 and  
22 2018 to gain an understanding of how NantWorks' software functioned and acquire  
23 trade secrets relating to NantWorks' software. Upon information and belief, BoA  
24 then incorporated and used the NantWorks trade secrets it improperly accessed,  
25 acquired, and used during 2014, the NantWorks trade secrets it improperly accessed,  
26 acquired, and used during 2015, the NantWorks trade secrets it improperly accessed,  
27 acquired, and used during 2016, the NantWorks trade secrets it improperly accessed,  
28 acquired, and used during 2017, and the NantWorks trade secrets it improperly

1 accessed, acquired, and used during 2018 in different versions of its own mobile check  
2 deposit solution, including the commercially available versions of its mobile check  
3 deposit software that BoA has provided to its customers from 2014 to the present. On  
4 information and belief, BoA used NantWorks' trade secrets to inform the  
5 development of and implement features developed by NantWorks into BoA's mobile  
6 banking software.

7 225. Upon information and belief, BoA used NantWorks' trade secrets and  
8 confidential information in BoA's mobile check deposit software in a manner not  
9 permitted by the NantWorks/BoA Agreements.

10 226. As a result of the BoA's breach, NantWorks has suffered damages in an  
11 amount to be determined at trial.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, NantWorks respectfully requests:

14 A. That Judgment be entered that:

15 a. BoA has infringed one or more claims of the Asserted Patents,  
16 directly and indirectly, literally and/or under the doctrine of equivalents;

17 b. BoA has infringed NantWorks' copyright rights;

18 c. BoA has misappropriated NantWorks' protected trade secrets;

19 d. BoA has breached their contractual obligations to NantWorks.

20 B. That, in accordance with 35 U.S.C. § 283, BoA, and all of their affiliates,  
21 employees, agents, officers, directors, attorneys, successors, and assigns and all those  
22 acting on behalf of or in active concert or participation with any of them, be  
23 preliminarily and permanently enjoined from (1) infringing the Asserted Patents and  
24 (2) making, using, selling, and offering for sale the mobile check deposit feature of  
25 the Bank of America Mobile Banking application and/or backend servers enabling  
26 the accused functionality of such application;

27 C. An order directing BoA to file with the Court and serve upon  
28 NantWorks' counsel within thirty (30) days after entry of the order of injunction, a

1 report setting forth the manner and form in which BoA has complied with the  
2 injunction, including the provision relating to destruction and recall of infringing  
3 products and materials;

4 D. An award of damages sufficient to compensate NantWorks for BoA's  
5 infringement under 35 U.S.C. § 284, including an enhancement of damages on  
6 account of BoA's willful infringement;

7 E. That the case be found exceptional under 35 U.S.C. § 285 and that  
8 NantWorks be awarded its reasonable attorneys' fees;

9 F. Costs and expenses in this action;

10 G. An award of prejudgment and post-judgment interest; and

11 H. Such other and further relief as the Court may deem just and proper.

12  
13 DATED: November 11, 2020

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

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15  
16 By /s/ Kevin P.B. Johnson

17 Kevin P.B. Johnson

18 Todd Briggs

19 QUINN EMANUEL URQUHART  
& SULLIVAN LLP

20 555 Twin Dolphin Dr., 5th Floor

21 Redwood Shores, California 94065

22 Tel.: (650) 801-5000

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23 Attorneys for Plaintiff

24 NANTWORKS, LLC and NANT  
25 HOLDINGS IP, LLC  
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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, NantWorks respectfully demands a trial by jury on all issues triable by jury.

DATED: November 11, 2020            QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s/ Kevin P.B. Johnson  
Kevin P.B. Johnson  
Todd Briggs  
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Attorneys for Plaintiff  
NANTWORKS, LLC and NANT HOLDINGS IP, LLC

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**ATTESTATION**

I, Todd Briggs, am the ECF user whose ID and password are being used to file the above document. In compliance with Local Rule 5-4, I hereby attest that Kevin Johnson has concurred in the filing of the above document.

/s/ Todd Briggs

Todd Briggs