

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

THE PNC FINANCIAL SERVICES GROUP,
INC., and PNC BANK, N.A.,

Plaintiffs,

v.

KIOBA PROCESSING LLC,

Defendant.

CASE NO. 2-20-CV-1884

JURY TRIAL DEMANDED

Date: December 4, 2020

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs The PNC Financial Services Group, Inc., and PNC Bank, N.A. (collectively, “PNC”), file this Complaint against Defendant Kioba Processing LLC (“Kioba”) seeking declaratory judgment of non-infringement of U.S. Patent Nos. 6,332,134 (“the ’134 Patent”); 6,931,382 (“the ’382 Patent”); and 7,107,078 (“the ’078 Patent”) (collectively, the “Patents-in-Suit”).

All paragraphs below are pled on information and belief. PNC alleges as follows:

NATURE OF ACTION

1. This is an action arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, seeking a declaratory judgment of non-infringement of the Patents-in-Suit and for such other relief as the Court deems just and proper.

2. Kioba’s patent enforcement and litigation campaign has placed a cloud over PNC’s products and services, and Kioba’s accusations against PNC’s competitors, customers, and affiliates of infringing the Patents-in-Suit have created a justiciable controversy between PNC and Kioba.

THE PARTIES

3. Plaintiff The PNC Financial Services Group, Inc. (“PNCFS”) is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at The Tower at PNC Plaza, 300 Fifth Ave., Pittsburgh, Pennsylvania, 15222.

4. Plaintiff PNC Bank, N.A. (“PNC Bank”) is a nationally chartered banking association organized and existing under the National Bank Act, with its home office at The Tower at PNC Plaza, 300 Fifth Ave., Pittsburgh, Pennsylvania, 15222.

5. Defendant Kioba is a limited liability company organized under the laws of the

State of Georgia having its principal place of business at 44 Milton Ave., Suite 254, Alpharetta, Georgia, 30009.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to federal question jurisdiction, 28 U.S.C. §§ 1331 and 1338(a), the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

7. This Court has subject matter jurisdiction over this action because Kioba has caused letters to be sent to PNCFS and PNC Bank (collectively, “PNC”), threatened to enforce the Patents-in-Suit against PNCFS and PNC Bank, and filed a series of actual suits against banks and financial institutions alleging that products and services similar to those offered by PNC Bank infringe the Patents-in-Suit. This conduct creates a reasonable apprehension that Kioba threatens imminent litigation asserting the Patents-in-Suit against PNC Bank for providing services like PNC points®; PNC Easy Lock®; and PNC Online Bill Pay via mobile app. As such, an actual and justiciable controversy exists between PNC and Kioba as to the alleged infringement of the Patents-in-Suit.

8. This Court has general and/or specific personal jurisdiction over Kioba. Kioba is subject to this Court’s specific and/or general personal jurisdiction pursuant to due process and/or the Pennsylvania Long Arm Statute, at least because (1) Kioba has minimum contacts in this forum that are directed at residents of this forum, and (2) the assertion of personal jurisdiction is reasonable and fair.

9. Kioba regularly conducts business throughout the United States, including within this District. For example, Kioba enforces its patents by sending litigation threats disguised as licensing offers. Kioba’s only business is the licensing and enforcement of patents it has acquired; Kioba does not produce, manufacture, distribute, develop, or sell any products or services, and

Kioba has not developed or invented any of the technology claimed in the Patents-in-Suit. Thus, Kioba's contacts with PNC in the Western District of Pennsylvania arise from Kioba conducting its only business, that of licensing and enforcing (including through offensive litigation) its patents.

10. Kioba worked in concert with its exclusive licensing agent IP Investments Group LLC ("IP Investments") to target PNC in the Western District of Pennsylvania as part of Kioba's licensing and enforcement business. Kioba and IP Investments are closely related entities, and both are owned and controlled by at least some of the same actors, including Ryan Strong.

11. At least by providing continuous and systematic contacts within this District, including conducting substantial and regular business herein through its patent licensing and enforcement business (either directly or via its exclusive agent, IP Investments), Kioba has subjected itself to general personal jurisdiction within this Court.

12. This Court has specific personal jurisdiction over Kioba at least because of Kioba's purposefully directed activities at residents of this forum, including PNC. This suit arises out of and relates to those activities. Further, personal jurisdiction over Kioba here is reasonable and fair.

13. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) and (c) at least because Kioba regularly conducts business in this District, Kioba is subject to personal jurisdiction in this District, and a substantial part of the events giving rise to the claims occurred in this District.

IP Investments and Kioba's Relationship

14. Based on public information from the Georgia Secretary of State, IP Investments was formed in 2005 by Melissa Hancock, with Michael McLaughlin as its Registered Agent in Georgia. Ex. A. According to IP Investments' website, Michael McLaughlin is President, CEO, and Founder. Ex. B. Michael McLaughlin "spends the vast majority of his professional time

negotiating patent sale and licensing transactions, valuing patents for acquisition and/or sale, and helping companies implement patent portfolio licensing programs and other strategies to extract value from patents and other intellectual property.” *Id.* Ryan Strong is Senior Vice President, COO, and Founder. *Id.* Ryan Strong “manages all aspects of patent licensing programs, negotiates patent sale / joint venture agreements, and assists clients in determining the most effective strategy for generating return on their intellectual property.” *Id.* William Hartselle is Senior Vice President and CTO, having “extensive experience leading the patent licensing program of a Fortune 50 company to monetize its patent portfolio.” *Id.* Elket Swope is a Technology and Patent Analyst, who “provides technical research, patent evaluations, and assists IPinvestments Group in monetizing patent portfolio for their clients.” *Id.*

15. Based on public information from the Georgia Secretary of State, Kioba was formed in October 2019 by Lucas Geren. Ex. C.

16. In late 2019, IP Investments acquired thousands of patents from Intellectual Ventures LLC (IV), becoming the top non-practicing entity recipient of patents divested from IV, which is itself a prodigious patent enforcement entity. Ex. D. Since then, IP Investments has spun off numerous patent-holding and assertion entities, including Kioba, which IP Investments uses to assert patents across the country, including in Pennsylvania. Some of IP Investments’ other patent-assertion entities include Hanger Solutions, LLC; DataCloud Technologies, LLC; FireNet Technologies, LLC; SynchView Technologies, LLC; Universal Transdata, LLC; VisibleConnections, LLC; and DigiMedia Tech, LLC. *Id.*

17. Affiliates of IP Investments, like Kioba, have been active in bringing patent infringement suits in Pennsylvania courts in the recent past. For example, at least SynchView Technologies, LLC and DigiMedia Tech, LLC have previously filed suit in this state against

Pennsylvania residents. *See, e.g., Synchview Techs., LLC v. Blue Ridge Cable Techs., Inc.*, No. 5:18-cv-03594-JFL, Dkt. 1 (Complaint) (E.D.P.A. Aug. 23, 2018); *Digimedia Tech, LLC v. Olympus Corp.*, No. 2:20-cv-02549-EGS, Dkt. 1 (Complaint) (E.D.P.A. May 29, 2020).

18. IP Investments identifies Ryan Strong as its COO and cofounder. Ex. B. Ryan Strong is a Member of the limited liability company IP Investments Group, LLC. Ex. E.

19. Ryan Strong is also an “Authorized Person” of Kioba and is identified as such on Kioba’s 2020 Annual Registration with the Georgia Secretary of State. Ex. F.

20. Kioba, the holder of the Patents-in-Suit, is working through its enforcement agent, IP Investments, to target PNC in the Western District of Pennsylvania as part of a choreographed, nationwide patent enforcement campaign. This campaign, and associated patent enforcement efforts, is Kioba’s only business and has targeted and continues to target Pennsylvania residents and utilize Pennsylvania courts. Given these circumstances, it is reasonable and fair for this Court to exercise jurisdiction over Kioba.

Kioba’s Enforcement Activities

21. Starting in early 2020, shortly after its formation, Kioba launched an aggressive patent enforcement campaign relating to the Patents-in-Suit targeting financial institutions. Kioba retained IP Investments to conduct this extensive campaign as its exclusive licensing agent. IP Investments, on behalf of Kioba, sent demand letters to financial institutions across the country. At least some of these letters included one or more “claim charts” detailing alleged infringement of one or more of the Patents-in-Suit. *See, e.g., Kioba Processing LLC v. Am. Express Co.*, No. 1:20-cv-08287-LGS, Dkt. 10 (Amended Complaint) at ¶ 46 (S.D.N.Y. Aug. 19, 2020).

22. Kioba intentionally and purposefully directed patent enforcement activities relating to the Patents-in-Suit into Pennsylvania and this District. For example, Kioba, through IP

Investments, sent a letter dated May 18, 2020 to PNCFS. Ex. G. The letter states that “[a]ll too often, it seems, initial licensing efforts are ignored and the burden, time and expense of needless prolonged litigation results.” *Id.* The letter identified over one hundred U.S. patents and urged PNC to familiarize itself with the patents. *Id.* Kioba’s letter is a barely veiled threat of litigation.

23. Kioba, through IP Investments, sent an email to PNCFS around July 23, 2020, reminding PNC of Kioba’s licensing demand referencing the Patents-in-Suit. On July 27, 2020, PNC Bank informed IP Investments that Kioba’s licensing demand had been forwarded to PNC Bank. Ex. H.

24. On October 7, 2020, Kioba, through IP Investments, responded to PNC Bank and explicitly referenced “the Kioba Processing Patent Licensing Program” and specifically identified the ’134 Patent, the ’382 Patent, and the ’078 Patent as relevant to “PNC products/services.” Ex. H. IP Investments’ email stated that “Kioba would like to highlight the [’134, ’382, and ’078] patents.” *Id.* The email further touted Kioba’s penchant and readiness for pursuing litigation, emphasizing that “[t]o date, Kioba has filed [] patent infringement lawsuits [against American Express Company and Discover Financial Services et al.]” *Id.* PNC understood this as a direct threat of imminent litigation.

25. Through IP Investments, Kioba sent patent licensing demands similar to that which it sent PNC to at least American Express, Discover, and Bank of America. *See, e.g., Kioba Processing LLC v. Am. Express Co.*, No. 1:20-cv-08287-LGS, Dkt. 10 (Amended Complaint) at ¶ 46 (S.D.N.Y. Aug. 19, 2020); *Kioba Processing LLC v. DFS Corp. Servs. LLC*, No. 1:20-cv-04868, Dkt. 19 (Amended Complaint) at ¶ 66 (N.D. Ill. Oct. 20, 2020); *Kioba Processing LLC v. Bank of Am. Corp.*, No. 2:20-cv-00328-JRG, Dkt. 1 (Complaint) at ¶ 63 (E.D. Tex. Oct. 9, 2020).

26. Kioba sued American Express, Discover, and Bank of America after sending patent

licensing demands to those companies, asserting some or all of the Patents-in-Suit. *See, e.g., Kioba Processing LLC v. Am. Express Co.*, No. 1:20-cv-08287-LGS (S.D.N.Y.) (“the Amex Lawsuit”); *Kioba Processing LLC v. DFS Corp. Servs. LLC*, No. 1:20-cv-04868 (N.D. Ill.) (“the Discover lawsuit”); *Kioba Processing LLC v. Bank of Am. Corp.*, No. 2:20-cv-00328-JRG (E.D. Tex.) (“the BoA lawsuit”).

27. Kioba’s patent licensing and enforcement demands and multiple lawsuits asserting the ’382 Patent establish a fear of imminent litigation for PNC regarding PNC Bank’s card freezing or locking services.

28. Kioba’s patent licensing and enforcement demands and multiple lawsuits asserting the ’078 Patent establish a fear of imminent litigation for PNC regarding PNC Bank’s methods of enabling customers to pay bills using a mobile app on a smartphone.

29. Kioba’s patent licensing and enforcement demands and lawsuit asserting the ’134 Patent establishes a fear of imminent litigation for PNC regarding PNC Bank’s rewards points redemption services using a mobile app on a smartphone.

Kioba’s Amex Lawsuit

30. In July 2020, Kioba filed the Amex lawsuit in the Northern District of Texas, accusing American Express Company (“Amex”) of infringing the Patents-in-Suit. *See Kioba Processing LLC v. Am. Express Co.*, No. 3:20-cv-01781-N (N.D. Tex. Jul. 6, 2020). Specifically, in the Amex lawsuit, Kioba accused Amex of infringing, among others: (1) the ’134 Patent based on Amex’s Membership Rewards Portal; (2) the ’382 Patent based on Amex’s Lock/Unlock card service; and (3) the ’078 Patent based on payment functionality for the American Express Mobile App. *See* Ex. I, Amex lawsuit, Dkt. 10 (First Amended Complaint) at ¶¶ 42, 77, and 93.

31. In the First Amended Complaint in the Amex lawsuit, Kioba specifically referenced

Amex’s “Membership Rewards Portal.” *Id.* at ¶ 42.

32. Kioba also specifically referenced Amex’s “Freeze Your Card Service” (or “FYC Service”). *Id.* at ¶ 77.

33. Also in the Amex lawsuit, Kioba specifically referenced Amex’s method of “payment of a bill using the Amex Mobile App on a smartphone.” *See* Ex. J, Amex lawsuit, Dkt. 10-4 (Exhibit D of First Amended Complaint).

34. On September 10, 2020, Amex moved to dismiss the Amex lawsuit for improper venue, or to transfer the case to the Southern District of New York. *See* Amex lawsuit, Dkt. 16. On September 29, 2020, Amex and Kioba jointly moved to transfer the Amex lawsuit to the Southern District of New York. *See* Amex lawsuit, Dkt. 18. The Amex lawsuit was transferred to the Southern District of New York on October 5, 2020. Ex. K, Amex lawsuit, Dkt. 19 (Agreed Order Granting Joint Motion to Transfer).

Kioba’s Discover Lawsuit

35. In July 2020, Kioba filed the Discover lawsuit in the Northern District of Illinois, accusing DFS Corporate Services LLC, DFS Services LLC, and Discover Bank (collectively, “Discover”) of infringing at least two of the Patents-in-Suit. Specifically, in the Discover lawsuit, Kioba accused Discover of infringing: the ’382 Patent based on Discover’s Freeze it service; and (2) the ’078 Patent based on Discover’s systems that support payment functionality for the Discover Mobile App. *See* Ex. J, Discover lawsuit, Dkt. 19 (Amended Complaint) at ¶¶ 59 and 75.

36. In the Amended Complaint in the Discover lawsuit, Kioba specifically referenced Discover’s “Freeze it” service. *Id.* at ¶ 59.

37. In the Amended Complaint in the Discover lawsuit, Kioba also specifically referenced Discover's "payment of a bill using Discover Mobile on a smartphone." *See* Ex. M, Discover lawsuit, Dkt. 19-3 (Exhibit C of Amended Complaint) at 2.

Kioba's BoA Lawsuit

38. In October 2020, Kioba filed the BoA lawsuit in the Eastern District of Texas, accusing Bank of America of infringing at least two of the Patents-in-Suit. Specifically, in the BoA lawsuit, Kioba accused Bank of America ("BoA") of infringing: (1) the '382 Patent based on BoA's Lock/Unlock service; and (2) the '078 Patent based on BoA's systems that support payment functionality for the BoA Mobile App. *See* Ex. N, BoA lawsuit, Dkt. 1 (Complaint) at ¶¶ 56 and 92.

39. In the Complaint in the BoA lawsuit, Kioba specifically referenced BoA's "Lock/Unlock" service. *Id.* at ¶ 56.

40. In the Complaint in the BoA lawsuit, Kioba also specifically referenced BoA's method of "payment of a bill using Bank of America Mobile on a smartphone." *See* Ex. O, BoA lawsuit, Dkt. 1-4 (Exhibit D of Complaint) at 3.

Threatened PNC Products and Services

41. PNC Bank provides a web-based service called PNC points® where consumers may redeem points for gift cards, electronics, travel, and other merchandise.

42. As part of its own mobile application (the "PNC Mobile app"), PNC Bank provides a service called PNC Easy Lock® where consumers may lock their account when a debit card or credit card is misplaced.

43. PNC Bank provides a service called PNC Online Banking where consumers may pay their bills without the hassles of writing checks or remembering usernames and passwords at

multiple biller sites.

44. Products and services like PNC points®, PNC Easy Lock®, and PNC Online Banking have been accused by Kioba of infringing the Patents-in-Suit.

45. For example, in the Amex lawsuit, the Discover lawsuit, and the BoA lawsuit, Kioba accused defendants of infringing the Patents-in-Suit at least in part by virtue of defendants' use of rewards points redemption, methods of freezing a credit or debit card, and online bill pay services.

46. Because PNC Bank provides products and services like, though not identical to, the alleged infringing activities in the Amex lawsuit, the Discover lawsuit, and the BoA lawsuit, PNC has a real and substantial apprehension of imminent litigation between PNC and Kioba for at least the alleged infringement of the Patents-in-Suit.

47. Kioba has conducted an aggressive and extensive patent enforcement campaign relating to the Patents-in-Suit, sending numerous demand letters and initiating patent infringement litigation against Amex, Discover, and BoA over rewards points redemption, freezing a credit or debit card, and online bill pay services similar, though not identical, to those used by PNC Bank. Kioba, through its exclusive licensing agent and closely related corporate entity IP Investments, has contacted PNC and directly implicated PNC Bank products regarding the alleged infringement of the Patents-in-Suit. There is thus now a substantial controversy between PNC and Kioba, who have adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

FACTUAL BACKGROUND

The Patents-in-Suit

48. The '134 Patent is entitled "Financial Transaction System" and, on its face,

indicates an issue date of December 18, 2001. A true and correct copy of the '134 patent is attached hereto as Ex. P. The United States Patent and Trademark Office ("USPTO") lists Kioba as the assignee of the '134 Patent at reel 051410 and frame 0205, which was recorded January 3, 2020. Kioba claims to be the "owner of the '134 patent with all substantial rights to the '134 patent, including the exclusive right to enforce, sue, and recover damages for past and future infringement." *See, e.g.*, Ex. I at ¶ 39.

49. The '382 Patent is entitled, "Payment Instrument Authorization Technique" and, on its face, indicates an issue date of August 16, 2005. A true and correct copy of the '382 patent is attached hereto as Ex. Q. The USPTO lists Kioba as the assignee of the '382 Patent at reel 051410 and frame 0205, which was recorded January 3, 2020. Kioba claims to be the "owner of the '382 patent with all substantial rights to the '382 patent, including the exclusive right to enforce, sue, and recover damages for past and future infringement." *See, e.g.*, Ex. I at ¶ 74.

50. The '078 Patent is entitled, "Method and System for the Effecting Payments By Means of A Mobile Station" and, on its face, indicates an issue date of September 12, 2006. A true and correct copy of the '078 patent is attached hereto as Ex. R. The USPTO lists Kioba as the assignee of the '078 Patent at reel 051463 and frame 0871, which was recorded January 3, 2020. Kioba claims to be the "owner of the '078 patent with all substantial rights to the '078 patent, including the exclusive right to enforce, sue, and recover damages for past and future infringement." *See, e.g.*, Ex. I at ¶ 90.

51. Kioba alleged in its communications to PNCFS and PNC Bank, that the Patents-in-Suit are part of Kioba's patent portfolio. Ex. H.

Acts Giving Rise to this Action

52. Plaintiff PNC Bank provides a service called PNC points®. PNC points® is a rewards program that allows customers to earn points for daily purchases. For example, a customer may earn points by making purchases with his or her PNC credit card. These points may then be redeemed for various rewards of the customer's choice, for example gift cards, travel experiences, and the like. Certain PNC Bank products, including the PNC points Visa and PNC Flex Visa credit cards, are automatically enrolled in the PNC points program. *See* Ex. S, <https://pncpoints.pnc.com/>.

53. Plaintiff PNC provides a service called PNC Easy Lock® accessible on the PNC Mobile app. PNC Easy Lock® allows a consumer to lock a personal or business debit or credit card in real time. Locking a card is fast and may prevent some new purchases, cash advances and withdrawals from being accepted. However, recurring transactions to merchants may still go through. For example, PNC Bank's website explains that "[w]hile purchases, cash advances, and withdrawals are stopped when you lock your debit or credit card, certain transactions will continue, such as transactions identified as recurring by the merchant (both new and previously scheduled), transactions made with other cards linked to a business credit card account, transactions made with other cards linked to your checking/savings account (debit card, banking card and University debit card only), university/college services, including meal plan transactions and dorm access (University debit card only), balance transfers, overdraft protection and payments made to your account (credit card only), reward redemptions, checks, account related fees, interest, dispute adjustments, posting of merchant refunds or other credits to your account, and other exempt transactions." *See* Ex. T, <https://www.pnc.com/en/personal-banking/banking/services/pnc-easylock.html>.

54. PNC Bank provides a service called PNC Online Bill Pay that may be accessible on the PNC Mobile app. PNC Online Bill Pay allows a consumer to pay their bills without the hassles of writing checks or remembering usernames and passwords at multiple biller sites. PNC Online Bill Pay is offered as a free service within PNC Online Banking that is available for residents within the US who have a qualifying checking account. *See* Ex. U, <https://www.pnc.com/en/personal-banking/banking/online-and-mobile-banking/online-banking.html>.

55. In the Amex lawsuit, Kioba accused Amex of infringing at least claim 30 of the '134 Patent by virtue of Amex's use of its Membership Rewards Portal. Specifically, Kioba alleged that Amex instructs and encourages its customers to use the Membership Rewards Portal in a way that infringes the '134 Patent. Ex. I. at ¶ 42.

56. The PNC Points® system utilizes similar, though not identical, systems and methods to those of Amex's Membership Rewards Portal.

57. Thus, PNC and other customers using PNC points® are presently faced with a substantial risk of litigation by Kioba for allegedly infringing, either directly or indirectly, at least the '134 Patent.

58. In the Amex lawsuit, Kioba accused Amex of infringing at least claim 6 of the '382 Patent by virtue of Amex's use of its Lock/Unlock card service. Ex. I. at ¶ 77.

59. In the Discover lawsuit, Kioba accused Discover of infringing at least claim 6 of the '382 Patent by virtue of Discover's use of its "Freeze it" service. Ex. L at ¶ 59.

60. In the BoA lawsuit, Kioba accused BoA of infringing at least claim 6 of the '382 Patent by virtue of its use of its "Lock/Unlock" service. Ex. N at ¶ 56.

61. PNC Easy Lock® utilizes similar, though not identical, systems and methods to

those of Amex's Lock/Unlock card service, Discover's "Freeze it" service, and BoA's "Lock/Unlock" service.

62. Thus, PNC is presently faced with a substantial risk of litigation by Kioba for allegedly infringing at least the '382 Patent.

63. In the Amex lawsuit, Kioba accused Amex of infringing at least claim 6 of the '078 Patent by virtue of Amex's testing of the payment functionality for the Amex Mobile App. Ex. I at ¶ 83. Moreover, Kioba alleged that Amex instructs and encourages its customers to use the Amex Mobile App in a way that infringes the '078 Patent. Ex. I at ¶ 99.

64. In the Discover lawsuit, Kioba accused Discover of infringing at least claim 6 of the '078 Patent by virtue of Discover's testing of systems that support payment functionality for the Discover Mobile App. Ex. L at ¶ 75. Moreover, Kioba alleged that Discover instructs and encourages its customers to use the Discover Mobile App in a way that infringes the '078 Patent. Ex. L at ¶ 81.

65. In the BoA lawsuit, Kioba accused BoA of infringing at least claim 6 of the '078 Patent by virtue of its testing of systems that support payment functionality for the BoA Mobile App. Ex. N at ¶ 92. Moreover, Kioba alleged that BoA instructs and encourages its customers to use the Bank of America Mobile App in a way that infringes the '078 Patent. Ex. N at ¶ 98.

66. PNC Online Bill Pay via mobile app utilizes similar, though not identical, systems and methods to those of the Amex Mobile App, Discover Mobile App, and BoA Mobile App. Thus, PNC and other customers using PNC Online Bill Pay via mobile app are presently faced with a substantial risk of litigation by Kioba for allegedly infringing, either directly or indirectly, at least the '078 Patent.

67. Thus, as described above, PNC and users of PNC systems and methods for rewards

points redemption, freezing a credit or debit card, and online bill pay, are presently faced with a substantial risk of litigation by Kioba for allegedly infringing the Patents-in-Suit.

COUNT I

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,332,134)

68. Plaintiffs reallege the allegations in paragraphs 1-67 above as if fully set forth herein.

69. PNC Bank, through the provision of the PNC Mobile app—including the PNC points feature—has not and does not infringe, induce infringement, or contribute to the infringement of any enforceable claim of the '134 patent, either literally or under the doctrine of equivalents.

70. For example, the PNC Mobile app, PNC points system, and related technology do not infringe at least because they do not “send[] a purchase request from [a] financial institution to [a] merchant, the purchase request including at least a portion of the merchant offer and a payment notification, wherein the portion of the merchant offer is used to match up the purchase request with the purchase, and the payment notification is used to indicate that payment for the purchase has been made and that the merchant offer has been accepted, and wherein the purchase request does not contain any information relating to the identity of the cardholder,” as required by claim 1 of the '134 patent. As a further example, the PNC Mobile App, PNC points system, and related technology do not infringe at least because they do not perform similar limitations present in claims 15, 17, 23, 25, 27, 30, and 32–34 of the '134 patent.

71. PNC has never had any intent to cause its customers or anyone else to infringe the '134 patent.

72. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

73. A judicial declaration is necessary and appropriate so that PNC may ascertain its rights regarding the '134 patent.

COUNT II
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,931,382)

74. Plaintiffs reallege the allegations in paragraphs 1-67 above as if fully set forth herein.

75. PNC Bank, through the provision of the PNC Mobile app, which utilizes PNC Easy Lock®, has not and does not infringe, induce infringement, or contribute to the infringement of any enforceable claim of the '382 patent, either literally or under the doctrine of equivalents.

76. For example, the PNC Mobile app and PNC Easy Lock® do not infringe at least because an authorized instrument holder does not “communicat[e] with [an] issuing entity to block, on a default basis, authorization of [a] payment instrument for non-face-to-face transactions,” as required by claim 1 of the '382 patent. In simple terms, the '382 patent claims a “white list,” where transactions or vendors are blocked unless specifically authorized, whereas in the PNC Mobile app and PNC Easy Lock®, transactions and vendors are authorized by default unless the user locks his or her account.

77. Moreover, blocking occurring by use of PNC Easy Lock® is not blocking “on a default basis,” as required by claim 1 of the '382 patent. Instead, PNC Easy Lock® allows some transactions to continue, such as transactions identified as recurring by the merchant, and this includes both new and previously scheduled transactions.

78. PNC has never had any intent to cause its customers or anyone else to infringe the '382 patent.

79. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

80. A judicial declaration is necessary and appropriate so that PNC may ascertain its rights regarding the '382 patent.

COUNT III
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,107,078)

81. Plaintiffs reallege the allegations in paragraphs 1-67 above as if fully set forth herein.

82. PNC Bank, through the provision of the PNC Mobile app, which utilizes PNC Online Bill Pay, has not and does not infringe, induce infringement, or contribute to the infringement of any enforceable claim of the '078 patent, either literally or under the doctrine of equivalents.

83. For example, the PNC Mobile app using PNC Online Bill Pay does not infringe at least because a mode of payment message based on a user profile is not generated for transmission to a mobile station "when the mobile station user is to make a purchase payment," as required by claims 1 and 6 of the '078 patent.

84. PNC has never had any intent to cause its customers or anyone else to infringe the '078 patent.

85. As a result of the acts described in the preceding paragraphs, there exists a controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

86. A judicial declaration is necessary and appropriate so that PNC may ascertain its rights regarding the '078 patent.

PRAYER FOR RELIEF

WHEREFORE, PNC prays for the following judgment and relief:

A. A declaration that PNC has not infringed, and does not infringe, either directly or indirectly, any valid and enforceable claim of the Patents-in-Suit through the provision of PNC

Bank's products, services, software, or technology, either literally or under the doctrine of equivalents;

B. An order declaring that PNC is the prevailing party and that this case is an exceptional case under 35 U.S.C. § 285, and awarding PNC its costs, expenses, and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law, including this Court's inherent authority; and

C. Any other equitable and/or legal relief that this Court may deem just and proper.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), PNC demands a trial by jury on all issues so triable.

Dated: December 4, 2020

Respectfully submitted,

The PNC Financial Services Group, Inc.
PNC Bank, N.A.

By: /s/ Perry A. Napolitano

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