

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

Ward Participations B.V.

Plaintiff,

v.

Bank of America Corporation

Defendant

Civil Action No. 6:21-cv-01191-ADA

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Ward Participations B.V. (“Ward Participations” or “Plaintiff”), files this Complaint for Patent Infringement against Bank of America Corporation (“Bank of America” or “Defendant”), and would respectfully show the Court as follows:¹

PARTIES

1. Plaintiff is a Limited Liability Company registered in Netherlands, having its statutory seat at Aerdenhout with its principal place of business located at Sloteweg 71, 1171 CG Badhoevedorp Noord-Holland Netherlands.

2. On information and belief, Defendant is a Delaware corporation with a principal address of 100 North Tryon Street, Charlotte, North Carolina 28255, and has regular and established places of business throughout this District, including at least at 607 W 3rd Street, Austin, Texas 78701. Defendant is registered to do business in Texas and may be served via its registered agent at CT Corporation System 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

¹ Plaintiff files this amended complaint in response to defendant’s motion to dismiss.

3. On information and belief, Defendant directly and/or indirectly develops, designs, manufactures, distributes, markets, offers to sell and/or sells infringing products and services in the United States, including in the Western District of Texas, and otherwise directs infringing activities to this District in connection with its products and services.

JURISDICTION

4. This civil action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including without limitation 35 U.S.C. §§ 271, 281, 283, 284, and 285 based on Defendant's unauthorized commercial manufacture, use, importation, offer for sale, and sale of the Accused Products in the United States. This is a patent infringement lawsuit over which this Court has subject matter jurisdiction under, *inter alia*, 28 U.S.C. §§ 1331, 1332, and 1338(a).

5. This United States District Court for the Western District of Texas has general and specific personal jurisdiction over Defendant because, directly or through intermediaries, Defendant has committed acts within the District giving rise to this action and are present in and transact and conduct business in and with residents of this District and the State of Texas.

6. Plaintiff's causes of action arise, at least in part, from Defendant's contacts with and activities in this District and the State of Texas.

7. Defendant has committed acts of infringing the patents-in-suit within this District and the State of Texas by making, using, selling, offering for sale, and/or importing in or into this District and elsewhere in the State of Texas, products claimed by the patents-in-suit, including without limitation products made by practicing the claimed methods of the patents-in-suit. Defendant, directly and through intermediaries, makes, uses, sells, offers for sale, imports, ships, distributes, advertises, promotes, and/or otherwise commercializes such infringing products into this District and the State of Texas. Defendant regularly conducts and solicits business in, engages in other

persistent courses of conduct in, and/or derives substantial revenue from goods and services provided to residents of this District and the State of Texas.

8. This Court has personal jurisdiction over Defendant pursuant to TEX. CIV. PRAC. & REM. CODE § 17.041 *et seq.* Personal jurisdiction exists over Defendant because Defendant has minimum contacts with this forum as a result of business regularly conducted within the State of Texas and within this district, and, on information and belief, specifically as a result of, at least, committing the tort of patent infringement within Texas and this District. This Court has personal jurisdiction over Defendant, in part, because Defendant does continuous and systematic business in this District, including by providing infringing products and services to the residents of the Western District of Texas that Defendant knew would be used within this District, and by soliciting business from the residents of the Western District of Texas. For example, Defendant is subject to personal jurisdiction in this Court because, *inter alia*, Defendant has regular and established places of business throughout this District, including at least at 607 W 3rd Street, Austin, Texas 78701, and directly and through agents regularly does, solicits, and transacts business in the Western District of Texas. Also, Defendant has hired and is hiring within this District for positions that, on information and belief, relate to infringement of the patents-in-suit. Accordingly, this Court's jurisdiction over the Defendant comports with the constitutional standards of fair play and substantial justice and arises directly from the Defendant's purposeful minimum contacts with the State of Texas.

9. This Court also has personal jurisdiction over Defendant, because in addition to Defendant's own online website and advertising with this District, Defendant has also made its products available within this judicial district and advertised to residents within the District to hire employees to be located in this District.

10. The amount in controversy exceeds \$75,000 exclusive of interests and costs.

11. Venue is proper in this Court under 28 U.S.C. § 1400(b) based on information set forth herein, which is hereby repeated and incorporated by reference. Further, upon information and belief, Defendant has committed acts of infringement, and/or advertise, market, sell, and/or offer to sell products, including infringing products, in this District. In addition, and without limitation, Defendant has regular and established places of business throughout this District, including at least at 607 W 3rd Street, Austin, Texas 78701.

THE PATENTS-IN-SUIT

12. On April 27, 2021, United States Patent No. 10,992,480 (“the ‘480 patent”), entitled “Method and System for Performing a Transaction and for Performing a Verification of Legitimate Access to, or Use of Digital Data” was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). On July 13, 2021, United States Patent No. 11,063,766 (“the ‘766 patent”), entitled “Method and System for Performing a Transaction and for Performing a Verification of Legitimate Access to, or Use of Digital Data” was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). The ‘480 Patent and ‘766 Patent claim patent-eligible subject matter and are valid and enforceable. Ward Participations B.V. is the exclusive owner by assignment of all rights, title, and interest in the ‘480 Patent and the ‘766 Patent, including the right to bring this suit for injunctive relief and damages, and including the right to sue and recover all past, present, and future damages for infringement of the ‘480 Patent and the ‘766 Patent. Defendant is not licensed to the ‘480 Patent or the ‘766 Patent, either expressly or implicitly, nor do they enjoy or benefit from any rights in or to the ‘480 Patent or ‘766 Patent whatsoever. A true and correct copy of the ‘480 Patent is attached hereto as **Exhibit A**. A true and correct copy of the ‘766 Patent is attached hereto as **Exhibit B**.

13. The '480 Patent and '766 Patent are referred to herein as the "patents-in-suit."

14. Plaintiff Ward Participations B.V. is the owner of the entire right, title, and interest in and to the patents-in-suit. The patents-in-suit are presumed valid under 35 U.S.C. § 282.

ACCUSED INSTRUMENTALITIES

15. The term "Accused Instrumentalities" or "Accused Products" refers to, by way of example and without limitation, Bank of America Mobile App and Bank of America digital cards for Samsung Pay.

See, e.g., <https://promotions.bankofamerica.com/digitalbanking/mobilebanking/digitalwallets>.

COUNT I
PATENT INFRINGEMENT OF THE '480 PATENT

16. Plaintiff restates and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

17. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims, including without limitation at least claim 1 of the '480 patent, by making, using, testing, selling, offering for sale and/or importing into the United States Defendant's Accused Products.

18. Defendant has, under 35 U.S.C. §271(a), infringed, and continues to infringe, one or more claims, including without limitation at least claim 1 of the '480 Patent by directing or controlling the performance of others who perform the patented method.

19. Through Defendant's website (<https://promotions.bankofamerica.com/digitalbanking/mobilebanking/digitalwallets>), Defendant instructs Bank of America cardholder's on how to utilize their existing Bank of America cards to ready their device to perform the infringing method. Defendant's website also instructs Bank of America cardholder's how to operate their device to perform the infringing method. Defendant provides a benefit to Bank of

America cardholders upon performing the steps of the patented process of the '480 Patent. Specifically, Defendant states “[a]dd your Bank of America cards to your Digital Wallet,” and that Bank of America cardholders will experience “Secure shopping,” “\$0 Liability Guarantee,” and “Enhanced Security.”

20. Alternatively, Defendant has, under 35 U.S.C. §271(a), infringed, and continues to infringe, one or more claims, including without limitation at least claim 1 of the '480 Patent as part of a joint enterprise that performs the method.

21. Defendant's website (<https://promotions.bankofamerica.com/digitalbanking/mobilebanking/digitalwallets>) hold Bank of America and Samsung Pay out as members of a joint venture. This include use of Samsung's name, technology, and registered mark. Together Bank of America and Samsung carry out a common purpose of providing “Secure shopping” by using a Bank of America card. It is on information and belief that Bank of America and Samsung share in a pecuniary interest from the utilization of Bank of America cards with Samsung pay including but not limited to fees generated from card usage at merchants by Bank of America cardholders. Finally, it is on information and belief that Bank of America and Samsung share in the rights of control as to how Bank of America and Samsung pay are implemented for cardholders.

22. On information and belief, Defendant has made no attempt to design around the claims of the '480 patent.

23. On information and belief, Defendant did not have a reasonable basis for believing that the claims of the '480 patent were invalid.

24. On information and belief, Defendant's Accused Products are available to businesses and individuals throughout the United States and in the State of Texas, including in this District.

25. Ward Participations B.V. has been damaged as the result of Defendant's infringement. Upon information and belief, Defendant will continue to infringe one or more claims of the '480 patent unless and until they are enjoined by this Court.

26. Defendant has caused and will continue to cause Ward Participations irreparable injury and damage by infringing one or more claims of the '480 patent. Ward Participations will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendant is enjoined from infringing the claims of the '480 patent.

27. The claim chart attached hereto as **Exhibit B** describes how the elements of an exemplary claim 1 from the '480 patent are infringed by the Accused Products. This provides details regarding only one example of Defendant's infringement, and only as to a single patent claim. Plaintiff reserves its right to amend and fully provide its infringement arguments and evidence thereof until its Preliminary and Final Infringement Contentions are later produced according to the court's scheduling order in this case.

28. To the extent that facts discovered during the pendency of this case show that Defendant's infringement is willful and deliberate, Plaintiff reserves the right to amend this complaint and request such a finding and seek appropriate relief at time of trial.

COUNT II
PATENT INFRINGEMENT OF THE '766 PATENT

29. Plaintiff restates and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

30. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims, including without limitation at least claim 1 of the '766 patent, by making, using, testing, selling, offering for sale and/or importing into the United States Defendant's Accused Products.

31. Defendant has, under 35 U.S.C. §271(a), infringed, and continues to infringe, one or more claims, including without limitation at least claim 1 of the '766 Patent by directing or controlling the performance of others who perform the patented method.

32. Through Defendant's website (<https://promotions.bankofamerica.com/digitalbanking/mobilebanking/digitalwallets>), Defendant instructs Bank of America cardholder's on how to utilize their existing Bank of America cards to ready their device to perform the infringing method. Defendant's website also instructs Bank of America cardholder's how to operate their device to perform the infringing method. Defendant provides a benefit to Bank of America cardholders upon performing the steps of the patented process of the '480 Patent. Specifically, Defendant states "[a]dd your Bank of America cards to your Digital Wallet," and that Bank of America cardholders will experience "Secure shopping," "\$0 Liability Guarantee," and "Enhanced Security."

33. Alternatively, Defendant has, under 35 U.S.C. §271(a), infringed, and continues to infringe, one or more claims, including without limitation at least claim 1 of the '766 Patent as part of a joint enterprise that performs the method.

34. Defendant's website (<https://promotions.bankofamerica.com/digitalbanking/mobilebanking/digitalwallets>) hold Bank of America and Samsung Pay out as members of a joint venture. This include use of Samsung's name, technology, and registered mark. Together Bank of America and Samsung carry out a common purpose of providing "Secure shopping" by using a Bank of America card. It is on information and belief that Bank of America and Samsung share in a pecuniary interest from the utilization of Bank of America cards with Samsung pay including but not limited to fees generated from card usage at merchants by Bank of America cardholders.

Finally, it is on information and belief that Bank of America and Samsung share in the rights of control as to how Bank of America and Samsung pay are implemented for cardholders.

35. On information and belief, Defendant has made no attempt to design around the claims of the '766 patent.

36. On information and belief, Defendant did not have a reasonable basis for believing that the claims of the '766 patent were invalid.

37. On information and belief, Defendant's Accused Products are available to businesses and individuals throughout the United States and in the State of Texas, including in this District.

38. Ward Participations B.V. has been damaged as the result of Defendant's infringement. Upon information and belief, Defendant will continue to infringe one or more claims of the '766 patent unless and until they are enjoined by this Court.

39. Defendant has caused and will continue to cause Ward Participations irreparable injury and damage by infringing one or more claims of the '766 patent. Ward Participations will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Defendant is enjoined from infringing the claims of the '766 patent.

40. The claim chart attached hereto as **Exhibit C** describes how the elements of an exemplary claim 1 from the '766 patent are infringed by the Accused Products. This provides details regarding only one example of Defendant's infringement, and only as to a single patent claim. Plaintiff reserves its right to amend and fully provide its infringement arguments and evidence thereof until its Preliminary and Final Infringement Contentions are later produced according to the court's scheduling order in this case.

41. To the extent that facts discovered during the pendency of this case show that Defendant's infringement is willful and deliberate, Plaintiff reserves the right to amend this complaint and request such a finding and seek appropriate relief at time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ward Participations respectfully requests the following relief:

- A. A judgment that Defendant has directly infringed either literally and/or under the doctrine of equivalents and continue to directly infringe the patents-in-suit;
- B. A judgment and order requiring Defendant to pay Plaintiff damages under 35 U.S.C. § 284 including past damages based on, *inter alia*, any necessary compliance with 35 U.S.C. §287, and supplemental damages for any continuing post-verdict infringement through entry of the final judgment with an accounting as needed;
- C. A judgment that this is an exceptional case within the meaning of 35 U.S.C. § 285 and Plaintiff is therefore entitled to reasonable attorneys' fees;
- D. A judgment and order requiring Defendant to pay Plaintiff post-judgment interest on the damages awarded;
- E. A judgment and order awarding a compulsory ongoing royalty;
- F. A judgment and order awarding Plaintiff costs associated with bringing this action;
- G. A judgment granting a preliminary and permanent injunction that restrains and enjoins Defendant, its officers, directors, divisions, employees, agents, servants, parents, subsidiaries, successors, assigns, and all those in privity, concert or participation with them from directly or indirectly infringing the patents-in-suit; and
- H. Such other and further relief as the Court deems just and equitable.

JURY TRIAL DEMANDED

Pursuant to FED. R. CIV. P. 38, Plaintiff Ward Participations hereby demands a trial by jury on all issues so triable.

Respectfully Submitted

Ramey LLP

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and LR5, I hereby certify that all counsel of record who have appeared in this case are being served on this day of March 8, 2022, with a copy of the foregoing via email and ECF filing.

/s/ William P. Ramey, III
William P. Ramey, III