

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION**

**MCOM IP, LLC,
Plaintiff,**

v.

**CITY NATIONAL BANK,
Defendant**

Civil Action No. 1:23-cv-08832

JURY TRIAL DEMANDED

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff mCom IP LLC (“mCom”) files this First Amended Complaint and demand for jury trial seeking relief from patent infringement of the claims of U.S. Patent No. 8,862,508 (“the ’508 patent”) (referred to as the “Patent-in-Suit”) by City National Bank (“Defendant” or “City National”). This First Amended Complaint is filed before Defendant has answered and a month in advance of the deadline for filing its Motion to Dismiss.

I. THE PARTIES

1. Plaintiff mCom is a Texas Limited Liability Company with its principal place of business located in Harris County, Texas.

2. On information and belief, Defendant is a national banking organization organized and existing under the laws of the State of New York, with a regular and established place of business located at 404 10th Avenue, New York, New York 10001. On information and belief, Defendant sells and offers to sell products and services throughout New York, including in this judicial district, and introduces products and services that perform infringing methods or processes into the stream of commerce knowing that they would be sold in New York and this judicial district. Defendant has been served.

II. JURISDICTION AND VENUE

3. This Court has original subject-matter jurisdiction over the entire action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claim arises under an Act of Congress relating to patents, namely, 35 U.S.C. § 271.

4. This Court has personal jurisdiction over Defendant because: (i) Defendant is present within or has minimum contacts within the State of New York and this judicial district; (ii) Defendant has purposefully availed itself of the privileges of conducting business in the State of New York and in this judicial district; and (iii) Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of New York and in this judicial district.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b). Defendant has committed acts of infringement and has a regular and established place of business in this District. Further, venue is proper because Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in New York and this District.

III. INFRINGEMENT - Infringement of the '508 Patent

6. On October 14, 2014, U.S. Patent No. 8,862,508 ("the '508 patent", included as Exhibit-A and part of this complaint) entitled "System and method for unifying e-banking touch points and providing personalized financial services" was duly and legally issued by the U.S. Patent and Trademark Office. Plaintiff owns the '508 patent by assignment.

7. The priority date for all claims of the '508 patent is November 14, 2005.¹ Independent Claim 13, from which Claim 17 depends, states:

A unified electronic banking system, said system comprising:

a common multi-channel server, wherein said multi-channel server is **communicatively coupled** to one or more independent computer systems;

wherein each of one or more independent computer systems is associated with an independent financial institution, and each of said **computer systems is communicatively coupled to said multi-channel server;**

one or more e-banking touch points, each of which comprise one or more of an automatic teller/transaction machine (ATM), a self-service coin counter (SSCC), a kiosk, a digital signage display, an online accessible banking website, a personal digital assistant (PDA), a personal computer (PC), a laptop, a wireless device, or a combination of two or more thereof, wherein one or more of said e-banking touch points are communicatively coupled to said multi-channel server, and wherein at least one of said e-banking touch points is in communication with one or more financial institutions through said multi-channel server; and

a data storage device, wherein transactional usage data associated with a transaction initiated by a user through one of said e-banking touch points is stored in said data storage device and accessed by one or more of said other e-banking touch points;

wherein said **active session is monitored via said server in real-time for selection of targeted marketing content** correlated to said user-defined preferences, said targeted marketing content correlated to said user-defined preferences is **selected subsequent to said monitoring and transmitted in real-time to at least one of said e-banking touch points** for acceptance, rejection, or no response by a user, and wherein said response by said user is used during said active session to determine whether transmission of additional information related to said marketing content occurs during said active session.²

8. Dependent claim 17 adds further material important to patentability. It states: “[t]he system of claim 13, wherein said system provides said one or more financial institutions with a common point of control of functionality provided by said system.”³

¹ Doc. No. 1-1 at 1, Related Application Data.

² Doc. No. 1-1 at 10:35-11:4 (emphasis added).

³ Doc. No. 1-1 at 11:15-18.

9. The '508 patent relates to novel and improved systems and methods for constructing a unified banking system.

10. Defendant maintains, operates, and administers systems, products, and services of unified banking systems that infringes one or more of claims of the '508 patent, including one or more of claims 2, 7, 14, and 17, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the '508 Patent into service (i.e., used them); but for Defendant's actions, the claimed-inventions embodiments involving Defendant's products and services would never have been put into service. Defendant's acts complained of herein caused those claimed-invention embodiments as a whole to perform, and Defendant's procurement of monetary and commercial benefit from it.

11. Support for the allegations of infringement may be found in the preliminary exemplary table attached as Exhibit B. These allegations of infringement are preliminary and are therefore subject to change.

12. Defendant has and continues to induce infringement. Defendant has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to construct a unified banking system of one or more of claims 2, 7, 14, and 17 of the '508 patent, literally or under the doctrine of equivalents. Moreover, Defendant has known of the '508 patent and the technology underlying it from at least the filing date of the lawsuit.⁴ For clarity, direct infringement is previously alleged in this complaint.

13. Defendant has and continues to contributorily infringe. Defendant has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., construction of unified banking system) and related services that provide unified banking system such as to

⁴ Plaintiff reserves the right to amend if discovery reveals an earlier date of knowledge.

cause infringement of one or more of claims 2, 7, 14, and 17 of the '508 patent, literally or under the doctrine of equivalents. Moreover, Defendant has known of the '508 patent and the technology underlying it from at least the filing date of the lawsuit.⁵ For clarity, direct infringement is previously alleged in this complaint.

14. Defendant has caused and will continue to cause Plaintiff damage by direct and indirect infringement of (including inducing infringement of) the claims of the '508 patent.

15. Exhibit C is a true and correct copy of an Order from The Honorable Alan D. Albright in the Western District of Texas denying a defendant's motion to dismiss based on patent eligibility of the Patent-in-Suit.

16. The claimed technology of U.S. Patent No. 8,862,508 ("the '508 patent") relates generally to systems and methods for delivering a retail banking multi-channel solution that unifies interactive electronic banking touch points to provide personalized financial services to customers and a common point of control for financial institutions.⁶ The '508 patent specifically provides that it solves the technological problem of unifying a financial institution's touch points for the delivery of a more personalized e-banking experience to customers:

conventional e-banking touch points continue to exist today as stand-alone systems, providing customers and financial institutions alike with relatively few control and presentation options. These stand-alone systems are deficient in that they limit the ability of financial institutions to provide a **more personalized e-banking experience to customers**, while at the same time providing a more unified means for regulating their systems through a common set of control consoles, without incurring the substantial costs associated with the upgrading of such legacy systems. In light of the many advantages that may be achieved by implementing a means for **unifying all of a financial institution's e-banking touch points into a common point of control, there is currently no system or method in place for doing so.**⁷

⁵ Plaintiff reserves the right to amend if discovery reveals an earlier date of knowledge.

⁶ Doc. No. 1-1, U.S. Pat. No. 8,862,508, at Abstract.

⁷ Doc. No. 1-1 at Column 1, lines 53-67 ("1:53-67") (emphasis added).

17. The claims of the '508 patent specifically claim, “a method for constructing a unified electronic banking environment”⁸ and “a unified electronic banking system.”⁹ Moreover, embodiments of the claimed invention of the '508 patent provide numerous benefits over the prior art, including, but not limited to, unifying all of a financial institution's e-banking touch points into a common point of control¹⁰ with real-time targeted marketing content through a common multi-channel server coupled to one or more e-banking touch points and a computer system of a financial institution that allows for real-time customer interaction.¹¹

18. It bears noting that the patent at issue in this case, U.S. Patent No. 8,862,508, previously survived a challenge brought under 35 U.S.C. § 101, in *mCom IP, LLC v. WoodForest Nat'l Bank*, 6:21-cv-989, Dkt. No. 26, at 6 (W.D. Tex. April 14, 2022). Judge Albright rejected the defendant's argument that the '508 patent failed to satisfy *Alice*. A copy of the Memorandum Opinion And Order Denying Defendant's Rule 12(B)(6) Motion To Dismiss For Failure To State A Claim is attached hereto as exhibit C.

19. To properly evaluate whether asserted claims “are directed to a patent-eligible concept,”¹² a court must examine “the focus of the claimed advance over the prior art to determine if the character of the claim as a whole, considered in light of the specification, is directed to excluded subject matter.”¹³ In other words, abstractness is determined by analyzing the claim as a whole, not whether each element standing alone is abstract.¹⁴ Taking the claim as a whole, the focus of the claims is “providing a unified banking platform with real-time targeted marketing content

⁸ Doc. No. 1-1 at 8:44-10:34, Claims 1-12.

⁹ Doc. No. 1-1 at 10:35-11:26, Claims 13-20.

¹⁰ Doc. No. 1-1 at Column 1, lines 53-67 (“1:53-67”) (emphasis added).

¹¹ Doc. No. 1-1 at Abstract and Claims, *generally*.

¹² *Alice Corp. Pty. Ltd.*, 573 U.S. at 218.

¹³ *Trading Techs. Int'l, Inc. v. IBG LLC*, 921 F.3d 1084, 1092 (Fed. Cir. 2019).

¹⁴ See e.g., *Alice Corp.*, 574 U.S. 208, 219, 134 S. Ct. 2347, 2359 (2014); *Eyetail365, LLC v. Zmodo Tech. Corp.*, 356 F. Supp. 3d 1059, 1067 (D. Nev. 2018).

through a common multi-channel server coupled to one or more e-banking touch points and a computer system of a financial institution for real-time customer interaction”¹⁵ (“Focus”).

Further support is found in the Abstract:¹⁶

(57) **ABSTRACT**
 A system and method for delivering a retail banking multi-channel solution that unifies interactive electronic banking touch points to provide personalized financial services to customers and a common point of control for financial institutions is provided.

The Federal Circuit has held that the specification is helpful in illuminating what a claim is “directed to.”¹⁷ However, the claims should be the primary tool to ensure that there is not preemption of an entire area.¹⁸ The Focus of the claim of the ‘508 patent is readily discernible from the language of the claims and supported by the specification.

20. The specification of the ‘508 patent provides further support for the Focus in the Background of Invention where it specifies that:

However, these conventional e-banking touch points continue to exist today as stand-alone systems, providing customers and financial institutions alike with relatively few control and presentation options. These stand-alone systems are deficient in that they limit the ability of financial institutions to provide a more personalized e-banking experience to customers, while at the same time providing a more unified means for regulating their systems through a common set of control consoles, without incurring the substantial costs associated with the upgrading of such legacy systems. In light of the many advantages that may be achieved by implementing a means for

¹⁵ Doc. No. 1-1 at Claims, *generally*.

¹⁶ Doc. No. 1-1 at Abstract.

¹⁷ *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 766 (Fed. Cir. 2019) citing *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611-12 (Fed. Cir. 2016); *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1376 (Fed. Cir. 2015); see also *Parker v. Flook*, 437 U.S. 584, 586, 98 S. Ct. 2522, 57 L. Ed. 2d 451 (1978) (noting that the patent application provided nothing more than a formula for computing an alarm limit); cf. *United States v. Adams*, 383 U.S. 39, 49, 86 S. Ct. 708, 15 L. Ed. 2d 572, 174 Ct. Cl. 1293 (1966) (“[I]t is fundamental that claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention.”).

¹⁸ *Id.* (“But while the specification may help illuminate the true focus of a claim, when analyzing patent eligibility, reliance on the specification must always yield to the claim language in identifying that focus. This is because “the concern that drives” the judicial exceptions to patentability is “one of pre-emption,” *Alice*, 573 U.S. at 216, and the claim language defines the breadth of each claim.”).

unifying all of a financial institution's e-banking touch points into a common point of control, there is currently no system or method in place for doing so.¹⁹

21. Accordingly, the '508 patent teaches that there is no system or method that unifies a financial institutions e-banking touchpoints allowing for a more unified control which limits presenting a more personalized e-banking experience to customers.²⁰

22. All embodiments described in the Summary support the Focus. Further support is provided in the Figures, the descriptions of which provide:

FIG. 1 is a schematic diagram of a banking platform system networked with a modular multi-channel server in accordance with an exemplary embodiment of the present invention.

FIGS. 2A-2B are flowcharts illustrating the steps employed in personalizing touch point environments in accordance with an exemplary embodiment of the present invention.

FIG. 3 is a flowchart illustrating the steps employed in publishing and monitoring marketing content on touch points in accordance with an exemplary embodiment of the present invention.

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23. And yet further support is provided by the Detailed Description:

The present invention is directed towards a system and method for unifying e-banking touch points residing at a plurality of financial institutions that can be remotely con-

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¹⁹ Doc. No. 1-1, at 1:53-67 (emphasis added).

²⁰ Doc. No. 1-1 at 1:53-67.

²¹ Doc. No. 1-1 at 2:56-67.

²² Doc. No. 1-1 at 3: 13-15.

24. With reference to the Figure 1, an exemplary system 100 for implementing the present

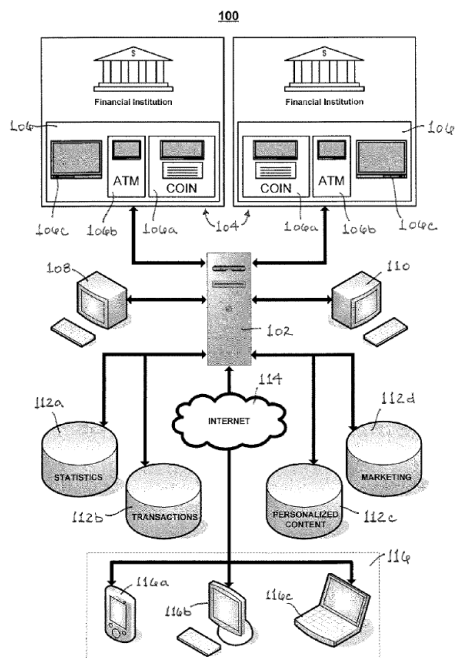


FIG. 1

invention:²³

25. An exemplary system 100 is comprised of a multi-channel server 102 networked to a plurality of branch locations 104 associated with a financial institution, wherein each branch location employs the use of various e-banking touch points 106.²⁴

26. The ‘508 patent specification provides substantial detail for the claimed invention and its interconnectivity with each claimed element for sufficient specificity to be concrete.²⁵ For instance, the ‘508 patent provides reference to systems and methods that can be used as e-banking touchpoints, namely: “automatic teller/transaction machine (ATM) touch point 106b, a self-service coin counter (SSCC) touch point 106a, a plasma signage display (PSD) touch point 106c, alternate e-banking system touch points (e.g., a kiosk) or any combination thereof.”²⁶

²³ Doc. No. 1-1 at 3:23-24.

²⁴ Doc. No. 1-1 at 3:29-33.

²⁵ See, e.g., *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018).

²⁶ Doc. No. 1-1 at 3:33-38.

27. The Figures provide the granularity and detailed steps of the invention. For example, Figures 2A-2B provide flowcharts illustrating exemplary steps employed in a touch point environment, including personalizing the experience and marketing content.²⁷ Figure 3 illustrates a system enabling monitoring of a marketing campaign by authorized marketing personnel.²⁸ Figure 4 provides an exemplary flowchart for the resource management of data passing through multi-channel server 102 and networked touch points 106.

28. The claims incorporate these specific elements and recite steps pulled from these illustrations.

29. Recent caselaw examining *Alice*'s first step pays particular attention to whether the claims are directed to a "specific means or method that improves [that] relevant technology."²⁹ The Federal Circuit has repeatedly affirmed that claims directed to improvements to the functioning of a computer or network will be found eligible at step one.³⁰

30. In growing class of cases, the Court has characterized the relevant technology as some discrete device, system, or method. These claims will also almost certainly be found eligible at *Alice*'s first step.³¹ Yet even when the Federal Circuit has characterized the relevant

²⁷ Doc. No. 1-1 at 4:57-6:25.

²⁸ Doc. No. 1-1 at 6:26-61.

²⁹ *McRO*, 837 F.3d at 1314.

³⁰ See, e.g., *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1296 (Fed. Cir. 2020) ("[I]mproving a basic function of a computer data-distribution network, namely, network security."); *Packet Intel. LLC v. NetScout Sys., Inc.*, 965 F.3d 1299, 1310 (Fed. Cir. 2020) ("[A] specific improvement in computer technology: a more granular, nuanced, and useful classification of network traffic."); *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1307 (Fed. Cir. 2020) (an "improvement to computer functionality, namely the reduction of latency experienced by parked secondary stations in communication systems."); *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999, 1009 (Fed. Cir. 2018) ("[A] 'specific' and 'particular' manner of navigating a three-dimensional spreadsheet that improves the efficient functioning of computers.").

³¹ See, e.g., *CardioNet, LLC v. InfoBionic, Inc.*, 955 F.3d 1358, 1368 (Fed. Cir. 2020) ("[A]n improved cardiac monitoring device . . ."); *Koninklijke KPN N.V. v. Gemalto M2M GmbH*, 942 F.3d 1143, 1150 (Fed. Cir. 2019) ("[I]mprovement in an existing technological process (i.e., error checking in data transmissions) . . ."); *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1349 (Fed. Cir. 2017) ("[T]he application of physics [to] create an improved technique for measuring movement of an object on a moving platform."); *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016) ("[A]llowing computers to produce 'accurate and realistic lip synchronization and facial expressions in animated characters' that previously could only be produced by human animators.").

technology as an abstract idea, like a mathematical concept, technique, analysis, or algorithm, the claims will satisfy step one of *Alice*.³²

31. In this case, mCom’s Complaint, incorporates allegations that the claimed invention contains “specific means or method that improves [that] relevant technology.”³³ As the Complaint alleges, the ’508 patent “relates to novel and improved systems and methods for constructing a unified banking system.”³⁴

32. The ’508 patent—which is incorporated into the Complaint by reference—describes methods and systems for providing a “client-server platform configured to unify a plurality of e-banking touch points,” enabling “financial institutions to deliver and maximize on the impact of electronic offerings” and to provide “a consistent, reliably and high quality transactional environment,” all “without incurring the substantial costs associated with the upgrading such legacy” e-banking touch points.³⁵ These are “technical ‘advantages offered by’” the claimed method and systems. *CardioNet*, 955 F.3d at 1369 (quoting *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1259–60 (Fed. Cir. 2017)).

33. The claims of the ’508 patent are directed to a technological solution for the prior art problem³⁶ of deficiencies of financial institution’s e-banking stand-alone systems in providing a personalized e-banking experience to customers, while at the same time providing a more unified means for regulating their systems through a common set of control consoles, without incurring the substantial costs associated with the upgrading of such legacy systems.

³² See, e.g., *In re Bd. of Trustees of Leland Stanford Junior Univ.*, 991 F.3d 1245, 1251 (Fed. Cir. 2021) (hereinafter *Stanford II*) (“[M]erely an enhancement to the abstract mathematical calculation of haplotype phase itself.”); *In re Bd. of Trustees of Leland Stanford Junior Univ.*, 989 F.3d 1367, 1368 (Fed. Cir. 2021) (hereinafter *Stanford I*); *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018) (“[T]he focus of the claims is not any improved computer or network, but the improved mathematical analysis.”).

³³ *McRO*, 837 F.3d at 1314.

³⁴ Doc. No. 1, ¶ 7.

³⁵ Doc. No. 1-1, ’508 patent at 1:60–2:13.

³⁶ A prior art problem as of the priority date of November 14, 2005.

The claimed solution is a unified banking platform with real-time targeted marketing content through a common multi-channel server coupled to one or more e-banking touch points for real-time customer interaction and a computer system of a financial institution for real-time customer interaction.³⁷ Thus, the claims are directed to a technological solution and patent eligible.

34. To evaluate whether asserted claims satisfy *Alice*'s second step of "search[ing] for an 'inventive concept,'"³⁸ a court considers "the elements of each claim both individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent-eligible application."³⁹ While a court may determine patent eligibility at the Rule 12(b)(6) stage, it is "only when there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law."⁴⁰ "Plausible factual allegations may preclude dismissing a case under § 101."⁴¹ All facts pertinent to the eligibility question must be proven by clear and convincing evidence.⁴² Here, mCom makes numerous factual allegations in the patent specification and must be taken as true at this stage of the litigation,⁴³ including unifying all of a financial institution's e-banking touch points into a common point of control⁴⁴ with real-time targeted marketing content through a common multi-channel server coupled to one or more e-banking touch points and a computer system of a financial institution that allows for real-time customer interaction.⁴⁵ The specification of the '508 patent provides that such a

³⁷ Doc. No. 1-1 at Abstract and Claims, *generally*.

³⁸ *Alice*, 573 U.S. at 217, 134 S.Ct. 2347

³⁹ *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1289 (Fed. Cir. 2018)

⁴⁰ *Green Shades Software, Inc.*, 882 F.3d at 1125.

⁴¹ *Id.*

⁴² *HP Inc.*, 881 F.3d at 1368 citing *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 95 (2011).

⁴³ *Guidry v. Am. Pub. Life Ins. Co.*, 512 F.3d 177, 180 (5th Cir. 2007).

⁴⁴ Doc. No. 1-1 at Column 1, lines 53-67 ("1:53-67") (emphasis added).

⁴⁵ Doc. No. 1-1 at Abstract and Claims, *generally*.

solution was not available as of the filing of the provisional application.⁴⁶ Thus, taking all inferences in mCom's favor,⁴⁷ dismissal at this stage is inappropriate.⁴⁸

35. The Claims of the '508 patent provide a solution to a specific problem arising in electronic banking, namely a unified banking platform with real-time targeted marketing content through a common multi-channel server coupled to one or more e-banking touch points for real-time customer interaction and a computer system of a financial institution for real-time customer interaction.⁴⁹ The prior art electronic banking systems did not include this functionality.⁵⁰ Thus, the claimed improvements cannot be said to be conventional when viewing the claim as a whole.

36. Stated another way, the claims of the '508 patent are further patentable for similar reasons that the claims in *Messaging Gateway Sols., LLC v. Amdocs, Inc.*⁵¹ were found patentable wherein the court in that case found the claims "directed to a problem unique to text-message telecommunication between a mobile device and a computer. The solution [] it provides is tethered to the technology that created the problem."⁵² Similarly, the present claims are directed to a problem unique to electronic banking. The solution it provides, a unified banking platform with real-time targeted marketing content through a common multi-channel server coupled to one or more e-banking touch points for real-time customer interaction and a computer system of a financial institution for real-time customer interaction⁵³ is tethered to the

⁴⁶ Doc. No. 1-1 at 1:53-67.

⁴⁷ *Slyce Acquisition v. Syte - Visual Conception*, No. W-19-CV-00257-ADA, 2020 U.S. Dist. LEXIS 9451, at *12 (W.D. Tex. Jan. 10, 2020).

⁴⁸ *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018); *see also Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

⁴⁹ Doc. No. 1-1 at Abstract and Claims, *generally*.

⁵⁰ Doc. No. 1-1 at 1:53-67.

⁵¹ Civil Action No. 14-732-RGA, 2015 U.S. Dist. LEXIS 49408 (D. Del. Apr. 15, 2015).

⁵² *Messaging Gateway Sols., LLC v. Amdocs, Inc.*, Civil Action No. 14-732-RGA, 2015 U.S. Dist. LEXIS 49408, at *15-16 (D. Del. Apr. 15, 2015).

⁵³ Doc. No. 1-1 at Abstract and Claims, *generally*.

technology that created the problem.⁵⁴ Stated another way, the present claims allow delivery of real-time targeted marketing content at one or more e-banking touch points for real-time customer interaction where it would otherwise be impossible and thus are patent eligible.⁵⁵

37. Similar to the rationale of *Messaging Gateway Solutions*, the claims here are directed as a whole to a “specific problem arising in the realm of” electronic banking.⁵⁶ Traditionally e-banking touch points were not unified with a financial institution’s computer system such as to allow real-time customer interaction through real-time targeted marketing content,⁵⁷ just like how in *Messaging*, traditionally “phones could not send SMS text messages to computers.”⁵⁸ Thus, here the claimed invention “overrides conventional practice.”⁵⁹ Here, the specification provides concrete examples of how to practice the claims tethering the solution “to the technology that created the problem.” For the same reason, the claims of the ‘508 Patent avoid the disqualifying problem identified in *Alice*, preempting the abstract idea of targeted marketing.⁶⁰

38. The preset claims therefore, when “taken together as an ordered combination, ... recite an invention that is not merely the routine or conventional,” delivery of real-time targeted marketing content at one or more e-banking touch points for real-time customer interaction.⁶¹ The claims do not try to pre-empt every use of unified banking system, but rather recite a specific way to deliver real-time targeted marketing content at one or more e-banking touch

⁵⁴ *Messaging Gateway Sols., LLC v. Amdocs, Inc.*, Civil Action No. 14-732-RGA, 2015 U.S. Dist. LEXIS 49408, at *16-17 (D. Del. Apr. 15, 2015).

⁵⁵ *See id.*

⁵⁶ *Messaging Gateway Solutions, LLC v. Amdocs, Inc.*, No. 14-732-RGA, 2015 U.S. Dist. LEXIS 49408, at *15 (D. Del. Apr. 15, 2015).

⁵⁷ Doc. No. 1-1 at 1:53-67.

⁵⁸ *Messaging Gateway Solutions, LLC v. Amdocs, Inc.*, No. 14-732-RGA, 2015 U.S. Dist. LEXIS 49408, at *16 (D. Del. Apr. 15, 2015).

⁵⁹ *Messaging Gateway Solutions, LLC v. Amdocs, Inc.*, No. 14-732-RGA, 2015 U.S. Dist. LEXIS 49408, at *15 (D. Del. Apr. 15, 2015).

⁶⁰ *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014); *Messaging Gateway Solutions, LLC v. Amdocs, Inc.*, No. 14-732-RGA, 2015 U.S. Dist. LEXIS 49408 at *17 (D. Del. Apr. 15, 2015).

⁶¹ *See, e.g., DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014).

points for real-time customer interaction,⁶² thus claiming additional features that render the claims patent eligible.⁶³

IV. CONDITIONS PRECEDENT

39. Plaintiff is a non-practicing entity, with no products to mark. Plaintiff has plead all statutory requirements to obtain pre-suit damages. Further, all conditions precedent for recovery are met.

V. JURY DEMAND

Plaintiff hereby requests a trial by jury on issues so triable by right.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- a. enter judgment that Defendant has infringed the claims of the '508 patent;
- b. award Plaintiff damages in an amount sufficient to compensate it for Defendant's infringement of the Patent-in-Suit in an amount no less than a reasonable royalty or lost profits, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;
- c. award Plaintiff an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;
- d. declare this case to be "exceptional" under 35 U.S.C. § 285 and award Plaintiff its attorneys' fees, expenses, and costs incurred in this action;
- e. declare Defendant's infringement to be willful and treble the damages, including attorneys' fees, expenses, and costs incurred in this action and an increase in the damage award pursuant to 35 U.S.C. § 284;

⁶² See Ex. 1 at Abstract and Claims, *generally*.

⁶³ See, e.g., *DDR Holdings, LLC*, 773 F.3d at 1259.

- f. a decree addressing future infringement that either (if) awards a permanent injunction enjoining Defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with Defendant from infringing the claims of the Patents-in-Suit, or (ii) awards damages for future infringement in lieu of an injunction in an amount consistent with the fact that for future infringement the Defendant will be an adjudicated infringer of a valid patent, and trebles that amount in view of the fact that the future infringement will be willful as a matter of law; and
- g. award Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ David J. Hoffman

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