

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

DECISIONING.COM, INC.,	)	Civil Action No. 3:03-2837-22
a Delaware corporation,	)	
	)	
Plaintiff,	)	
	)	<b><u>AMENDED COMPLAINT</u></b>
vs.	)	(Jury Demand)
	)	
TD AMERITRADE HOLDING	)	
CORPORATION, INC., a Delaware	)	
corporation; TD AMERITRADE, INC. a	)	
Nebraska corporation, and TD WATERHOUSE,	)	
GROUP, INC., a Delaware corporation	)	
	)	
Defendants.	)	

Plaintiff decisioning.com, Inc. (“decisioning.com”) brings this amended complaint against defendants TD Ameritrade Holding Corporation, Inc. (“TDAHC”) and its wholly-owned subsidiary TD Ameritrade, Inc. (“TD Ameritrade”), and TD Waterhouse Group, Inc. (“TDW”) seeking damages and other relief for patent infringement.

TDAHC and its wholly-owned subsidiary TD Ameritrade changed their corporate names from Ameritrade Holding Corporation, Inc. and Ameritrade, Inc., respectively, on or about January 24, 2006. TDAHC acquired the stock of TDW on or about January 24, 2006 as part of a purchase of TDW in exchange for approximately 32.5% of TDAHC’s stock and other consideration. Thus, upon information and belief, TDW and TDAHC are responsible for the liabilities of TDW incurred before and after the date of this Amended Complaint.

**THE PARTIES**

1. decisioning.com is a South Carolina corporation with its principal place of business at 1053-B Sparkleberry Lane Extension, Columbia, South Carolina 29223.

2. Upon information and belief, TDAHC is a Delaware corporation with its principal place of business at 4211 South 102nd Street, Omaha, Nebraska 68127, and TD Ameritrade is a Nebraska corporation with its principal place of business at 1005 N. Ameritrade Place, Bellevue, Nebraska 68005.

3. Upon information and belief, TDW is a Delaware corporation having a principal place of business in a location unknown by decisioning.com at this time.

4. TDAHC and TD Ameritrade have offered brokerage accounts to consumers residing in the State of South Carolina and elsewhere in the United States using interactive sites on the World Wide Web accessible through the web site on the World Wide Web of [www.ameritrade.com](http://www.ameritrade.com) (the “Ameritrade Web Site”). Brokerage accounts that have been marketed by TDAHC and TD Ameritrade at the Web Site include an “Express Application” for an “Individual Account,” a “Joint Account,” and an “Individual Retirement Account” (“IRA”) (collectively the “Ameritrade Brokerage Accounts”).

5. Consumers in this District have used the Ameritrade Brokerage Accounts to place orders and have executed securities trades for stock and other equities from TDAHC and TD Ameritrade at the Ameritrade Web Site.

6. TDAHC and TD Ameritrade have and continue to offer brokerage accounts to consumers residing in the State of South Carolina and elsewhere in the United States using interactive sites on the World Wide Web accessible through [www.tdameritrade.com](http://www.tdameritrade.com) (the “TD Ameritrade Web Site”). Brokerage accounts marketed by TDAHC and TD Ameritrade at the TD Ameritrade Web Site include an application for an “Individual Account,” a “Joint Account,” and an “Individual Retirement Account” (“IRA”) (collectively the “TD Ameritrade Brokerage Accounts”).

7. Consumers in this District have and continue to use the TD Ameritrade Brokerage Accounts to place orders and have executed securities trades for stock and other equities from TDAHC and TD Ameritrade at the TD Ameritrade Web Site.

8. TDW has offered brokerage accounts to consumers residing in the State of South Carolina and elsewhere in the United States using interactive sites on the World Wide Web accessible through [www.tdwaterhouse.com](http://www.tdwaterhouse.com) (the “TD Waterhouse Web Site”). Brokerage accounts marketed by TDW at the TD Ameritrade Web Site included applications for an “Individual Account,” joint accounts, IRAs, and educational accounts (collectively the “TD Waterhouse Brokerage Accounts”).

9. Consumers in this District have used the TD Waterhouse Brokerage Accounts to place orders and have executed securities trades for stock and other equities from TDW at the TD Waterhouse Web Site.

10. TDAHC and TD Ameritrade have conducted continuous and systematic business in South Carolina and this District. For example, TDAHC and TD Ameritrade have (a) routinely offered to contract, via the Ameritrade Web Site, with persons in South Carolina; and (b) promoted its services to, and solicits contact from, persons in South Carolina via the Ameritrade Web Site.

11. TDAHC and TD Ameritrade have and continue to conduct continuous and systematic business in South Carolina and this District. For example, TDAHC and TD Ameritrade have and continue to (a) routinely offer to contract, via the TD Ameritrade Web Site, with persons in South Carolina; and (b) promote its services to, and solicits contact from, persons in South Carolina via the TD Ameritrade Web Site.

12. TDW has conducted continuous and systematic business in South Carolina and this District. For example, TDW has (a) routinely offered to contract, via the TD Waterhouse Web Site, with persons in South Carolina; and (b) promoted its services to, and solicits contact from, persons in South Carolina via the TD Waterhouse Web Site.

13. Upon information and belief, TDAHC and TD Ameritrade have in the past made, used, sold and/or offered for sale systems and processes to receive data from an applicant to remotely request an Ameritrade Brokerage Account via a remote interface and without human assistance, receive the data from the applicant received at a remote interface, access at least one database for information relevant to the applicant's identity and for the information relevant to the applicant's ability and willingness to comply with the account requirements, verify the applicant's identity by comparing certain of the information received from the applicant with certain of the information received from the at least one database relevant to the applicant's identity, compare certain of the information received from the applicant and certain of the information received from the at least one database relevant to the applicant's ability and willingness to comply with the account requirements to determine in real time and without human assistance if the applicant's requested account is approved; send a result to the remote applicant interface informing the applicant whether or not establishment of the requested account was approved.

14. Upon information and belief, TDAHC and TD Ameritrade have in the past and now continue to make, use, sell and/or offers for sale systems and processes to receive data from an applicant to remotely request a TD Ameritrade Brokerage Account via a remote interface and without human assistance, receive the data from the applicant received at a remote interface, access at least one database for information relevant to the applicant's identity and for the

information relevant to the applicant's ability and willingness to comply with the account requirements, verify the applicant's identity by comparing certain of the information received from the applicant with certain of the information received from the at least one database relevant to the applicant's identity, compare certain of the information received from the applicant and certain of the information received from the at least one database relevant to the applicant's ability and willingness to comply with the account requirements to determine in real time and without human assistance if the applicant's requested account is approved; send a result to the remote applicant interface informing the applicant whether or not establishment of the requested account was approved.

15. Upon information and belief, TDW has in the past made, used, sold and/or offered for sale systems and processes to receive data from an applicant to remotely request a TD Waterhouse Brokerage Account via a remote interface and without human assistance, receive the data from the applicant received at a remote interface, access at least one database for information relevant to the applicant's identity and for the information relevant to the applicant's ability and willingness to comply with the account requirements, verify the applicant's identity by comparing certain of the information received from the applicant with certain of the information received from the at least one database relevant to the applicant's identity, compare certain of the information received from the applicant and certain of the information received from the at least one database relevant to the applicant's ability and willingness to comply with the account requirements to determine in real time and without human assistance if the applicant's requested account is approved; send a result to the remote applicant interface informing the applicant whether or not establishment of the requested account was approved.

**JURISDICTION AND VENUE**

16. This Court has subject matter jurisdiction over decisioning.com’s patent infringement claims under 28 U.S.C. § 1331 and 1338(a).

17. This Court has personal jurisdiction over each of the Defendants – TDAHC, TD Ameritrade, and TDW, because each of the Defendants have transacted and are transacting business in this District, both generally and regarding the allegations in this Complaint, and because each of these Defendants have committed tortuous acts within the District.

18. Venue properly lies in this Court under 28 U.S.C. §§ 1391(b), (c) and 1400(b), because each of the Defendants is subject to personal jurisdiction and has committed acts of patent infringement in this District.

**FACTUAL BACKGROUND**

19. decisioning.com hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1-18.

20. decisioning.com is a wholly-owned subsidiary of Affinity Technology Group, Inc. (“Affinity”) which is located at 1053-B Sparkleberry Lane Extension, Columbia, South Carolina 29223.

21. On August 15, 2000, United States Letters Patent No. 6,105,007 (“’007 Patent”) was duly and legally issued for an invention entitled “Automatic Financial Account Processing System,” in which Affinity was the assignee. A true and correct copy of the ‘007 Patent is attached as Exhibit 1 to this Complaint.

22. decisioning.com owns all rights, title and interest in and to the ‘007 Patent via an assignment from Affinity, which is attached as Exhibit 2 to this Complaint.

**FOR A FIRST CAUSE OF ACTION**

**Patent Infringement of U.S. Patent No. 6,105,007 – 35 U.S.C. § 271**

(As to Defendants TD Ameritrade Holding Corporation, Inc. (“TDAHC”) and TD Ameritrade, Inc. (“TD Ameritrade”))

23. decisioning.com hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1-22.

24. TDAHC and TD Ameritrade have infringed the claims of the ‘007 Patent and continue to infringe the claims of the ‘007 Patent by making, using and selling and/or offering to sell its systems and processes to operate the Ameritrade Web Site and the TD Ameritrade Web Site.

25. Upon information and belief, TDAHC and TD Ameritrade will not stop making, using, selling and/or offering for sale its system and processes to avoid infringing the ‘007 Patent unless enjoined by this Court.

26. Upon information and belief, TDAHC’s and TD Ameritrade’s infringement has been deliberate, willful and wanton and with full knowledge of the ‘007 Patent.

27. decisioning.com hereby demands a jury trial on its cause of action for patent infringement as set forth above.

**FOR A SECOND CAUSE OF ACTION**

**Patent Infringement of U.S. Patent No. 6,105,007 – 35 U.S.C. § 271**

(As to Defendant TD Waterhouse, Inc. (“TDW”))

28. decisioning.com hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1-27.

29. TDW has infringed the claims of the ‘007 Patent by making, using and selling and/or offering to sell its systems and processes that are accessible via the TD Waterhouse Web Site.

30. decisioning.com hereby demands a jury trial on its cause of action for patent infringement as set forth above.

**RELIEF REQUESTED**

WHEREFORE, decisioning.com request that this Court enter a judgment in decisioning.com's favor and against each of the Defendants and provide decisioning.com the following relief:

**AS TO THE FIRST CAUSE OF ACTION**

31. Order, adjudge and decree that TDAHC and TD Ameritrade have infringed the '007 Patent in violation of 35 U.S.C. § 271;

32. Order, adjudge and decree that TDAHC and TD Ameritrade have willfully and knowingly infringed the '007 Patent;

33. Order, adjudge and decree that TDAHC's and TD Ameritrade's infringement of the '007 Patent is exceptional under 35 U.S.C. § 285;

34. Award decisioning.com damages for patent infringement including prejudgment interest and costs against TDAHC and TD Ameritrade under 35 U.S.C. § 284;

35. Award decisioning.com three times its damages for patent infringement by TDAHC and TD Ameritrade to compensate decisioning.com under 35 U.S.C. § 284;

36. Award decisioning.com its reasonable attorneys' fees under 35 U.S.C. § 285 from TDAHC and TD Ameritrade; and

37. Award such other and further relief as the Court may deem just.

**AS TO THE SECOND CAUSE OF ACTION**

38. Order, adjudge and decree that TDW has infringed the '007 Patent in violation of 35 U.S.C. § 271;



39. Order, adjudge and decree that TDW's infringement of the '007 Patent is exceptional under 35 U.S.C. § 285 if it is found that TDW willfully and knowingly infringed the '007 Patent;

40. Award decisioning.com damages for patent infringement including prejudgment interest and costs against TDW under 35 U.S.C. § 284;

41. Award decisioning.com three times its damages for patent infringement by TDW to compensate decisioning.com under 35 U.S.C. § 284;

42. Award decisioning.com its reasonable attorneys' fees under 35 U.S.C. § 285 from TDW; and

43. Award such other and further relief as the Court may deem just.

**JURY DEMAND**

decisioning.com demands trial by jury.

**[Signature page follows]**

SOWELL GRAY STEPP & LAFFITTE, LLC

By:           s/J. Calhoun Watson          

J. Calhoun Watson  
Fed. I.D. No.: 4794  
[cwatson@sowell.com](mailto:cwatson@sowell.com)  
Post Office Box 11449  
Columbia, South Carolina 29211  
Phone: 803-929-1400  
Fax: 803-929-0300

and

OF COUNSEL  
Steven N. Terranova, Esquire (NC Bar No. 26155)  
Withrow & Terranova, PLLC  
201 Shannon Oaks Circle, Suite 200  
Cary, North Carolina 27511  
Phone: 919-654-4520  
Fax: 919-654-4521

*Attorneys for Plaintiff [decisioning.com](http://decisioning.com), Inc.*

Columbia, South Carolina

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