

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BROWSERKEY, LLC,	§	
	§	Case No.
Plaintiff,	§	
	§	<u>JURY TRIAL DEMANDED</u>
v.	§	
	§	
BANK OF AMERICA CORPORATION,	§	
	§	
Defendant.	§	
	§	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff BrowserKey, LLC (“BrowserKey” or “Plaintiff”) for its Complaint against Bank of America Corporation (“Bank of America” or “Defendant”) alleges as follows:

THE PARTIES

1. BrowserKey is incorporated under the laws of the State of Texas, with a place of business located at 101 East Park Boulevard, Suite 600, Plano, Texas 75074.

2. Upon information and belief, Bank of America is a corporation organized and existing under the laws of the state of Delaware, with a place of business at 100 North Tyron Street, Charlotte, North Carolina 28255, and with additional regular and established places of business in this District at least at 2400 North Central Expressway, Plano, Texas 75074; 7001 Independence Parkway, Plano, Texas 75025; 2015 Coit Road, Plano, Texas 75075; 850 W. Arapaho Road, Richardson, Texas 75080; and 551 South Plano Road, Richardson, Texas 75081. Upon information and belief, Defendant may be served with process via its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338, and 1367.

4. This Court has specific and personal jurisdiction over Defendant consistent with the requirements of the Due Process Clause of the United States Constitution and the Texas Long Arm Statute. Upon information and belief, Defendant has sufficient minimum contacts with the forum because Defendant has physical locations and transacts substantial business in the State of Texas and in this Judicial District. Further, Defendant has, directly or through subsidiaries or intermediaries, committed acts of patent infringement in the State of Texas and in this Judicial District as alleged in this Complaint, as alleged more particularly below.

5. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(b). Defendant is registered to do business in Texas and, upon information and belief, Defendant has transacted business in this Judicial District, has committed acts of direct and indirect infringement in this Judicial District, and has regular and established places of business in this Judicial District as set forth above. Defendant is subject to personal jurisdiction in this Judicial District and has committed acts of patent infringement in this Judicial District. On information and belief, Defendant through its own acts and/or through the acts of others, makes, uses, sells, offers to sell, and/or imports infringing products within this Judicial District, regularly does and solicits business in this Judicial District, and has the requisite minimum contacts with the Judicial District, such that this venue is a fair and reasonable one. Further, upon information and belief, Defendant has admitted or not contested proper venue in this Judicial District in other patent infringement actions.

6. Upon information and belief, Defendant maintains offices and physical places of business throughout the United States, including in this Judicial District, including but not limited to: 7105 Corporate Drive, Plano, Texas 75024; 2400 North Central Expressway, Plano, Texas 75074; 7001 Independence Parkway, Plano, Texas 75025; 2015 Coit Road, Plano, Texas 75075; 850 W. Arapaho Road, Richardson, Texas 75080; and 551 South Plano Road, Richardson, Texas 75081.

7. Upon information and belief, Defendant offers its products and services throughout Texas, including this Judicial District, by shipping, distributing, offering for sale, selling, and advertising its products through its website:

BANK OF AMERICA

Checking Savings Credit Cards Home Loans Auto Loans Investing Better Money Habits®

My branch or ATM
Select a Branch or ATM

Find a Financial Center or ATM

Found 50 results within 12.0 miles Currently open Open Saturdays Financial Center Services ATM Services

- Plano**
 Financial Center
 2400 N Central Expy, Plano, TX 75074
 Open today until 5pm (Local time)
 Directions | Full Details & Services
- Independence Square**
 ATM
 3100 Independence #350, Plano, TX 75075
 Open 24 Hours
 Directions | Full Details & Services
- Coit Road**
 Financial Center
 2015 Coit Rd, Plano, TX 75075
 Open today until 4pm (Local time)

¹ <https://locators.bankofamerica.com/?q=Plano,%20TX,%20US>; *see also* <https://www.dallasnews.com/business/banking/2021/11/04/bank-of-america-is-pumping-86-million-into-renovating-its-plano-campus/>

8. Upon information and belief, Defendant manages the marketing, sales, and provision of services of its products to customers and/or potential customers located in Texas and in the Eastern District of Texas.

U.S. PATENT NO. 7,249,262

9. On July 24, 2007, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,249,262 (the “’262 Patent”) entitled “Method For Restricting Access To A Web Site By Remote Users.” A true and correct copy of the ’262 Patent is attached hereto as Exhibit A.

10. BrowserKey is the sole and exclusive owner of all right, title, and interest to and in the ’262 Patent, and holds the exclusive right to take all actions necessary to enforce its rights to the ’262 Patent, including the filing of this patent infringement lawsuit. BrowserKey also has the right to recover all damages for infringement of the ’262 Patent as appropriate under the law.

INFRINGEMENT ALLEGATIONS

11. The ’262 Patent generally covers a method of restricting access to data maintained on a server computer by one or more authorized, networked client machines. The technology was developed by Leon E. Hauck and Brent J. Burval. This technique is incorporated into web and mobile applications made by numerous banking institutions, including Bank of America.

12. Bank of America has manufactured, used, marketed, distributed, sold, offered for sale, exported from, and imported into the United States, products that infringe the ’262 Patent. These Accused Products include at least all versions and variants of the Bank of America Web and Mobile Applications, including web and mobile applications for all Bank of America affiliates² (e.g., Merrill Lynch) since 2018.

² <https://www.bankofamerica.com/security-center/affiliate-companies/>

13. BrowserKey has at all times complied with the marking provisions of 35 U.S.C. § 287 with respect to the '262 Patent.

COUNT I
(Infringement of the '262 Patent)

14. Paragraphs 1 through 13 are incorporated by reference as if fully set forth herein.

15. BrowserKey has not licensed or otherwise authorized Bank of America to make, use, offer for sale, sell, or import any products that embody the inventions of the '262 Patent.

16. Bank of America directly infringes the '262 Patent, either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271, by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '262 Patent. These products include at least all versions and variants of the Bank of America Web and Mobile Applications.

17. For example, Bank of America directly infringes at least claim 11 of the '262 Patent by making, using, offering to sell, selling, and/or importing into the United States products that practice a method of restricting access to data maintained on a server computer by an authorized client machine, said method comprising the steps of: a. creating a session identifier in a computer remote from the client machine for a current browsing session of the client machine; b. transmitting to the client machine the session identifier created in step a.; c. storing the session identifier transmitted in step b. within the client machine; d. verifying, on the client machine, that the client machine is authorized to access data maintained on the server computer; e. obtaining the session identifier stored in step c., and storing such session identifier within a storage table remote from the client machine if such client machine was verified in step d.; f. transmitting a request by the client machine for access to data maintained on the server computer, such request including the session identifier stored in step c.; g. comparing the session identifier transmitted in step f. with

the session identifier stored in the storage table during step e. to determine whether the request for access transmitted in step f. is authorized; and h. permitting access by the client machine to the requested data maintained on the server computer if the comparison made in step g. shows that the request for access is authorized, and denying access by the client machine to the requested data maintained on the server computer if the comparison made in step g. shows that the request for access is not authorized.

18. The Accused Products practice a method of restricting access to data maintained on a server computer by an authorized client machine. For example, upon information and belief, on client machines running the Bank of America Mobile Application variant for Apple iOS, one method by which an operator may sign in to access Bank of America’s “protected URLs,” as a Bank of America account holder, is via Apple’s Touch and Face ID (locally compared “biometrics”).

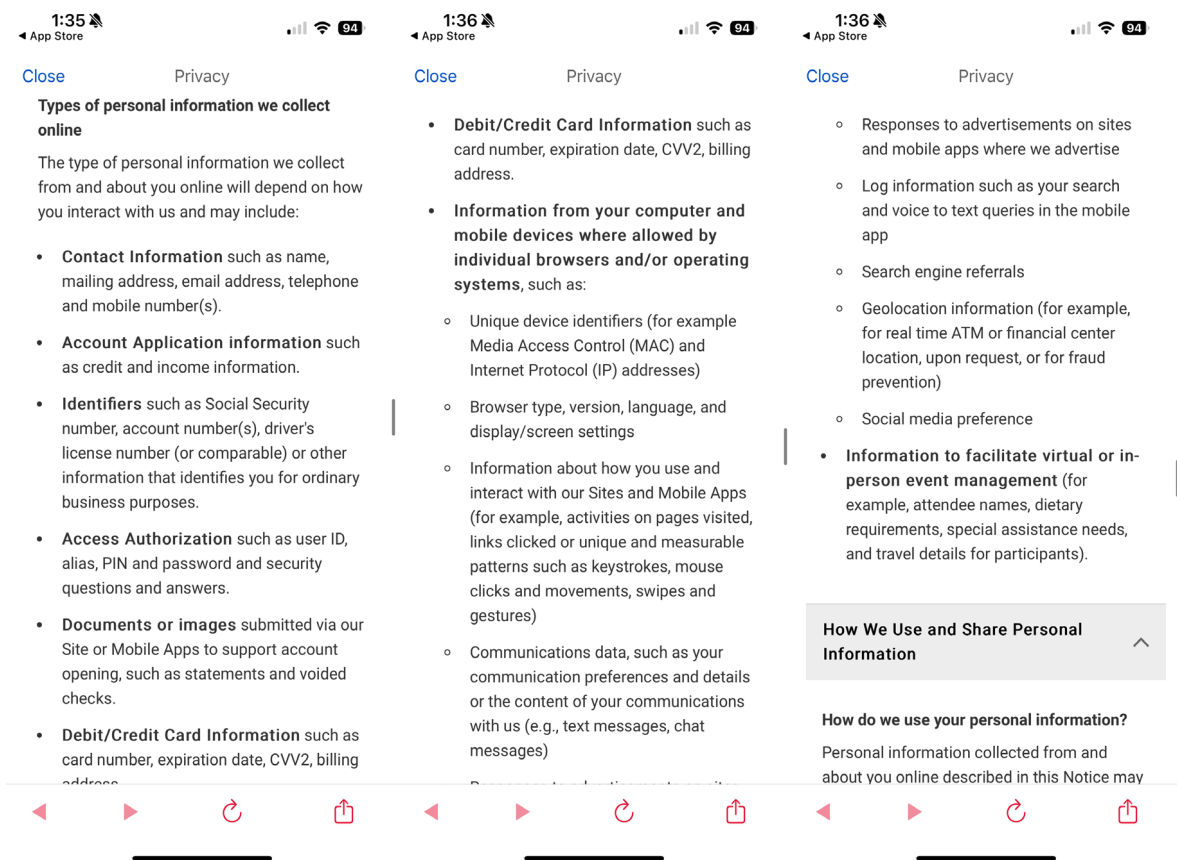
19. The Accused Products further practice a method creating a session identifier in a computer remote from the client machine for a current browsing session of the client machine. For example, upon information and belief, Bank of America server computer(s) create one or more session identifiers, remote from the client machine, when a new user agent session on the client machine initially requests, via the HTTP protocol, a Bank of America “protected URL.”

20. Further, upon information and belief, when first launching the Bank of America Mobile Application, a user agent requests Bank of America URLs. In response to the request, one or more name-value pair(s) are created by the Bank of America server(s).

21. The Accused Products further practice a method of transmitting to the client machine the session identifier created in step a. Upon information and belief, Bank of America transmits the session identifier(s) to the client machine via the Internet. Session identifier(s) are

transmitted by the Bank of America HTTP server computer(s) to the client machine via one or more HTTP response headers and/or HTTP response bodies.

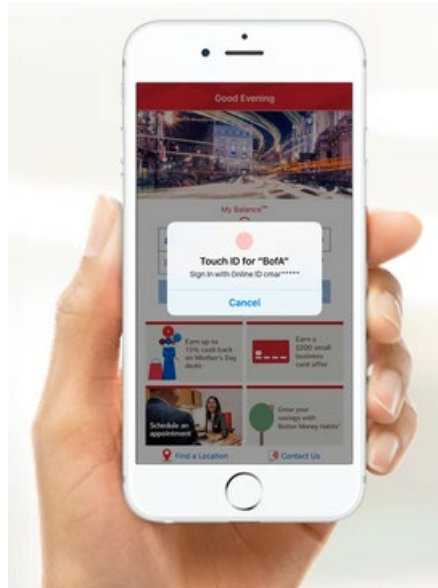
22. The Accused Products further practice a method of storing the session identifier transmitted in step b. within the client machine. Upon information and belief, per instructions from Bank of America servers and/or Bank of America computer code, the web browser stores the session identifiers(s) on the client machine.



23. The Accused Products further practice a method of verifying, on the client machine, that the client machine is authorized to access data maintained on the server computer. Upon information and belief, when the client machine supports Apple Touch / Face ID, and the Bank of America Mobile Application has been provisioned to sign in to Bank of America online services

³ <https://www.bankofamerica.com/content/documents/privacy/us-online-privacy-notice-en.pdf>

via Touch / Face ID, Bank of America computer code automatically prompts the operator to sign in via Touch / Face ID immediately after the application is launched.

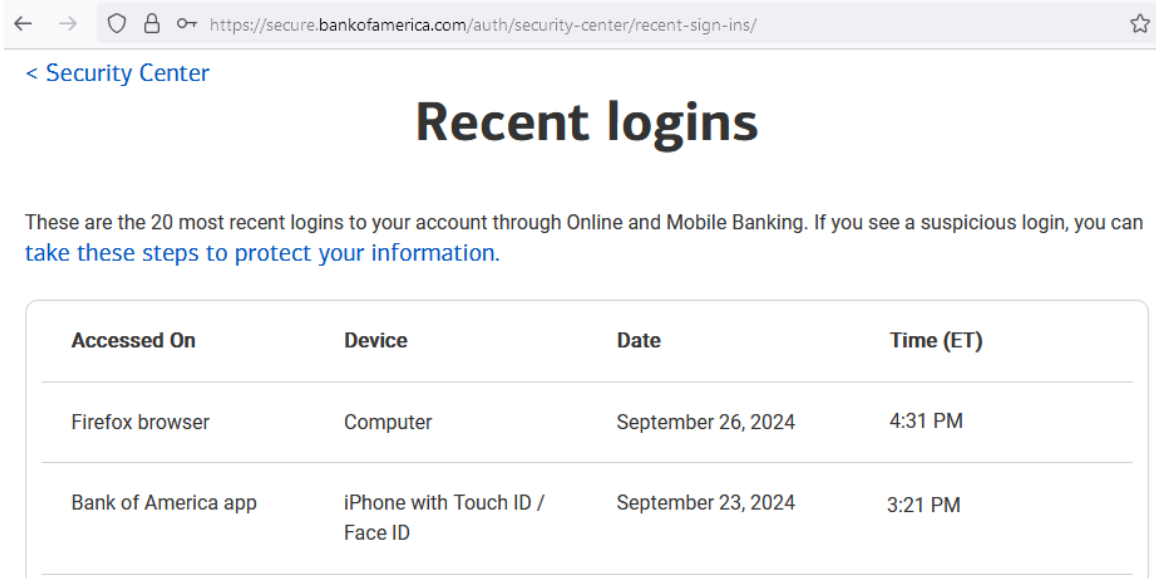


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24. The Accused Products further practice a method of obtaining the session identifier stored in step c., and storing such session identifier within a storage table remote from the client machine if such client machine was verified in step d. Upon information and belief, the Bank of America Web Application is an extension or related to a remote Bank of America storage table

⁴ <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/touch-id/>

storing session identifier(s).



25. The Accused Products further practice a method of transmitting a request by the client machine for access to data maintained on the server computer, such request including the session identifier stored in step c. Upon information and belief, per instructions from Bank of America servers and/or Bank of America computer code, upon successful sign in, the user agent is automatically redirected to the default Bank of America Mobile Application page (a Bank of America “Protected URL”) which invokes one or more HTTP requests. The HTTP request(s) are transmitted by the client machine and such request(s) include session identifier(s) to overcome limitations of the stateless HTTP protocol.

26. The Accused Products further practice a method of comparing the session identifier transmitted in step f. with the session identifier stored in the storage table during step e. to determine whether the request for access transmitted in step f. is authorized. Upon information and belief, Bank of America compares session identifier(s) remotely. For example, when session cookies (which store session identifiers(s)) are deleted from the client machine, the client machine is no longer logged in and no longer able to access Bank of America “Protected URLs.” Further,

Bank of America indicates that “[i]f you delete cookies . . . you may be prompted to make selections again.”⁵

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https://business.bofa.com/content/dam/boamlimages/documents/articles/ID19_0760/Cookie_Policy.pdf

Close

Privacy

Cookie Policy

Last updated August 25, 2023

This Cookie Policy ("Policy") applies to Bank of America legal entities that utilize the brand names Bank of America, Merrill, or BofA Securities as well as the following entities: Managed Account Advisors LLC and BAL Investment & Advisory, Inc., ("Company", "we", "us" or "our"). This Policy explains how we use cookies and similar tracking technologies when a user interacts with us online through our websites, mobile applications and digital services (collectively, "Sites and Mobile Apps").

Introduction

We have developed this Policy to: (1) provide you with general information on cookies and other tracking technologies which we will refer to as "cookies"; (2) identify the specific purposes for processing personal data collected from or by the cookies set on our Sites and Mobile Apps; (3) explain if and how you can manage cookies settings on our Sites and Mobile Apps; and (4) inform you about the retention period for personal data collected through our Sites and Mobile Apps.

This Policy should be read in conjunction with other relevant privacy and data protection notices provided by Bank of America for your jurisdiction. Please refer to these notices for additional information about our privacy practices applicable to your product or service, including but not limited to our customers, financial professionals, associates and contractors:

- Our [U.S. Privacy](#) page includes notices applicable to Consumers and residents such as the [U.S. Online Privacy Notice](#) and [Employee and Contractor Data Protection Notices](#); and
- Our [Global Privacy Notice](#) page supports our Corporate or Institutional clients including our [Digital Privacy Notice](#).

Cookies

A cookie is a small file containing certain pieces of data that is created and stored when you visit a website using a computer or mobile device. When you visit a website, a cookie may be used to track the activities of your browser and provide you with a more consistent, efficient online experience.

We may collect certain information about you through our use of cookies, software development kits (SDKs) and other tracking technologies when you use our Sites and Mobile Apps. For example, we identify and store the region where you are located based on your partially masked IP address (which is anonymized immediately thereafter) to direct you to the appropriate jurisdiction-specific webpage.

Categories of Cookies

Below is a list of the types of cookies and tracking technologies used on one or more of our Sites and Mobile Apps.

Category	Description	Common examples
Strictly Necessary	These cookies are necessary for the website to function and cannot be switched off in our systems. They may be in response to actions made by you that amount to a request for services, such as setting your privacy preferences.	<ul style="list-style-type: none"> • Cookies that if disabled prevent the Sites and Mobile Apps from functioning • Load balancing to distribute network traffic across different servers • Keeping users logged in while navigating the website using session cookies
Performance	Performance or analytical cookies enable us to measure and improve the performance of our Sites and Mobile Apps. None of this information can be used to identify a specific user.	<ul style="list-style-type: none"> • Collecting aggregated and anonymized data to improve functionality and features • Measuring the number of unique visitors • Enabling voice-to-text chat functionality • Tracking tags that log how visitors use a website or app
Preference	Preference cookies enable Sites and Mobile Apps to provide enhanced functionality and personalization by allowing us to remember choices you make. Where a jurisdiction's Data Protection Authority has issued guidance that prohibits the use of Google Analytics, Google Analytics cookies will not be loaded, nor can be accepted, when the system identifies a user accessing our Sites and Mobile Apps with an IP address from that jurisdiction.	<ul style="list-style-type: none"> • Remembering choices from a previous visit or session • Setting preferences such as privacy, language, font, text size and text prefills • Watching a video or commenting on a blog • Live chat functionality when engaged by the user, including voice to text • Geolocation, which allows us to determine your location at the time of a location request; this information is not retained after the session ends

Advertising	<p>Advertising cookies and technologies are used to deliver advertisements that may be relevant to you and your interests. Some of our online services also use small, encoded images such as tags and pixels. This information may be shared with other organizations such as advertisers.</p> <p>We present tailored ads to you:</p> <ul style="list-style-type: none"> • On our Sites and Mobile Apps through ads that appear as you sign on or off your online accounts. • In offline channels such as financial centers, call centers, and through direct marketing (for example email, mail, phone). • On third-party websites and mobile apps not affiliated with Bank of America. 	<ul style="list-style-type: none"> • Marketing pixels that gather information about visitors on a website, including browsing behavior and types of ads clicked • Advertising partners use cookies to remember that you have visited a site • Tracking online activity for more relevant advertising including limiting the number of times you see an advertisement • Measuring the effectiveness of an advertising campaign • Interacting with social media platforms
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Close

Privacy

Software Development Kits ("SDK")	A software development kit (SDK) is a mobile-specific set of tools that provides a developer with the ability to build a custom app which can be added on, or connected, to another program. SDK packages are used to deliver similar technologies like cookies within the mobile experience.	Types of SDKs <ul style="list-style-type: none"> • Java development kit (JDK) • Windows 7 SDK • the MacOS X SDK • iPhone SDK
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Managing Cookies

We comply with local jurisdiction requirements and may disable some of the cookie technologies or you may have the ability to opt in or opt out of certain cookie types through a consent banner. Our consent banner will look different or may not be available depending on the jurisdiction from which you visit our Sites and Mobile Apps. If you delete cookies, access our Sites and Mobile Apps from a different device or change web browsers, you may be prompted to make your selections again.

Bank of America participates in the Digital Advertising Alliance ("DAA") self-regulatory Principles for Online Behavioral Advertising and uses the Advertising Options Icon on our behavioral ads on non-affiliated third-party sites (excluding ads appearing on platforms that do not accept the icon). Ads served on our behalf by these companies do not contain unencrypted personal information and we limit the use of personal information by companies that serve our ads. To learn more about ad choices, or to opt out of interest-based advertising with non-affiliated third-party sites, visit [Your Ad Choices](#) powered by the Digital Advertising Alliance or through the [Network Advertising Initiative's Opt-Out Tool](#). You may also visit the individual sites for additional information on their data and privacy practices and opt-out options.

When we contract with a third-party provider to manage the content of the information within our Sites and Mobile Apps, third-party providers are required by contract to only use your information for the purposes specified by us and to use reasonable measures to keep your information secure and confidential. If you leave one of our Sites or Mobile Apps, you will be presented with a notice that you are continuing to a site that we do not own. The third-party provider is solely responsible for cookies, cookie tracking and your choices for managing cookies on their site.

Data Transfer

Personal data of users who visit our Sites and Mobile Apps and/or use our services may be transferred or processed in any jurisdiction where we have facilities or in which we engage service providers, including the United States. Any such transfer shall be undertaken in accordance with applicable data protection law and our privacy notices.

Retention

Cookies have a duration period. Some cookies are temporary (session cookies), while others may stay on your browser until you delete them manually or until your browser deletes them based on the duration set within the cookie (persistent cookie).

We will retain personal information collected through cookies for as long as needed or permitted considering the purpose(s) for which it was obtained. The criteria used to determine our retention periods includes the purpose for which the personal data was collected, whether there is a legal obligation to which we are subject and whether retention is advisable considering our legal position (such as regarding applicable statutes of limitations, litigation, or regulatory investigations).

This Cookie Policy is subject to change from time to time. When we make changes, we will post the revised Policy on this page with a new "Last Updated" date.

27. The Accused Products further practice a method of permitting access by the client machine to the requested data maintained on the server computer if the comparison made in step g. shows that the request for access is authorized, and denying access by the client machine to the requested data maintained on the server computer if the comparison made in step g. shows that the request for access is not authorized. Upon information and belief, if the client machine is signed in, access to data maintained on Bank of America servers(s) is authorized by Bank of America. If

the client machine is not signed in, access to data maintained on Bank of America servers(s) is denied by Bank of America.

28. Bank of America indirectly infringes one or more claims of the '262 Patent by knowingly and intentionally inducing others, including Bank of America customers and end-users of the Accused Products and products that include the Accused Products, to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States products that include infringing technology, such as the Bank of America Web and Mobile Applications.

29. Bank of America has indirectly infringed one or more claims of the '262 Patent, as provided by 35 U.S.C. § 271(b), by inducing infringement by others, such as Bank of America's customers and end-users, in this District and elsewhere in the United States. For example, Bank of America's customers and end-users directly infringe, either literally or under the doctrine of equivalents, through their use of the inventions claimed in the '262 Patent. Bank of America induces this direct infringement through its affirmative acts of manufacturing, selling, distributing, and/or otherwise making available the Accused Products, and providing instructions, documentation, and other information to customers and end-users suggesting that they use the Accused Products in an infringing manner, including technical support, marketing, product manuals, advertisements, and online documentation. Because of Bank of America's inducement, Bank of America's customers and end-users use the Accused Products in a way Bank of America intends and directly infringe the '262 Patent. Bank of America performs these affirmative acts with knowledge of the '262 Patent and with the intent, or willful blindness, that the induced acts directly infringe the '262 Patent.

30. Bank of America has indirectly infringed one or more claims of the '262 Patent, as provided by 35 U.S.C. § 271(c), by contributing to direct infringement by others, such as customers and end-users, in this District and elsewhere in the United States. Bank of America's affirmative acts of selling and offering to sell the Accused Products in this District and elsewhere in the United States and causing the Accused Products to be manufactured, used, sold and offered for sale contributes to others' use and manufacture of the Accused Products, such that the '262 Patent is directly infringed by others. The accused components within the Accused Products are material to the invention of the '262 Patent, are not staple articles or commodities of commerce, have no substantial non-infringing uses, and are known by Bank of America to be especially made or adapted for use in the infringement of the '262 Patent. Bank of America performs these affirmative acts with knowledge of the '262 Patent and with intent, or willful blindness, that they cause the direct infringement of the '262 Patent.

31. BrowserKey has suffered damages as a result of Defendant's direct and indirect infringement of the '262 Patent in an amount to be proved at trial.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, BrowserKey prays for relief against Bank of America as follows:

- a. Entry of judgment declaring that Bank of America has directly and/or indirectly infringed one or more claims of the '262 Patent;
- b. Entry of judgment declaring that Bank of America's infringement of the '262 Patent is willful;

- c. An order awarding damages sufficient to compensate BrowserKey for Defendant's infringement of the '262 Patent, but in no event less than a reasonable royalty, together with pre-judgment and post-judgment interest and costs;
- d. Entry of judgment declaring that this case is exceptional and awarding BrowserKey its costs and reasonable attorneys' fees under 35 U.S.C. § 285;
- e. An accounting for acts of infringement;
- f. Such other equitable relief which may be requested and to which the Plaintiff is entitled; and
- g. Such other and further relief as the Court deems just and proper.

Dated: October 2, 2024

Respectfully submitted,

/s/ Vincent J. Rubino, III

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