

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

ALEXSAM, INC.	)	
	)	
<i>Plaintiff,</i>	)	CASE NO. 2:08-CV-15
	)	
v.	)	MAGISTRATE JUDGE EVERINGHAM
	)	
PIER 1 IMPORTS, INC	)	<b>JURY TRIAL DEMANDED</b>
	)	
<i>Defendant.</i>	)	

**SECOND AMENDED COMPLAINT**

Plaintiff Alexsam, Inc. (“Alexsam”) complains against Defendant Pier 1 Imports, Inc. (“Pier 1”), as follows:

**NATURE OF ACTION**

This is an action for patent infringement pursuant to 35 U.S.C. § 271. Alexsam’s patented technology relates to stored value card programs, such as electronic gift card programs, and provides systems and methods for performing card activation, recharge and other card authorization transactions using retail point-of-sale devices, intermediate networks and processors, and card processing hub platforms. The patented technology enables stored value card system operators to provide stored value cards for sale and to enable card authorization transactions to be performed at selected retail locations. Defendant manages, controls, uses, and obtains benefits from stored value card program in which stored value cards are sold to consumers at various retail locations and card activation and/or recharge transactions are initiated by retail point-of-sale devices using systems and methods which infringe the patented technology.

**THE PARTIES**

1. Alexsam is a corporation organized and existing under the laws of the State of Texas. Alexsam is in the business of licensing its patented technology, has pursued numerous patent infringement actions against various other parties in this District, and is presently a party to pending patent infringement actions venued in this District.

2. On information and belief, Pier 1 is a corporation organized and existing under the laws of the State of Delaware, has a principal place of business at 100 Pier 1 Place, Fort Worth, Texas 76102, has designated its registered agent in Texas for purposes of service of process as Prentice-Hall Corp. System Inc., 701 Brazos Street, Suite 1050, Austin, Texas 78701, and is doing business in this judicial district. Pier 1, by itself, and/or through one or more entities owned, controlled or otherwise affiliated with Pier 1, conducts business in and is doing business in Texas and in this District and elsewhere in the United States, including, without limitation, promoting, offering to sell and selling products and services to consumers in this District through the interactive website [http:// www.Pier1.com/](http://www.Pier1.com/) and through its own retail stores located in this District. The business activities of Pier 1 also include promoting, offering to sell and selling branded stored value cards through its interactive website, at its own retail stores and at third-party retail stores located in this District, managing stored value card programs with respect to consumers in this District and enabling consumers to use such cards to make purchases at retail stores located in this District. Pier 1 is registered to do business in Texas and has a designated registered agent in Texas for purposes of service of process.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code.

4. Subject-matter jurisdiction over Alexsam's claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, Defendant has solicited business in the State of Texas, transacted business within the State of Texas and attempted to derive financial benefit from residents of the State of Texas, including benefits directly related to the instant patent infringement cause of action set forth herein.

6. On information and belief, Defendant has placed its products and services into the stream of commerce throughout the United States and is actively engaged in transacting business in Texas and in the Eastern District of Texas.

7. Defendant, either alone or in conjunction with others, has committed acts of infringement within this judicial district, has induced others to commit acts of infringement within this judicial district, and/or has contributed to infringing activities within this judicial district.

8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because Defendant is subject to personal jurisdiction in this District, resides in, has regularly conducted business in this District and/or has committed acts of patent infringement in this District.

**FIRST CAUSE OF ACTION – INFRINGEMENT OF '608 PATENT**

9. Plaintiff hereby repeats and re-alleges the allegations contained in paragraphs 1 to 10, as if fully set forth herein.

10. On December 14, 1999, U.S. Patent No. 6,000,608 ("the '608 patent"), entitled "Multifunction Card System," a copy of which is attached hereto as Exhibit A, was duly and legally issued to the inventor, Robert E. Dorf. Mr. Dorf has assigned all right, title and interest

in the '608 patent to Alexsam, including the right to sue for and recover all past, present and future damages for infringement of the '608 patent.

11. Pier 1 and/or through its subsidiaries, affiliates, agents, and/or business partners, has in the past and continue to directly infringe the '608 patent pursuant to 35 U.S.C. § 271(a) by making, having made, using, selling and/or offering to sell stored value cards and related services, and by making and using systems and methods for conducting associated stored value card authorization transactions which are covered by the '608 patent within the United States and within this District. Defendant has been and is engaged in direct infringing activities with regard to at least stored value cards having a unique identification number comprising a bank identification number ("BIN") that can be redeemed at one or more of Pier 1 stores ("Pier 1 Cards").

12. Defendant has made and used and continues to make and use infringing card systems, and has practiced and continue to practice infringing methods by at least one or more of: (i) choosing and authorizing selected retail locations to initiate Pier 1 Card activation and/or recharge transactions that use point-of-sale devices on Defendant's behalf; (ii) supplying, offering for sale and selling Pier 1 Cards at such authorized retail locations, which cards have a unique identification number comprising a BIN and must be activated and/or recharged at a point-of-sale device of the retailer; (iii) dictating terms and conditions upon Pier 1 customers by which Defendant retains ownership of funds received from purchases of Pier 1 Cards, remain liable for the balance of the accounts associated with such cards and the customers are directed how and where to redeem value; (iv) dictating the manner by which Pier 1 Cards must be activated and informing customers that such cards have no value unless activated at the checkout counter; (v) directing via contract providers for distribution, transaction processing services,

connectivity and integration (“intermediate processors”) which enable activation and/or recharge authorization transactions to be initiated at point-of-sale locations and associated with corresponding card accounts hosted on a card processing platform on Defendant’s behalf; and/or (vi) directing via contract a card processing platform such that card activation and/or recharge authorization transactions initiated at third-party retailer point-of-sale devices are routed via the selected intermediate processors to and from the selected processing platform, with such processing platform providing processing of card authorization transactions and management of accounts associated with such Pier 1 Cards.

13. Defendant has placed infringing card systems into action or service, exercise control over the systems and obtain beneficial use of the infringing systems, and are thus liable for direct infringement under 35 U.S.C. § 271(a) based on making and using systems covered by the ‘608 patent. Defendant is further liable for direct infringement of systems and methods covered by the ‘608 patent because the Defendant makes, uses, practices, directs and controls the accused card systems and methods, including any components and steps thereof which may be provided by third-parties, such as retailers, intermediate processors and processing platforms, on behalf of, according to the requirements of and subject to Defendant’s control, such that Defendant is jointly and severally and/or vicariously liable for the components and acts provided by such third-parties on Defendant’s behalf.

14. Plaintiff pleads in the alternative that Defendant, and/or through its subsidiaries, affiliates, agents, and/or business partners, has contributed to and continue to contribute to the direct infringement of the ‘608 patent pursuant to 35 U.S.C. § 271(c) at least by providing, selling and/or offering to sell Pier 1 Cards having a unique identification number comprising a BIN through intermediate processors and third-party retailers as a material component of card

systems covered by the '608 patent and for use by intermediate processors in practicing methods and making and using systems covered by the '608 patent, knowing that such cards are especially made or especially adapted for use in infringing the '608 patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use.

15. Plaintiff further pleads in the alternative that Defendant, and/or through its subsidiaries, affiliates, agents, and/or business partners, has induced and continue to induce the direct infringement of the '608 patent pursuant to 35 U.S.C. § 271(b) at least by one or more of: (i) supplying, offering for sale and selling Pier 1 Cards at such authorized retail locations, which cards have a unique identification number comprising a BIN and must be activated and/or recharged at a point-of-sale device of the retailer; (ii) dictating terms and conditions upon Pier 1 customers by which Defendant retains ownership of funds received from purchases of Pier 1 Cards, remain liable for the balance of the accounts associated with such cards and the customers are directed how and where to redeem value; (iii) dictating the manner by which the Pier 1 Cards must be activated and informing customers that such cards have no value unless activated at the checkout counter; (iv) directing via contract providers for distribution, transaction processing services, connectivity and integration ("intermediate processors") which enable activation and/or recharge authorization transactions to be initiated at point-of-sale locations and associated with corresponding card accounts hosted on a card processing platform on Defendant's behalf; (v) directing via contract a card processing platform such that card activation and/or recharge authorization transactions initiated at third-party retailer point-of-sale devices are routed via the selected intermediate processors to and from the selected processing platform, with such processing platform providing processing of card authorization transactions and management of accounts associated with such Pier 1 Cards; (vi) advertising and promoting such Pier 1 Card

programs; and/or (vii) enabling Pier 1 customers to make purchases using such cards at retail stores owned or controlled by Defendant; all with specific intent to cause and/or encourage such direct infringement of the '608 patent and/or with deliberate indifference of a known risk that such activities would cause and/or encourage direct infringement of the '608 patent.

**SECOND CAUSE OF ACTION – INFRINGEMENT OF '787 PATENT**

16. Plaintiff hereby repeats and re-alleges the allegations contained in paragraphs 1 to 10, as if fully set forth herein.

17. On February 20, 2001, U.S. Patent No. 6,189,787 (“the ‘787 patent”), entitled “Multifunctional Card System,” a copy of which is attached hereto as Exhibit B, was duly and legally issued to the inventor, Robert E. Dorf. Mr. Dorf has assigned all right, title and interest in the ‘787 patent to Alexsam, including the right to sue for and recover all past, present and future damages for infringement of the ‘787 patent.

18. Defendant, and/or through its subsidiaries, affiliates, agents, and/or business partners, has in the past and continue to directly infringe the ‘787 patent pursuant to 35 U.S.C. § 271(a) by making, having made, using, selling and/or offering to sell stored value cards and related services, and by making and using systems and methods for conducting associated stored value card authorization transactions which are covered by the ‘787 patent within the United States and within this District. Defendant has been and is engaged in direct infringing activities with regard to at least stored value cards having a unique identification number comprising a BIN that can be redeemed at one or more of Pier 1 stores (“Pier 1 Cards”).

19. Defendant has made and used and continues to make and use infringing card systems, and has practiced and continues to practice infringing methods by at least one or more of: (i) choosing and authorizing selected retail locations to initiate Pier 1 Card activation and/or

recharge transactions that use point-of-sale devices on Defendant's behalf; (ii) supplying, offering for sale and selling Pier 1 Cards at such authorized retail locations, which cards have a unique identification number comprising a BIN and must be activated and/or recharged at a point-of-sale device of the retailer; (iii) dictating terms and conditions upon Pier 1 customers by which Defendant retains ownership of funds received from purchases of Pier 1 Cards, remains liable for the balance of the accounts associated with such cards and the customers are directed how and where to redeem value; (iv) dictating the manner by which Pier 1 Cards must be activated and informing customers that such cards have no value unless activated at the checkout counter; (v) directing via contract providers for distribution, transaction processing services, connectivity and integration ("intermediate processors") which enable activation and/or recharge authorization transactions to be initiated at point-of-sale locations and associated with corresponding card accounts hosted on a card processing platform on Defendant's behalf; and/or (vi) directing via contract a card processing platform such that card activation and/or recharge authorization transactions initiated at third-party retailer point-of-sale devices are routed via the selected intermediate processors to and from the selected processing platform, with such processing platform providing processing of card authorization transactions and management of accounts associated with such Pier 1 Cards.

20. Defendant has placed infringing card systems into action or service, exercise control over the systems and obtain beneficial use of the infringing systems, and is thus liable for direct infringement under 35 U.S.C. § 271(a) based on making and using systems covered by the '787 patent. Defendant is further liable for direct infringement of systems and methods covered by the '787 patent because these Defendant makes, uses, practices, directs and controls the accused card systems and methods, including any components and steps thereof which may be



provided by third-parties, such as retailers, intermediate processors and processing platforms, on behalf of, according to the requirements of and subject to Defendant's control, such that Defendant is jointly and severally and/or vicariously liable for the components and acts provided by such third-parties on Defendant's behalf.

21. Plaintiff pleads in the alternative that Defendant, and/or through its subsidiaries, affiliates, agents, and/or business partners, have contributed to and continue to contribute to the direct infringement of the '787 patent pursuant to 35 U.S.C. § 271(c) at least by providing, selling and/or offering to sell Pier 1 Cards having a unique identification number comprising a BIN through intermediate processors and third-party retailers as a material component of card systems covered by the '787 patent and for use by intermediate processors in practicing methods and making and using systems covered by the '787 patent, knowing that such cards are especially made or especially adapted for use in infringing the '787 patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use.

22. Plaintiff further pleads in the alternative that Defendant, and/or through its subsidiaries, affiliates, agents, and/or business partners, has induced and continues to induce the direct infringement of the '787 patent pursuant to 35 U.S.C. § 271(b) at least by one or more of: (i) supplying, offering for sale and selling Pier 1 Cards at such authorized retail locations, which cards have a unique identification number comprising a BIN and must be activated and/or recharged at a point-of-sale device of the retailer; (ii) dictating terms and conditions upon Pier 1 customers by which Defendant retains ownership of funds received from purchases of Pier 1 Cards, remain liable for the balance of the accounts associated with such cards and the customers are directed how and where to redeem value; (iii) dictating the manner by which the Pier 1 Cards must be activated and informing customers that such cards have no value unless activated at the

checkout counter; (iv) directing via contract providers for distribution, transaction processing services, connectivity and integration (“intermediate processors”) which enable activation and/or recharge authorization transactions to be initiated at point-of-sale locations and associated with corresponding card accounts hosted on a card processing platform on Defendant’s behalf; (v) directing via contract a card processing platform such that card activation and/or recharge authorization transactions initiated at third-party retailer point-of-sale devices are routed via the selected intermediate processors to and from the selected processing platform, with such processing platform providing processing of card authorization transactions and management of accounts associated with such Pier 1 Cards; (vi) advertising and promoting such Pier 1 Card programs; and/or (vii) enabling Pier 1 customers to make purchases using such cards at retail stores owned or controlled by Defendant; all with specific intent to cause and/or encourage such direct infringement of the ‘787 patent and/or with deliberate indifference of a known risk that such activities would cause and/or encourage direct infringement of the ‘787 patent.

23. Defendant’s direct infringement, contributory infringement and/or inducement to infringe the ‘787 patent has injured Alexsam, and Alexsam is entitled to recover damages adequate to compensate for such infringement pursuant to 35 U.S.C. § 284.

24. Unless enjoined by the Court, Defendant will continue to injure Alexsam by directly infringing, contributing to the infringement of and/or inducing the infringement of the ‘787 patent.

**PRAYER FOR RELIEF**

WHEREFORE, Alexsam prays for:

- A. Judgment that the ‘608 and ‘787 patents are each valid, enforceable, and infringed by Defendant;

- B. A preliminary and permanent injunction enjoining Defendant, its officers, agents, servants, employees, subsidiaries and affiliated companies, and those persons acting in active concert or participation therewith, from engaging in the aforesaid unlawful acts of patent infringement;
- C. An award of damages arising out of Defendant's acts of patent infringement, together with pre-judgment and post-judgment interest;
- D. Judgment that the damages so adjudged be trebled in accordance with 35 U.S.C. § 284;
- E. An award of Alexsam's attorneys' fees, costs and expenses incurred in this action in accordance with 35 U.S.C. § 285; and
- F. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Alexsam demands trial by jury of all issues triable of right by a jury.

**RESERVATION OF RIGHTS**

Alexsam's investigation is ongoing, and certain material information remains in the sole possession of Defendant or third parties, which will be obtained via discovery herein. Alexsam expressly reserves the right to amend or supplement the causes of action set forth herein in accordance with Rule 15 of the Federal Rules of Civil Procedure.

Respectfully submitted,

Date: January 21, 2011

s/ Alison Aubry Richards  
Timothy P. Maloney  
Steven C. Schroer  
Alison Aubry Richards  
David A. Gosse  
FITCH, EVEN, TABIN & FLANNERY  
120 South LaSalle Street, Suite 1600  
Chicago, Illinois 60603  
Telephone: (312) 577-7000  
Facsimile: (312) 577-7007

Melissa Richards Smith  
Texas State Bar No. 24001351  
Melissa@gillamsmithlaw.com  
GILLAM & SMITH, L.L.P.  
303 South Washington Avenue  
Marshall, TX 75670  
Telephone: (903) 934-8450  
Facsimile: (903) 934-9257

*Counsel for Plaintiff Alexsam, Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 21st day of January, 2011. Any other counsel of record will be served by first class mail.

s/ Alison Aubry Richards  
Alison Aubry Richards