

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

LEON STAMBLER,

Plaintiff,

v.

INTUIT INC., et al

Defendants.

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CIVIL ACTION NO. 2:10-cv-181

JURY TRIAL DEMANDED

PLAINTIFF'S SECOND AMENDED COMPLAINT

Plaintiff LEON STAMBLER files this Second Amended Complaint against the above-named Defendants, alleging as follows:

I. THE PARTIES

1. Plaintiff LEON STAMBLER ("Stambler") is an individual residing in Parkland, Florida.

2. Defendant DISCOVER FINANCIAL SERVICES is a Delaware corporation with its principal place of business in Riverwoods, Illinois. This Defendant may be served through its counsel of record in this lawsuit.

3. Defendant DISCOVER BANK is a banking subsidiary of DISCOVER FINANCIAL SERVICES chartered under the laws of Delaware with its principal place of business in Greenwood, Delaware. This Defendant may be served through its counsel of record in this lawsuit.

4. Defendant DFS SERVICES LLC is a Delaware limited liability company with its principal place of business in Riverwoods, Illinois. This Defendant may be served through its counsel of record in this lawsuit.

5. Defendant ING BANK, FSB is a federally chartered savings bank with its principal place of business in Wilmington, Delaware. This Defendant may be served through its counsel of record in this lawsuit.

6. Defendant ING DIRECT INVESTING, INC. is a Washington corporation with its principal place of business in Seattle, Washington. This Defendant may be served with process through its agent for service of process Corporation Service Company, 300 Deschutes Way Southwest, Suite 304, Tumwater, WA 98501.

7. Defendant SHAREBUILDER CORPORATION is a Washington corporation with its principal place of business in Seattle, Washington. This Defendant may be served with process through its agent for service of process Corporation Service Company, 300 Deschutes Way Southwest, Suite 304, Tumwater, WA 98501.

8. Defendant INTERNATIONAL BANCSHARES CORPORATION is a Texas corporation with its principal place of business in Laredo, Texas. This Defendant may be served through its counsel of record in this lawsuit.

9. Defendant INTERNATIONAL BANK OF COMMERCE is a banking subsidiary of INTERNATIONAL BANCSHARES CORPORATION chartered under the laws of Texas with its principal place of business in Laredo, Texas. This Defendant may be served through its counsel of record in this lawsuit.

10. Defendant ONLINE RESOURCES CORPORATION is a Delaware corporation with its principal place of business in Chantilly, Virginia. This Defendant may be served through its counsel of record in this lawsuit.

11. Defendant S1 CORPORATION is a Delaware corporation with its principal place of business in Norcross, Georgia. This Defendant may be served through its counsel of record in this lawsuit.

12. Defendant S1, INC. is a Kentucky corporation with its principal place of business in Norcross, Georgia. This Defendant may be served through its counsel of record in this lawsuit.

13. Defendant TD AMERITRADE HOLDING CORPORATION is a Delaware corporation with its principal place of business in Omaha, Nebraska. This Defendant may be served through its counsel of record in this lawsuit.

14. Defendant TD AMERITRADE, INC. is a New York corporation with its principal place of business in Omaha, Nebraska. This Defendant may be served through its counsel of record in this lawsuit.

15. Defendant UNIONBANCAL CORPORATION is a Delaware corporation with its principal place of business in San Francisco, California. This Defendant may be served through its counsel of record in this lawsuit.

16. Defendant UNION BANK, N.A. is a banking subsidiary of UNIONBANCAL CORPORATION chartered under the laws of the United States with its principal place of business in San Francisco, California. This Defendant may be served through its counsel of record in this lawsuit.

17. Defendant THE VANGUARD GROUP, INC. is a Pennsylvania corporation with its principal place of business in Malvern, Pennsylvania. This Defendant may be served through its counsel of record in this lawsuit.

II. JURISDICTION AND VENUE

18. This is an action for infringement of two United States patents arising under 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction of this action under Title 28 U.S.C. §1331 and §1338(a).

19. The Court has personal jurisdiction over each Defendant, and venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b). Each Defendant has substantial contacts with the forum as a result of conducting business within the State of Texas and within this District. Upon information and belief, each Defendant regularly solicits business in the State of Texas and in this District, and derives substantial revenue from products and/or services provided to individuals residing in the State of Texas and in this District. In addition, each Defendant conducts business relating to secure online banking, including online bill pay, with and for customers residing in this District. Specifically, each Defendant provides these services directly to consumers in this District through its own interactive website(s) (e.g., www.discoverbank.com) and/or indirectly to consumers in this District through the provision of products and services to financial institutions who serve consumers in this District. Through the provisions of these products and/or services, each Defendant has committed and continues to commit acts of patent infringement in the State of Texas and in this District.

III. PATENT INFRINGEMENT

20. On August 11, 1998, United States Patent No. 5,793,302 (“the ‘302 patent”) was duly and legally issued for a “Method for Securing Information Relevant to a Transaction.” A true and correct copy of the ‘302 patent is attached hereto as Exhibit “A.” On October 26, 1999, United States Patent No. 5,974,148 (“the ‘148 patent”) was duly and legally issued for a “Method for Securing Information Relevant to a Transaction.” A true and correct copy of the ‘148 patent is attached hereto as Exhibit “B.” (The ‘302 and ‘148 patents are collectively referred to herein as “the patents-in-suit”). Stambler is the inventor and owner of all rights, title, and interest in and to the patents-in-suit and possesses all rights of recovery under them.

21. Defendants DISCOVER FINANCIAL SERVICES, DISCOVER BANK, and DFS SERVICES LLC (together “DISCOVER”) have infringed and continue to infringe, directly,

contributorily, and/or through the inducement of others, the claimed methods of the patents-in-suit. For example, Defendant DISCOVER directly and/or contributorily infringes claims 7, 41 and 47 of the '302 patent by providing secure online banking products and/or services that allow payments or funds transfers (e.g., Discover Bank Online Savings and Discover Card Pay Bills Online) and by providing products, services, and/or processes that allow encrypted communications between Defendant and its customers and/or devices (e.g., Discover Bank Online Savings and Discover Card Pay Bills Online). And, for example, Defendant DISCOVER induces its customers' infringement of claims 28, 34, and 35 of the '148 patent as evidenced by the customers' use of Defendant's secure online banking products and/or services that allow such customers to initiate payments and/or funds transfers (e.g., Discover Bank Online Savings and Discover Card Pay Bills Online).

22. Defendants ING BANK, FSB, ING DIRECT INVESTING, INC., and SHAREBUILDER CORPORATION (together "ING") have infringed and continue to infringe, directly, contributorily, and/or through the inducement of others, the claimed methods of the patents-in-suit. For example, Defendant ING directly and/or contributorily infringes claims 7, 41 and 47 of the '302 patent by providing secure online banking products and/or services that allow payments or funds transfers (e.g., ING Direct Electric Orange Checking) and by providing products, services, and/or processes that allow encrypted communications between Defendant and its customers and/or devices (e.g., ING Direct Electric Orange Checking). And, for example, Defendant ING induces its customers' infringement of claims 28, 34, and 35 of the '148 patent as evidenced by the customers' use of Defendant's secure online banking products and/or services that allow such customers to initiate payments and/or funds transfers (e.g., ING Direct Electric Orange Checking).

23. Defendants INTERNATIONAL BANCSHARES CORPORATION and INTERNATIONAL BANK OF COMMERCE (together “INTERNATIONAL BANK”) have infringed and continue to infringe, directly, contributorily, and/or through the inducement of others, the claimed methods of the patents-in-suit. For example, Defendant INTERNATIONAL BANK directly and/or contributorily infringes claims 7, 41 and 47 of the ‘302 patent by providing secure online banking products and/or services that allow payments or funds transfers (e.g., IBC Bank Online) and by providing products, services, and/or processes that allow encrypted communications between Defendant and its customers and/or devices (e.g., IBC Bank Online). And, for example, Defendant INTERNATIONAL BANK induces its customers’ infringement of claims 28, 34, and 35 of the ‘148 patent as evidenced by the customers’ use of Defendant’s secure online banking products and/or services that allow such customers to initiate payments and/or funds transfers (e.g., IBC Bank Online).

24. Defendant ONLINE RESOURCES CORPORATION has infringed and continues to infringe, directly, contributorily, and/or through the inducement of others, the claimed methods of the patents-in-suit. For example, Defendant ONLINE RESOURCES CORPORATION directly and/or contributorily infringes claims 7, 41 and 47 of the ‘302 patent by providing secure online banking products and/or services that allow payments or funds transfers (e.g., Online Resources Online Banking) and by providing products, services, and/or processes that allow encrypted communications between users and/or devices (e.g., Online Resources Online Banking). And, for example, Defendant ONLINE RESOURCES CORPORATION induces infringement of claims 28, 34, and 35 of the ‘148 patent as evidenced by customers’ use of Defendant’s secure online banking products and/or services that allow such customers to initiate payments and/or funds transfers (e.g., Online Resources Online Banking).

25. Defendants S1 CORPORATION and S1, INC. (together “S1”) have infringed and continue to infringe, directly, contributorily, and/or through the inducement of others, the claimed methods of the patents-in-suit. For example, Defendant S1 directly and/or contributorily infringes claims 7, 41 and 47 of the ‘302 patent by providing secure online banking products and/or services that allow payments or funds transfers (e.g., S1 Consumer Online Banking) and by providing products, services, and/or processes that allow encrypted communications between users and/or devices (e.g., S1 Consumer Online Banking). And, for example, Defendant S1 induces infringement of claims 28, 34, and 35 of the ‘148 patent as evidenced by customers’ use of Defendant’s secure online banking products and/or services that allow such customers to initiate payments and/or funds transfers (e.g., S1 Consumer Online Banking).

26. Defendants TD AMERITRADE HOLDING CORPORATION and TD AMERITRADE, INC. (together “TD AMERITRADE”) have infringed and continue to infringe, directly, contributorily, and/or through the inducement of others, the claimed methods of the patents-in-suit. For example, Defendant TD AMERITRADE directly and/or contributorily infringes claims 7, 41 and 47 of the ‘302 patent by providing secure online banking products and/or services that allow payments or funds transfers (e.g., TD Ameritrade account funding) and by providing products, services, and/or processes that allow encrypted communications between Defendant and its customers and/or devices (e.g., TD Ameritrade account funding). And, for example, Defendant TD AMERITRADE induces its customers’ infringement of claims 28, 34, and 35 of the ‘148 patent as evidenced by the customers’ use of Defendant’s secure online banking products and/or services that allow such customers to initiate payments and/or funds transfers (e.g., TD Ameritrade account funding). Defendant TD AMERITRADE’s infringing activities, as a result of having been previously provided written notice of the patents-in-suit, have been and continue to be willful.

27. Defendants UNIONBANCAL CORPORATION and UNION BANK, N.A. (together “UNION BANK”) have infringed and continue to infringe, directly, contributorily, and/or through the inducement of others, the claimed methods of the patents-in-suit. On information and belief, Defendant UNION BANK has been and now is directly infringing at least claims 41 and 47 of the ‘302 patent by performing secure online banking transactions, including accepting and processing payments and/or funds transfers initiated using Defendant’s secure online banking products and/or services (e.g., Union Bank Personal Online Banking and other funds transfer services accessible through UNION BANK’s interactive online website(s) (e.g., www.unionbank.com)) and claim 7 of the ‘302 patent by engaging in encrypted communications between computers or other devices owned by Defendant. And, on information and belief, Defendant UNION BANK has been and now is: 1) inducing and/or contributing to its customers’ direct infringement of at least claims 28, 34, and 35 of the ‘148 patent by its customers’ use of Defendant’s secure online banking products and/or services that allow such customers to securely initiate payments and/or funds transfers (e.g., Union Bank Personal Online Banking and other services accessible through UNION BANK’s interactive online website(s) (e.g., www.unionbank.com)); and 2) inducing and/or contributing to its customers’ direct infringement of claim 7 of the ‘302 patent by its customers’ use of Defendant’s products, services, and/or processes that allow secure communications between Defendant and its customers (e.g., Union Bank Personal Online Banking and other services accessible through UNION BANK’s interactive online website(s) (e.g., www.unionbank.com)). Defendant UNION BANK’s infringing activities, as a result of having been previously provided written notice of the patents-in-suit, have been and continue to be willful.

28. Defendant THE VANGUARD GROUP, INC. has infringed and continues to infringe, directly, contributorily, and/or through the inducement of others, the claimed methods

of the patents-in-suit. For example, Defendant THE VANGUARD GROUP, INC. directly and/or contributorily infringes claims 7, 41 and 47 of the '302 patent by providing secure online banking products and/or services that allow payments or funds transfers (e.g., account funding and account transfers via personal.vanguard.com) and by providing products, services, and/or processes that allow encrypted communications between Defendant and its customers and/or devices (e.g., account funding and account transfers via personal.vanguard.com). And, for example, Defendant THE VANGUARD GROUP, INC. induces its customers' infringement of claims 28, 34, and 35 of the '148 patent as evidenced by the customers' use of Defendant's secure online banking products and/or services that allow such customers to initiate payments and/or funds transfers (e.g., account funding and account transfers via personal.vanguard.com). Defendant THE VANGUARD GROUP's infringing activities, as a result of having been previously provided written notice of the patents-in-suit, have been and continue to be willful.

29. Stambler has been damaged as a result of Defendants' infringing conduct. Defendants are, thus, liable to Stambler in an amount that adequately compensates him for their infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

IV. JURY DEMAND

Stambler hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

V. PRAYER FOR RELIEF

Stambler requests that the Court find in his favor and against Defendants, and that the Court grant Stambler the following relief:

- a. Judgment that one or more claims of United States Patent Nos. 5,793,302 and 5,974,148 have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement

Defendants have contributed and/or by others whose infringement has been induced by Defendants;

- b. Judgment that Defendants account for and pay to Stambler all damages to and costs incurred by Stambler because of Defendants' infringing activities and other conduct complained of herein;
- c. Judgment that Defendants account for and pay to Stambler a reasonable, on-going, post judgment royalty because of Defendants' infringing activities and other conduct complained of herein;
- d. That Defendants' infringements be found to be willful from the time that Defendants became aware of the infringing nature of their respective products and services, which is the time of filing of Plaintiff's Original Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- e. That Stambler be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- f. That this Court declare this an exceptional case and award Stambler his reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- g. That Stambler be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: April 29, 2010.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2011, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Marshall Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Brent N. Bumgardner