

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**VIRGINIA E-COMMERCE SOLUTIONS,  
LLC,**

Plaintiff,

v.

**EBAY, INC. and  
PAYPAL, INC.**

Defendants.

**Case No. 1:10-CV-1229 LMB IDD**

**PATENT CASE**

**JURY TRIAL DEMANDED**

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**SECOND AMENDED COMPLAINT**

Pursuant to the Court's Order, Virginia E-Commerce Solutions, LLC, ("Virginia E-Commerce") files this Second Amended Complaint against eBay, Inc. ("eBay") and PayPal, Inc. ("PayPal") (collectively "Defendants") for infringement of United States Patent No. RE 40,753 E (hereinafter also referred to as "the '753 patent"), which is a reissue of United States Patent No. 6,618,705. A copy of the '753 patent is attached as Exhibit 1. A claim chart that establishes infringement by eBay and PayPal is attached as Exhibit 2.

**JURISDICTION**

1. This is an action for patent infringement under Title 35 of the United States Code. Virginia E-Commerce is seeking injunctive relief as well as damages.
2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States' patent statutes, 35 U.S.C. §101 *et seq.*

3. Venue is proper under 28 U.S.C. §§ 1391(c) and 1400(b) because Defendants have committed acts of infringement in this district and division and are deemed to reside in this district and division.

4. Virginia E-Commerce is a Virginia limited liability corporation with its principal place of business in this judicial district and in this division, in Arlington, Virginia.

5. Defendant eBay is a Delaware corporation with its principal place of business in San Jose, California. This Court has personal jurisdiction over eBay and venue is proper in this district and division because eBay has committed, and continues to commit, acts of infringement in the Commonwealth of Virginia, including in this district and division and has engaged in continuous and systematic activities in the Commonwealth of Virginia, including in this district and division.

6. Defendant PayPal is a Delaware corporation with its principal place of business in San Jose, California. This Court has personal jurisdiction over PayPal and venue is proper in this district and division because PayPal has committed, and continues to commit, acts of infringement in the Commonwealth of Virginia, including in this district and division and has engaged in continuous and systematic activities in the Commonwealth of Virginia, including this district and division.

**BACKGROUND FACTS RELATED TO INFRINGEMENT**

7. Virginia E-Commerce incorporates paragraphs 1 through 6 herein by reference.

8. Virginia E-Commerce is the owner of all right, title and interest in the ‘753 patent with rights to enforce the ‘753 patent and sue infringers.

9. The ‘753 patent, titled “Method and System for Conducting Business in a Transnational E-Commerce Network” is valid, enforceable and was duly issued in full

compliance with Title 35 of the United States Code. According to the abstract of '753 patent: the system provides for a splitting of a merchant server into a Web, DB server and a payment server. The Web, DB server allows for the easy up-dating registration by a merchant of items available for purchase on the website of the Web, DB server. In addition, the '753 patent points out that the invention described therein was designed to provide for safe e-Commerce credit card transactions for a buyer in one nation state purchasing products from a merchant server located either in the same nation state or in a second nation state. '753 patent at col. 2, ll. 9-32.

10. eBay provides a system(s) for supporting online purchasing including, but not limited to, a system and related computer code, whereby (1) eBay provides product/item information for two or more merchants on the www.eBay.com website, and associated websites and server(s) ("Website"), such that the merchants can add items and update information relating to those items on the Website, (2) the Website receives a purchase request from a buyer for a merchant's item(s), (3) the buyer's communication with the Website is switched to communication with a payment server (*e.g.*, PayPal) for the purpose of processing a credit card transaction for the purchase of the item(s), (4) the eBay server(s) receives information from the payment server regarding whether the credit card transaction has been approved, and (5) the Website is updated after receiving confirmation that the credit card transaction has been approved, so the merchant product information on the Website is updated with respect to the purchase ("the eBay System").

11. PayPal, a wholly-owned subsidiary of eBay, operates a system(s), and related computer code, for supporting online buying over the internet whereby PayPal's system(s), receive, store, and/or send online buyers' credit card information to a financial network for transaction processing, including, but not limited to, any PayPal system(s) whereby (1) a buyer's

communication with a merchant's website is shifted to communicate with PayPal's website to submit log-in information, a credit card number, and/or other confidential information to PayPal for the purpose of processing a credit card transaction, (2) PayPal sending the credit card payment information to the financial network to obtain a decision as to whether the credit card transaction is approved, and (3) PayPal submitting to eBay or other merchant the decision of whether the credit card transaction is approved ("the PayPal System").

12. Merchants may communicate with the eBay System to list items for sale and update information about those items.

13. Buyers, who communicate with the eBay System via the eBay.com website, identify a product for purchase and then make a purchase request via eBay's website. After making the purchase request, the buyers are switched to a PayPal System, via PayPal's website, for the secure submission of log-in or other confidential information.

14. PayPal sends credit card payment information to a financial network for payment transaction processing, including communicating with the eBay servers to confirm that a buyer's credit card has accepted for payment.

15. If a buyer's credit card transaction has been accepted, the eBay servers and website are updated with respect to the item that was purchased.

16. PayPal is a wholly owned subsidiary of eBay.

17. By virtue of eBay's ownership of PayPal, eBay directs and controls the actions of PayPal and PayPal consents to such direction and control. PayPal is eBay's agent with respect to PayPal's payment processing services performed on behalf of eBay for eBay's buyers such that the acts of PayPal with respect to any steps in the method claims asserted against eBay may be attributed to eBay. In accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will

likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

18. Examples of such direction and control include: (a) that the domain names eBay.com, PayPal.com, PayPal.net, and Paypal.org, with PayPal's consent, are all controlled by the same domain administrator and administrative and technical contact, namely eBay, Inc.; (b) Upon acquisition of PayPal by eBay, eBay, with PayPal's consent, replaced PayPal's CEO Peter Thiel (one of PayPal's founders) with a eBay's head of international operations, executive Matt Bannick; (c) after eBay acquired PayPal, with PayPal's consent, eBay discontinued PayPal's online gaming business, which was expected to account for 10 percent to 15 percent of PayPal's total revenue in fiscal 2003; (d) on PayPal's website, PayPal describes itself as "PayPal is an eBay company;" (e) on PayPal's payment page, eBay's trademark and logo are displayed such that PayPal is presented to the public as eBay's agent; (f) PayPal is listed in eBay's contacts for customers on eBay's website; (g) most of the pages on PayPal's website provide a link to eBay; (h) users can and are encouraged to link their PayPal and eBay accounts; (i) there is a significant level of interaction between the PayPal.com and eBay.com websites and servers when a buyer seeks to purchase a product on eBay as shown in the purchase example shown in the attached claim chart (Exhibit 2) and (j) PayPal's business revenue and profit is attributable to eBay, as reflected by eBay's financial statements, and PayPal's revenue accounts for almost 40% of eBay's revenue.

19. In order to perform the payment services performed by PayPal on eBay's behalf, that are accused herein, eBay, with PayPal's consent, redirects buyers and customers to PayPal through links on eBay's web pages.

20. In addition, and in the alternative, PayPal is contractually obligated to perform

payment processing services for eBay's buyers on eBay's behalf such that the acts of PayPal with respect to any steps in the method claims asserted against eBay may be attributed to eBay in accord with *Akamai Tech., Inc. v. Limelight Networks, Inc.*, \_\_\_ F.3d\_\_\_, 2010 WL 5151337 (Fed. Cir. 2010). In accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

21. While Virginia E-Commerce has no access to internal eBay and PayPal documents absent discovery, the contractual relationship is supported by the limited public information that was available. For example, historically eBay and PayPal were competitors. Prior to the acquisition of PayPal by eBay, eBay's "eBay Payments by Billpoint" performed eBay's payment services. After the acquisition, eBay Payments by Billpoint was completely phased-out in the first half of 2003. Thereafter, PayPal's performed payment services on eBay's behalf for eBay's buyers in an integrated system. Around the time of the acquisition, eBay and PayPal described a "seamless integration" of PayPal with eBay. eBay provides online payment transaction only through PayPal.

## COUNT I

### INFRINGEMENT OF THE '753 PATENT BY PAYPAL

22. Virginia E-Commerce incorporates paragraphs 1 through 21 herein by reference.

23. Based on the information presently available to Virginia E-Commerce, absent discovery, PayPal has and continues to directly infringe claims 67 and 83 of the '753 patent through PayPal's making, using, offering for sale, selling and practicing the apparatus and method of the claimed invention. Virginia E-Commerce's specific contentions mapping the elements of the asserted claims to PayPal's accused system and practices are shown in the claim

chart attached to this Complaint as Exhibit 2, the disclosure of which is incorporated herein by reference.

24. Virginia E-Commerce contends that PayPal practices each step of the asserted method claim (67), and makes, uses, sells, and/or offers for sale all portions of the asserted apparatus claim (83). In accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

**INDIRECT INFRINGEMENT BY PAYPAL**  
**(Inducing Infringement)**

25. Based on the information presently available to Virginia E-Commerce, absent discovery, in the alternative to direct infringement, Virginia E-Commerce contends that since PayPal has been on notice of the '753 patent, PayPal indirectly infringes claim 83 of the '753 patent by inducing buyers to use the accused apparatus, as shown in the charts attached hereto as Exhibit 2. In accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

26. Since PayPal was on notice of the '753 patent, PayPal knowingly induced infringement of claim 83 of the '753 patent and possessed specific intent to encourage others' infringement.

27. Since PayPal was on notice of the '753 patent, PayPal knew or should have known that its actions alleged herein would induce actual infringement of claim 83 of the '753 patent. While Virginia E-Commerce cannot attest to at this time to PayPal's actual knowledge, in accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

28. PayPal had knowledge of the '753 patent since at least the inception of this action but continues to cause others to use the infringing system and continues to instruct others how to use the accused system in accord with claim 83 of the '753 patent.

29. Since PayPal was on notice of the '753 patent, PayPal intended to cause the acts of others that constitute the direct infringement of the '753 patent. As noted in *Broadcom Corp. v. Qualcomm, Inc.*, 543 F.3d, 683 (Fed. Cir. 2008), this intent can be established through circumstantial evidence. In addition, "this intent may be established where an alleged infringer who 'knew or should have known his actions would induce actual infringement,' is shown to have induced infringing acts through [its] actions." *Broadcom*, 543 F.3d at 699.

30. Since PayPal was on notice of the '753 patent, PayPal knew or should have known that its actions would cause direct infringement by others.

31. PayPal has and continues to indirectly infringe claim 83 of the '753 patent by inducing others including buyers on the eBay System and the PayPal System to infringe in violation of 35 U.S.C. § 271 (b).

32. PayPal has not produced or relied upon an opinion of counsel related to the '753 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

33. PayPal has been on notice of the '753 patent and Virginia E-Commerce's infringement contentions since at least the filing of the lawsuit.

34. PayPal supports the accused system that is used by its customers.

35. PayPal did not make any changes to its accused system or give its customers instructions on how to avoid infringement after the lawsuit was filed. *Broadcom* 543 F.3d, at 700.



36. PayPal has produced no evidence as to any investigation, design around or remedial actions with respect to the '753 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

37. PayPal instructs its customers on using the accused system in a manner this is accused herein to infringe.

**COUNT II**  
**INFRINGEMENT OF THE '753 PATENT BY EBAY**

38. Virginia E-Commerce incorporates paragraphs 1 through 37 herein by reference.

39. Based on the information presently available to Virginia E-Commerce, absent discovery, eBay has and continues to directly infringe claims 17, 24, 25, 30, 35, 36, 55, 58, and 59 of the '753 patent through eBay's making, using, selling, and/or offering to sell the system and methods of the claimed invention. Virginia E-Commerce's specific contentions mapping the elements of the asserted claims to eBay's accused system and practices are shown in the claim charts attached as Exhibit 2, the disclosure of which is incorporated herein by reference.

40. Virginia E-Commerce contends that eBay practices each step of the asserted method claims (17, 24, 25, 55, 59, and 59), and makes, uses, sells, and/or offers for sale all portions of the asserted system claims (30, 35, and 36). In accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

41. To the extent any elements of these asserted claims are construed to require action by PayPal, PayPal's activities in that respect are attributable to eBay in accord with *Akamai Tech. v. Limelight Networks*, 2009-1372 (Fed. Cir. 2010) by virtue of eBay's agency or contractual relationship with PayPal based on the factual allegations above. In accordance with

Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

**INDIRECT INFRINGEMENT BY EBAY**  
**(Inducing Infringement)**

42. Based on the information presently available to Virginia E-Commerce, absent discovery, in the alternative to direct infringement, Virginia E-Commerce contends that eBay indirectly infringes claims 30, 35 and 36 of the '753 patent by inducing buyers to use the accused system, as shown in the charts attached hereto as Exhibit 2.

43. Since eBay was on notice of the '753 patent, eBay knowingly induced infringement of claims 30, 35 and 36 of the '753 patent and possessed specific intent to encourage others' infringement. While Virginia E-Commerce cannot attest to at this time to eBay's actual knowledge, in accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

44. Since eBay was on notice of the '753 patent, eBay knew or should have known that its actions alleged herein would induce actual infringement of claims 30, 35 and 36 of the '753 patent. As noted in *Broadcom Corp. v. Qualcomm, Inc.*, 543 F.3d, 683 (Fed. Cir. 2008), this intent can be established through circumstantial evidence. In addition, "this intent may be established where an alleged infringer who '*knew or should have known* his actions would induce actual infringement,' is shown to have induced infringing acts through [its] actions." *Broadcom* 543 F.3d, at 699.

45. eBay had knowledge of the '753 patent since at least the inception of this action but continues to cause others to use the infringing system and continues to instruct others how to use the accused system in accord with claims 30, 35 and 36 of the '753 patent.

46. Since eBay was on notice of the '753 patent, eBay intended to cause the acts of others that constitute the direct infringement of the '753 patent.

47. Since eBay was on notice of the '753 patent, eBay knew or should have known that its actions would cause direct infringement by others.

48. Since eBay was on notice of the '753 patent, eBay has and continues to indirectly infringe one or more claims of the '753 patent by inducing others, including buyers on the eBay System and the PayPal System, to infringe in violation of 35 U.S.C. § 271 (b).

49. eBay has not produced or relied upon an opinion of counsel related to the '753 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

50. eBay has been on notice of the '753 patent and Virginia E-Commerce's infringement contentions since at least the filing of the lawsuit.

51. eBay supports the accused system that is used by its customers.

52. eBay did not make any changes to its accused system or give its customers instructions on how to avoid infringement after the lawsuit was filed. *Broadcom*, 543 F.3d, at 700.

53. eBay has produced no evidence as to any investigation, design around or remedial actions with respect to the '753 patent. In accordance with Fed. R. Civ. P. 11(b)(3), Virginia E-Commerce will likely have additional evidentiary support after a reasonable opportunity for discovery on this issue.

54. eBay instructs its customers on using the accused system in a manner this is accused herein to infringe.

**ADDITIONAL ALLEGATIONS AGAINST ALL DEFENDANTS**

55. Virginia E-Commerce has complied with 35 U.S.C. § 287.

56. Defendants' actions complained of herein are causing irreparable harm and monetary damage to Virginia E-Commerce and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Virginia E-Commerce asks the Court to:

- a) Enter judgment for Virginia E-Commerce on this Second Amended Complaint;
- b) Enjoin the Defendants, their agents, officers, servants, employees, attorneys, and all persons in active concert or participation with the Defendants who receive notice of the order from further infringement of United States Patent No. RE40,753 E;
- c) Award Virginia E-Commerce damages resulting from Defendants' infringement in accordance with 35 U.S.C. § 284;
- d) Award Virginia E-Commerce an ongoing royalty rate for any Defendants' post-judgment infringement, where applicable;
- e) Award Virginia E-Commerce interest and costs; and
- f) Award Virginia E-Commerce such further relief to which the Court finds Virginia E-Commerce entitled under law or equity.

**DEMAND FOR JURY TRIAL**

Virginia E-Commerce demands a trial by jury on all issues properly triable by jury in this action.

DATED: January 31, 2011

Respectfully submitted,

**HARNES, DICKEY & PIERCE, PLC**

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**CERTIFICATE OF SERVICE**

It is hereby certified that on this 31<sup>st</sup> day of January, 2011, that a copy of the foregoing was served on the following counsel via the Court's Electronic Filing System:

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/s/ Terry L. Clark  
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