

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RAYMOND ANTHONY JOAO and	:	ECF Case
ROBERT RICHARD BOCK,	:	
	:	Civil Action Number
Plaintiffs,	:	03 Civ. 10199 (CM) (MDF)
	:	
-against-	:	<u>SECOND AMENDED COMPLAINT</u>
	:	
SLEEPY HOLLOW BANK and	:	
JACK HENRY & ASSOCIATES, INC.	:	
	:	Jury Trial Demanded
Defendants.	:	
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Plaintiffs Raymond Anthony Joao and Robert Richard Bock, by their attorneys, Fried & Epstein LLP, for their second amended complaint against defendants Sleepy Hollow Bank and Jack Henry & Associates, Inc. allege as follows:

THE PARTIES

1. Plaintiff Raymond Anthony Joao resides at 122 Bellevue Place, Yonkers, New York 10703.
2. Plaintiff Robert Richard Bock resides at 166 Sweetfield Circle, Yonkers, New York 10704.
3. Defendant Sleepy Hollow Bank (the "Bank") is a New York State chartered bank, with its principal place of business at 49 Beekman Avenue, Sleepy Hollow, New York 10591.
4. The Bank transacts business in the state of New York, in the Southern District of New York, and over the Internet, which is substantially and significantly related to Plaintiffs' claims herein.

5. Defendant Jack Henry & Associates, Inc. (“JHA”) is a Delaware corporation, with its principal place of business at 663 West Highway 60, Monett, Missouri 65708.

6. JHA is the third party provider of the Bank’s Internet banking services and the Bank’s website.

7. JHA transacts business in the state of New York, in the Southern District of New York, and over the Internet, which is substantially and significantly related to Plaintiffs’ claims herein.

8. JHA has committed a tortious act within the state of New York and the Southern District of New York.

9. JHA has committed a tortious act without the state of New York that has caused injury to property within the state of New York and within the Southern District of New York, and JHA derives substantial revenue from goods used or services rendered in the state of New York and in the Southern District of New York.

JURISDICTION AND VENUE

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

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) and §1400(b).

FACTUAL ALLEGATIONS

13. On March 4, 2003, United States Patent No 6,529,725 (the “725 patent”), entitled “TRANSACTION SECURITY APPARATUS AND METHOD,” was duly and lawfully issued by the United States Patent and Trademark Office in the names of plaintiffs Raymond Anthony Joao and Robert Richard Bock.

14. Plaintiffs are the owners of all rights, title and interest in and to the 725 patent, a true copy of which is attached as Exhibit A to the amended complaint.

15. The 725 patent issued with 323 apparatus claims and 17 method claims.

16. Some of the claims of the 725 patent are directed to a transaction security apparatus and method for use in conjunction with a checking account, a savings account, and/or an automated teller machine account.

17. The Bank and JHA, as the Bank’s service provider, offer to provide and provide banking services over the Internet.

18. The Bank and JHA, as the Bank’s service provider, operate and maintain an Internet website at <http://www.sleepyhollowbank.com> for the purpose of providing Internet banking services to certain of the Bank’s customers.

19. Some of the Bank’s Internet banking services are described in a brochure, a copy of which is attached as Exhibit B to the amended complaint.

20. The Bank’s Internet banking services include permitting customers with checking accounts to “Place Stop Payments” orders on checks *via* the Bank’s website.

21. The Bank and JHA, as the Bank’s service provider, have infringed and are continuing to infringe one or more of the following Claims: 108, 118, 119, 128, 135, 137, 138, 148, 157, 164, and 166 of the 725 patent by operating and maintaining an

Internet website at <http://www.sleepyhollowbank.com> that permits customers of the Bank with checking accounts to “Place Stop Payments” orders on checks *via* the Bank’s website, all without leave or license granted by Plaintiffs.

22. JHA has infringed and is continuing to infringe the Claims of the 725 patent that are listed in paragraph 21 above by making, using, selling, offering to sell, and/or advertising, without leave or license granted by Plaintiffs, one or more products and/or services to financial institutions, other than the Bank, that permit the customers of those institutions with checking accounts to place stop payments on checks *via* a website or over the Internet.

23. JHA actively has induced and actively is continuing to induce the infringement of the Claims of the 725 patent that are listed in paragraph 21 above by making, using, selling, offering to sell, and/or advertising, without leave or license granted by Plaintiffs, one or more products and/or services to the Bank and other financial institutions that permit their respective customers with checking accounts to place stop payments on checks *via* a website or over the Internet, in direct infringement of the 725 patent.

24. By letter dated November 6, 2003, plaintiff Joao, on behalf of Plaintiffs, informed John J. Hughes, the Bank’s chairman, that the Bank, by operating and maintaining an Internet website at <http://www.sleepyhollowbank.com> that permits customers of the Bank with checking accounts to “Place Stop Payments” orders on checks *via* the Bank’s website, without leave or license granted by Plaintiffs, is infringing a number of the claims in the 725 patent.

25. By letter dated November 14, 2003, Joseph L. Macchia, the Bank's senior vice president and chief operating officer, responded to plaintiff Joao's November 6, 2003 letter by stating the following: "we suggest you address this issue [the infringement of the 725 patent] with our service provider, Jack Henry & Associates, Inc. Jack Henry & Associates, Inc. is a third party service provider for our banks computer system and support products which includes our web site."

26. In or about January of 2004, JHA learned of the existence of the 725 patent and that Plaintiffs had alleged that the Bank was infringing the 725 patent by operating and maintaining an Internet website that permitted customers of the Bank with checking accounts to "Place Stop Payments" orders on checks *via* the Bank's website or over the Internet.

27. JHA also has infringed and is continuing to infringe one or more of the following Claims: 87, 93, 94, 96, 97, 98, 101, 102, 104, 105, 106, 107, 109, 114, 116, 125, 126, 127, 139, 145, 146, 154, 156, 192, 193, 267, 274, 278, 279, 280, 281, 283, 284, 286, 287, 289, 290, 291, 292, 293, 294, 296, 297, 298, 299, 300, and 301 of the 725 patent by making, using, selling, offering to sell, and/or advertising, without leave or license granted by Plaintiffs, one or more products and/or services to financial institutions that enable those institutions to transmit a signal or message, such as an email alert, to their respective customers, informing them when some type of banking transaction has taken place on their account, such as when an account is above or below a set limit or when a check clears.

28. JHA actively has induced and actively is continuing to induce the infringement of the Claims of the 725 patent that are listed in paragraph 27 above by

making, using, selling, offering to sell, and/or advertising, without leave or license granted by Plaintiffs, one or more products and/or services to financial institutions, other than the Bank, that enable those institutions to transmit a signal or message, such as an email alert, to their respective customers, informing them when some type of banking transaction has taken place on their account, such as when an account is above or below a set limit or when a check clears.

29. In or about December of 2004, JHA learned Plaintiffs were alleging that JHA was infringing the 725 patent by making, using, selling, offering to sell, and/or advertising, without leave or license granted by Plaintiffs, one or more products and/or services to financial institutions, other than the Bank, that enables those institutions to transmit a signal or message, such as an email alert, to their respective customers, informing them when some type of banking transaction has taken place on their account, such as when an account is above or below a set limit or when a check clears.

COUNT I
(Infringement of the 725 Patent)

30. Plaintiffs repeat and reallage each of the allegations contained in paragraphs 1 through 29 as if fully set forth herein.

31. Defendants, by operating and maintaining an Internet website at <http://www.sleepyhollowbank.com> that permits customers of the Bank with checking accounts to “Place Stop Payments” orders on checks *via* the Bank’s website, without leave or license granted by Plaintiffs, directly infringe and/or induce the infringement of the Claims of the 725 patent that are listed in paragraph 21 above, in violation of 35 U.S.C §271.

32. JHA has infringed and is continuing to infringe the Claims of the 725 patent that are listed in paragraph 21 above by making, using, selling, offering to sell, and/or advertising, without leave or license granted by Plaintiffs, one or more products and/or services to financial institutions, other than the Bank, that permit the customers of those institutions with checking accounts to place stop payments on checks *via* a website or over the Internet, in violation of 35 U.S.C. § 271.

33. JHA actively has induced and actively is continuing to induce the infringement of the Claims of the 725 patent that are listed in paragraph 21 above by making, using, selling, offering to sell, and/or advertising, without leave or license granted by Plaintiffs, one or more products and/or services to the Bank and to other financial institutions that permit their respective customers with checking accounts to place stop payments on checks *via* a website or over the Internet, in direct infringement of the 725 patent, in violation of 35 U.S.C. § 271.

34. Defendants' acts of infringement have and will continue to damage Plaintiffs under 35 U.S.C. § 284 in an amount no less than a reasonable royalty for the use made of the invention covered in the 725 patent.

35. Plaintiffs have given Defendants written notice of the 725 patent and of their infringement of the 725 patent, and that infringement is continuing.

36. Defendants' infringement of the 725 patent is willful.

37. Plaintiffs demand trial by jury on all their claims triable of right by a jury.

COUNT II
(Infringement of the 725 Patent)

38. Plaintiffs repeat and reallage each of the allegations contained in paragraphs 1 through 37 as if fully set forth herein.

39. JHA has infringed and is continuing to infringe the Claims of the 725 patent that are listed in paragraph 27 above by making, using, selling, offering to sell, and/or advertising, without leave or license granted by Plaintiffs, one or more products and/or services to financial institutions that enable those institutions to transmit a signal or message, such as an email alert, to their respective customers, informing them when some type of banking transaction has taken place on their account, such as when an account is above or below a set limit or when a check clears, in violation of 35 U.S.C. § 271.

40. JHA actively has induced and actively is continuing to induce the infringement of the Claims of the 725 patent that are listed in paragraph 27 above by making, using, selling, offering to sell, and/or advertising, without leave or license granted by Plaintiffs, one or more products and/or services financial institutions, other than the Bank, that enable those institutions to transmit a signal or message, such as an email alert, to their respective customers, informing them when some type of banking transaction has taken place on their account, such as when an account is above or below a set limit or when a check clears, in violation of 35 U.S.C. § 271.

41. JHA's acts of infringement have and will continue to damage Plaintiffs under 35 U.S.C. § 284 in an amount no less than a reasonable royalty for the use made of the invention covered in the 725 patent.

42. Plaintiffs have given JHA written notice of the 725 patent and of their infringement of the 725 patent, and that infringement is continuing.

43. JHA's infringement of the 725 patent is willful.

44. Plaintiffs demand trial by jury on all their claims triable of right by a jury.

RELIEF DEMANDED

WHEREFORE, Plaintiffs respectfully demand judgment as follows:

A. Adjudicating that Defendants have infringed and are infringing the 725 patent;

B. Preliminarily and permanently enjoining Defendants and all of their officers, directors, agents, employees, and persons in active concert of participation with Defendants from: (i) making, using, selling, offering to sell, and/or advertising any products and/or services that embody one or more of the claims of the 725 patent; and (ii) actively inducing the infringement of the 725 patent by others;

C. Awarding Plaintiffs such damages adequate to compensate them for Defendants' infringement of the 725 Patent together with interests and costs, pursuant to 35 U.S.C. § 284;

D. Adjudicating that Defendants' infringement of the 725 patent has been and is willful;

E. Awarding Plaintiffs treble damages pursuant to 35 U.S.C. § 284;

F. Entering an order declaring that this is an exceptional case and awarding Plaintiffs their reasonable attorney's fees pursuant to 35 U.S.C. § 285; and

G. Such other, further and additional relief as the Court deems appropriate and proper.

Dated: New York, New York
January 18, 2005

FRIED & EPSTEIN LLP

A handwritten signature in blue ink that reads "John W. Fried". The signature is written in a cursive style with a large, prominent initial "J".

By _____
John W. Fried (JF-2667)

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*Attorneys for Plaintiffs Raymond Anthony
Joao and Robert Richard Bock*