

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

EVERY PENNY COUNTS, INC.)	
Plaintiff)	
)	
v.)	CASE NO: 8:07CV1254-T26 MAP
)	
FIRST DATA CORPORATION,)	
COMDATA STORED VALUE)	
SOLUTIONS, INC.,)	
INCOMM HOLDINGS, INC., and)	
VALUTEK CARD SOLUTIONS, LLC)	
Defendants)	
)	JURY TRIAL DEMANDED

**THIRD AMENDED COMPLAINT SEEKING DAMAGES AND
PERMANENT INJUNCTIVE RELIEF FOR PATENT INFRINGEMENT**

Comes now, Plaintiff, Every Penny Counts, Inc., and for its complaint seeking damages and permanent injunctive relief against Defendants, First Data Corporation, Comdata Stored Value Solutions, Inc., InComm Holdings, Inc., and Valutec Card Solutions, LLC, respectfully states as follows:

I. INTRODUCTION

This is an action seeking the recovery of significant damages sustained by Plaintiff, Every Penny Counts, Inc. (“EPC”) as a direct result of the knowing and willful infringement of its patents by Defendant First Data Corporation and the infringement of its patents by Defendants Comdata Stored Value Solutions, Inc., InComm Holdings, Inc., and Valutec Card Solutions, LLC. As more fully detailed below, EPC is holder of United States Patent Number 7,171,370 (“the ’370 Patent”). Over a period of several years,

Defendants have introduced products and processes which use the invention(s) embodied in the '370 Patent. EPC now seeks recovery of those damages together with treble damages, attorney's fees and permanent injunctive relief.

II. PARTIES, JURISDICTION AND VENUE

1. Plaintiff, EPC, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the City of Sarasota, Sarasota County, Florida.

2. Upon information and belief, Defendant First Data Corporation ("FIRST DATA") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Greenwood Village, Colorado.

3. Upon information and belief, Defendant Comdata Stored Value Solutions, Inc. ("COMDATA") is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in Brentwood, Tennessee.

4. Upon information and belief, Defendant InComm Holdings, Inc. ("INCOMM") is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Atlanta, Georgia.

5. Upon information and belief, Defendant Valutec Card Solutions, LLC. ("VALUTECH") is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Franklin, Tennessee.

6. FIRST DATA, COMDATA, INCOMM and VALUTECH (collectively "the Defendants") have engaged in systematic activities within this judicial district. This

Court enjoys subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States. This Court also enjoys jurisdiction pursuant to 28 U.S.C. § 1338(a).

7. This Court has venue pursuant to 28 U.S.C. § 1391(b) as the Defendants are subject to personal jurisdiction in this judicial district. Alternatively, venue is proper pursuant to 28 U.S.C. § 1400(b) because all of the Defendants have committed acts of infringement and/or induced the infringement of EPC's patents within this judicial district and have regular and established business activities within the district including, but not limited to, the advertisement of, sale of and/or inducement to use, products which infringe the '370 Patent.

II. GENERAL ALLEGATIONS

8. United States Patent Application Number 11/098,651, which issued as the '370 Patent, is a continuation of United States Patent Application Number 09/609,777.

9. On February 5, 2001, the inventor Bertram V. Burke assigned to Every Penny Counts, Inc., a corporation formed under the laws of the State of New Jersey ("OLD EPC"), the improvements disclosed in Application Number 09/609,777, as well as all divisional, continuing, substitute, renewal, reissue, and all other applications which have been or shall be filed on any of said improvements. A copy of the assignment is attached hereto and made a part hereof as Exhibit "A."

10. On September 2, 2004, OLD EPC reformed as EPC, the Plaintiff in this action, and EPC acquired all rights and title to all issued patents and any pending patent applications, all well as all divisional, continuing, substitute, renewal, or reissue applications thereof.

11. On January 30, 2007, the '370 Patent issued to EPC. A copy of the '370 Patent is attached hereto and made a part hereof as Exhibit "B."

12. The '370 Patent has claims directed towards an automated method for allowing consumers to place discretionary funds onto a merchant's prepaid card of the consumer's choice, the accounts are managed by a central clearinghouse allowing the consumer to use the prepaid card at said merchant.

III. INFRINGEMENT BY THE DEFENDANTS IN VIOLATION OF 35 U.S.C. § 271(a)

13. Each of the Defendants is engaged in the provision of financial services to the public at large. Specifically, each of the Defendants provide services directed to processing retail financial transactions and/or control the method for the issuance and use of prepaid cards.

14. The prepaid cards at issue in the instant case are of the kind which can be used by consumers only at limited locations, such as the various branches of an individual retail merchant who issues the card. Such prepaid cards are commonly known in the industry as "closed" prepaid cards. By way of example, a Sears® branded "closed" prepaid card can typically be used only at the issuing merchant, in this example, Sears®

stores. Such “closed” prepaid cards are typically sold by the individual merchants, but set up, tracked, processed and otherwise controlled by the Defendants.

15. Upon information and belief, FIRST DATA offers, distributes, markets, sells or otherwise controls services which process or manage individually branded “closed” prepaid cards which can be utilized by consumers at the merchant’s specific retail locations.

16. Upon information and belief, FIRST DATA’s offering, distributing, marketing and otherwise controlling the use of such “closed” prepaid cards utilizes the technology and inventions taught in at least one of the claims of the ’370 Patent.

17. Upon information and belief, FIRST DATA offers its “closed” prepaid card services, processes and products for sale and use throughout the United States.

18. Upon information and belief, FIRST DATA licenses, partners or otherwise cooperates with third parties (including, but not limited to, banks, merchants, credit unions, etc.) to offer, distribute, market, manufacture and/or sell “closed” prepaid cards which utilize the FIRST DATA’s financial services infrastructure and associated services to practice at least one of the inventions contained in the ’370 Patent.

19. Upon information and belief, COMDATA offers, distributes, markets, sells or otherwise controls services which process or manage individually branded “closed” prepaid cards which can be utilized by consumers at the merchant’s specific retail locations.

20. Upon information and belief, COMDATA’s offering, distributing, marketing and otherwise controlling the use of such respective “closed” prepaid cards

utilizes the technology and inventions taught in at least one of the claims of the '370 Patent.

21. Upon information and belief, COMDATA offers its "closed" prepaid card services, processes and products for sale and use throughout the United States.

22. Upon information and belief, COMDATA licenses, partners or otherwise cooperates with third parties (including, but not limited to, banks, merchants, credit unions, etc.) to offer, distribute, market, manufacture and/or sell "closed" prepaid cards which utilize the COMDATA's financial services infrastructure and associated services to practice at least one of the inventions contained in the '370 Patent.

23. Upon information and belief, INCOMM offers, distributes, markets, sells or otherwise controls services which process or manage individually branded "closed" prepaid cards which can be utilized by consumers at the merchant's specific retail locations.

24. Upon information and belief, INCOMM's offering, distributing, marketing and otherwise controlling the use of such respective "closed" prepaid cards utilizes the technology and inventions taught in at least one of the claims of the '370 Patent.

25. Upon information and belief, INCOMM offers its "closed" prepaid card services, processes and products for sale and use throughout the United States.

26. Upon information and belief, INCOMM licenses, partners or otherwise cooperates with third parties (including, but not limited to, banks, merchants, credit unions, etc.) to offer, distribute, market, manufacture and/or sell "closed" prepaid cards

which utilize the INCOMM's financial services infrastructure and associated services to practice at least one of the inventions contained in the '370 Patent.

27. Upon information and belief, VALUTEC offers, distributes, markets, sells or otherwise controls services which process or manage individually branded "closed" prepaid cards which can be utilized by consumers at the merchant's specific retail locations.

28. Upon information and belief, VALUTEC's offering, distributing, marketing and otherwise controlling the use of such respective "closed" prepaid cards utilizes the technology and inventions taught in at least one of the claims of the '370 Patent

29. Upon information and belief, VALUTEC offers its "closed" prepaid card services, processes and products for sale and use throughout the United States.

30. Upon information and belief, VALUTEC licenses, partners or otherwise cooperates with third parties (including, but not limited to, banks, merchants, credit unions, etc.) to offer, distribute, market, manufacture and/or sell "closed" prepaid cards which utilize the VALUTEC's financial services infrastructure and associated services to practice at least one of the inventions contained in the '370 Patent.

31. Upon information and belief, prior to the institution of this action, FIRST DATA was aware of the existence of the '370 Patent and knew or should have known that EPC was the lawful owner of the '370 Patent.

32. Despite knowledge of the '370 Patent, FIRST DATA continued and continues to willfully infringe the '370 Patent.

33. FIRST DATA is not authorized or licensed by EPC to practice any of the inventions encompassed by the '370 Patent.

34. COMDATA is not authorized or licensed by EPC to practice any of the inventions encompassed by the '370 Patent.

35. INCOMM is not authorized or licensed by EPC to practice any of the inventions encompassed by the '370 Patent.

36. VALUTEC is not authorized or licensed by EPC to practice any of the inventions encompassed by the '370 Patent.

37. As a result of the infringing acts committed by FIRST DATA, EPC has suffered and continues to suffer damages which will continue unless this Court enjoins such acts of infringement.

38. As a result of the infringing acts committed by COMDATA, EPC has suffered and continues to suffer damages which will continue unless this Court enjoins such acts of infringement.

39. As a result of the infringing acts committed by INCOMM, EPC has suffered and continues to suffer damages which will continue unless this Court enjoins such acts of infringement.

40. As a result of the infringing acts committed by VALUTEC, EPC has suffered and continues to suffer damages which will continue unless this Court enjoins such acts of infringement.

PRAYER FOR RELIEF


WHEREFORE, EPC respectfully prays that, after due proceedings, there be judgment in its favor and against Defendants FIRST DATA, COMDATA, INCOMM, and VALUTEC and that EPC be granted the following relief:

- (a) permanent injunctive relief prohibiting the Defendants, their agents, employees, officers, directors, licensees and all of those in privity with any of the Defendants from continuing to engage in acts of infringement of the '370 Patent;
- (b) an award of all damages recoverable under the United States Patent laws;
- (c) an award of treble damages and reasonable attorneys' fees for FIRST DATA's willful infringement;
- (d) an award of interest and costs; and
- (e) such other relief as may be just and equitable.

EPC demands a trial by jury.

Respectfully submitted,

PHELPS DUNBAR LLP



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