



IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

BMC RESOURCES, INC.,

Plaintiff,

v.

PAYMENTECH, L.P.,

Defendant.

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CIVIL ACTION NO. 3:03CV1927-M

PLAINTIFF BMC RESOURCES, INC.'S AMENDED COMPLAINT

Plaintiff BMC Resources, Inc. (BMC) submits the following amended complaint against Defendant, Paymentech, L.P. (Paymentech).

I. PARTIES

1. BMC is a company created under the laws of the state of Texas with its principal place of business in Dallas, Texas.

2. Paymentech is a Delaware Limited Partnership having a principal place of business in Dallas, Texas.

II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 USC §1338(a).

4. This Court has personal jurisdiction over Paymentech because it has appeared.

5. Venue is proper in this District under 28 USC §1391 and §1400(b).

### **III. BACKGROUND**

6. BMC owns legal title to United States Patents Numbers 5,870,456 (the '456 Patent) and 5,715,298 (the '298 Patent).

7. Paymentech is developing systems to perform PINless Debit transaction processing.

8. Paymentech has been actively engaged in discussions with merchants to provide transaction processing for PINless Debit transactions.

9. Paymentech believes there is evidentiary support that its development efforts and offers to provide PINless Debit transactions could infringe the '456 and '298 patents.

### **IV. CLAIM FOR INFRINGEMENT OF THE '456 PATENT**

10. BMC incorporates the foregoing paragraphs into this section.

#### **A. Infringement of the '456 Patent**

11. On information and belief, Paymentech has offered to sell to others processing for PINless Debit transactions in the United States that infringes at least one claim of the '456 Patent in violation of 35 U.S.C. § 271(a).

12. On information and belief, Paymentech has induced others to perform processes in the United States that infringe at least one claim of the '456 patent in violation of 35 U.S.C. § 271(b).

#### **B. Remedies**

13. BMC is entitled to an award of damages adequate to compensate for the infringement, including lost profits and damages from price erosion, but in no event less than a reasonable royalty for Paymentech's use of BMC's patented invention under 35 USC § 284.

14. Upon information and belief, Paymentech will continue to infringe the '456 patents unless enjoined. BMC is entitled to an injunction preventing further infringement under 35 USC § 283.

15. Upon information and belief, Paymentech has willfully infringed the '456 patent.

16. This case is exceptional and BMC is entitled to reasonable attorney fees.

**V. CLAIM OF INFRINGEMENT OF U.S. PATENT 5,715,298**

17. BMC incorporates the foregoing paragraphs into this section.

**A. Infringement of the '298 Patent**

18. On information and belief, Paymentech has offered to sell to others processing for PINless Debit transactions in the United States that infringes at least one claim of the '298 Patent in violation of 35 U.S.C. § 271(a).

19. On information and belief, Paymentech has induced others to perform processes in the United States that infringe at least one claim of the '298 patent in violation of 35 U.S.C. § 271(b).

**B. Remedies**

20. BMC is entitled to an award of damages adequate to compensate for the infringement, including lost profits and damages from price erosion, but in no event less than a reasonable royalty for Paymentech's use of BMC's patented invention under 35 USC § 284.

21. Upon information and belief, Paymentech will continue to infringe the '298 patents unless enjoined. BMC is entitled to an injunction preventing further infringement under 35 USC § 283.

22. Upon information and belief, Paymentech has willfully infringed the '298 patent.

23. This case is exceptional and BMC is entitled to reasonable attorney fees.

**VI. RELIEF**

BMC requests that the Court enter a judgment against Paymentech for:

- (a) Infringement of the '456 and '298 patents in violation of 35 USC § 271;
- (b) Willful infringement of the '456 and '298 patents;
- (c) Damages, costs and interest in accord with 35 U.S.C. § 284;
- (d) Injunctive relief to prevent further infringement in accord with 35 U.S.C. § 283;
- (e) Enhanced damages, and attorney fees, in accord with 35 USC § 284 and § 285;
- (f) Pre-judgment and post-judgment interest; and
- (g) All such relief to which BMC is justly entitled.

Respectfully submitted,

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