

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ING BANK, FSB	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
LBS INNOVATIONS, LLC	)	
	)	
Defendant.	)	JURY TRIAL DEMANDED
	)	

**PLAINTIFF’S COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff ING Bank, fsb (“ING Bank”) files this Complaint for Declaratory Judgment (“Complaint”).

**JURISDICTION**

1. ING Bank seeks declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, declaring United States Patent No. 6,091,956 to be not infringed and to be invalid or unenforceable. This Court has original subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338, 2201 and 2202.

2. Defendant LBS Innovations LLC (“LBSI”) attempted to serve ING Direct Bancorp, Inc. (“ING Direct Bancorp”) in this District with a Summons and an Amended Complaint that created the present dispute. Additionally, upon information and belief, LBSI has served at least five (5) additional parties in this District with a summons and a complaint alleging patent infringement over the last eight (8) months including U.S. Bancorp, MasterCard, Inc., Stop & Shop Supermarket Co., TD Bank U.S. Holding Co. and Toys “R” Us, Inc. Furthermore, upon information and belief, LBSI has engaged in settlement negotiations in this District and/or

with parties incorporated in this District, related to its litigious patent enforcement activities. Moreover, a substantial part of the events or omissions giving rise to the claims to be adjudicated in this action occurred in this District. Accordingly, LBSI is subject to personal jurisdiction in this District and venue is proper in this District under 28 U.S.C. §1391.

### **PARTIES**

3. ING Bank is a federally chartered savings bank located at One South Orange Street, Wilmington, New Castle County, Delaware, 19801.

4. Defendant LBSI is a Texas Limited Liability Company which claims to have its principal place of business at 815 Brazos Street, Suite 500, Austin, Texas 78701.

### **BACKGROUND**

5. LBSI holds itself out, and is identified by the United States Patent and Trademark Office (“USPTO”), as the owner of all right, title and interest in and to U.S. Patent Number 6,091,956 entitled “Situation Information System,” issued July 18, 2000 to inventor Dennis D. Hollenberg (“the ‘956 patent”). A copy of the ‘956 patent is attached as Exhibit A.

6. Upon information and belief, LBSI does not practice the teachings of the ‘956 patent. The only way for LBSI to profit from its ownership of the ‘956 patent is through licensing to third parties.

7. On September 14, 2011, LBSI filed a complaint (the “LBSI Original Complaint”) in the U.S. District Court for the Eastern District of Texas, Marshall Division (the “Texas Action”). LBSI served the LBSI Original Complaint on the two originally-named defendants, Citgo Petroleum Corporation and Dave & Buster’s, Inc., on February 10, 2012 and on February 13, 2012 respectively.

8. On or about April 27, 2012, LBSI filed an Amended Complaint in the Texas

Action, naming multiple additional defendants including ING Direct Bancorp, and alleging infringement of the '956 patent by those defendants. On or about April 30, 2012, LBSI attempted to serve ING Direct Bancorp with a Summons and the Amended Complaint. A copy of LBSI's Amended Complaint (the "LBSI Amended Complaint") is attached as Exhibit B.

9. The LBSI Amended Complaint alleges that ING Direct Bancorp infringes the '956 patent "by making and/or using in the United States the computer implemented website <http://home.ingdirect.com/>, which has a [sic] ATM location interface at [https://secure.ingdirect.com/myaccount/INGDirect/atm\\_locate.vm](https://secure.ingdirect.com/myaccount/INGDirect/atm_locate.vm)." (Exh. B at 9-10).

10. ING Direct Bancorp no longer conducts business, and is no longer affiliated with ING Bank. Furthermore, ING Direct Bancorp did not and does not maintain, operate and own the website <http://home.ingdirect.com/> identified as the accused instrumentality in LBSI's Amended Complaint. Instead, that website is maintained, operated and owned by ING Bank.

11. Prior to February 17, 2012, ING Bank was a wholly owned subsidiary of ING Direct Bancorp. As of February 17, 2012, ING Bank became a wholly owned subsidiary of Capital One Financial Corporation.

## COUNT I

### **Declaratory Judgment of NonInfringement of Patent**

12. ING Bank incorporates the foregoing paragraphs by reference as though set forth fully herein.

13. In light of LBSI's filing of the LBSI Amended Complaint against ING Direct Bancorp, alleging infringement of the '956 patent "by making and/or using in the United States the computer implemented website <http://home.ingdirect.com/>", an actual, substantial and continuing justiciable controversy having adverse legal interest of sufficient immediacy and

reality to warrant the issuance of a declaration of rights by this Court has arisen and now exists between ING Bank and LBSI concerning alleged infringement of the '956 patent.

14. ING Bank has not infringed, and does not infringe, directly or indirectly, any valid claim of the '956 patent.

15. Thus, ING Bank is entitled to a declaration that it has not infringed, and does not and will not infringe, any valid claim of the '956 patent.

## COUNT II

### **Declaratory Judgment of Invalidity of Patent**

16. ING Bank incorporates the foregoing paragraphs by reference as though set forth fully herein.

17. In light of LBSI's filing of the LBSI Amended Complaint against ING Direct Bancorp, alleging infringement of the '956 patent "by making and/or using in the United States the computer implemented website <http://home.ingdirect.com/>", an actual, substantial and continuing justiciable controversy having adverse legal interest of sufficient immediacy and reality to warrant the issuance of a declaration of rights by this Court has arisen and now exists between ING Bank and LBSI concerning the invalidity of the claims of the '956 patent.

18. The claims of the '956 patent are invalid for failure to comply with the requirements of patentability as specified in 35 U.S.C. §§ 1 et seq., including, without limitation, 35 U.S.C. §§ 101, 102, 103, and/or 112, and/or based on other judicially-created bases for invalidation.

19. Thus, ING Bank is entitled to a declaration that the claims of the '956 patent are invalid.

**PRAYERS FOR RELIEF**

WHEREFORE, Plaintiff ING Bank prays for:

- (a) A Declaration that the '956 Patent is invalid or unenforceable;
- (b) A Declaration that ING Bank does not infringe any valid claim of the '956 Patent;
- (c) A determination that this is an exceptional case under 35 U.S.C. § 285;
- (d) An award to ING Bank of its costs and attorneys' fees;
- (e) Such other relief as this Court or a jury may deem proper and just under the circumstances.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

DUANE MORRIS LLP

Dated: June 6, 2012

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