

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Vantiv, LLC,

Plaintiff

v.

Swipe Innovations, LLC,

Defendant.

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NO.

**COMPLAINT FOR DECLARATORY RELIEF**

COMES NOW, Plaintiff, Vantiv, LLC (“Vantiv”) seeking a declaration of non-infringement and invalidity against Defendant, Swipe Innovations, LLC, and, in support thereof, would respectfully show as follows:

**NATURE OF THE ACTION**

1. In this action, Vantiv seeks declaratory relief under 28 U.S.C. §§ 2201-2202 that U.S. Patent No. 5,351,296 (“the ‘296 Patent”) is not infringed by Vantiv and is invalid.

**THE PARTIES**

2. Plaintiff, Vantiv, LLC, (“Vantiv”) is a Delaware Limited Liability Company with its principal place of business at 8500 Governor’s Hill drive, Cincinnati, Ohio 45249.

3. On information and belief, Swipe is a Texas Limited Liability Company with its principal place of business in Houston, Texas, with its registered agent listed as Law Tech Services, Inc., 1177 West Loop South, Ste. 1700, Houston, Texas 77027.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338, 2201 and 2202, on the grounds that Vantiv seeks a declaration of its rights against threats of patent infringement litigation made by Swipe directly to Vantiv.

5. This Court has jurisdiction over the person of defendant Swipe, among other things, by virtue of Swipe's formation under the laws of this state and having its principal place of business being located in Houston, Texas.

6. Venue is proper in this Court by virtue of 28 U.S.C. §§ 1391 and 1400.

7. This action for a declaratory judgment of noninfringement, and with regard to certain other claims, is authorized by 28 U.S.C. §§ 2201-2202.

### **BACKGROUND**

8. Vantiv is a leading integrated provider of payment processing strategies and advanced technology solutions for businesses and financial institutions and has been providing payment processing services to institutions since the 1970s.

9. In a Complaint filed on March 7, 2012, before the U.S. District Court for the Eastern District of Texas, Lufkin Division, Case No 9:12-CV-40, titled *Swipe Innovations, LLC v. Elavon, Inc., et al.*, (the "Swipe Complaint"), Swipe alleges that Vantiv infringes U.S. Patent No. 5,351,296 ("the '296 Patent"), titled "Financial Transmission System."

10. The '296 Patent was filed on March 29, 1993 and issued September 27, 1994. The listed inventor is Mark K. Sullivan. The United States Patent and Trademark Office ("USPTO") Assignee Database indicates that Defendant Swipe is the most recent assignee of the '296 Patent.

11. Upon information and belief, the '296 Patent expires in less than a year, on or around March 29, 2013.

12. Prior to filing the Swipe Complaint, neither Swipe nor its predecessors in interest ever notified Vantiv that it allegedly infringed the '296 Patent.

13. Vantiv had no notice of the '296 Patent or of Swipe's claim that Vantiv allegedly infringes the '296 Patent until Swipe filed the Swipe Complaint.

14. The '296 Patent's forty-nine claims pertain to "[a] method and device for determining and securely transmitting an account code of a financial card over a communications link in a communications network to a remote location which also allows a telephone to be used concurrently to perform voice communications over the same communications link with the remote location."

15. The Swipe Complaint was filed against twelve unrelated defendants.

16. Swipe has not identified which of the forty-nine claims it alleges Vantiv infringes.

17. Vantiv does not, in fact, directly infringe any claim of the '296 Patent.

18. Swipe has not identified any customers of Vantiv that directly infringe any claim of the '296 Patent using any product or process supplied by Vantiv.

19. Vantiv's customers do not, in fact, directly infringe any claim of the '296 Patent using any product or process supplied by Vantiv.

20. Swipe has not identified any actions by Vantiv that, in concert with other parties, jointly infringe any claim of the '296 Patent.

21. Vantiv does not and has never acted in concert with other parties to jointly infringe any claim of the '296 Patent. Vantiv filed a Motion to Dismiss the Swipe Complaint for misjoinder under 35 U.S.C. § 299 on July 17, 2012.

22. The claims of the '296 Patent are invalid for failure to meet one or more of the conditions for patentability specified in the Patent Act, 35 U.S.C. § 101, et seq., including without limitation §§ 102, 103, and 112 and/or judicial decisions and/or the applicable provisions of Title 37 of the Code of Federal Regulation.

23. On information and belief, Swipe filed its Complaint against Vantiv knowing that the '296 Patent is invalid and that Vantiv has not infringed and does not infringe any valid claim of the '296 Patent. This case is an exceptional case under 35 U.S.C. § 285 and, in addition to the relief requested below, Vantiv is entitled to recover attorneys' fees and costs associated with defending this action.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment of Non-infringement)**

24. Vantiv incorporates the foregoing allegations as if fully restated herein.

25. Vantiv has not and is not now infringing, actively inducing the infringement of, or contributorily infringing any valid claim of the '296 Patent.

26. A justiciable controversy exists as to whether Vantiv has been or is now infringing any valid claim of the '296 Patent.

27. Vantiv seeks a declaration from this Court that Vantiv has not and is not now infringing, actively inducing the infringement of, or contributorily infringing any valid claim of the '296 Patent.

**SECOND CLAIM FOR RELIEF**  
**(Declaratory Judgment of Invalidity)**

28. Vantiv incorporates the foregoing allegations as if fully restated herein.

29. All claims of the '296 Patent asserted against Vantiv are invalid.

30. All claims of the '296 Patent asserted against Vantiv are invalid for failure to comply with one or more of the requirements of 35 U.S.C. §§ 101, et seq., including without limitation §§ 102, 103, and 112.

31. A justiciable controversy exists as to whether the claims of the '296 Patent asserted against Vantiv are valid.

32. Vantiv seeks a declaration from this Court that the claims of the '296 Patent are invalid.

### **PRAYER FOR RELIEF**

WHEREFORE, Vantiv prays for the following relief against Swipe:

A. That this Court enter a declaration that Vantiv has not previously infringed, and is not currently infringing, inducing the infringement of, or contributorily infringing any valid claim of the '296 Patent;

B. That this Court enter a declaration that the claims of the '296 Patent asserted against Vantiv are invalid;

C. That this case be deemed an exceptional case under 35 U.S.C. § 285 and that Vantiv be awarded its costs and attorneys' fees; and

D. That Vantiv be awarded such other and further relief as this Court deems equitable and just.

### **JURY DEMAND**

Vantiv hereby demands a trial by jury of all issues.

Dated: July 19, 2012

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