

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

**AERITAS, LLC,**

Plaintiff,

v.

**CONTINENTAL AIRLINES, INC.,**

Defendant.

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement in which Plaintiff Aeritas, LLC makes the following allegations against Defendant Continental Airlines, Inc.:

**PARTIES**

1. Plaintiff Aeritas, LLC (“Aeritas” or “Plaintiff”) is a Texas limited liability company having a principal place of business at 10414 Crestover Drive, Dallas, Texas 75229.

2. On information and belief, Defendant Continental Airlines, Inc. (“Continental” or “Defendant”) is a Delaware corporation with its principal office at 19300 International Boulevard, Seattle, WA 98188. Continental may be served with process via its registered agent, The Corporation Trust Company, 1209 N. Orange Street, Wilmington, Delaware 19801.

**JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

5. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in this district.

**COUNT I**

**INFRINGEMENT OF U.S. PATENT NO. 7,933,589**

6. Plaintiff Aeritas is the owner by assignment of United States Patent No. 7,933,589 (the "'589 patent'"), entitled "Method and System for Facilitation of Wireless E-Commerce Transactions." The '589 patent issued on April 26, 2011. A true and correct copy of the '589 patent is included as Exhibit A.

7. Defendant has been and now is directly and/or jointly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '589 patent, in this judicial district and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling products and services that facilitate wireless transactions by receiving a request for a transaction consisting of an authorization with respect to a product or service and a multistage fulfillment event associated with the authorization occurring at a fulfillment location, determining whether such authorization has been obtained, communicating a two-dimension, optically scannable transaction code that is capable of being scanned at the fulfillment location initially to partially complete the transaction, and completing the wireless transaction at a second point by scanning the two dimensional code, including but not limited to Defendant's "Mobile Boarding Documents," "Mobile Check-in," and "Mobile Boarding Pass." By making, using, importing, offering for sale, and/or selling such products and services, and all like products and services, Defendant has injured Aeritas and is thus liable to Aeritas for infringement of the '589 patent pursuant to 35 U.S.C. § 271.

8. Defendant's infringement of the '589 patent has been and continues to be willful. On February 25, 2010, counsel for Aeritas wrote to Mr. Jeffrey Smisek, Chairman, President and

CEO of Defendant, and put Defendant on notice of U.S. Patent Application No. 09/690,213. On April 26, 2011, U.S. Patent Application No. 09/690,213 was issued as the '589 patent. In part because Defendant was on notice of the application that issued as the '589 patent, Aeritas believes that Defendant knowingly acted with an objectively high likelihood that its actions constituted infringement of the '589 patent. Defendant therefore has willful infringed the '589 patent since April 26, 2011.

9. As a result of Defendant's infringement of the '589 patent, Aeritas has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Aeritas will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

10. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the '589 patent, Aeritas will be greatly and irreparably harmed.

## **COUNT II**

### **INFRINGEMENT OF U.S. PATENT NO. 7,209,903**

11. Plaintiff Aeritas is the owner by assignment of United States Patent No. 7,209,903 (the "'903 patent'"), entitled "Method and System for Facilitation of Wireless E-Commerce Transactions." The '903 patent issued on April 24, 2007. A true and correct copy of the '903 patent is included as Exhibit B.

12. Defendant has been and now is directly and/or jointly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '903 patent, in this judicial district and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling products and services that facilitate wireless transactions that involve a payment obligation on behalf of a requester and a fulfillment obligation on behalf of a provider by receiving a request from a requester who has indicated acceptance of an obligation to pay for the product or service, verifying that requester's identity,

communicating a transaction code to a wireless communication device representative of the transaction requested, optically scanning the code from a visual display of the wireless communication device in fulfillment of the transaction, and triggering a fulfillment event in response whereby the provider fulfills the obligation to the requester and the requested product or service is received, including but not limited to Defendant's "Mobile Boarding Documents," "Mobile Check-in," and "Mobile Boarding Pass." By making, using, importing, offering for sale, and/or selling such products and services, and all like products and services, Defendant has injured Aeritas and is thus liable to Aeritas for infringement of the '903 patent pursuant to 35 U.S.C. § 271.

13. Defendant's infringement of the '903 patent has been and continues to be willful. On February 25, 2010, counsel for Aeritas wrote to Mr. Jeffrey Smisek, Chairman, President and CEO of Defendant, enclosing both the '903 patent and a claim chart illustrating the basis for Defendant's infringement. In correspondence dated April 1, April 7 and April 19, 2010 between counsel for Aeritas and counsel for Defendant, Defendant evaluated the '903 patent but refused to consider a license for the patent. Aeritas further believes that Defendant's stated evaluation of the scope and applicability of the '903 patent was unreasonable and Defendant knowingly acted with an objectively high likelihood that its actions constituted infringement of the '903 patent. Therefore, Defendant has been willfully infringing the '903 patent since at least February 25, 2010.

14. As a result of Defendant's infringement of the '903 patent, Aeritas has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Aeritas will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

15. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the '903 patent, Aeritas will be greatly and irreparably harmed.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff Aeritas, LLC respectfully requests that this Court enter:

- A. A judgment in favor of Aeritas that Defendant has infringed, directly and jointly, jointly, and/or indirectly, by way of inducing and/or contributing to the infringement of the Asserted Patents, and that such infringement was willful;
- B. A permanent injunction enjoining Defendant and its officers, directors, agents, servants affiliates, employees, divisions, branches, subsidiaries, parents, and all other acting in active concert or participation with them, from infringement, inducing the infringement, or contributing to the infringement of the Asserted Patents;
- C. An award of to Aeritas for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendant's prohibited conduct regarding the '589 patent with notice being made at least as early as April 26, 2011, as provided under 35 U.S.C. § 284.
- D. An award of to Aeritas for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendant's prohibited conduct regarding the '903 patent with notice being made at least as early as February 25, 2010, as provided under 35 U.S.C. § 284.
- E. A judgment and order requiring Defendant to pay Aeritas its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the Asserted Patents as provided under 35 U.S.C. § 284;
- F. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Aeritas its reasonable attorneys' fees against Defendant;
- G. Any and all other relief to which Aeritas may show itself to be entitled.

**DEMAND FOR JURY TRIAL**

Plaintiff Aeritas, LLC, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

October 13, 2011

BAYARD, P.A.

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