

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

PAUL N. WARE and FINANCIAL  
SYSTEMS INNOVATION, LLC,

Plaintiffs,

v.

CIRCUIT CITY STORES, INC., et  
al.,

Defendants.

Case No. 4:05-cv-0156-RLV

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**PLAINTIFFS' SECOND AMENDED COMPLAINT**

Plaintiffs Paul N. Ware and Financial Systems Innovation, LLC

(“Plaintiffs”) file this Second Amended Complaint<sup>1</sup> against Defendants OfficeMax Incorporated, Staples, Inc., Fry’s Electronics, Inc., and Rite Aid Corporation, for infringement of United States Patent No. 4,707,592 (hereinafter “the ‘592 patent”).

**JURISDICTION**

1. This is an action for patent infringement under Title 35 of the United

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<sup>1</sup> Pursuant to the Court’s January 5, 2010 Order (Doc. No. 129), Plaintiffs file this Second Amended Complaint setting forth with more specificity the manner in which Defendants are alleged to have infringed U.S. Patent No. 4,707,592.

Plaintiffs do not concede or agree that they must prove each and every item alleged in this Complaint in order to meet their burden of proof in this matter.

States Code. Plaintiffs are seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff Paul N. Ware (“Ware”) is a citizen of the State of Georgia, residing in Rome, Georgia.

4. Plaintiff Financial Systems Innovation, LLC (“Financial Systems”) is an Illinois limited liability company with its principal place of business located in Newport Beach, California.

5. Defendant OfficeMax Incorporated (“OfficeMax”) is a Delaware corporation with its principal place of business located in Itasca, Illinois. This Court has personal jurisdiction over OfficeMax because OfficeMax has committed acts of infringement in the State of Georgia, has conducted business in the State of Georgia, and/or has engaged in continuous and systematic activities in the State of Georgia.

6. Defendant Staples, Inc. (“Staples”) is a Delaware corporation with its principal place of business located in Framingham, Massachusetts. This Court has personal jurisdiction over Staples because Staples has committed acts of infringement in the State of Georgia, has conducted business in the State of

Georgia, and/or has engaged in continuous and systematic activities in the State of Georgia.

7. Defendant Fry's Electronics, Inc. ("Fry's") is a California corporation with its principal place of business located in San Jose, California. This Court has personal jurisdiction over Fry's because Fry's has committed acts of infringement in the State of Georgia, has conducted business in the State of Georgia, and/or has engaged in continuous and systematic activities in the State of Georgia.

8. Defendant Rite Aid Corporation ("Rite Aid") is a Delaware corporation with its principal place of business located in Camp Hill, Pennsylvania. This Court has personal jurisdiction over Rite Aid because Rite Aid has committed acts of infringement in the State of Georgia, has conducted business in the State of Georgia, and/or has engaged in continuous and systematic activities in the State of Georgia.

9. On information and belief, each Defendant's systems that are alleged herein to infringe were made, used, imported, offered for sale, and/or sold in the Northern District of Georgia.

10. This court has personal jurisdiction over Defendants because each Defendant has committed acts of infringement in this district; are deemed to reside in this district; do business in this district; and/or have systematic and continuous contacts in this district.

VENUE

11. Venue is proper in the Northern District of Georgia pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because Defendants are deemed to reside in this district. In addition, and in the alternative, Defendants have committed acts of infringement in this district and have regular and established places of business in this district.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

12. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271 *et seq.* 35 U.S.C. § 271 states, in part:

“...whoever without authority makes, uses, offers to sell or sells any patented invention, within the United States ...during the term of the patent therefor, infringes the patent.”

13. Plaintiff Ware is the owner of United States Patent No. 4,707,592 entitled “Personal Universal Identity Card System for Failsafe Interactive Financial Transactions.”

14. Plaintiff Financial Systems is the exclusive licensee of the ‘592 patent with rights to enforce the ‘592 patent and sue infringers.

15. The ‘592 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

16. A copy of the ‘592 patent, titled “Personal Universal Identity Card

System for Failsafe Interactive Financial Transactions,” is attached hereto as Exhibit 1.

17. The Abstract of the ‘592 patent describes the claimed invention as follows:

A financial card transaction system for protecting the financial transactions against fraud, by reducing the dissemination of the cardholder’s account code and the transaction data. The system includes a plurality of retail sales, each having a card reader that is connected by data channels to a transaction center with a computer that includes cardholder’s records and a transaction number generator.

Exhibit 1, ‘592 patent, Abstract.

18. Claim 1 of the ‘592 patent claims:

1. A financial and identification card transaction system for protecting transactions between a plurality of cardholders, each having a card, with a machine-readable code imprinted thereon and a card-issuing organization via at least one transaction site connected by a data channel with a remote transaction center, the system which comprises:

- a card reader disposed at the transaction site for reading the machine-readable code imprinted on the card, the machine readable code including a cardholder code that is unique to each cardholder;
- a transaction number that uniquely identifies each transaction;
- a transaction number store included with the card reader for receiving and storing the transaction number from the transaction center;
- a transaction data input device connected to the card reader for receiving transaction data;
- a printer connected to the card reader for printing a transaction ticket which includes the transaction number;
- a center computer disposed at the transaction center having memory for storing transaction data received from the card reader via the data channel;
- a transaction number generator included with the center computer for generating the transaction number.

**COUNT I**  
**INFRINGEMENT OF UNITED STATES PATENT NO. 4,707,592**  
**(vs. Rite Aid Corporation)**

19. Plaintiffs incorporate paragraphs 1 through 18 by reference as though fully set forth herein.

20. Defendant Rite Aid owns, leases, licenses, and/or operates retail stores for the sale of pharmaceuticals, prescription medications, health care products, food, beauty products, photography equipment, and other household products.

21. On information and belief, during the relevant time period at its retail stores Rite Aid utilized financial transaction systems that include cash registers, financial card readers, printers, point-of-sale (“POS”) software, and other technology (“Rite Aid Financial Transaction Systems”) to process financial transaction. Exhibit 2, Dec. Francis B. Spirk (Sept. 30, 2009) (Doc. No. 91-3).

22. On information and belief, during the relevant time period the cash registers utilized by Rite Aid in Rite Aid’s Financial Transaction Systems included, but were not limited to, an NCR cash register, a Wincor/Nixdorf cash register, or a Stores Automated Systems, Inc. (“SASI”) cash register. Exhibit 2, Dec. Francis B. Spirk ¶ 2.

23. On information and belief, during the relevant time period the card readers utilized by Rite Aid in Rite Aid’s Financial Transaction Systems included,

but were not limited to, a Symbol PD8500 card reader, a Symbol@POS reader, or a Verifone Everest reader. Exhibit 2, Dec. Francis B. Spirk ¶ 2.

24. On information and belief, during the relevant time period Rite Aid's Financial Transaction Systems generated a sequential number, or transaction number, for each transaction performed. Exhibit 2, Dec. Francis B. Spirk ¶ 3.

25. On information and belief, during the relevant time period Rite Aid's Financial Transaction Systems generated receipts for transactions that included a store number, a register number, a cashier number, an approval number, and a sequential number, or transaction number. Exhibit 2, Dec. Francis B. Spirk ¶¶ 3-6.

26. On information and belief, during the relevant time period Rite Aid infringed at least claim 1 of the '592 patent via its use of Rite Aid's Financial Transaction Systems described herein.

27. On information and belief, additional discovery may reveal that Defendant Rite Aid has made, imported, offered for sale, or sold Rite Aid's Financial Transaction Systems and/or one or more components of Rite Aid's Financial Transaction Systems described herein. Such manufacture, importation, offer for sale or sale constitutes infringement of at least claim 1 of the '592 patent.

28. Plaintiffs have written to Defendant Rite Aid, notifying it of the '592 patent as well as notifying them of the fact that Plaintiffs have initiated litigation against other retailers for infringement of the '592 patent. Following this



correspondence, on information and belief, Defendant Rite Aid did not cease and desist its infringing conduct.

29. Prior litigation involving the '592 patent has been initiated in the United States District Court for the Northern District of Georgia, Rome Division,. Defendant Rite Aid has retail stores in this District.

30. Through litigation and other efforts, Plaintiffs have granted over 70 licenses under the '592 patent to date.

31. Defendant Rite Aid's infringement is willful.

32. Defendant Rite Aid's actions complained of herein will continue unless Defendant Rite Aid is enjoined by this court.

33. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

34. Plaintiffs have complied with 35 U.S.C. § 287.

35. Defendant Rite Aid's actions complained of herein are causing irreparable harm and monetary damage to Plaintiffs and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

**COUNT II**  
**INFRINGEMENT OF UNITED STATES PATENT NO. 4,707,592**  
**(vs. OfficeMax Incorporated)**

36. Defendant OfficeMax owns, leases, licenses, and/or operates retail stores for the sale of stationary items, office supplies, technology equipment, and office furniture.

37. On information and belief, during the relevant time period at its retail stores Office Max utilized financial transaction systems that include cash registers, financial card readers, printers, point-of-sale (“POS”) software, and other technology (“Office Max Financial Transaction Systems”) to process financial transaction.

38. On information and belief, during the relevant time period the POS software used by Office Max in conjunction with the Office Max Financial Transaction Systems included, but was not limited to, GlobalStore.

39. On information and belief, during the relevant time period Office Max’s Financial Transaction Systems generated receipts for transactions that included a store number, date stamp, time stamp, and a transaction number.

40. On information and belief, during the relevant time period Office Max infringed at least claim 1 of the ‘592 patent via its use of Office Max’s Financial Transaction Systems described herein.

41. On information and belief, additional discovery may reveal that Office Max has made, imported, offered for sale, and/or sold Office Max’s Financial Transaction Systems and/or one or more components of Office Max’s Financial Transaction Systems described herein. Such manufacture, importation, offer for sale or sale constitutes infringement of at least claim of the ‘592 patent.

42. Plaintiffs have written to Defendant OfficeMax, notifying it of the '592 patent as well as notifying them of the fact that Plaintiffs have initiated litigation against other retailers for infringement of the '592 patent. Following this correspondence, on information and belief, Defendant OfficeMax did not cease and desist its infringing conduct.

43. Prior litigation involving the '592 patent has been initiated in the United States District Court for the Northern District of Georgia, Rome Division,. Defendant OfficeMax has retail stores in this District.

44. Through litigation and other efforts, Plaintiffs have granted over 70 licenses under the '592 patent to date.

45. Defendant OfficeMax's infringement is willful.

46. Defendant OfficeMax's actions complained of herein will continue unless Defendant OfficeMax is enjoined by this court.

47. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

48. Plaintiffs have complied with 35 U.S.C. § 287.

49. Defendant OfficeMax's actions complained of herein are causing irreparable harm and monetary damage to Plaintiffs and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

**COUNT III**  
**INFRINGEMENT OF UNITED STATES PATENT NO. 4,707,592**  
**(vs. Staples, Inc.)**

50. Defendant Staples owns, leases, licenses, and/or operates retail stores for the sale of stationary items, office supplies, shipping supplies, technology equipment, and office furniture as well as copy and printing services.

51. On information and belief, during the relevant time period at its retail stores Staples utilized financial transaction systems that include cash registers, financial card readers, printers, point-of-sale (“POS”) software, and other technology (“Staples Financial Transaction Systems”) to process financial transaction.

52. On information and belief, during the relevant time period Staples’ Financial Transaction Systems generated receipts for transactions that included a store number or other identification, date stamp, time stamp, authorization number and a transaction number. Exhibit 3, Sample Receipts from Staples.

53. On information and belief, during the relevant time period Staples infringed at least claim 1 of the ‘592 patent via its use of Staples’ Financial Transaction Systems described herein. Exhibit 3.

54. On information and belief, additional discovery may reveal that Staples has made, imported, offered for sale, and/or sold Staples’ Financial Transaction Systems and/or one or more components of Staples’ Financial Transaction Systems described herein. Such manufacture, importation, offer for sale or sale constitutes infringement of at least claim of the ‘592 patent.

55. Plaintiffs have written to Defendant Staples, notifying it of the '592 patent as well as notifying them of the fact that Plaintiffs have initiated litigation against other retailers for infringement of the '592 patent. Following this correspondence, on information and belief, Defendant Staples did not cease and desist its infringing conduct.

56. Prior litigation involving the '592 patent has been initiated in the United States District Court for the Northern District of Georgia, Rome Division. Defendant Staples has retail stores in this District.

57. Through litigation and other efforts, Plaintiffs have granted over 70 licenses under the '592 patent to date.

58. Defendant Staples' infringement is willful.

59. Defendant Staples' actions complained of herein will continue unless Defendant Staples is enjoined by this court.

60. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

61. Plaintiffs have complied with 35 U.S.C. § 287.

62. Defendant Staples' actions complained of herein are causing irreparable harm and monetary damage to Plaintiffs and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

**COUNT IV**  
**INFRINGEMENT OF UNITED STATES PATENT NO. 4,707,592**  
**(vs. Fry's Electronics, Inc.)**

63. Defendant Fry's owns, leases, licenses, and/or operates retail stores for the sale of computers, computer peripheral equipment, personal music devices, cameras, phones, computer software, music, movies, car electronics, and office products.

64. On information and belief, during the relevant time period at its retail stores Fry's utilized financial transaction systems that include cash registers, financial card readers, printers, point-of-sale ("POS") software, and other technology ("Fry's Financial Transaction Systems") to process financial transaction.

65. On information and belief, during the relevant time period Fry's' Financial Transaction Systems generated receipts for transactions that included a store number or other identification, date stamp, time stamp, authorization number and a transaction number. Exhibit 4, Sample Receipt from Fry's.

66. On information and belief, during the relevant time period Fry's infringed at least claim 1 of the '592 patent via its use of Staples' Financial Transaction Systems described herein. Exhibit 4.

67. On information and belief, additional discovery may reveal that Fry's has made, imported, offered for sale, and/or sold Fry's' Financial Transaction Systems and/or one or more components of Fry's' Financial Transaction Systems

described herein. Such manufacture, importation, offer for sale or sale constitutes infringement of at least claim of the '592 patent.

68. Plaintiffs have written to Defendant Fry's notifying it of the '592 patent as well as notifying them of the fact that Plaintiffs have initiated litigation against other retailers for infringement of the '592 patent. Following this correspondence, on information and belief, Defendant Fry's did not cease and desist its infringing conduct.

69. Prior litigation involving the '592 patent has been initiated in the United States District Court for the Northern District of Georgia, Rome Division. Defendant Fry's has retail stores in this District.

70. Through litigation and other efforts, Plaintiffs have granted over 70 licenses under the '592 patent to date.

71. Defendant Fry's infringement is willful.

72. Defendant Fry's actions complained of herein will continue unless Defendant is enjoined by this court.

73. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

74. Plaintiffs have complied with 35 U.S.C. § 287.

75. Defendant Fry's actions complained of herein are causing irreparable harm and monetary damage to Plaintiffs and will continue to do so unless and until Defendant are is and restrained by this Court.

JURY DEMAND

76. Plaintiffs hereby request a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, with respect to each named Defendant, Plaintiffs ask the Court to:

- a) Enter judgment for Plaintiffs on this Second Amended Complaint;
- b) Award Plaintiffs damages resulting from each Defendant's infringement in accordance with 35 U.S.C. § 284;
- c) Treble the damages in accordance with the provisions of 35 U.S.C. §284;
- d) Find the case to be exceptional under the provisions of 35 U.S.C. § 285;
- e) Award Plaintiffs reasonable attorney fees under 35 U.S.C. § 285;
- f) Award Plaintiffs pre-judgment and post judgment interest and costs; and
- g) Award Plaintiffs such further relief to which the Court finds Plaintiffs entitled under law or equity.



DATED: January 25, 2010

Respectfully submitted,

**THE SIMON LAW FIRM, PC**

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***ATTORNEYS FOR PLAINTIFFS***

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Civil Rule 7.1(D), the undersigned counsel certifies that the foregoing brief has been prepared using Times New Roman, 14 point, in accordance with Local Civil Rule 5.1(B).

/s/ Anthony G. Simon  
Anthony G. Simon

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served on all counsel of record via the Court's CM/ECF system on January 25, 2010.

/s/ Anthony G. Simon  
Anthony G. Simon