

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

**AERITAS, LLC,**

Plaintiff,

v.

**ALASKA AIR GROUP, INC.,**

Defendant.

**Civil Action No. 1:11-cv-00967-SLR**

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement in which Plaintiff Aeritas, LLC makes the following allegations against Defendant Alaska Air Group, 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 Alaska Air Group, Inc. (“Alaska” or “Defendant”) is a Delaware corporation with its principal office at 19300 International Boulevard, Seattle, WA 98188.

**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, contributed to, 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 (literally and under the doctrine of equivalents) infringing at least claim 40 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 Application,” “Mobile Site,” “Mobile Check-in,” and “Mobile Boarding Pass.” Defendant also has been indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘589 patent by its customers. Since at least after being served with the Complaint in this action, Defendant has knowingly contributed to the infringement, and continues to contribute to the infringement of one or more claims of the ‘589 patent by offering its products to its customers, which constitute a material part of the invention and is not a staple article or commodity of commerce suitable for substantial noninfringing use. Further, since at least after being served with the Complaint in this action, Defendant has knowingly contributed to the infringement, and continues to contribute to the infringement of one or more claims of the

‘589 patent, by offering to its customers use of its mobile software, which constitutes a material part of the invention and is not a staple article or commodity of commerce suitable for substantial noninfringing use. Further, after being served with the complaint in this action, Defendant has induced infringement, and continues to induce infringement, of one or more claims of the ‘589 patent, with specific intent that its software be used by Defendant's customers to infringe the ‘589 patent. Defendant’s acts of infringement have been willful under 35 U.S.C. § 284 since the date it was served with the complaint in this action. 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. To the extent that Defendant is jointly infringing one or more of the claims of the ‘589 patent with one or more third parties, Defendant exercises control or direction over the infringement such that it is the mastermind of the infringement. On information and belief, Defendant's mastermind relationship is derived from a contractual relationship with the one or more third parties to provide the infringing services and/or system at the control or direction of Defendant.

9. Defendant’s acts of infringement have been willful under 35 U.S.C. § 284 since at least the date it was served with the Complaint in this action.

10. As a result of Defendant’s infringement of the ‘589 patent, Plaintiff 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 Plaintiff Aeritas will continue to suffer damages in the future unless Defendant’s infringing activities are enjoined by this Court.

11. 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, Plaintiff Aeritas will be greatly and irreparably harmed.

**COUNT II**

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

12. 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.

13. Defendant has been and now is directly (literally and under the doctrine of equivalents) infringing at least 22 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 Application,” “Mobile Site,” “Mobile Check-in,” and “Mobile Boarding Pass.” Defendant also has been indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '903 patent by its customers. Since at least after being served with the Complaint in this action, Defendant has knowingly contributed to the infringement, and continues to contribute to the infringement of one or more claims of the '903 patent by offering its products to its customers, which constitute a material part of the invention and is not a staple article or commodity of commerce suitable for substantial noninfringing use. Further, since at least after being served with the Complaint in this action, Defendant has knowingly contributed to the infringement, and continues to contribute to the infringement of one or more claims of the ‘903 patent, by offering to its customers use of its mobile software,

which constitutes a material part of the invention and is not a staple article or commodity of commerce suitable for substantial noninfringing use. Further, after being served with the complaint in this action, Defendant has induced infringement, and continues to induce infringement, of one or more claims of the '903 patent, with specific intent that its software be used by Defendant's customers to infringe the '903 patent. Defendant's acts of infringement have been willful under 35 U.S.C. § 284 since the date it was served with the complaint in this action. 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.

14. To the extent that Defendant is jointly infringing one or more of the claims of the '903 patent with one or more third parties, Defendant exercises control or direction over the infringement such that it is the mastermind of the infringement. On information and belief, Defendant's mastermind relationship is derived from a contractual relationship with the one or more third parties to provide the infringing services and/or system at the control or direction of Defendant.

15. Defendant's acts of infringement have been willful under 35 U.S.C. § 284 since at least the date it was served with the Complaint in this action.

16. As a result of Defendant's infringement of the '903 patent, Plaintiff 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 Plaintiff Aeritas will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

17. 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, Plaintiff Aeritas will be greatly and irreparably harmed.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff Aeritas respectfully requests that this Court enter:

- A. A judgment in favor of Plaintiff Aeritas that Defendant has infringed (either literally or under the doctrine of equivalents), directly or indirectly, by way of inducing or contributing to the infringement of, one more of the claims of the Asserted Patents;
- B. A judgment that such infringement was willful;
- C. 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;
- D. A judgment and order requiring Defendant to pay Plaintiff 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;
- E. An award to Aeritas for enhanced damages equal to treble the amount of actual damages, for the willful nature of Defendant's acts of infringement, with notice being made as least as early as the date of the filing of the complaint, 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 Plaintiff Aeritas may show itself to be entitled.

**DEMAND FOR JURY TRIAL**

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

December 27, 2011

BAYARD, P.A.

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