

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

SWIPE INNOVATIONS, LLC,

Plaintiff,

v.

- (1) HEARTLAND PAYMENT SYSTEMS INC.; and
- (2) DEBITEK, INC. D/B/A HEARTLAND MICROPAYMENTS,

Defendants.

CIVIL ACTION NO. 9:12-CV-150-RC

(Consolidated Action, Lead Case: No. 9:12-cv-40)

THIRD AMENDED COMPLAINT
FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Swipe Innovations, LLC (“Swipe”) files this Third Amended Complaint¹ against the above-named defendants, alleging, based on its own knowledge with respect to itself and its own actions, and based on information and belief as to all other matters, as follows:

PARTIES

1. Swipe is a limited liability company formed under the laws of the State of Texas, with a principal place of business in Houston, Texas.

2. Defendant Heartland Payment Systems Inc. (“Heartland Payment”), is a Delaware corporation with a principal place of business in Princeton, New Jersey.

Heartland can be served via its registered agent for service of process: Corporation Service Company dba CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

¹ This is the third amended complaint filed against Heartland Payment, even though it is the first complaint filed in this case after severance.

3. Defendant Debittek, Inc. d/b/a Heartland MicroPayments (“Debittek”), is a Delaware corporation with a principal place of business in Chattanooga, Tennessee. Debittek is doing business in the state of Texas but has failed to appoint an agent for service of process in Texas. Accordingly, Debittek can be served under the Texas Long Arm Statute and/or the Texas Business Organizations Code by serving the Secretary of State. Debittek’s home, home office, and principal office address is 2115 Chapman Rd., Ste. 159; Chattanooga, TN 37421. Debittek is a wholly owned subsidiary of Heartland Payment.

JURISDICTION AND VENUE

4. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §1331 and §1338(a).

5. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, defendants have transacted business in this district and have committed and/or induced acts of patent infringement in this district.

6. Defendants are subject to this Court’s specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute, due at least to defendants’ 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 Texas and in this district.

JOINDER

7. Plaintiff’s rights to relief are asserted against all named defendants jointly, severally, or in the alternative with respect to or arising out of the same transaction,

occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process; and questions of fact common to all defendants will arise in this action.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,351,296

8. On September 27, 1994, United States Patent No. 5,351,296 (“the 296 patent”) was duly and legally issued by the United States Patent and Trademark Office for an invention titled “Financial Transmission System.” A true and correct copy of the 296 patent is attached hereto as Exhibit A.

9. The 296 patent relates to performing financial transactions with a financial card over a communications network, and, for example, to a method and device for determining and securely transmitting an account code of such a financial card over a communications link in a communications network to a remote location.

10. Swipe is the owner of the 296 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 296 patent against infringers, and to collect damages for all relevant times.

11. Each defendant, either alone and/or in conjunction with others, including its customers and/or suppliers, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale payment terminal products and/or systems (including at least products and/or systems with encrypting PIN pads) that infringed one or more claims of the 296 patent.

12. Each defendant is accused of infringing the 296 patent both directly and indirectly with respect to Accused Products and Accused Services as identified in Swipe’s

infringement contentions against them, as applicable (which are incorporated by reference as if fully set forth herein).

13. The Accused Products include payment systems with encrypting PIN pads (including standalone PIN pads or payment terminals incorporating PIN pads), that can perform financial transactions over a communication network in conjunction with a telephone.

14. An example of an infringing product that is a standalone PIN pad is First Data's FD-10:



Source: http://www.firstdata.com/downloads/marketing-merchant/fd10_set_up_guide.pdf

15. An example of an infringing product that is a payment terminal incorporating a PIN pad is Elavon's Verifone Vx510:



Source: http://www.elavon.com/documents/pdfs/verifone_vx510.pdf

16. The Accused Products perform financial transactions as part of processes that encrypt, transmit, and decrypt financial account data (e.g., PINs) following the Derived Unique Key Per Transaction ("DUKPT") method. The devices are particularly useful in performing financial transactions involving secret account codes, such as PIN debit transactions. The Accused Services involve the use of the Accused Products to carry out such financial transactions.

17. DUKPT is a key management method approved by the Payment Card Industry ("PCI") Security Standards Council for secure financial transactions. It incorporates a standard administered by American National Standards Institute ("ANSI")

and described in ANSI X9.24 Part 1, titled “Retail Financial Services Symmetric Key Management.” The Accused Products have been specially approved under PCI specifications, or their equivalent, to perform financial transactions in accordance with the DUKPT standard.

Heartland

18. Heartland Payment and/or Debitex (collectively, “Heartland”) either alone and/or in conjunction with others, including its customers and/or suppliers, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale payment terminal products and/or systems (including at least the Mobuyle Retail app and E3-P1 Pin Pad, and/or i5310 MicroPayments Electronic Cash System models) that infringed one or more claims of the 296 patent.

19. Heartland’s infringement was willful at least from service of the first complaint against Heartland Payment for infringement of the 296 patent.

20. Heartland’s customers and/or suppliers directly made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale payment terminal products and/or systems (including at least the Mobuyle Retail app, E3-P1 Pin Pad, and/or i5310 MicroPayments Electronic Cash System models) that infringed one or more claims of the 296 patent.

21. Heartland induced and/or contributed to infringement of the 296 patent by its customers and/or suppliers.

22. Heartland took active steps, directly and/or through contractual relationships with others, to cause infringement with both knowledge of the 296 patent and the specific intent to cause its customers and/or suppliers (e.g., merchants, third-party

manufacturers) to make, use, sell, import, or otherwise provide the Accused Products and/or perform the Accused Services in a manner that infringed the 296 Patent. Such steps by Heartland included, among other things, advising or directing its customers and/or suppliers to make, use, sell, or import the Accused Products or perform the Accused Services in an infringing manner; advertising and promoting the use of the Accused Products or performance of the Accused Services in an infringing manner; and/or distributing instructions that guide users to use the Accused Products or to perform the Accused Services in an infringing manner.²

23. The Accused Products contain hardware and software components that are especially designed to be used in conjunction with other devices or systems that may not be provided by Heartland. These other devices or systems may include: key loading devices; point of sale terminals and cash registers; host security modules/hardware security modules; and computers operated by front-end networks, acquirers, intermediate switches, debit networks, card issuers, and others. To the extent Heartland does not provide these other devices and systems, it takes active steps, directly and/or through contractual relationships, to cause infringement by its customers and/or suppliers, including, among other things, advising or directing others to integrate such other devices and systems with Accused Products; advertising and promoting the use by others of the Accused Products with such other devices and systems; and distributing instructions that guide users to integrate the Accused Products with such other devices and systems. *Id.*

² Ex. D to 8-31-12 Infringement Contentions [Heartland Payment Systems Materials] (Screenshot of Google Play Store webpage for Heartland Payment Systems's Mobuyle Retail app, E3-P1 Pin Pad Marketing Materials).

24. The Accused Products have hardware and/or software components that are especially designed to be used with such other devices and systems in carrying out DUKPT transactions, as shown by the fact that the Accused Products were separately tested for and approved for use with the DUKPT standard, actions required by PCI guidelines, or their equivalent. These components in the Accused Products constitute a material part of the invention of one or more asserted claims of the 296 patent and are not staple articles of commerce suitable for substantial non-infringing use. These distinct and separate components are used only to perform the DUKPT key management method and not any other key management method approved for use in financial transactions involving PIN data transmission by PCI or similar organizations.

25. For the reasons stated above, Heartland infringes the 296 patent both directly and indirectly.

Damages

26. Swipe has been damaged as a result of the infringing conduct by defendants alleged above and, thus, such defendants are liable to Swipe in an amount that adequately compensates it for their infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Swipe hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

Swipe requests that the Court find in its favor and against defendants, and that the Court grant Swipe the following relief:

- a. Judgment that one or more claims of the 296 patent have been directly

and/or indirectly infringed, either literally and/or under the doctrine of equivalents, by defendants and/or by others acting in concert therewith;

b. A permanent injunction enjoining defendants and their respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the 296 patent;

c. Judgment that defendants account for and pay to Swipe all damages to and costs incurred by Swipe because of defendants' infringing activities and other conduct complained of herein, including, under 35 U.S.C. § 284, enhanced damages for willful infringement at least as of the date of the service of the first complaint against them in 9:12-cv-40, by which time defendants undoubtedly had knowledge of the patent-in-suit;

d. That Swipe be granted pre-judgment and post-judgment interest on the damages caused by defendants' infringing activities and other conduct complained of herein;

e. That this Court declare this an exceptional case and award Swipe its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and

f. That Swipe be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 27, 2012

Respectfully submitted,

/s/ Larry D. Thompson, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Larry D. Thompson, Jr.
Larry D. Thompson, Jr.