

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

AERITAS, LLC,

Plaintiff,

v.

VIRGIN AMERICA 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 Virgin America Inc.

PARTIES

1. Plaintiff Aeritas, LLC (“Aeritas” or “Plaintiff”) is a Texas limited liability company having a principal place of business at 15950 Dallas Parkway, Suite 225, Dallas, Texas 75248.

2. On information and belief, Defendant Virgin America Inc. (“Defendant”) is a Delaware corporation with its principal office at 555 Airport Boulevard, Burlingame, CA 94010. Defendant may be served via its registered agent, The Corporation Trust Company, 1209 North 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 still is directly infringing at least claim 28 of the '589 patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing, without license or authority, software and systems 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 pass products. Thus, by making, using, importing,

offering for sale, and/or selling such software, Defendant has injured Aeritas and is thus liable to Aeritas for infringement of the ‘589 patent under 35 U.S.C. § 271(a).

8. Defendant has been and still is indirectly infringing, by way of inducing infringement by others of the ‘589 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claim 28 of the ‘589 patent by facilitating 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 pass products. These software and systems are made, used, imported, offered for sale, and/or sold by direct infringers of the ‘589 patent in the United States, such as Defendant’s customers. Defendant induces others to directly infringe by inducing or encouraging the use of its infringing software. Since at least the filing of this complaint, Defendant has had knowledge of the ‘589 patent and, by continuing the actions described above, has had the specific intent to, or were willfully blind to the fact that its actions would, induce infringement of the ‘589 patent. Thus, by making, using, importing, offering for sale, and/or selling infringing products and services, Defendant has injured Aeritas and is thus liable to Aeritas for infringement of the ‘589 patent under 35 U.S.C. § 271(b).

9. Defendant has also been and still is indirectly infringing, by way of contributing to the infringement by others of the ‘589 patent, by, among other things, making, using,

importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claim 28 of the '589 patent by facilitating 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 pass products. These software and systems are made, used imported, offered for sale, and/or sold by direct infringers of the '589 patent in the United States, such as Defendant's customers. Defendant induces others to directly infringe by inducing or encouraging the use of its infringing products and services. Defendant's infringing products and services are a material part of the invention, and are especially made or especially adapted for use in the infringement of the '589 patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least the filing of this complaint, Defendant has had knowledge of the '589 patent and, by continuing the actions described above, has had the specific intent to, or were willfully blind to the fact that its actions would, induce infringement of the '589 patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendant has injured Tranxition and is thus liable to Tranxition for infringement of the '589 patent under 35 U.S.C. § 271(c).

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 still is directly infringing at least claim 1 of the '903 patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing, without license or authority, software and systems 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 pass products. Thus, by making, using, importing, offering for sale, and/or selling such software, Defendant has

injured Aeritas and is thus liable to Aeritas for infringement of the '903 patent under 35 U.S.C. § 271(a).

14. Defendant has been and still is indirectly infringing, by way of inducing infringement by others of the '903 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claim 1 of the '903 patent by facilitating 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 pass products. These software and systems are made, used, imported, offered for sale, and/or sold by direct infringers of the '903 patent in the United States, such as Defendant's customers. Defendant induces others to directly infringe by inducing or encouraging the use of its infringing software. Since at least the filing of this complaint, Defendant has had knowledge of the '903 patent and, by continuing the actions described above, has had the specific intent to, or were willfully blind to the fact that its actions would, induce infringement of the '903 patent. Thus, by making, using, importing, offering for sale, and/or selling infringing products and services, Defendant has injured Aeritas and is thus liable to Aeritas for infringement of the '903 patent under 35 U.S.C. § 271(b).

15. Defendant has also been and still is indirectly infringing, by way of contributing to the infringement by others of the '903 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claim 1 of the '903 patent by facilitating 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 pass products. These software and systems are made, used imported, offered for sale, and/or sold by direct infringers of the '903 patent in the United States, such as Defendant's customers. Defendant induces others to directly infringe by inducing or encouraging the use of its infringing products and services. Defendant's infringing products and services are a material part of the invention, and are especially made or especially adapted for use in the infringement of the '903 patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least the filing of this complaint, Defendant has had knowledge of the '903 patent and, by continuing the actions described above, has had the specific intent to, or were willfully blind to the fact that its actions would, induce infringement of the '903 patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendant has injured Tranxition and is thus liable to Tranxition for infringement of the '903 patent under 35 U.S.C. § 271(c).

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, directly and/or indirectly, by way of inducing and/or contributing to the infringement of the Asserted Patents;
- 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. 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;

- D. 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;
- E. 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.

November 19, 2012

BAYARD, P.A.

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