

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

POLLIN PATENT LICENSING, LLC and
AUTOSCRIBE CORPORATION,

Plaintiffs,

v.

COMMERCE BANCSHARES, INC. and
COMMERCE BANK, a State Chartered Trust
Company,

Defendants.

Case No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Pollin Patent Licensing, LLC and Autoscribe Corporation complain of Defendants Commerce Bancshares, Inc. and Commerce Bank, a State Chartered Trust Company, as follows:

1. This is a claim for patent infringement that arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction over the subject matter of this claim under 28 U.S.C. §§ 1331 and 1338(a).

2. Pollin Patent Licensing, LLC ("PPL") is a Florida limited liability company with a business address of 9801 Washingtonian Boulevard, Suite 200, Gaithersburg, Maryland 20878.

3. Autoscribe Corporation ("Autoscribe") is a Maryland corporation with a principal place of business at 9801 Washingtonian Boulevard, Suite 200, Gaithersburg, Maryland 20878.

4. On October 3, 2006, the United States Patent and Trademark Office granted U.S. Patent No. 7,117,171, entitled "System and Method for Making a Payment from a Financial Account" and naming Robert Pollin as the inventor (the "'171 Patent") (Exhibit 1), which claims priority from an application filed on October 15, 1992.

5. Autoscribe is the owner by assignment of all legal rights, title, and interest in and to the '171 Patent.

6. PPL is an exclusive licensee to rights in the '171 Patent.

7. Among other activities, Autoscribe specializes in various forms of electronic payment solutions, including software and services for payment capture, risk management, ACH processing and check by phone payment (see, e.g., www.paymentvision.com). Among other things, PPL is responsible for the licensing of the '171 Patent.

8. Autoscribe and PPL have standing to sue for infringement of the '171 Patent because they collectively own all right, title and interest in and to the '171 Patent and the Autoscribe processes and products covered by that patent, including the right to collect for past damages. Autoscribe and PPL have each suffered injury from the Defendants' acts of patent infringement.

9. Commerce Bancshares, Inc. ("Commerce Bancshares") is a corporation organized under the laws of the State of Missouri with a principal place of business and/or corporate headquarters located at 1000 Walnut Street, Kansas City, Missouri 64106. Commerce Bancshares has identified Commerce Bank, N.A. as its registered agent. Upon information and belief, Commerce Bancshares is doing business in this judicial district as "Commerce Bank." Upon information and belief, Commerce Bancshares owns and operates a website at www.commercebank.com, which provides information about a variety of payment options for customers. Upon information and belief, Commerce Bancshares provides, among other things, a variety of banking products and services (including at least personal loan, mortgage, student loan and credit card services) to customers throughout the United States, including Missouri and this judicial district, in branches, online and over the telephone, including through at least one service or call center in St. Louis, Missouri.

10. Upon information and belief, Commerce Bank, a State Chartered Trust Company ("Commerce Bank") is a state chartered trust company organized under the laws of the State of Missouri with a principal place of business and/or corporate headquarters located at 1000 Walnut Street, 16th Floor, Kansas City, Missouri 64106. Upon information and belief, Commerce Bank (formerly known as Commerce Bank, N.A.) serves as the registered agent for Commerce Bancshares. Upon information and belief, Commerce Bank provides, among other things, a variety of banking products and services (including at least personal loan, mortgage, student loan and credit card services) to customers throughout the United States, including Missouri and this judicial district, in branches, online and over the telephone.

11. Upon information and belief, Commerce Bancshares and Commerce Bank provide payment processing services in Missouri and this judicial district by telephone through at least one call center located in this judicial district and elsewhere. Also upon information and belief, Commerce Bancshares and Commerce Bank own, operate, control, direct the activities of and/or collect funds through call centers, including call centers through which debt is collected using a telephone.

12. Accordingly, as set forth above, this Court has personal jurisdiction over Commerce Bancshares and Commerce Bank because, among other things, they reside in this judicial district and transact substantial business in Missouri and this judicial district, including the collection of debt from a debtor's checking account through the use of telephones and at least one call center located in this judicial district and from residents of Missouri and this judicial district.

13. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(d) and 1400(b).

INFRINGEMENT OF U.S. PATENT NO. 7,117,171

14. Upon information and belief, Defendants have infringed and continue to infringe the '171 Patent by, among other activities, making, using and/or conducting business through its call centers to collect debt throughout the United States, including within this judicial district, in a manner that is covered by at least claims 6 and 12 of the '171 Patent. Alternatively, upon information and belief, Defendants will have also infringed the '171 Patent with actual notice of infringement at least as early as March 11, 2011 and by the filing of this Complaint, by knowingly and actively inducing others to infringe and by contributing to the infringement of others by making, using and/or conducting check-by-phone services through call centers.

15. Upon information and belief, Defendants directly infringe the '171 Patent by performing each and every step of the claimed limitations of at least claims 6 and 12 of the '171 Patent.

16. Specifically, Defendants offer a service whereby customers can make payments to Defendants over the phone, through a conversation with a live operator, from a checking account ("Check-by-Phone System").

17. Upon information and belief, the Check-by-Phone system includes a computing system with an input screen and requires entry of a customer's routing and account numbers.

18. Upon information and belief, the required routing and account numbers are obtained by an operator representing Defendants and Defendants' Check-by-Phone System confirms the identity of the customer's financial institution based on the routing number provided by the customer and, in instances where the provided routing number does not match a valid routing number, the system provides an error indication.

19. Upon information and belief, Defendants create electronic records containing the information obtained from a customer and Defendants process and transmit those electronic records to a clearing system to cause a transfer of funds from the customer to Defendants.

20. At least as early as March 11, 2011, Defendants received actual notice of the '171 Patent and the likelihood of infringement thereof.

21. Defendants also promote and advertise infringing systems and indirectly infringe the '171 Patent by encouraging direct infringement by merchant-clients. Defendants educate their merchant-clients in the use of the Check-by-Phone System in an infringing manner and intend for their merchant-clients to use the indirectly infringing systems in an infringing manner.

22. Moreover, Defendants' indirectly infringing systems are especially designed to infringe the '171 Patent because they include features that have no substantial non-infringing uses.

23. After several calls and emails with representatives of Defendants conducted in an effort to obtain further evidence of infringement beyond publicly available sources, Defendants obtained outside counsel. Outside counsel for Defendants stated in an email of August 2, 2011, that: "Commerce has no interest in providing you any information right now. We will contact you if that changes in the future." Autoscribe believes that further evidence of infringement will be made available through the course of early discovery.

24. Autoscribe and PPL have complied with the provisions of 35 U.S.C. § 287.

25. Defendants' infringement, contributory infringement and/or inducement to infringe has injured Plaintiffs and Plaintiffs are entitled to recover damages adequate to compensate them for such infringement, but in no event less than a reasonable royalty.

26. Defendants' infringing activities have caused irreparable harm to Plaintiffs, which have no adequate remedy at law, and will continue to injure Plaintiffs, unless and until this Court

enters an injunction prohibiting Defendants from further infringement, contributing to and/or inducing infringement of the '171 Patent.

PRAYER FOR RELIEF

WHEREFORE, Autoscribe and PPL respectfully ask this Court to enter judgment against each Defendant, Commerce Bancshares and Commerce Bank, jointly and severally, as well as their respective subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees and all persons in active concert or participation with them, granting the following relief:

- A. The entry of judgment in favor of Plaintiffs and against each Defendant;
- B. An award of damages adequate to compensate Plaintiffs for the infringement of the '171 Patent that has occurred, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- C. Increased damages and/or attorneys' fees as permitted under 35 U.S.C. § 284 and § 285;
- D. Such other relief that Plaintiffs are entitled to under law, and any other and further relief that this Court or a jury may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury of all issues properly triable to a jury.

Dated: November 29, 2012

Respectfully submitted,

/s/ Paul A. Lesko

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