

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

SWIPE INNOVATIONS, LLC,

Plaintiff,

v.

- (1) INGENICO CORP.;
- (2) INGENICO INC.; AND
- (3) INGENICO S.A. D/B/A GROUPE
INGENICO,

Defendants.

CIVIL ACTION NO. 9:12-CV-127

FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Swipe Innovations, LLC (“Swipe”) files this First Amended Complaint against the above-named defendants, alleging, based on its own knowledge as 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 Ingenico Corp. is a Delaware corporation with a principal place of business in Alpharetta, Georgia. Ingenico Corp. is doing business in the state of Texas but has failed to appoint an agent for service of process in Texas. Accordingly, Ingenico Corp. can be served under the Texas Long Arm Statute, as well as the Texas Business Corporations Act, by serving the Secretary of State. Ingenico Corp.’s home, home office, and principal office address is 6195 Shiloh Road, Suite D, Alpharetta, GA 30005.

3. Defendant Ingenico Inc. is a Georgia corporation with a principal place of business in Alpharetta, Georgia. Ingenico Inc. is doing business in the state of Texas but

has failed to appoint an agent for service of process in Texas. Accordingly, Ingenico Inc. can be served under the Texas Long Arm Statute, as well as the Texas Business Corporations Act, by serving the Secretary of State. Ingenico Inc.'s home, home office, and principal office address is 6195 Shiloh Road, Suite D, Alpharetta, GA 30005.

4. Defendant Ingenico S.A. d/b/a Groupe Ingenico ("Groupe Ingenico") is a corporation organized under the laws of France with a principal place of business in 28/32 boulevard de Grenelle, 75015 Paris, France. Groupe Ingenico can be served at this principal place of business.

JURISDICTION AND VENUE

5. 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).

6. 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 acts of patent infringement in this district.

7. 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

8. 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

9. 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."

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. Ingenico Corp., Ingenico Inc., and Groupe Ingenico (collectively, "Ingenico"), either alone and/or in conjunction with others, including their 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 such as, but not limited to, the following models: 5100/i5100, i3010, i7780, iCT 250, iPP220, iPP320, i6550, Elite 712, eN-Crypt 2100, eN-Touch 1000) that infringed one or more claims of the 296 patent.

12. Ingenico is accused of infringing the 296 patent both directly and indirectly with respect to the Accused Products and Accused Services.

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 Ingenico's iPP220:



iPP220 PIN Pad

Source: <http://ingenico.us/wp-content/uploads/2012/07/iPP220-Mar2012.pdf>

15. An example of an infringing product that is a payment terminal incorporating a PIN pad is the Ingenico Telium iCT250:



Source: <http://www.amazon.com/Ingenico-I5100-Dual-Credit-Terminal/dp/B003D0P874>

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 the 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.

18. Ingenico, 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 following models: 5100/i5100, i3010, i7780, iCT 250, iPP220, iPP320, i6550, Elite 712, eN-Crypt 2100, eN-Touch 1000)

19. Ingenico's infringement was willful at least from the filing date and/or service date of the U.S. entities (Ingenico Corp. and Ingenico Inc.) for the first complaint against it for infringement of the 296 patent.

20. Ingenico'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 following models: 5100/i5100, i3010, i7780, iCT 250, iPP220, iPP320, i6550, Elite 712, eN-Crypt 2100, eN-Touch 1000)

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

22. Ingenico 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 Ingenico 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.

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 Ingenico. 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 Ingenico 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.*

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. 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, Ingenico infringes the 296 patent both directly and indirectly.

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 filing and/or service to the U.S. entities (Ingenico

Corp. and Ingenico Inc.) of the first complaint against them, by which time the 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: November 30, 2012

Respectfully submitted,

/s/ Larry D. Thompson, Jr.

Larry D. Thompson, Jr. (lead attorney)

Texas Bar No. 24051428

larry@ahtlawfirm.com

Matthew J. Antonelli

Texas Bar No. 24068432

matt@ahtlawfirm.com

Zachariah S. Harrington

Texas Bar No. 24057886

zac@ahtlawfirm.com

ANTONELLI, HARRINGTON &
THOMPSON LLP

4200 Montrose Blvd., Ste. 430

Houston, TX 77006

(713) 581-3000

(713) 581-3020 fax

Stafford Davis

State Bar No. 24054605

THE STAFFORD DAVIS FIRM, PC

305 S. Broadway, Suite 406

Tyler, Texas 75702

(903) 593-7000

sdavis@stafforddavisfirm.com

Attorneys for Swipe Innovations, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November 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.