

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

SONIC INDUSTRY, LLC,

Plaintiff,

v.

VIEWPOINT BANK, N.A.

Defendant.

Civil Action No. 2:12-cv-00571

JURY TRIAL DEMANDED

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff Sonic Industry, LLC (“Plaintiff”), by and through its undersigned counsel, files this First Amended Complaint against ViewPoint Bank, N.A. (“Defendant”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of Plaintiff’s United States Patent No. 5,954,793 entitled “*Remote Limit-Setting Information System*” (the “’793 patent”; a copy of which is attached hereto as Exhibit A). Plaintiff is the exclusive licensee of the ’793 patent with respect to the Defendant. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff is a limited liability company organized and existing under the laws of the State of Delaware. Plaintiff maintains its principal place of business at 3422 Old Capital Trail, PMB (STE) 1549, Wilmington, Delaware 19808-6192. Plaintiff is the exclusive licensee of the ’793 patent with respect to the Defendant, and possesses all substantial rights in the patent including but not limited to the right to sue for infringement and recover past damages.

3. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 1309 West 15th Street, Plano, TX 75075.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).
5. The Court has personal jurisdiction over Defendant because: Defendant is present within or has minimum contacts with the State of Texas and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.
6. More specifically, Defendant, directly and/or through authorized intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive web page) its products and services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas, has contributed to patent infringement in the State of Texas and in the Eastern District of Texas, and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Defendant has paying customers who are residents of the State of Texas and the

Eastern District of Texas and who use the Defendant's products and services in the State of Texas and in the Eastern District of Texas.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I – PATENT INFRINGEMENT

8. The '793 patent was duly and legally issued by the United States Patent and Trademark Office on September 21, 1999, after full and fair examination, for systems and methods for setting limits on a remote information system. Plaintiff is the exclusive licensee of the '793 patent with respect to the Defendant, and possesses all substantial rights in the patent and all rights of recovery under the '793 patent with respect to the Defendant, including but not limited to the right to sue for infringement and recover past damages.
9. Plaintiff is informed and believes that Defendant owns, operates, advertises, controls, sells, uses and otherwise provides hardware and software for "A method for remotely setting limits on an information distribution system including a remote processing device for being connected to a host computer by a communications channel, said method comprising the steps of: entering selection and limit parameters at the remote processing device; verifying the selection and limit parameters at the remote processing device prior to establishing said communications channel; if the selection and limit parameters are verified at the remote processing device, establishing said communications channel and transferring said selection and limit parameters from the remote processing device to the host computer by the communication channel; storing said selection and limit parameters in a memory of the host computer; transmitting inbound information directly from at least one information source, through a communications link, to said host computer, said information source being outside said host computer and said processing device; extracting, only in said host computer, extracted information from said inbound information in response to said selection and limit parameters, said extracted information including only those portions of inbound information which satisfy said selection and limit parameters; and distributing a non-interactive paging message from the host computer to the remote processing device, said paging message

including, of said inbound information transmitted to said host computer, only said extracted information.”

10. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the '793 patent by making, using, providing, offering to sell, and selling (directly or through intermediaries), in this district and elsewhere in the United States, apparatus, systems and methods for using a remote device to set a selection and limit on a server. More particularly, Plaintiff is informed and believes that Defendant, uses, sells and/or requires and/or directs users to access and/or use a remote device that enters and verifies selection and limit parameters for online banking prior to transmitting the parameters to a host computer for processing, in a manner claimed in the '793 patent. Defendant infringes the '793 patent by Defendant providing ViewPoint online banking software, allowing users to log on the Defendants website and set alerts corresponding to their bank accounts which practices a method for remotely setting limits on an information distribution system.
11. Defendant infringes "793 patent by providing customers a variety of tools and systems designed to manage and facilitate interacting with their bank accounts, including an alert system providing users with messages when conditions change. See EXHIBIT B, showing the "Alerts Questions" of ViewPoint Bank. The remote processing device corresponds to a user's desktop computer, laptop, smart phone, tablet, or any other portable device interacting with the ViewPoint online banking software, specifically the alerts functionality described in http://www.viewpointbank.com/home/fiFiles/static/documents/epoint_quickreference_gettingstarted.pdf, page 13-16, entitled Customer Alerts Module and the ViewPoint Bank online alerts website, which loads its html into the Customer's remote processing device's internet browser. See Exhibit C. The host computer is the ViewPoint Bank server feeding customer information to the remote processing device, and the communications channel is the data transfer channel that ferries information between the host computer and portable device. Selection and limit parameters refer to classifications that the customer may monitor and receive alerts related to those classifications. Selection limits correspond to the appropriate

account. See Exhibit B, “User can select to be notified when their account balance falls below a certain amount that the user selects” The limit parameters correspond to the values corresponding to whether an alert should be generated. See Exhibit B, “Security alerts, balance alerts, wire transfer alerts, and reminders are types of alerts that can be given based upon user’s desired selections”. This alert generation capability is accessible through the Customer Alerts Module as described above. See Exhibit C. The customer provides selection and limit parameters for generating an alert by interacting with ViewPoint bank’s online banking Customer Alert Module website’s html code loaded on to their internet browser. Upon the customer clicking submit, the Customer Alert Module, including the ViewPoint Bank Alert website html code on the customer’s web browser, takes the parameters that the Customer provided, and inputs this information into a verification routine in the ViewPoint Bank Alert website html code loaded on the Customers internet browser. The browser checks to see if parameters have been provided by the customer, thereby verifying the customer has provided alert parameters. See Exhibit B, “Enter the email address to send the alert, then click submit”.

12. After selection and limit parameters are established, the ViewPoint Bank Customer Alert website html code, loaded in the Customer’s browser on their remote processing device then tells the Customer’s remote processing device to establish a communications channel with ViewPoint Bank’s host computer. The remote processing device, based on information and belief, sends this data to the ViewPoint Bank servers, the host computer, over the data transfer channel, the communication channel. Based on information and belief, once the parameter data is transferred from the remote processing device to the host computer, that data is stored in memory. The Defendant infringes the ‘793 patent when the inbound information corresponds to financial data that the host computer aggregates for access by the customer. For the information to go between the inbound information source and the host computer, a communications link is established. These inbound information sources are outside both Defendant’s servers that handle customer requests, the host computer, and the

customer's computer, the remote processing device. The inbound information sources are within ViewPoint Bank's custody, care, or control. These inbound information sources are a single or plurality of servers that contain customer account information including but not limited to balance, deposits, and debit information, etc. Based on information and belief, the host computer, after receiving the parameter data from the remote processing device, extracts the relevant information from the inbound information source and delivers only that information as an alert to the user. This infringement of the '793 patent occurs when, a customer's account goes below a threshold and an alert is generated to the customer's remote processing device, computer and/or smart phone.

13. While the Defendant's server is receiving information about many accounts, when it receives information indicating that a customer's specific account has gone below a specific threshold, the Defendant's server generates an alert for delivery to the customer's computer, alerting the customer about the movement of said account, but not about the movement of any other accounts, such as money markets, mortgages, certificates of deposits or savings. Based on information and belief, the host computer, after receiving the parameter data from the remote processing device, extracts the relevant information from the inbound information source and delivers only that information as an alert to the customer.
14. Plaintiff is informed and believes that Defendant owns, operates, advertises, controls, sells, uses and otherwise provides hardware and software for "An Apparatus for remotely setting limits on an information distribution system including a host computer for being connected to a remote processing device by a communications network, said apparatus comprising: means for entering selection and limit parameters at the remote processing device; means for verifying the selection and limit parameters at the remote processing device prior to establishing a connection to said host computer via said network; means for establishing said connection and transferring via said communications network said selection and limit parameters from the remote processing device to the host computer if the selection and limit parameters are verified at the remote processing device; means, coupled to said transferring

means, for storing said selection and limit parameters in a memory of the host computer; means for transmitting inbound information directly from at least one information source, via a communications link, to said host computer, said information source being outside said host computer and said processing device; means, located only in said host computer and coupled to said storing means and said transmitting means, for extracting selected portions of said inbound information in response to said selection and limit parameters, said selected portions including only those portions of said inbound information which satisfy said selection and limit parameters; and means, coupled to said extracting means, for distributing a non-interactive paging message from the host computer to the remote processing device, said paging message including, of said inbound information transmitted to said host computer, only said selected portions of said inbound information.”

15. Defendant provides and uses an apparatus that allows their Customers specify alerts to be sent to them based on their bank account activity. The Defendant provides and uses a means for entering selection parameters, i.e. the ViewPoint Bank online alert website html code present on the Customers computer and browser. Defendant provides and uses a means for verifying these selection and limit parameters i.e. the ViewPoint Bank online alert website html code present on the Customer’s computer and browser, via a verification routine, that checks if limit parameters have in fact been provided by the Customer. Defendant provides and uses a means for establishing a connection between the Customer’s computer, and the ViewPoint Bank server, or host computer. This connection is established by the Defendant’s website code on the Customer’s browser and software on the host computer. After the Customer clicks “Submit” Defendant’s website code on the Customer’s computer and browser take that information, verify it is there, then enter or send these selections to Defendant’s host computer. Defendant provides and uses the host computer as a means to store the alert selections made by the Customer. Defendant provides and uses a means for transmitting inbound information directly from at least one information source, via a communications link, to said host computer. The software present on the Defendant’s host

computer, and on the inbound information servers, which are under the Defendant's custody, care or control, allow an aggregation of account information to be sent to the Defendant's host computer. Defendant's software on the host computer, then calls the Customer's stored selection and limit parameter's i.e. alerts from the host computer's memory. The software on Defendant's host computer, then uses this information, to filter the incoming aggregate account information sent from the inbound information servers that Defendant has care, custody or control over. Defendant's host computer, then formats the filtered data, to allow the filtered data to be sent to the Customers remote processing device, i.e. computer or mobile phone, or tablet PC, in the form of a non-interactive paging message i.e. text message, email, push notification.

16. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.
17. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of the Defendant's wrongful acts in an amount subject to proof at trial, 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.
18. Defendant's infringement of Plaintiff's exclusive rights under the '793 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

19. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '793 patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendant.

- B. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- C. That, should Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of their actions, which is the time of filing of Plaintiff's Original Complaint at the latest, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- D. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant from further acts of (1) infringement, (2) contributory infringement, and (3) actively inducing infringement with respect to the claims of the '793 patent;
- E. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. §285; and
- F. Any further relief that this Court deems just and proper.

Dated: January 25, 2013

Respectfully submitted,

By: /s/ Austin Hansley

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