

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

PRAGMATUS TELECOM, LLC,

Plaintiff,

v.

FIRST DATA CORPORATION,

Defendant.

Civil Action No. 12-cv-1681-RGA

JURY TRIAL DEMANDED

**FIRST AMENDED COMPLAINT**

Plaintiff Pragmatius Telecom, LLC (“Pragmatius”) complains and alleges as follows against Defendant First Data Corporation (“First Data”):

**THE PARTIES**

1. Pragmatius is a limited liability company organized and existing under the laws of the Commonwealth of Virginia with its principal place of business at 601 North King Street, Alexandria, Virginia 22314.

2. Pragmatius is informed and believes that First Data Corporation is a Delaware corporation with its principal place of business at 5565 Glenridge Connector, N.E., Suite 2000, Atlanta, GA 30342.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States, United States Code, 35 U.S.C. § 271 et seq. This Court has subject matter jurisdiction over this action under Title 28 United States Code, §§ 1331 and 1338.

4. Pragmatius is informed and believes that this Court has personal jurisdiction over First Data because First Data is incorporated within this district and has committed, and continues to commit, acts of infringement in Delaware. Pragmatius is informed and believes that First Data also maintains a registered agent in Delaware, namely Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

5. Venue is proper under 28 U.S.C. §§ 1391 and 1400 because First Data has committed acts of infringement in this district and/or is deemed to reside in this district.

**THE PATENTS-IN-SUIT**

6. On October 30, 2001, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 6,311,231 (“the ’231 Patent”), entitled “Method and System for Coordinating Data and Voice Communications Via Customer Contract Channel Changing System Using Voice Over IP.” Pragmatus holds all right, title, and interest in and to the ’231 Patent. A true and correct copy of the ’231 Patent is attached as Exhibit B.

7. On December 23, 2003, the USPTO duly and legally issued United States Patent No. 6,668,286 (“the ’286 Patent”), entitled “Method and System for Coordinating Data and Voice Communications Via Customer Contact Channel Changing System Over IP.” Pragmatus holds all right, title and interest in and to the ’286 Patent. A true and correct copy of the ’286 Patent is attached as Exhibit C.

8. On January 2, 2007, the USPTO duly and legally issued United States Patent No. 7,159,043 (“the ’043 Patent”), entitled “Method and System for Coordinating Data and Voice Communications Via Contact Channel Changing System.” Pragmatus holds all right, title and interest in and to the ’043 Patent. A true and correct copy of the ’043 Patent is attached as Exhibit D.

**COUNT I**

**(INFRINGEMENT OF THE ’231 PATENT)**

9. Pragmatus incorporates by reference herein the averments set forth in paragraphs 1 through 8 above.

10. First Data has and continues to infringe directly one or more claims of the ’231 Patent, including at least by using the system of claim 9 of the ’231 Patent to provide live chat service over the Internet.

11. First Data also has and continues to infringe indirectly one or more claims of the ’231 Patent by inducing customers (including but not limited to Wal-Mart) to infringe and/or

contributing to the infringement of customers of at least claim 9 of the '231 Patent by providing live chat service over the Internet. Pragmatus is informed and believes that First Data had notice of its infringement no later than September or October 2012 when Pragmatus' assertion of infringement against Wal-Mart was relayed to First Data's in-house counsel. *See* Exhibit A. After Pragmatus informed Wal-Mart that its live chat services infringed the '231 Patent, Wal-Mart wrote Pragmatus Telecom and copied First Data's in-house counsel and informed Pragmatus Telecom "that the allegedly infringing services are supplied by to Walmart by [First Data], which is required to indemnify, defend, and hold Walmart harmless against allegations of patent infringement." *Id.* The letter further directed Pragmatus Telecom to direct future correspondence concerning Wal-Mart's infringement to First Data's in-house counsel. *Id.* Pragmatus is informed and believes that First Data then agreed to indemnify Wal-Mart further evidencing First Data's notice of its infringement. Moreover, First Data also has written notice of its infringement by virtue of the filing and service of the original Complaint. Upon information and belief, First Data knows that its live chat services constitute a material part of the '231 Patent, are especially made or adapted to infringe the '231 Patent, and have no substantial non-infringing use other than to infringe claim 9 of the '231 Patent. Pragmatus is also informed and believes that First Data also instructs customers how to use its live chat services in a manner that infringes claim 9 of the '231 Patent through the creation and dissemination of marketing materials and other materials that inform the users how to use its live chat services with the intent and knowledge that users will use First Data's live chat services in a way that infringes.

12. As a result of First Data's acts of infringement, Pragmatus has suffered and will continue to suffer damages in an amount to be proved at trial.

## **COUNT II**

### **(INFRINGEMENT OF THE '286 PATENT)**

13. Pragmatus incorporates by reference herein the averments set forth in paragraphs 1 through 8 above.

14. First Data has and continues to infringe directly one or more claims of the '286 Patent, including at least by using the system of claim 18 of the '286 Patent to provide live chat service over the Internet.

15. First Data also has and continues to infringe indirectly one or more claims of the '286 Patent by inducing customers (including but not limited to Wal-Mart) to infringe and/or contributing to the infringement of customers of at least claim 18 of the '286 Patent by providing live chat service over the Internet. Pragmatus is informed and believes that First Data had notice of its infringement no later than September or October 2012 when Pragmatus' assertion of infringement against Wal-Mart was relayed to First Data's in-house counsel. *See* Exhibit A. After Pragmatus informed Wal-Mart that its live chat services infringed the '286 Patent, Wal-Mart wrote Pragmatus Telecom and copied First Data's in-house counsel and informed Pragmatus Telecom "that the allegedly infringing services are supplied by to Walmart by [First Data], which is required to indemnify, defend, and hold Walmart harmless against allegations of patent infringement." *Id.* The letter further directed Pragmatus Telecom to direct future correspondence concerning Wal-Mart's infringement to First Data's in-house counsel. *Id.* Pragmatus is informed and believes that First Data then agreed to indemnify Wal-Mart further evidencing First Data's notice of its infringement. Moreover, First Data also has written notice of its infringement by virtue of the filing and service of the original Complaint. Upon information and belief, First Data knows that its live chat services constitute a material part of the '286 Patent, are especially made or adapted to infringe the '286 Patent, and have no substantial non-infringing use other than to infringe claim 18 of the '286 Patent. Pragmatus is also informed and believes that First Data also instructs customers how to use its live chat services in a manner that infringes claim 18 of the '286 Patent through the creation and dissemination of marketing materials and other materials that inform the users how to use its live chat services with the intent and knowledge that users will use First Data's live chat services in a way that infringes.

16. As a result of First Data's acts of infringement, Pragmatus has suffered and will continue to suffer damages in an amount to be proved at trial.

**COUNT III**  
**(INFRINGEMENT OF THE '043 PATENT)**

17. Pragmatus incorporates by reference herein the averments set forth in paragraphs 1 through 8 above.

18. First Data has and continues to infringe directly one or more claims of the '043 Patent, including at least by using the system of claim 1 of the '043 Patent to provide live chat service over the Internet.

19. First Data also has and continues to infringe indirectly one or more claims of the '043 Patent by inducing customers (including but not limited to Wal-Mart) to infringe and/or contributing to the infringement of customers of at least claim 1 of the '043 Patent by providing live chat service over the Internet. Pragmatus is informed and believes that First Data had notice of its infringement no later than September or October 2012 when Pragmatus' assertion of infringement against Wal-Mart was relayed to First Data's in-house counsel. *See* Exhibit A. After Pragmatus informed Wal-Mart that its live chat services infringed the '043 Patent, Wal-Mart wrote Pragmatus Telecom and copied First Data's in-house counsel and informed Pragmatus Telecom "that the allegedly infringing services are supplied by to Walmart by [First Data], which is required to indemnify, defend, and hold Walmart harmless against allegations of patent infringement." *Id.* The letter further directed Pragmatus Telecom to direct future correspondence concerning Wal-Mart's infringement to First Data's in-house counsel. *Id.* Pragmatus is informed and believes that First Data then agreed to indemnify Wal-Mart further evidencing First Data's notice of its infringement. Moreover, First Data also has written notice of its infringement by virtue of the filing and service of the original Complaint. Upon information and belief, First Data knows that its live chat services constitute a material part of the '043 Patent, are especially made or adapted to infringe the '043 Patent, and have no substantial non-infringing use other than to infringe claim 1 of the '043 Patent. Pragmatus is

also informed and believes that First Data also instructs customers how to use its live chat services in a manner that infringes claim 1 of the '043 Patent through the creation and dissemination of marketing materials and other materials that inform the users how to use its live chat services with the intent and knowledge that users will use First Data's live chat services in a way that infringes.

20. As a result of First Data's acts of infringement, Pragmatus has suffered and will continue to suffer damages in an amount to be proved at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Pragmatus respectfully requests the following relief:

- a) A judgment that First Data has infringed one or more claims of United States Patent Nos. 6,311,231, 6,668,286, and 7,159,043;
- b) A judgment that United States Patent Nos. 6,311,231, 6,668,286, and 7,159,043 are valid and enforceable;
- c) Pragmatus be awarded damages adequate to compensate Pragmatus for First Data's infringement of United States Patent Nos. 6,311,231, 6,668,286, and 7,159,043 up until the date such judgment is entered, including prejudgment and post-judgment interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary adequately to compensate Pragmatus for First Data's infringement, an accounting;
- d) A judgment that Pragmatus be awarded attorneys' fees, costs, and expenses incurred in prosecuting this action; and
- e) A judgment that Pragmatus be awarded such further relief at law or in equity as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pragmatus hereby demands trial by jury on all claims and issues so triable.

Dated: March 7, 2013

Respectfully submitted,

FARNAN LLP

/s/ Brian E. Farnan

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