

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

N5 TECHNOLOGIES, LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. NO. 2:12-cv-00686-MHS
)	
CAPITAL ONE, N.A.,)	
)	JURY TRIAL DEMANDED
CAPITAL ONE BANK (USA) NATIONAL)	
ASSOCIATION,)	
)	
and)	
)	
CAPITAL ONE SERVICES, LLC,)	
)	
Defendants.)	
)	
)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff N5 Technologies, LLC (“N5”) files this first amended complaint for patent infringement against Defendants Capital One, N.A., Capital One Bank (USA) National Association, and Capital One Services, LLC (collectively, “Capital One” or “Defendants”).

PARTIES

1. N5 is a limited liability company organized and existing under the laws of the Commonwealth of Virginia with its Registered Office and principal place of business at 10432 Balls Ford Road, Suite 300, Manassas, Virginia 20109.

2. On information and belief, Defendant Capital One, N.A. is a federally-chartered banking institution with its principal place of business in Glen Allen, Virginia. This Defendant

may be served through its registered agent, Corporation Service Company, 11 South 12th Street, Richmond, Virginia 23218.

3. On information and belief, Defendant Capital One Bank (USA) National Association is a federally-chartered banking institution with its principal place of business in Glen Allen, Virginia. This Defendant may be served through its registered agent, Corporation Service Company, 11 South 12th Street, Richmond, Virginia 23218.

4. On information and belief, Defendant Capital One Services, LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in McLean, Virginia. This Defendant may be served through its registered agent, Corporation Service Company, 2711 Centreville Road, Suite 400, Wilmington, Delaware 19808.

5. N5 is the owner of U.S. Patent No. 7,197,297 to Myles, et al., titled “Authentication Method for Enabling a User of a Mobile Station to Access to Private Data or Services” (“the ’297 Patent”).

6. Defendants directly or indirectly distribute, market, sell and/or offer to sell throughout the United States, including in this judicial district, a banking product and/or service known as “Mobile Banking” through which the Defendants provide certain information to their customers and allow them to perform certain banking transaction through the use of mobile devices.

JURISDICTION AND VENUE

7. This is an action for patent infringement, arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*

8. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

9. Defendants conduct substantial business in this judicial district and regularly solicit business from, do business with, and derive revenue from goods and services provided to, customers in this district, and have committed acts of patent infringement in this judicial district and such acts are continuing. Because Defendants have committed acts of patent infringement in this judicial district, and/or are otherwise present and doing business in this judicial district, this Court has personal jurisdiction over Defendants.

10. Defendants are properly joined in this action because each of the Defendants directly or indirectly distributes, markets, sells and/or offers to sell throughout the United States, including in this judicial district, banking products and/or services known as “Mobile Banking” that utilize the same infringing process.

11. Because Defendants have committed acts of patent infringement in this judicial district and because Defendants provide services and/or products in this judicial district, do business in this judicial district, and otherwise have minimum contacts here, venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c), and 1400(b).

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,197,297

12. N5 realleges and incorporates herein by reference the allegations stated in paragraphs 1-11 of this Complaint.

13. The United States Patent and Trademark Office duly and legally issued the ’297 Patent on March 27, 2007, to the inventors Colin Myles and Richard Owen. N5 is the owner by assignment of all right, title and interest in and to the ’297 Patent, including the right to sue,

enforce and recover damages for all past, present, and future infringements of the patent. A true and correct copy of the '297 Patent is attached as Exhibit A.

14. Defendants have infringed and are continuing to infringe, literally or through the doctrine of equivalents, directly, indirectly, and/or jointly, one or more claims of the '297 Patent, by making, using, offering to sell and/or selling in this judicial district and elsewhere within the United States and/or importing into the United States Mobile Banking products and services that are within the scope of at least claim 1 of the '297 patent, constituting infringement under 35 U.S.C. § 271 (a).

15. In particular, N5 is informed and believes, and based thereon alleges, that Defendants operate a Mobile Banking product and service which enables a registered bank customer to use a mobile phone or device to access private data associated with the customer's bank account(s) over a public telephone/data network. The Mobile Banking products and services include the bank authenticating the customer through the use of the customer's mobile phone number and/or other information connected with the customer and the customer's bank account(s) upon receiving the customer's inquiry through SMS messaging or other means, which is controlled and/or executed at the direction of Defendants. Moreover, through their marketing, packaging, product literature, user manuals, technical support, and other published and electronic materials and resources related to the Defendants' Mobile Banking products and services, Defendants actively encouraged and specifically intended their customers to use the Mobile Banking products and services as directed by Defendants in the United States in a manner that directly infringes the asserted claims of '297 Patent, which infringement is ongoing.

16. To the extent Defendants continue to sell or otherwise supply the accused Mobile Banking products and services after the filing of the complaint, Defendants are indirectly

infringing one or more claims of the '297 Patent under 35 U.S.C. § 271(b), including on information and belief at least claim 1 of the '297 Patent. Defendants are actively, knowingly, and intentionally inducing infringement of the '297 Patent by practicing the methods set forth therein and by selling, offering to sell, and/or importing into the United States the accused Mobile Banking products and services after the filing of the complaint; with the knowledge and specific intent that third parties, including their customers, will continue to—either alone or in combination with Defendants—practice the patented methods and use, sell, offer for sale, and/or import the accused Mobile Banking products and services supplied by Defendants to infringe the '297 Patent; and with the knowledge and specific intent to encourage and facilitate the infringement through the dissemination of the accused Mobile Banking products and services and/or the creation and dissemination of promotional and marketing materials, supporting materials, instructions, product manuals, and/or technical information relating to the accused Mobile Banking products and services and infringing uses thereof.

17. To the extent Defendants continue to sell or otherwise supply the accused Mobile Banking products and services after the filing of the complaint, Defendants are indirectly infringing one or more claims of the '297 Patent under 35 U.S.C. § 271(c), including on information and belief at least claim 1 of the '297 Patent. Defendants are actively, knowingly, and intentionally contributing to the infringement of the '297 Patent by selling, offering to sell, and/or importing into the United States the accused Mobile Banking products and services after the filing of the complaint; with the knowledge that the accused Mobile Banking products and services are especially designed and/or adapted to operate in a manner that infringes the '297 Patent; with the knowledge that third parties, including their customers, will continue to—either alone or in combination with Defendants—practice the patented methods; and with the

knowledge that the infringing mobile banking technology in the accused Mobile Banking products and services is not a staple article of commerce nor does it have a substantial non-infringing use.

18. Defendants' acts of infringement have caused damage to N5 and N5 is entitled to recover from Defendants the damages sustained by N5 as a result of Defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement of N5's exclusive rights under the '297 Patent will continue to damage N5, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court. Defendants' infringement is willful and deliberate, as Defendants became aware of the infringing nature of their Mobile Banking products and services at the latest when they received a copy of N5's complaint, entitling N5 to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

WHEREFORE, N5 prays that it have judgment against Defendants for the following:

- (1) Adjudging that Defendants have infringed the '297 Patent;
- (2) Permanently enjoining and restraining Defendants and their agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association, active concert or participation with any of them, from further acts of infringement, contributory infringement or inducement of infringement of any asserted claim of the '297 Patent;
- (3) Awarding damages to N5, together with both pre-judgment and post-judgment interest;
- (4) Awarding increased damages pursuant to 35 U.S.C. § 284;

- (5) Finding this action constitutes an exceptional case pursuant to 35 U.S.C. § 285;
 - (6) Awarding N5 all of its costs in this action, including attorneys' fees and expenses;
- and
- (7) Awarding such other and further relief, at law or in equity, to which N5 is justly entitled.

JURY DEMAND

N5 hereby demands a jury trial on all issues so triable.

Dated: December 14, 2012

Respectfully submitted,

/s/Andrew W. Spangler
Andrew W. Spangler
Texas State Bar #24041960
Spangler & Fussell P.C.
208 N. Green Street, Suite 300
Longview, TX 75601
903-753-9300
Facsimile: 903-553-0403
spangler@sfipfirm.com

James A. Fussell, III
Arkansas State Bar #2003193
Spangler & Fussell P.C.
211 N. Green Street, Suite 100
Alexandria, VA 22314
903-753-9300
Facsimile: 903-553-0403
fussell@sfipfirm.com

Attorneys for Plaintiff N5 Technologies, LLC

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 17th day of December, 2012, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Andrew W. Spangler
Andrew W. Spangler