

EXHIBIT B

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BANK OF AMERICA
CORPORATION
and BANK OF AMERICA, N.A.

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 NANTWORKS, LLC, a Delaware
16 limited liability company, and NANT
17 HOLDINGS IP, LLC, a Delaware
18 limited liability company,

17 Plaintiffs,

18 vs.

19 BANK OF AMERICA
20 CORPORATION, a Delaware
21 corporation, and BANK OF
22 AMERICA, N.A., a national banking
23 association,

23 Defendants.

Case No. 2:20-cv-07872-GW-PVC

Honorable George H. Wu

**DEFENDANTS' FINAL INVALIDITY
CONTENTIONS FOR U.S. PATENT
NOS. 7,881,529, 7,899,252, 8,478,036,
8,520,897, 9,031,278, AND 9,324,004**

**CONTAINS MATERIAL
DESIGNATED "CONFIDENTIAL –
ATTORNEY EYES ONLY" IN
SECTION VII.**

DEFENDANTS’ FINAL INVALIDITY CONTENTIONS

In accordance with S.P.R. 4.2¹ and the schedule adopted by the Court (Dkt. 201), Defendants Bank of America Corporation and Bank of America, N.A. (together “Defendants” or “Bank of America”) hereby disclose their Final Invalidity Contentions. Bank of America incorporates by reference their April 8, 2021 Preliminary Invalidity Contentions, their August 2, 2021 Supplemental Invalidity Contentions, their April 29, 2022 Second Supplemental Invalidity Contentions, and all associated information and documents produced and/or referenced therein.

I. GENERAL STATEMENT AND RESERVATION OF RIGHTS

On August 31, 2023, Plaintiffs NantWorks, LLC and Nant Holdings IP, LLC (collectively “NantWorks” or “Plaintiffs”) served Bank of America with its Final Infringement Contentions and asserted the below listed patent claims (“Asserted Claims”):²

Asserted Patent	Asserted Claims
U.S. Pat. No. 7,881,529 (“’529 patent”)	Claims 4 and 20
U.S. Pat. No. 7,899,252 (“’252 Patent”)	Claims 18, 27, 29, and 31
U.S. Pat. No. 8,478,036 (“’036 Patent”)	Claim 1
U.S. Pat. No. 8,520,897 (“’897 Patent”)	Claims 25, 30, 33–34, and 39
U.S. Pat. No. 9,324,004 (“’004 Patent”)	Claims 1, 6, and 18
U.S. Pat. No. 9,031,278 (“’278 Patent”)	Claims 1 and 4–5

Subject to Bank of America’s reservation of rights herein, with respect to each

¹ The Court’s Scheduling Order (Dkt. 201) modifies S.P.R. 4.2.1 by setting the deadlines for opening expert reports on October 26, 2023 and rebuttal expert reports on November 20, 2023.

² Plaintiffs dropped their infringement allegations asserting U.S. Pat. No. 8,463,030 (“’030 Patent”) and U.S. Pat. No. 8,326,038 (“’038 Patent”) (including Counts III and IV of their First Amended Complaint).

1 asserted claim in Plaintiffs' Final Infringement Contentions, Bank of America provides
2 these Final Invalidity Contentions pursuant to S.P.R. 4.2. These Final Invalidity
3 Contentions include:

- 4 • S.P.R. 2.5.1. The identity of each item of prior art that anticipates each
5 asserted claim or renders it obvious (*see* Section III);
- 6 • S.P.R. 2.5.2. Whether each item of prior art anticipates each asserted claim
7 or renders it obvious. For obviousness, an explanation of why the prior art
8 renders the asserted claim obvious, including an identification of any
9 combinations of prior art showing obviousness (*see* Section IV);
- 10 • S.P.R. 2.5.3. A chart identifying where specifically in each alleged item of
11 prior art each limitation of each asserted claim is found, including for each
12 limitation that such party contends is governed by 35 U.S.C. § 112 ¶ 6, the
13 identity of the structure(s), act(s), or material(s) in each item of prior art
14 that performs the claimed function. (*see* Exhibits A-01-H-31); and
- 15 • S.P.R. 2.5.4. Any grounds of invalidity based on 35 U.S.C. § 101,
16 indefiniteness under 35 U.S.C. § 112 ¶ 2 or enablement or written
17 description under 35 U.S.C. § 112 ¶ 1 of any of the asserted claims) (*see*
18 Sections V and VI).

19 Bank of America's discovery and investigation in connection with this action is
20 continuing, thus these disclosures are based on information obtained to date. To the
21 extent that Bank of America obtains additional information, including through third-
22 party discovery or any supplemental infringement contentions from Plaintiffs (which,
23 as explained below, Bank of America asserts would be improper), Bank of America
24 reserves the right to supplement and/or amend these Invalidity Contentions (and, if
25 required, request leave of the Court to do the same). Bank of America reserves the right
26 to amend these Invalidity Contentions should Plaintiffs provide the information that it
27 failed to provide in its S.P.R. 2.1 and 4.1 disclosures or in response to Bank of
28

1 America's Discovery requests or if Plaintiffs amend or supplement its S.P.R. 2.1 and
2 4.1 disclosures in any way.

3 Plaintiffs' disclosures under S.P.R. 2.1, 2.2, and 4.1 remain deficient in numerous
4 respects. For example, Plaintiffs' "Preliminary" Final Contentions fail to comply with
5 the level of specificity required by SPR 2.1.2 and 2.1.3, and include improper
6 reservation of rights to supplement with "additional ways in which BoA Accused
7 Products infringe." Yet another example is that Plaintiffs' doctrine of equivalents
8 contentions, are deficient and lack the detail required by S.P.R. 2.1. NantWorks failed
9 to provide a detailed and proper analysis regarding the differences between the Accused
10 Products and the asserted claims or how those alleged differences are insubstantial.
11 Further, NantWorks's doctrine of equivalents contentions renders the claim scope
12 inconsequential or ineffective, including as it relates to disclaimed traditional symbols.

13 Most, if not all, of the deficiencies in Plaintiffs' Preliminary Final Contentions
14 have been documented by Bank of America through multiple letters since at least May
15 18, 2021, and up to Bank of America's most recent letter of August 19, 2023. Plaintiffs'
16 shifting infringement contentions, deficiencies in its infringement contentions, and
17 changing claim scope have prejudiced Bank of America from being able to reasonably
18 prepare its defenses, including its invalidity contentions. For example, despite the
19 Court's most recent claim construction order (Dkt. 236), e.g., differentiating symbols
20 and decomposition for the Characteristics terms, NantWorks continues to interpret the
21 claims beyond the scope of the court's constructions and what the patentee regarded as
22 the invention in the specification of the Asserted Patents. The lack of detail in Plaintiffs'
23 Infringement Contentions has prejudiced Bank of America's ability to prepare these
24 Final Invalidity Contentions by forcing it to speculate as to Plaintiffs' actual position
25 on Bank of America's alleged infringement. Therefore, these Final Invalidity
26 Contentions are based in whole or in part on the present understanding of the Asserted
27 Claims and Plaintiffs' apparent positions as to the scope of the Asserted Claims as
28

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