

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

FINTIV, INC.,	§	
	§	
Plaintiff,	§	C.A. No. 1:19-cv-01238-ADA
	§	
v.	§	JURY TRIAL DEMANDED
	§	
APPLE INC.,	§	
	§	
Defendant.	§	

**APPLE INC.’S MOTION TO DISMISS UNDER
FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

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Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Apple Inc. (“Apple”) moves to dismiss Count III of Plaintiff Fintiv, Inc.’s (“Fintiv”) Second Amended Complaint (“SAC,” ECF No. 92) for failure to state a claim. This Court should dismiss Count III for the straightforward reason that no court can issue the relief it requests: a declaration that patent claims—which are already presumed to be valid—are valid.

BACKGROUND

On December 21, 2018, Fintiv sued Apple for allegedly infringing U.S. Patent No. 8,843,125 (the “’125 Patent”), entitled “System and Method for Managing Mobile Wallet and Its Related Credentials.” Complaint ¶¶ 1-4, ECF No. 1; SAC ¶¶ 1-4.¹ The ’125 Patent generally relates to management of virtual cards stored on mobile devices. *See* SAC ¶ 11; *see also* ’125 Patent 2:55-3:47, ECF No. 1-1. In its original Complaint, Fintiv accused the Apple Wallet

¹ Apple cites to Fintiv’s various complaints only to illustrate for the Court the subject matter of the dispute, and because the Court must treat Fintiv’s allegations in the SAC as true for the purposes of this motion only. Apple does not admit the truth or relevance of any allegation or characterization made by Fintiv.

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