

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

FINTIV, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

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Civil Action No.: 1:19-CV-01238-ADA

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Fintiv, Inc. (“Fintiv”), by and through its attorneys, for its Second Amended Complaint against Defendant Apple Inc. (“Apple”), hereby alleges the following:

I. NATURE OF THE ACTION

1. This is a patent infringement action to end Defendant’s unauthorized and infringing manufacture, use, sale, offering for sale, and/or importation of methods and products incorporating Plaintiff’s patented inventions.

2. Fintiv is the owner of all right, title, and interest in and to United States Patent No. 8,843,125 (the “’125 Patent”), issued September 23, 2014 and titled “System and Method for Managing Mobile Wallet and its Related Credentials.” A true and correct copy of the ’125 Patent is attached hereto as Exhibit A.

3. Apple manufactures, provides, sells, offers for sale, imports, and/or distributes products and services which directly infringe the ’125 Patent. Further, Apple indirectly infringes

the '125 Patent by inducing and/or contributing to infringement by others, including Apple device users, card issuers, and card issuer's authorized service providers.

4. Fintiv seeks monetary damages and prejudgment interest for Defendant's past and continuing infringement of the '125 Patent.

II. PARTIES

5. Plaintiff Fintiv, Inc. is a Delaware corporation having a principal place of business at 801 Barton Springs, Austin, Texas 78704. Fintiv is a corporation in good standing in the State of Delaware. A true and correct copy of the Certificate of Good Standing issued by Delaware's Secretary of State is attached hereto as Exhibit B.

6. Defendant Apple Inc. is a corporation organized and existing under the laws of California and has a regular and established places of business at 12535 Riata Vista Circle and 5501 West Parmer Lane, Austin, Texas. Apple employs thousands of people, including hundreds of engineers, who work at these locations in Texas. The work done at these Apple locations in Texas includes work related to Apple's iPhones and Apple Watch products. Apple can electronically access documents at its facilities in California and elsewhere from these locations in Austin, Texas, as found, inter alia, in *e-Watch Inc. v. Apple Inc.*, No. 2:13-CV-01061-JRG-RSP, 2016 WL 7338342, at *2 (E.D. Tex. Dec. 19, 2016) and *TracBeam, LLC v. Apple Inc.*, No. 6:14-CV-680, 2015 WL 5786449 (E.D. Tex. Sept. 29, 2015).

7. Apple also operates brick-and-mortar Apple Stores at Barton Creek Square, Austin, Texas and at Apple Domain Northside, Austin, Texas. See www.apple.com/retail/. Apple uses, offers for sale and sells iPhones and Apple Watch products that include Apple's Wallet functionality at these Apple Stores. Apple may be served with process through its registered agent for service in Texas: CT Corporation System, 1999 Bryant Street, Suite 900, Dallas, Texas 75201.

III. JURISDICTION AND VENUE

8. This is an action for patent infringement, which arises under the Patent Laws of the United States, in particular, 35 U.S.C. §§ 271, 281, 282, 284, and 285. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Apple because it has committed acts giving rise to this action within Texas and within this judicial district. Defendant also regularly does business or solicits business in this District and in Texas, engages in other persistent courses of conduct and derives substantial revenue from products and/or services provided in this District and in Texas, and has purposefully established substantial, systematic, and continuous contacts within this District and should reasonably expect to be sued in a court in this District. For example, Apple has offices in this District and has a Texas registered agent for service. Apple operates a website that solicits sales of the infringing products by consumers in this District and in Texas, has entered into partnerships with numerous resellers and distributors to sell and offer for sale the infringing products to consumers in this District and in Texas, both online and in stores, and offers support service to customers in this District and Texas. Given these contacts, the Court's exercise of jurisdiction over Apple will not offend traditional notions of fair play and substantial justice.

10. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b) because Apple has an established place of business in this District, including at 12535 Riata Vista Circle and 5501 West Parmer Lane, Austin, Texas, has committed acts within this judicial district giving rise to this action, and Apple continues to conduct business in this judicial district, including one or more acts of making, selling, using, importing and/or offering for sale infringing products or providing support service to Apple's customers in this District.

IV. THE PATENT-IN-SUIT

11. The '125 Patent relates to management of virtual cards stored on mobile devices and discloses provisioning a contactless card in a mobile device with a mobile wallet application.

12. The specification of the '125 Patent identifies technical problems in the prior art and claims improvement to these problems. For instance, the specification explains that prior art lacked “an effective means to manage various payment applets residing within the mobile device.” ('125 Patent at 1:63-67.) Moreover, prior art implementations did not enable a user to “view any account specific information stored within the SE [Secure Element] or manage such applications with or without the use of POS [Point of Sale] equipment.” *Id.* at 2:19-29. The specification further explains that “[a]nother limitation of current mobile wallet applications is the lack of support providing for such technology. . . . Accordingly, users may often be bombarded with various applications that may be inapplicable to the user, making the process more difficult than necessary.” *Id.* at 2:30-44. Finally, the prior art did not allow for an easy way to update information: “As various service providers operate independently from one another, when an update is required by a particular service provider, each individual application is typically updated separately.” *Id.* at 2:45-52. In essence, the '125 Patent claims a technical solution to these problems through a mobile wallet application and mobile wallet management system to store contactless cards in a secure element. The claimed technical solution is further incorporated in at least claims 11, 13-14, 16-18, and 20-25 of the '125 patent.

13. Fintiv owns all substantial and material rights to and interests in the '125 Patent, including the right to recover damages for all past and future infringement thereof.

14. The '125 Patent is valid and enforceable.

COUNT I: DIRECT INFRINGEMENT OF THE '125 PATENT

15. Fintiv incorporates paragraphs 1 through 15 herein by reference.

16. Apple, without authorization or license from Fintiv, has been and is presently directly infringing, literally or under the doctrine of equivalents, at least claims 11, 13-14, 16-18, and 20-25 of the '125 Patent, as infringement is defined by 35 U.S.C. § 271(a), including through making, using (including for testing purposes), selling, offering for sale, and/or importing infringing products. Apple is thus liable for direct infringement of the '125 Patent pursuant to 35 U.S.C. § 271(a). Exemplary infringing products include Apple iPhone devices (including, at least, iPhone 6, 6 Plus, 6s, 6s Plus, SE, 7, 7 Plus, 8, 8 Plus, X, XR, XS, XS Max), Apple Watch devices (including, at least, Series 1, Series 2, Series 3, and Series 4), and the Apple Wallet Application (collectively, “the Apple Devices”).

17. Claim 11, for example, recites:

A method for provisioning a contactless card applet in a mobile device comprising a mobile wallet application, the method comprising:

activating the mobile wallet application;

connecting to a Trusted Service Manager (TSM) system;

synchronizing the mobile wallet application with the TSM system;

displaying a contactless card applet based on attributes of the mobile device;

receiving a selection of a contactless card applet;

retrieving a widget and a wallet management applet (WMA) corresponding to the contactless card applet; and

provisioning the selected contactless card applet, the widget, and the WMA.

18. As reflected in Apple’s own product literature illustrated below, the Apple Devices are enabled to provision a contactless card in a mobile device that includes a mobile wallet application. All of this functionality is disclosed in at least claim 11 of the '125 patent.

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