

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ESTECH SYSTEMS, INC.,

Plaintiff,

v.

TARGET CORPORATION,
PLAINSCAPITAL BANK,
BOKF, NATIONAL ASSOCIATION,
BBVA USA,
WELLS FARGO & COMPANY, AND
WELLS FARGO BANK, N.A.,
REGUS MANAGEMENT GROUP, LLC,
Defendants.

C.A. 2:20-cv-00123-JRG (lead case)

JURY TRIAL DEMANDED

C.A. 2:20-cv-00122-JRG

C.A. 2:20-cv-00126-JRG

C.A. 2:20-cv-00127-JRG

C.A. 2:20-cv-00128-JRG

C.A. 2:20-cv-00143-JRG

**DEFENDANTS TARGET CORPORATION, PLAINSCAPITAL BANK, BOKF,
NATIONAL ASSOCIATION, BBVA USA, WELLS FARGO & COMPANY, AND
WELLS FARGO BANK, N.A., AND REGUS MANAGEMENT GROUP, LLC'S
INVALIDITY CONTENTIONS**

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Pursuant to Rule 3-3 of the Local Patent Rules of the Eastern District of Texas and the Court’s Docket Control Order (Dkt. No. 66), Defendants Target Corporation, PlainsCapital Bank, BOKF, National Association, BBVA USA, Wells Fargo & Company, Wells Fargo Bank, N.A., and Regus Management Group, LLC (collectively “Defendants”) provide Plaintiff Estech Systems, Inc. (“Plaintiff” or “Estech”) with notice of their collective Invalidity Contentions (the “Invalidity Contentions”) with respect to those claims asserted against Defendants by Estech in its July 6, 2020, Initial Disclosure of Asserted Claims and Infringement Contentions and its July 16, 2020, Amended Disclosure of Asserted Claims and Infringement Contentions, collectively alleging infringement of claims 1–5 and 7–12 of U.S. Patent No. 8,391,298 (the “298 Patent”); claims 29–41 of U.S. Patent No. 7,068,684 (the “684 Patent”); claims 1 and 2 of U.S. Patent No. 7,123,699 (the “699 Patent”); and claims 1–3 and 6–8 of U.S. Patent No. 6,067,349 (the “349 Patent”) (the “Asserted Patents” and the “Asserted Claims”).

I. RESERVATIONS

A. General Reservations

Defendants rely on and incorporate by reference, as if originally set forth herein, all invalidity or unenforceability positions, and all associated prior art and arguments, raised during the prosecution of the Asserted Patents. Moreover, Defendants reserve the right, to the extent permitted by the Court and the applicable statutes and rules, to supplement these Invalidity Contentions based on prior art currently known to Estech, including documents responsive to the mandatory disclosures contained in the Court’s Discovery Order (Dkt. No. 67)¹ and prior art identified or provided to Estech by any third party. Defendants also reserve the right to rely on evidence of the state of the art at the pertinent time to inform certain interpretations of the prior art

¹ Docket citations herein are to the lead case, with docket number EDTX-2:20-cv-00123.

and/or to inform how a person of ordinary skill in the relevant art would understand certain prior art disclosures. Defendants further reserve the right to rely on Patents owned by or assigned to Estech Systems, Inc.

Consistent with Patent Rule 3-6, Defendants reserve the right to amend these Invalidity Contentions as permitted by the Court. Defendants reserve the right to amend or supplement these Invalidity Contentions and the corresponding document production should Estech: 1) provide any information that it failed to provide in its Patent Rule 3-1 and 3-2 disclosures; 2) amend its Patent Rule 3-1 or 3-2 disclosures in any way; or 3) attempt to rely on any information at trial, in a hearing or during a deposition which it failed to provide in its Patent Rule 3-1 and 3-2 disclosures.

Defendants provide the information below, as well as the accompanying production of documents, for the sole purpose of complying with Patent Rules 3-3 and 3-4. The information provided shall not be deemed an admission regarding the scope of any claims or the proper construction of those claims or any terms contained therein. Nothing contained in these Invalidity Contentions should be understood or deemed to be an express or implied admission or contention with respect to the proper construction of any terms in the Asserted Claims, or with respect to the alleged infringement of the Asserted Claims.

B. Ongoing Discovery

Limited discovery has occurred to date and Defendants continue their searches for, and analyses of, relevant prior art. Defendants reserve the right to revise, amend, and/or supplement the information provided herein, including identifying, charting, and relying on additional references should Defendants' further searches and analyses yield additional information or references, consistent with the Local Patent Rules and the Federal Rules of Civil Procedure.

Defendants' Invalidity Contentions are based on information reasonably available as of the date of these Invalidity Contentions. Because discovery is ongoing Defendants expressly reserve

the right to clarify, alter, amend, modify, or supplement these Invalidity Contentions, to identify additional prior art, and to rely on additional information, documents, tangible things, and testimony obtained during discovery, including discovery obtained from third parties. For example, prior art not included in these Invalidity Contentions, whether or not known to Defendants at this time, may become relevant depending on the positions Estech asserts and the claim constructions the Court adopts.

Discovery is in its infancy and is ongoing, and Defendants' prior art investigation and third-party discovery are not yet complete. Defendants reserve the right to present additional items of prior art under 35 U.S.C. §§ 102(a), (b), (e),² and/or (g), and/or 103 located during the course of discovery or further investigation and the right to provide additional charts specifying further theories of invalidity. For example, Defendants may issue subpoenas to third parties believed to have knowledge, documentation, and/or corroborating evidence concerning some of the prior art listed herein and/or additional prior art. These third parties include without limitation the authors, inventors, or assignees of the references listed in these Invalidity Contentions. For example, for any given company's commercial products, Defendants anticipate that additional documentation relating to these products will be discovered, and Defendants reserve the right to rely on such documentation to further support these Invalidity Contentions. In addition, Defendants reserve the right to assert invalidity under 35 U.S.C. § 102(c), (d), or (f) to the extent that discovery or further investigation yield information forming the basis for such invalidity.

Similarly, Defendants have not had the opportunity to take any depositions of the inventors named on the face of the Asserted Patents or other persons having relevant information.

² To the extent applicable for a given Asserted Patent, based on that patent's earliest possible effective priority date.

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