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11 Attorneys for Plaintiffs
NANTWORKS, LLC and NANT HOLDINGS IP, LLC

13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

18 Plaintiffs,

19 vs.

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

23 Defendants.
24

CASE NO. 2:20-cv-7872-GW-PVC

**PLAINTIFFS NANTWORKS, LLC,
AND NANT HOLDINGS IP, LLC,
PRELIMINARY INFRINGEMENT
CONTENTIONS**

25
26
27
28
Case No. 2:20-cv-7872-GW-PVC

PLAINTIFFS' PRELIMINARY INFRINGEMENT CONTENTIONS

1 Pursuant to the Court’s Order adopting Judge Guilford’s Standing Patent Rules
2 (“S.P.R.”) in this action (Dkt. No. 91), Plaintiffs NantWorks LLC, and Nant Holdings
3 IP, LLC, (collectively, “Plaintiffs” or “NantWorks”), hereby submit its Preliminary
4 Infringement Contentions.

5 Discovery has just begun, and NantWorks is seeking discovery from
6 Defendants Bank of America Corp. and Bank of America, N.A. (collectively,
7 “Defendants” or “Bank of America” or “BoA”) that may affect NantWorks’s
8 Preliminary Infringement Contentions. Not all information concerning the Accused
9 Products is publicly available such as relevant source code and technical
10 specifications that demonstrate the structure and operation of the accused
11 functionalities within the Accused Products. NantWorks has served discovery
12 requests on Defendants to obtain additional information relevant to infringement that
13 is in Defendants’ possession, custody or control. NantWorks reserves the right to
14 supplement and/or amend its Preliminary Infringement Contentions based on the
15 discovery Defendants provide in response to NantWorks’s discovery requests. In
16 particular, NantWorks reserves the right to supplement and/or amend its Preliminary
17 Infringement Contentions after it has been provided with an opportunity to inspect
18 and review Defendants’ proprietary and confidential technical information for the
19 Accused Products, including source code and technical specifications. NantWorks
20 will provide such supplements and/or amendments in its Final Infringement
21 Contentions.

22 **I. ASSERTED CLAIMS**

23 For the reasons set forth in NantWorks’s First Amended Complaint and the
24 attached claim charts, Defendants infringe at least the following claims (“Asserted
25 Claims”):

- 26 • U.S. Patent No. 9,031,278 (the “’278 Patent”): Claims 1 and 3-5
- 27 • U.S. Patent No. 7,881,529 (the “’529 Patent”): Claims 1-4, 6-7, 9, 18-21,
28 and 23-24

- 1 • U.S. Patent 7,899,252 (the “’252 Patent”) : Claims 18-19, 26-29, 31-34
- 2 • U.S. Patent No. 8,326,038 (the “’038 Patent”): Claims 1-6, 8-10, 13-16, 19-
- 3 22
- 4 • U.S. Patent No. 8,463,030 (the “’030 Patent”) : Claims 1-4, 6-7, 13, 16-19,
- 5 21-22, 25-27, 29-32, and 35-37
- 6 • U.S. Patent No. 8,520,897 (the “’897 Patent”): Claims 25-26, 29-34, and 38-
- 7 42
- 8 • U.S. Patent No. 9,324,004 (the “’004 Patent”): Claims 1-3, 6, 11, 15, and 18
- 9 • U.S. Patent No. 8,478,036 (the “’036 Patent”) Claims 1-2, 10, 12-15, and
- 10 19

11 **II. PRIORITY DATE**

12 The Asserted Claims of the Asserted Patents are entitled to at least the earliest
13 U.S. or foreign priority dates listed on the face of each patent or identified in the
14 prosecution histories of each patent. In particular, the ’278, ’529, ’252, ’038, ’030,
15 ’897, ’004, and ’036 Patents are entitled to a priority date not later than November 6,
16 2000, which is the filing date of provisional application No. 60/246,295. NantWork’s
17 investigation is ongoing, and NantWorks reserves the right to establish earlier and/or
18 alternative priority and invention dates for the Asserted Claims.

19 **III. ACCUSED PRODUCTS**

20 With its Bank of America Mobile Banking App (the “BoA App”), BoA offers
21 its mobile check deposit feature to its customers, including individuals and business.
22 BoA makes the BoA App available to customers to install it onto the customer’s
23 devices. BoA controls and operates various computers, servers, software, and other
24 infrastructure that operates and supports the BoA App and mobile check deposit
25 feature. The BoA App, its mobile check deposit feature, and the mobile devices,
26 computers, servers, software, and other infrastructure related to and/or associated with
27 the BoA App and its mobile check deposit feature are the “BoA Accused Products.”
28 For example, BoA provides materials that describe how the BoA Accused Products

1 function. See, e.g., <https://www.bankofamerica.com/online-banking/mobile-and-online-banking-features/mobile-check-deposit/>.

2
3 NantWorks further accuses any other products that Defendants are currently
4 developing, making, selling, offering to sell, importing and/or using that implement
5 mobile check cashing functionality, including but not limited to any newer but
6 unreleased versions of the Accused Products.

7 NantWorks has served discovery requests on Defendants—on February 10,
8 2021—seeking additional information regarding the identification and functionality
9 of the Accused Products, but responses to that discovery were not provided prior to
10 the service of these Preliminary Infringement Contentions. NantWorks reserves its
11 rights to supplement its Preliminary Infringement Contentions to include any
12 additional products and/or features identified through discovery.

13 **IV. CLAIM CHARTS FOR THE ACCUSED PRODUCTS**

14 Attached as Exhibits 1-8 are claim charts for the '278, '529, '252, '038, '030,
15 '897, '004, and '036 Patents, respectively, that identify where each element of each
16 Asserted Claim of the Asserted Patents is found within the Accused Products, based
17 on the information currently available to NantWorks. In response to NantWorks's
18 requests for production, Defendants have not yet produced any information regarding
19 the Accused Products. NantWorks reserves the right to amend and/or supplement
20 these claim charts based upon information learned through this outstanding discovery
21 and will provide supplements, modifications and/or amendments in its Final
22 Infringement Contentions that will be due after the Court issues its *Markman* order.

23 **V. DIRECT AND INDIRECT INFRINGEMENT**

24 For the reasons set forth in NantWorks's First Amended Complaint, for
25 example, Defendants directly infringe the Asserted Claims under 35 U.S.C. § 271(a),
26 Defendants induce the infringement of others under 35 U.S.C. § 271(b), and
27 Defendants contribute to the infringement of others under 35 U.S.C. § 271(c).

28

1 Defendants also infringe each method claim of the Asserted Claims because
2 Defendants have performed each and every step of the Asserted Claims at least
3 through testing and/or use by their employees, among other ways. Defendants also
4 infringe those claims by providing the BoA App and the Accused Products to their
5 customers and encouraging those customers to use the products in an infringing
6 manner that meets each and every step of the charted method claims.

7 With respect to the '252, '897, '278, and '004 Patents, which involve steps
8 performed using the BoA App on a customer's mobile device, Defendants are also
9 liable for infringement under 35 U.S.C. § 271(a) of each such method claim because
10 BoA conditions the customer's use of the mobile check deposit functionality of the
11 BoA App, and receipt of associated benefits (e.g., the ability to remotely deposit
12 checks using a mobile device), on the customer's performance of such steps. For
13 example, BoA conditions the customer's use of the mobile banking application
14 through its Mobile Check Deposit Terms and Conditions, which are provided to each
15 customer upon the customer's enrollment to the BoA mobile banking application, and
16 which the customer must accept in order to utilize the application. The Mobile Check
17 Deposit Terms and Conditions dictate the hardware and software to be utilized by the
18 customer and dictates the responsibilities of a customer with regard to capturing an
19 image of a check using a camera-enabled mobile device and transferring such an
20 image to BoA for image processing. The customer's use of the mobile banking
21 application is further conditioned due to the design and functionality of the BoA
22 Accused Products. For example, actions performed at a customer's mobile device,
23 such as capturing an image of a check and transferring such an image are necessary
24 technological prerequisites in the customer's participation in BoA's mobile deposit
25 services. BoA also establishes the manner and timing of performance by which a
26 customer utilizes the BoA mobile banking application to perform mobile check
27 deposits. BoA establishes such manner and timing of performance through its Mobile
28 Check Deposit Terms and Conditions and through BoA's design of the functionality

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