

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

FINTIV, INC.,

Plaintiff,

v.

PAYPAL HOLDINGS, INC.,

Defendant.

Civil Action No. 6:22-cv-00288-ADA

JURY TRIAL DEMANDED

**PLAINTIFF FINTIV, INC.'S INITIAL DISCLOSURE OF ASSERTED CLAIMS,
ACCUSED INSTRUMENTALITIES, AND INFRINGEMENT CONTENTIONS**

Pursuant to the Order Governing Proceedings – Patent Case, Plaintiff Fintiv, Inc. (“Plaintiff” or “Fintiv”) hereby serves its Initial Disclosure of Asserted Claims, Accused Instrumentalities, and Infringement Contentions on Defendant PayPal Holdings, Inc. (“Defendant” or “PayPal”).

I. INITIAL INFRINGEMENT CONTENTIONS

A. Identification of Asserted Claims

Plaintiff asserts that the Defendant infringes the claims of United States Patent Nos. 8,538,845 (the “’845 Patent”), 9,892,386 (the “’386 Patent”), and 11,120,413 (the “’413 Patent”), 9,208,488 (the “’488 Patent”), and 10,438,196 (the “’196 Patent”) (collectively the “Patents-in-Suit” or “Asserted Patents”) as set forth in its claim charts.

The foregoing is based upon Plaintiff’s investigation to date, without the benefit of any discovery from the Defendant and without the benefit of the Court’s claim construction. Plaintiff reserves the right to add, delete, substitute or otherwise amend the Asserted Claims based on discovery, the Court’s claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedures and the Local Rules of the Western District of Texas.

B. Identification of Accused Instrumentalities

For each Asserted Claim, Plaintiff identifies the Accused Instrumentalities of which it is aware in its claim charts. For each Accused Instrumentality identified in the charts, Plaintiff’s contentions apply to the Accused Instrumentality and any other similar past, present, or future products, as well as systems incorporating the Accused Instrumentalities or other products with the same or substantially similar features.

This identification of Accused Instrumentalities is based on Plaintiff’s investigation to date, without the benefit of any discovery from the Defendant and without the benefit of the Court’s

claim construction. Plaintiff believes that due to the nature of the technology, review of technical documents and/or source code will be needed to Plaintiff reserves the right to add, delete, substitute or otherwise amend this list of Accused Instrumentalities based on discovery, the Court's claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedure and the Court's rule, including the Local Rules of the Western District of Texas.

C. Claim Charts

Exhibit A, attached hereto and incorporated by reference, is a claim chart identifying specifically where each element of each Asserted Claim is found within each Accused Instrumentality.

Plaintiff asserts that Defendant has directly infringed and continues to directly infringe the Asserted Claims through Defendant PayPal's Mobile Payment system and back end servers used with PayPal's mobile applications including but not limited to the PayPal and Venmo mobile applications and PayPal and Venmo Business. *See e.g.* <https://www.paypal.com/us/business/accept-payments>; <https://venmo.com/business/start/>, which puts into and derives beneficial use from a community of more than 83 million people. *Id.* Plaintiff asserts that direct infringement is performed by PayPal through making, selling, offering to sell and using the PayPal System. Plaintiff asserts that PayPal also makes and uses the system, for example, through also testing the accused products including with mobile devices within the United States.

Plaintiff further asserts that Defendant has indirectly infringed and continues to indirectly infringe by contributing to and actively inducing infringement of one or more of the claims of the Asserted Patents through the infringement of third-parties who access and utilize the PayPal System. Plaintiff asserts that these third-parties directly infringe at least one or more of the claims

of the Asserted Patents through its use of, implementation of, and/or integration with the PayPal System. Defendant has notice of the Asserted Patents at least as of the filing of the complaint in this matter. However, PayPal also has notice of the Asserted Patents as described in the Complaint. The PayPal System is known by Defendant to be especially made or especially adapted for use to infringe the Asserted Patents, and is not a staple article or commodity of commerce suitable for substantial non-infringing uses. Defendant contributes to the infringement of the Asserted Patents by selling, offering to sell, making, and otherwise making the PayPal system available to third parties and PayPal partners, who purchase and use the PayPal system in a way that infringes and/or practices one or more claims of the Asserted Patents. Defendant actively induce infringement by encouraging the use of the infringing devices in ways that infringe one or more claims of the Asserted Patents. For example, instructions on how to use mobile Payment Applications in a way that infringe the PayPal system are disclosed on PayPal websites, including www.Paypal.com and www.venmo.com. Defendant knew or should have known that such encouragement would induce infringement. Such induced and/or contributory infringement has occurred at least since Defendant became aware of the Asserted Patents.

As indicated in claim charts attached to Plaintiff's contentions, Plaintiff asserts that some claim elements are hardware and/or software limitations. Plaintiff reserves the right to supplement its contentions for those limitations after it receives production of hardware specifications, technical documents, and/or source code from Defendant.

These preliminary infringement contentions are based upon publicly-available information without discovery from Defendant, and Plaintiff's investigation to date, without the benefit of any substantial discovery from Defendant and without the benefit of the Court's claim construction. The Accused Instrumentalities involve confidential, proprietary designs that are not publicly

available, and Defendant has not yet provided discovery in this case regarding the structure or operation of any of the Accused Instrumentalities. Discovery is ongoing, and Plaintiff anticipates that the subject matter of these infringement contentions will be the subject of further extensive expert discovery. Plaintiff anticipates that discovery may provide additional evidence of Defendant's infringement, may lead to the discovery of additional instances of infringement, and may also enable identification of additional claims that are infringed by Defendant. Plaintiff reserves the right to add, delete, substitute, or otherwise amend these contentions based on discovery, the Court's claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedure and the Court's rules, including the Local Rules of the Western District of Texas. Plaintiff reserves the right to further modify and/or supplement these contentions with additional or different theories and/or additional or different evidence.

D. Literal Infringement or Infringement Under the Doctrine of Equivalents

Plaintiff alleges that each element of the Asserted Claim are found literally in the Accused Instrumentalities. To the extent that Defendant alleges that one or more elements of the Asserted Claims are not literally in the Accused Instrumentalities and/or to the extent the Court's claim construction alters our infringement analysis, Plaintiff alleges that the Accused Instrumentalities infringe under the doctrine of equivalents and reserves the right to amend and/or supplement the information and contentions in the accompanying claim charts accordingly.

These assertions are based upon Plaintiff's investigation to date, without the benefit of any discovery from the Defendant and without the benefit of the Court's claim construction. Plaintiff reserves the right to add, delete, substitute or otherwise amend this list of Asserted Claims based on discovery, the Court's claim construction, or other circumstances, in a manner consistent with the Federal Rules of Civil Procedures and the Local Rules of the Western District of Texas.

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