

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

SWIPE INNOVATIONS, LLC,

Plaintiff,

v.

- (1) INTUIT PAYMENT SOLUTIONS, LLC;
- (2) INTUIT PAYMENTS INC.; AND
- (3) INTUIT INC.,

Defendants.

CIVIL ACTION NO. 9:13-CV-15

FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

In accordance with the parties' agreed-upon scheduling order (Case No. 9:13-cv-14 (consolidated lead case), Dkt. 43), Plaintiff Swipe Innovations, LLC ("Swipe") files this First Amended Complaint against the above-named defendants, alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

PARTIES

1. Swipe is a limited liability company formed under the laws of the State of Texas, with a principal place of business in Houston, Texas.

2. Defendant Intuit Payment Solutions, LLC ("Payments LLC") is a California limited liability company. Payments LLC is doing business in the state of Texas but has failed to appoint an agent for service of process in Texas. Accordingly, Payments LLC can be served under the Texas Long Arm Statute and/or the Texas Business Organizations Code by serving the Secretary of State. Payments LLC's home, home office, and principal office address is 26541 Agoura Rd., Ste. 200; Calabasas, CA 91302.

3. Defendant Intuit Payments Inc. (“Payments Inc.”) is a Delaware corporation with a principal place of business in Mountain View, California. Payments Inc. can be served with process by serving its registered agent: Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company; 211 E. 7th Street, Suite 620; Austin, TX 78701-3218.

4. Defendant Intuit Inc. is a Delaware corporation with a principal place of business in Mountain View, California. Intuit Inc. can be served with process by serving its registered agent: Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company; 211 E. 7th Street, Suite 620; Austin, TX 78701-3218.

JURISDICTION AND VENUE

5. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §1331 and §1338(a).

6. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, defendants have transacted business in this district and have committed acts of patent infringement in this district.

7. Defendants are subject to this Court’s specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute, due at least to defendants’ substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,351,296

8. On September 27, 1994, United States Patent No. 5,351,296 (“the 296 patent”) was duly and legally issued by the United States Patent and Trademark Office for an invention titled “Financial Transmission System.”

9. Swipe is the owner of the 296 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 296 patent against infringers, and to collect damages for all relevant times.

10. Payments LLC, Payments Inc., and Intuit Inc. (collectively, “Intuit”) had knowledge of the 296 patent at least from the filing date and/or service date of the original complaint against it for infringement of the 296 patent.

11. In addition, Intuit had knowledge of the 296 patent at least from the date the 296 patent was cited by Intuit or its affiliates during the prosecution of U.S. Pat. No. 6,446,048 (titled “Web-based entry of financial transaction information and subsequent download of such information”), which lists as inventors Michael L. Wells and Joseph W. Wells and was originally assigned, as issued, to Intuit, Inc. The 048 patent’s application was filed on Sept. 3, 1999.

12. The title of the 048 patent bears similarities to the title of the 296 patent. The title of the 296 patent is “Financial Transmission System.”

13. The 048 patent covers the same or substantially similar subject matter as the 296 patent.

14. The 048 patent’s inventors, Michael L. Wells and Joseph W. Wells, were involved in the prosecution of that patent.

15. Joseph Wells is currently employed as Intuit's "engineering vice president and fellow" ("a prestigious title reserved for the company's most-senior engineers") and has worked for Intuit for over 22 years. Holly Perez, Intuit, "Got Code? How This Fellow Wrote a Software Engineering Career," <http://network.intuit.com/2013/08/02/computer-software-engineering-career/>.

16. Michael L. Wells had been employed as a Staff Software Engineer at Intuit for over 5 years. See <http://www.linkedin.com/in/mwells>.

17. Joseph W. Wells has been employed in a number of management positions during his time at Intuit.

18. Michael L. Wells had been employed in a number of management positions during his time at Intuit.

19. Both Joseph W. Wells and Michael L. Wells had knowledge of the 296 patent at least through their activities related to the prosecution of the 048 patent.

20. On information and belief, Michael L. Wells works or worked on the accused products/instrumentalities (as defined below) or systems related to the accused products/instrumentalities.

21. On information and belief, Joseph W. Wells works or worked on the accused products/instrumentalities (as defined below) or systems related to the accused products/instrumentalities.

22. By virtue of at least his positions in Intuit and his work involving the accused products/instrumentalities or related systems, Michael L. Wells's personal knowledge of the 296 patent should be imputed to Intuit.

23. By virtue of at least his positions in Intuit and his work involving the accused products/instrumentalities or related systems, Joseph W. Wells's personal knowledge of the 296 patent should be imputed to Intuit.

24. Upon information and belief, the original assignee of the 048 patent as issued is or was a subsidiary and/or affiliate of Intuit.

25. The knowledge of the 296 patent possessed by its subsidiaries and/or affiliates should be imputed to Intuit.

26. Upon information and belief, Intuit was involved in the prosecution of the 048 patent.

27. Intuit has knowledge of the 296 patent at least due to its involvement in the prosecution of the 048 patent.

28. In addition, Intuit had knowledge of the 296 patent at least from the date the 296 patent was cited by Intuit or its affiliates during the prosecution of U.S. Pat. No. 7,395,241 (titled "Consumer-directed financial transfers using automated clearinghouse networks"), which lists as inventors Scott D. Cook and Rene A. Lacerte and was originally assigned, as issued, to Intuit Inc. The 241 patent's application was filed on Jan. 19, 2000.

29. The title of the 241 patent bears similarities to the title of the 296 patent. The title of the 296 patent is "Financial Transmission System."

30. The 241 patent covers the same or substantially similar subject matter as the 296 patent.

31. The 241 patent appears to read on several claims of the 296 patent.

32. The 241 patent's inventors, Scott D. Cook and Rene A. Lacerte, were involved in the prosecution of that patent.

33. Scott D. Cook is a founder of Intuit and has been its CEO “for the better part of 20 years, since its launch in 1983.” He has been a Director for Intuit since 1984. See <http://www.inc.com/magazine/20040401/25cook.html>; <http://investing.businessweek.com/research/stocks/people/person.asp?personId=649914&ticker=INTU>.

34. Rene A. Lacerte was a Senior Product Manager and Group Product Manager at Intuit. He was employed there for almost 5 years. See <http://www.linkedin.com/in/renelacerte>.

35. Scott D. Cook has been employed in a number of management positions during his time at Intuit.

36. Rene A. Lacerte had been employed in a number of management positions during his time at Intuit.

37. Scott D. Cook has knowledge of the 296 patent at least through his activities related to the prosecution of the 241 patent.

38. Rene A. Lacerte has knowledge of the 296 patent at least through his activities related to the prosecution of the 241 patent.

39. On information and belief, Scott D. Cook works or worked on the accused products/instrumentalities (as defined below) or systems related to the accused products/instrumentalities.

40. On information and belief, Rene A. Lacerte works or worked on the accused products/instrumentalities (as defined below) or systems related to the accused products/instrumentalities.

41. By virtue of at least his positions in Intuit and his work involving the accused products/instrumentalities or related systems, Scott D. Cook's personal knowledge of the 296 patent should be imputed to Intuit.

42. By virtue of at least his positions in Intuit and his work involving the accused products/instrumentalities or related systems, Rene A. Lacerte's personal knowledge of the 296 patent should be imputed to Intuit.

43. Upon information and belief, the original assignee of the 241 patent as issued is or was a subsidiary and/or affiliate of Intuit.

44. The knowledge of the 296 patent possessed by its subsidiaries and/or affiliates should be imputed to Intuit.

45. Upon information and belief, Intuit was involved in the prosecution of the 241 patent.

46. Intuit has knowledge of the 296 patent at least due to its involvement in the prosecution of the 241 patent.

47. In addition, Intuit had knowledge of the 296 patent at least from the date the 296 patent was cited by Intuit or its affiliates during the prosecution of U.S. Pat. No. 7,720,760 (titled "Consumer-directed financial transfers using automated clearinghouse networks"), which lists as inventors Scott D. Cook and Rene A. Lacerte and was originally assigned, as issued, to Intuit Inc. The 760 patent's application was filed on May 29, 2008.

48. The title of the 760 patent bears similarities to the title of the 296 patent. The title of the 296 patent is "Automatic notification of receipt of electronic mail (e-mail) via telephone system without requiring log-on to e-mail server."

49. The 760 patent covers the same or substantially similar subject matter as the 296 patent.

50. The 760 patent appears to read on several claims of the 296 patent.

51. The 760 patent's inventors, Scott D. Cook and Rene A. Lacerte, were involved in the prosecution of that patent.

52. Scott D. Cook is a founder of Intuit and has been its CEO "for the better part of 20 years, since its launch in 1983." He has been a Director for Intuit since 1984.

See <http://www.inc.com/magazine/20040401/25cook.html>; <http://investing.businessweek.com/research/stocks/people/person.asp?personId=649914&ticker=INTU>.

53. Rene A. Lacerte was a Senior Product Manager and Group Product Manager at Intuit. He was employed there for almost 5 years.

See <http://www.linkedin.com/in/renelacerte>.

54. Scott D. Cook has been employed in a number of management positions during his time at Intuit.

55. Rene A. Lacerte had been employed in a number of management positions during his time at Intuit.

56. Scott D. Cook has knowledge of the 296 patent at least through his activities related to the prosecution of the 760 patent.

57. Rene A. Lacerte has knowledge of the 296 patent at least through his activities related to the prosecution of the 760 patent.

58. On information and belief, Scott D. Cook works or worked on the accused products/instrumentalities (as defined below) or systems related to the accused products/instrumentalities.

59. On information and belief, Rene A. Lacerte works or worked on the accused products/instrumentalities (as defined below) or systems related to the accused products/instrumentalities.

60. By virtue of at least his positions in Intuit and his work involving the accused products/instrumentalities or related systems, Scott D. Cook's personal knowledge of the 296 patent should be imputed to Intuit.

61. By virtue of at least his positions in Intuit and his work involving the accused products/instrumentalities or related systems, Rene A. Lacerte's personal knowledge of the 296 patent should be imputed to Intuit.

62. Upon information and belief, the original assignee of the 760 patent as issued is or was a subsidiary and/or affiliate of Intuit.

63. The knowledge of the 296 patent possessed by its subsidiaries and/or affiliates should be imputed to Intuit.

64. Upon information and belief, Intuit was involved in the prosecution of the 760 patent.

65. Intuit has knowledge of the 296 patent at least due to its involvement in the prosecution of the 760 patent.

66. In addition, Intuit had knowledge of the 296 patent at least from the date the 296 patent was cited by Intuit or its affiliates during the prosecution of U.S. Pat. No. 7,729,959 (titled "Web-based entry of financial transaction information and subsequent download of such information"), which lists as inventors Michael L. Wells and Joseph W. Wells and was originally assigned, as issued, to Intuit Inc. The 959 patent's application was filed on Sept. 3, 1999.

67. The title of the 959 patent bears similarities to the title of the 296 patent. The title of the 296 patent is “Automatic notification of receipt of electronic mail (e-mail) via telephone system without requiring log-on to e-mail server.”

68. The 959 patent covers the same or substantially similar subject matter as the 296 patent.

69. The 959 patent appears to read on several claims of the 296 patent.

70. The 959 patent’s inventors, Michael L. Wells and Joseph W. Wells, were involved in the prosecution of that patent.

71. Joseph Wells is currently employed as Intuit’s “engineering vice president and fellow” (“a prestigious title reserved for the company’s most-senior engineers”) and has worked for Intuit for over 22 years. Holly Perez, Intuit, “Got Code? How This Fellow Wrote a Software Engineering Career,” <http://network.intuit.com/2013/08/02/computer-software-engineering-career/>.

72. Michael L. Wells had been employed as a Staff Software Engineer at Intuit for over 5 years. See <http://www.linkedin.com/in/mwells>.

73. Joseph W. Wells has been employed in a number of management positions during his time at Intuit.

74. Michael L. Wells had been employed in a number of management positions during his time at Intuit.

75. Both Joseph W. Wells and Michael L. Wells had knowledge of the 296 patent at least through their activities related to the prosecution of the 959 patent.

76. On information and belief, Michael L. Wells works or worked on the accused products/instrumentalities (as defined below) or systems related to the accused products/instrumentalities.

77. On information and belief, Joseph W. Wells works or worked on the accused products/instrumentalities (as defined below) or systems related to the accused products/instrumentalities.

78. By virtue of at least his positions in Intuit and his work involving the accused products/instrumentalities or related systems, Michael L. Wells's personal knowledge of the 296 patent should be imputed to Intuit.

79. By virtue of at least his positions in Intuit and his work involving the accused products/instrumentalities or related systems, Joseph W. Wells's personal knowledge of the 296 patent should be imputed to Intuit.

80. Upon information and belief, the original assignee of the 959 patent as issued is or was a subsidiary and/or affiliate of Intuit.

81. The knowledge of the 296 patent possessed by its subsidiaries and/or affiliates should be imputed to Intuit.

82. Upon information and belief, Intuit was involved in the prosecution of the 959 patent.

83. Intuit has knowledge of the 296 patent at least due to its involvement in the prosecution of the 959 patent.

84. Intuit, either alone and/or in conjunction with others, including its customers and/or suppliers, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale payment terminal products and/or systems

(including at least the following model: Intuit GoPayment with Quickbooks) that infringed one or more claims of the 296 patent.

85. Intuit is accused of infringing the 296 patent both directly and indirectly with respect to the Accused Products and Accused Services (as defined herein).

86. The accused products include payment systems that feature a mobile credit card reader linked to a mobile computing device (e.g., mobile phones), where the system can encrypt PIN data and other secret financial information and can perform financial transactions over a communication network in conjunction with a telephone (“Accused Products”).

87. An example of an Accused Product that features a mobile credit card reader linked to a mobile computing device, where the system can encrypt PIN data and other secret financial information, is the Intuit GoPayment with Quickbooks:



Source: http://about.intuit.com/about_intuit/press_room/press_kit/gopayment/

How does GoPayment handle security?

GoPayment is secure and PCI-compliant. Sensitive credit card information is never permanently stored on the mobile device. To protect data in transit, GoPayment adheres to online banking industry protection standards, using an https connection over SSL (Secure Socket Layer) at 128-bit encryption. An additional layer of encryption (3DES combined with DUKPT) protects communication between your device and Bluetooth swiper/printer before information leaves the swiper.

Source: https://merchantcenter.intuit.com/wapweblet/ims-mp-help/en/qbms/svc_mp_gopayment_faqs.html

88. The Accused Products perform financial transactions as part of processes that encrypt, transmit, and decrypt financial account data (e.g., PINs) following the Derived Unique Key Per Transaction (“DUKPT”) method. The devices are particularly

useful in performing financial transactions involving secret account codes, such as PIN debit transactions. The services that involve the use of the Accused Products to carry out such financial transactions are referred to as the “Accused Services.”

89. DUKPT is a key management method approved by the Payment Card Industry (“PCI”) Security Standards Council for secure financial transactions. It incorporates a standard administered by American National Standards Institute (“ANSI”) and described in ANSI X9.24 Part 1, titled “Retail Financial Services Symmetric Key Management.” The Accused Products have been specially approved under PCI specifications, or their equivalent, to perform financial transactions in accordance with the DUKPT standard.

90. Intuit, either alone and/or in conjunction with others, including its customers and/or suppliers, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale payment terminal products and/or systems (including at least the following model: Intuit GoPayment with Quickbooks).

91. Intuit’s customers and/or suppliers directly made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale payment terminal products and/or systems (including at least the following model: Intuit GoPayment with Quickbooks).

92. Intuit induced and/or contributed to infringement of the 296 patent by its customers and/or suppliers.

93. Intuit took active steps, directly and/or through contractual relationships with others, to cause infringement with both knowledge of the 296 patent and the specific intent to cause its customers and/or suppliers (e.g., merchants, third-party manufacturers)

to make, use, sell, import, or otherwise provide the Accused Products and/or perform the Accused Services in a manner that infringed the 296 Patent. Such steps by Intuit included, among other things, advising or directing its customers and/or suppliers to make, use, sell, or import the Accused Products or perform the Accused Services in an infringing manner; advertising and promoting the use of the Accused Products or performance of the Accused Services in an infringing manner; and/or distributing instructions that guide users to use the Accused Products or to perform the Accused Services in an infringing manner. *See, e.g.,* Infringement Contentions Exhibit B [Reference materials for Intuit charts].

94. The Accused Products contain hardware and software components that are especially designed to be used in conjunction with other devices or systems that may not be provided by Intuit. These other devices or systems may include: key loading devices; point of sale terminals and cash registers; host security modules/hardware security modules; and computers operated by front-end networks, acquirers, intermediate switches, debit networks, card issuers, and others. To the extent Intuit does not provide these other devices and systems, it takes active steps, directly and/or through contractual relationships, to cause infringement by its customers and/or suppliers, including, among other things, advising or directing others to integrate such other devices and systems with Accused Products; advertising and promoting the use by others of the Accused Products with such other devices and systems; and distributing instructions that guide users to integrate the Accused Products with such other devices and systems. *See, e.g., id.*

95. The Accused Products have hardware and/or software components that are especially designed to be used with such other devices and systems in carrying out DUKPT transactions, as shown by the fact that the Accused Products were separately

tested for and approved for use with the DUKPT standard, actions required by PCI guidelines or their equivalent. These components in the Accused Products constitute a material part of the invention of one or more asserted claims of the 296 patent and are not staple articles of commerce suitable for substantial non-infringing use. These distinct and separate components are used only to perform the DUKPT key management method and not any other key management method approved for use in financial transactions involving PIN data and other secret financial information transmission by PCI or similar organizations.

96. For the reasons stated above, Intuit infringes the 296 patent both directly and indirectly.

97. Intuit's infringement was willful from the date it had knowledge of the 296 patent.

98. Swipe has been damaged as a result of the infringing conduct by defendants alleged above and, thus, such defendants are liable to Swipe in an amount that adequately compensates it for defendants' infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

99. Swipe and/or its predecessors-in-interest have satisfied all obligations set forth in 35 U.S.C. § 287 required to collect damages for the full period allowed by law according to 35 U.S.C. § 286.

JURY DEMAND

Swipe hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

Swipe requests that the Court find in its favor and against defendants, and that the Court grant Swipe the following relief:

a. Judgment that one or more claims of the 296 patent have been directly and/or indirectly infringed, either literally and/or under the doctrine of equivalents, by defendants and/or by others acting in concert therewith;

b. Judgment that defendants account for and pay to Swipe all damages to and costs incurred by Swipe because of defendants' infringing activities and other conduct complained of herein, including, under 35 U.S.C. § 284, enhanced damages for willful infringement at least as of the date the defendants first had knowledge of the 296 patent;

c. That Swipe be granted pre-judgment and post-judgment interest on the damages caused by defendants' infringing activities and other conduct complained of herein;

d. That this Court declare this an exceptional case and award Swipe its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and

e. That Swipe be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: February 3, 2014

Respectfully submitted,

/s/ Larry D. Thompson, Jr.

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Attorneys for Swipe Innovations, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Larry D. Thompson, Jr.
Larry D. Thompson, Jr.