

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Jean-Marc Zimmerman  
Zimmerman, Weiser & Paray LLP  
226 St. Paul Street  
Westfield, New Jersey 07090  
Tel: (908) 654-8000  
Fax: (908) 654-7207  
jmz@zwpllp.com

Attorneys for Plaintiff Verify Smart Corp.

VERIFY SMART CORP.,  
  
Plaintiff,  
  
v.  
  
BANK OF AMERICA CORPORATION, and  
BANK OF AMERICA, NATIONAL  
ASSOCIATION,  
  
Defendants.

Case No. 14-5117 (KSH)

COMPLAINT FOR PATENT  
INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff Verify Smart Corp. (“Verify”) demands a jury trial and complains against the defendants Bank of America Corporation and Bank of America, National Association (hereinafter collectively “Bank of America”).

**THE PARTIES**

1. Verify is a corporation organized and existing under the laws of the State of Nevada, conducting business in this judicial district.
2. Upon information and belief, Defendant Bank of America Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the City of Charlotte, County of Mecklenburg, State of North Carolina, and having bank branches throughout this judicial district in which it is conducting business.

3. Bank of America, National Association, is a banking subsidiary of Defendant Bank of America Corporation. Defendant Bank of America, National Association, is a national banking corporation organized under the laws of the United States, with its principal place of business in the City of Charlotte, County of Mecklenburg, State of North Carolina. Bank of America Corporation and Bank of America, National Association will hereinafter be collectively referred to as “Bank of America”.

#### **JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States of America, Title 35 of the United States Code. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. Verify is informed and believes, and based thereon alleges, that Bank of America is doing business and committing acts of infringement of the patent identified below in this judicial district, and is subject to personal jurisdiction in this judicial district.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

#### **THE PATENTS**

7. On October 9, 2012, U.S. Patent No. 8,285,648 (“the ‘648 patent”) was duly and legally issued to Dan Scammell for an invention entitled “System and Method for Verifying A User’s Identity In Electronic Transactions”. The ‘648 patent was assigned to Colleen Scammell and then licensed to Assured Mobile Technologies LLC which assigned the exclusive worldwide rights to Verify to enforce and license the ‘648 patent. A copy of the ‘648 patent is attached to this Complaint as Exhibit 1.

8. The ‘648 patent is directed to novel systems and methods of verifying the identity

of consumers initiating electronic commercial transactions, e.g., online banking using a mobile electronic device, to provide enhanced security and user verification for such transactions.

**DIRECT INFRINGEMENT BY BANK OF AMERICA**

9. Verify is informed and believes, and based thereon alleges, that Bank of America makes, uses, tests, markets and sells or otherwise provides to its banking customers a fraud prevention device and system under the name SafePass (“SafePass”). SafePass lets a customer authorize a banking transaction, such as bill paying and money transfers, using a one-time pass-code sent to the customer’s mobile phone.

10. Verify is informed and believes, and based thereon alleges, that SafePass is designed to enable secure banking transactions for the Bank of America’s customers.

11. Verify is informed and believes, and based thereon alleges, that SafePass infringes the claims of the ‘648 patent, including without limitation at least claims 1 and 5, literally and/or under the doctrine of equivalents, in violation of Verify’s rights.

**BANK OF AMERICA’S INDIRECT INFRINGEMENT**

12. Verify is informed and believes, and based thereon alleges, that SafePass is designed specifically to enable secure banking transactions in a manner that infringes the claims of the ‘648 patent, including without limitation at least claims 1 and 5 thereof.

13. Verify is informed and believes, and based thereon alleges, that SafePass is material for enabling enable secure banking transactions in a manner that infringes the claims of the ‘648 patent.

14. Verify is informed and believes, and based thereon alleges, that SafePass is using a method and process for enabling secure banking transactions in a manner that infringes the method claims of the ‘648 patent.

15. Verify is informed and believes, and based thereon alleges, that SafePass does not have substantial non-infringing uses.

16. Bank of America advertises the ability of SafePass to provide “protection against fraud and identity theft as you use Online Banking. The SafePass feature lets you authorize transactions using one-time, 6-digit Passcodes.”

17. Bank of America advertises that SafePass works as follows: “Once you've registered your mobile phone and you've signed in to Online Banking:

1. Select the Send SafePass Code Button
2. Receive a 6-digit code, sent as a text message to your mobile phone
3. Enter the code in Online Banking
4. Complete your transaction

The code expires as soon as you use it-and within 10 minutes if you don't use it. You can always request another code by pushing the button again.”

18. Bank of America provides express instructions in its advertisement materials that teach and suggest to its customers to use the SafePass system and methodology in a way that infringes at least claims 1 and 5 of the '658 patent.

19. Verify is informed and believes, and based thereon alleges, that Bank of America has investigated the '648 patent and became aware, or should have become aware, that its SafePass infringes the '648 patent.

20. Verify is informed and believes, and based thereon alleges, that Bank of America has been advertising and offering for use by its customers the infringing SafePass after Bank of America became aware that such device and system infringed the '648 patent, and will continue with such infringing activities.

21. Verify is informed and believes, and based thereon alleges, that Bank of America has been selling or otherwise providing SafePass to its customers with the specific knowledge of the '648 patent and the specific knowledge that SafePass is and will be used to infringe the '648 patent, and that Bank of America will continue such infringing activities.

22. Bank of America is jointly responsible with each of its customers for the infringement of the '648 patent, through the use of SafePass.

23. Bank of America contributes to the infringement and induces infringement of the '648 patent based on its marketing, sale, distribution and teaching of its customers how to use the SafePass and Bank of America's own actions in assisting its customers in the operation of the SafePass.

24. Bank of America has been and is actively inducing the infringement of the '648 patent by encouraging its customers to use SafePass, that has no substantial non-infringing use and is material for enabling secure banking transactions in a manner that constitutes direct infringement of the claims of the '648 patent. Bank of America has been and continues doing so with knowledge of the '648 patent and with the specific intent that its customers use SafePass in a manner that constitutes direct infringement of the claims of the '648 patent.

25. Bank of America has been and is contributorily infringing the '648 patent by providing to its customers SafePass, which has no substantial non-infringing use and is material for enabling secure banking transactions in a manner that constitutes direct infringement of the claims of the '648 patent. Bank of America has been and continues doing so with knowledge of the '648 patent and with the specific intent that its customers use the SafePass in a manner that constitutes direct infringement of the claims of the '648 patent.

26. Bank of America's customers have been using Bank of America's SafePass in a manner that constitutes infringement of the claims of the '648.

27. Bank of America assists its customers with their infringing uses of SafePass, including without limitation teaching its customer how to operate Safepass, supporting its operation and providing testing, support and maintenance for Safepass, either directly or through Bank of America's authorized agents, affiliates and/or business partners.

28. Verify has been and is being damaged by the foregoing activities of Bank of America and its customers which infringe the '648 patent, and will be irreparably harmed unless such infringing activities are enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Verify prays for judgment against Defendant Bank of America on all the counts and for the following relief:

- A. Declaration that the Verify is the owner of the right to sue and to recover for infringement of the '648 patent being asserted in this action;
- B. Declaration that Bank of America has directly infringed, actively induced the infringement of, and/or contributorily infringed the '648 patent;
- C. Declaration that Bank of America and its customers are jointly or severally responsible for the damages from infringement of the '648 patent through the use of SafePass;
- D. Declaration that Bank of America is responsible jointly or severally with its customers for the damages caused by the infringement of the '648 patent through the use of SafePass, by the Bank of America's customers;
- E. A preliminary and permanent injunction against Bank of America, each of its

officers, agents, servants, employees, and attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons acting in active concert or participation with them, including distributors, enjoining them from continuing acts of direct infringement, active inducement of infringement, and contributory infringement of the '648 patent;

- F. An accounting for damages under 35 U.S.C. § 284 for infringement of the '648 patent by Bank of America, and the award of damages so ascertained to Verify together with interest as provided by law;
- G. Award of Verify's costs and expenses;
- H. Award of Verify's attorney fees;
- I. Award of treble damages; and
- J. Such other and further relief as this Court may deem proper, just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff Verify demands a trial by jury of all issues properly triable by jury in this action.

By: /s/Jean-Marc Zimmerman  
Zimmerman, Weiser & Paray LLP  
226 St. Paul Street  
Westfield, New Jersey 07090  
Tel: (908) 654-8000  
Fax: (908) 654-7207  
jmz@zwpllp.com  
Attorneys for Plaintiff Verify Smart Corp.

Dated: August 14, 2014  
Westfield, NJ 07090