

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION  
CASE NO. \_\_\_\_\_**

21<sup>st</sup> MORTGAGE CORPORATION

*Plaintiff,*

v.

AUTOSCRIBE CORPORATION and  
POLLIN PATENT LICENSING, LLC

*Defendants.*

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JURY TRIAL DEMANDED

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**COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT,  
INVALIDITY, AND UNENFORCEABILITY**

Plaintiff 21<sup>st</sup> Mortgage Corporation (“21<sup>st</sup> Mortgage” or “Plaintiff”) complains and avers against Defendants Autoscribe Corporation (“Autoscribe”) and Pollin Patent Licensing, LLC (“PPL”) (collectively, “Defendants”) as follows:

**Parties**

1. 21<sup>st</sup> Mortgage is a Delaware corporation having a principle place of business at 620 Market Street, Knoxville, Tennessee 37902.

2. On information and belief, Defendant Autoscribe is a Maryland corporation with a principle place of business at 9801 Washingtonian Boulevard, Suite 200, Gaithersburg, Maryland 20878.

3. On information and belief, Defendant PPL is a Florida limited liability company with a principle place of business at 9801 Washingtonian Boulevard, Suite 200, Gaithersburg, Maryland 20878.

### **Jurisdiction and Venue**

4. 21<sup>st</sup> Mortgage brings this action under Title 35 of the United States Code, and 28 U.S.C. §§ 2201-2202, seeking a declaration of non-infringement, invalidity, and/or unenforceability with respect to the patents-at-issue.

5. This action arises under the Patent Laws of the United States; this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendants because, on information and belief, each conducts substantial business within this District, including, *inter alia*, efforts to license and enforce certain patents that are at issue in this matter.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c).

### **Background**

8. This action seeks declaratory judgment that 21<sup>st</sup> Mortgage has not infringed, directly or indirectly, any claims of U.S. Patent No. 7,117,171 (the “’171 patent”), U.S. Patent No. 6,041,315 (the “’315 patent”), U.S. Patent No. 5,966,698 (the “’698 patent”), U.S. Patent No. 5,727,249 (the “’249 patent”), and U.S. patent No. 5,504,677 (the “’677 patent”) (collectively, the “patents-at-issue”) (copies of each of the patents-at-issue are included in the attached Exhibit A). Further, 21<sup>st</sup> Mortgage seeks declaratory judgment that each of the claims of the patents-at-issue are invalid and/or unenforceable.

9. The relief sought by 21<sup>st</sup> Mortgage is necessary because Defendants have previously accused numerous entities of patent infringement involving the patents-at-issue, have initiated infringement litigation against a number of those entities, including other financial institutions, and have now accused 21<sup>st</sup> Mortgage of infringing one or more of the patents-at-issue. Accordingly, an actual case or controversy exists in this matter.

10. The '171 patent (see Exhibit A), entitled "System and Method for Making a Payment from a Financial Account," issued from an original application filed on October 15, 1992 and names on its face Robert Pollin as sole inventor and Autoscribe as the assignee.

11. On information and belief, Autoscribe is, and purports to be, the assignee of all legal rights, title and interest in and to the '171 patent, and PPL is the exclusive licensee of the '171 patent.

12. The '315 patent (see Exhibit A), entitled "Automated Payment System and Method," issued from an original application filed on October 15, 1992 and names on its face Robert Pollin as the sole inventor and Autoscribe as the assignee.

13. On information and belief, Autoscribe is, an purports to be, the assignee of all legal rights, title and interest in and to the '315 patent, and PPL is the exclusive licensee of the '315 patent.

14. The '698 patent (see Exhibit A), entitled "Automated Payment System and Method," issued from an original application filed on October 15, 1992 and names on its face Robert Pollin as the sole inventor and Autoscribe as the assignee.

15. On information and belief, Autoscribe is, an purports to be, the assignee of all legal rights, title and interest in and to the '698 patent, and PPL is the exclusive licensee of the '698 patent.

16. The '249 patent (see Exhibit A), entitled "Automated Payment System and Method," issued from an original application filed on October 15, 1992 and names on its face Robert Pollin as the sole inventor and Autoscribe as the assignee.

17. On information and belief, Autoscribe is, an purports to be, the assignee of all legal rights, title and interest in and to the '249 patent, and PPL is the exclusive licensee of the '249 patent.

18. The '677 patent (see Exhibit A), entitled "Automated Payment System," issued from an original application filed on October 15, 1992 and names on its face Robert Pollin as the sole inventor and Autoscribe as the assignee.

19. On information and belief, Autoscribe is, an purports to be, the assignee of all legal rights, title and interest in and to the '677 patent, and PPL is the exclusive licensee of the '677 patent.

### **Facts**

20. Through communications and conduct, Defendants have asserted infringement of the patents-at-issue against 21<sup>st</sup> Mortgage.

21. On information and belief, on or about November 8, 2011, Defendants, through a third party called IP Dispute Resolution Corporation ("IPDR"), wrote 21<sup>st</sup> Mortgage a letter identifying the patents-at-issue and alleging that they cover "certain check by phone payment systems involving a live operator."

22. The November 8 letter goes on to state that "Autoscribe believes that 21<sup>st</sup> Century [*sic*] Mortgage has used and is using a system for the collection of late payments that is covered by one or more of its issued U.S. patents."

23. The November 8 letter further states that if 21<sup>st</sup> Mortgage does nothing in response to the letter, "Autoscribe will reassign the matter to its patent litigation attorneys." A copy of the November 8 letter is attached hereto as Exhibit B.

24. Since the November 8 letter, 21<sup>st</sup> Mortgage has received a series of emails and telephone calls from IPDR soliciting money for a paid-up license covering the patents-at-issue, the most recent of which was an email received on March 29, 2012.

25. 21<sup>st</sup> Mortgage has not infringed, directly or indirectly, any valid and enforceable claims of the patent-at-issue. Further, the claims of the patents-at-issue are not valid and/or unenforceable. Therefore, 21<sup>st</sup> Mortgage is not liable to either Autoscribe or PPL for patent infringement.

26. An Article III case or controversy therefore exists inasmuch as Defendants have asserted that 21<sup>st</sup> Mortgage has engaged in conduct that infringes the patents-at-issue, and that 21<sup>st</sup> Mortgage has asserted that its conduct does not infringe any of the patents-at-issue.

27. The instant dispute is therefore clearly defined and is ripe for adjudication.

### **COUNT I**

#### **Declaratory Judgment of Invalidity, Unenforceability, and/or Noninfringement of U.S. Patent 7,117,171**

28. Paragraphs 1-27 are incorporated herein by reference.

29. 21<sup>st</sup> Mortgage does not and has not, either directly or indirectly, infringed the '171 patent either literally or under the doctrine of equivalents.

30. The claims of the '171 patent are invalid and/or unenforceable for failure to meet the requirements of Title 35, United States Code, including, but not limited to, Sections 101, 102, 103, 112, and the rules and regulations pertaining thereto.

31. 21<sup>st</sup> Mortgage reserves the right to raise claims of inequitable conduct and/or exceptionality if the discovery and evidence support such claims.

32. Consequently, an actual and justiciable controversy exists between 21<sup>st</sup> Mortgage and Defendants with respect to the '171 patent.

33. 21<sup>st</sup> Mortgage hereby seeks entry of a declaratory judgment that the claims of the '171 patent are invalid, unenforceable, and/or not infringed by 21<sup>st</sup> Mortgage.

## **COUNT II**

### **Declaratory Judgment of Invalidity, Unenforceability, and/or Noninfringement of U.S. Patent 6,041,315**

34. Paragraphs 1-33 are incorporated herein by reference.

35. 21<sup>st</sup> Mortgage does not and has not, either directly or indirectly, infringed the '315 patent either literally or under the doctrine of equivalents.

36. The claims of the '315 patent are invalid and/or unenforceable for failure to meet the requirements of Title 35, United States Code, including, but not limited to, Sections 101, 102, 103, 112, and the rules and regulations pertaining thereto.

37. 21<sup>st</sup> Mortgage reserves the right to raise claims of inequitable conduct and/or exceptionality if the discovery and evidence support such claims.

38. Consequently, an actual and justiciable controversy exists between 21<sup>st</sup> Mortgage and Defendants with respect to the '315 patent.

39. 21<sup>st</sup> Mortgage hereby seeks entry of a declaratory judgment that the claims of the '315 patent are invalid, unenforceable, and/or not infringed by 21<sup>st</sup> Mortgage.

### **COUNT III**

#### **Declaratory Judgment of Invalidity, Unenforceability, and/or Noninfringement of U.S. Patent 5,966,698**

40. Paragraphs 1-39 are incorporated herein by reference.

41. 21<sup>st</sup> Mortgage does not and has not, either directly or indirectly, infringed the '698 patent either literally or under the doctrine of equivalents.

42. The claims of the '698 patent are invalid and/or unenforceable for failure to meet the requirements of Title 35, United States Code, including, but not limited to, Sections 101, 102, 103, 112, and the rules and regulations pertaining thereto.

43. 21<sup>st</sup> Mortgage reserves the right to raise claims of inequitable conduct and/or exceptionality if the discovery and evidence support such claims.

44. Consequently, an actual and justiciable controversy exists between 21<sup>st</sup> Mortgage and Defendants with respect to the '698 patent.

45. 21<sup>st</sup> Mortgage hereby seeks entry of a declaratory judgment that the claims of the '698 patent are invalid, unenforceable, and/or not infringed by 21<sup>st</sup> Mortgage.

### **COUNT IV**

#### **Declaratory Judgment of Invalidity, Unenforceability, and/or Noninfringement of U.S. Patent 5,727,249**

46. Paragraphs 1-45 are incorporated herein by reference.

47. 21<sup>st</sup> Mortgage does not and has not, either directly or indirectly, infringed the '249 patent either literally or under the doctrine of equivalents.

48. The claims of the '249 patent are invalid and/or unenforceable for failure to meet the requirements of Title 35, United States Code, including, but not limited to, Sections 101, 102, 103, 112, and the rules and regulations pertaining thereto.

49. 21<sup>st</sup> Mortgage reserves the right to raise claims of inequitable conduct and/or exceptionality if the discovery and evidence support such claims.

50. Consequently, an actual and justiciable controversy exists between 21<sup>st</sup> Mortgage and Defendants with respect to the '249 patent.

51. 21<sup>st</sup> Mortgage hereby seeks entry of a declaratory judgment that the claims of the '249 patent are invalid, unenforceable, and/or not infringed by 21<sup>st</sup> Mortgage.

#### **COUNT V**

#### **Declaratory Judgment of Invalidity, Unenforceability, and/or Noninfringement of U.S. Patent 5,504,677**

52. Paragraphs 1-51 are incorporated herein by reference.

53. 21<sup>st</sup> Mortgage does not and has not, either directly or indirectly, infringed the '677 patent either literally or under the doctrine of equivalents.

54. The claims of the '677 patent are invalid and/or unenforceable for failure to meet the requirements of Title 35, United States Code, including, but not limited to, Sections 101, 102, 103, 112, and the rules and regulations pertaining thereto.

55. 21<sup>st</sup> Mortgage reserves the right to raise claims of inequitable conduct and/or exceptionality if the discovery and evidence support such claims.

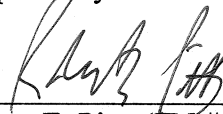
56. Consequently, an actual and justiciable controversy exists between 21<sup>st</sup> Mortgage and Defendants with respect to the '677 patent.



57. 21<sup>st</sup> Mortgage hereby seeks entry of a declaratory judgment that the claims of the '677 patent are invalid, unenforceable, and/or not infringed by 21<sup>st</sup> Mortgage.

**WHEREFORE** 21<sup>st</sup> Mortgage requests that this Court enter an order determining the respective rights of the parties pursuant to the patents-at-issue and whether the patents-at-issue are valid, enforceable, and infringed by 21<sup>st</sup> Mortgage; to enter such other orders as are necessary and appropriate to implement and carry out this Court's declaratory judgment to be made; and to grant 21<sup>st</sup> Mortgage any and all other just and proper relief to which it may appear entitled, including attorneys fees and costs.

Respectfully submitted,



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