

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LUPERCAL, LLC,

Plaintiff

v.

ALLY FINANCIAL, INC.,

Defendant

Case No. 2:22-cv-00026

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Lupercal, LLC (“Lupercal” or “Plaintiff”) files this Complaint for patent infringement against Defendant Ally Financial, Inc. (“Ally” or “Defendant”), and alleges as follows:

PARTIES

1. Lupercal is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Dallas, Texas.

2. Upon information and belief, Defendant Ally is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 500 Woodward Ave Detroit, MI 48226. Defendant maintains brick and mortar offices all over the country including, but not limited to the Eastern District of Texas some of which are located at, 2911 Lake Vista Blvd., Lewisville, TX 75067.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

4. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a)

5. This Court has personal jurisdiction over Defendant because it has engaged in systematic and continuous business activities in this District. As described below, Defendant has committed acts of patent infringement giving rise to this action within this District

6. Venue is proper in this District under 28 U.S.C. § 1400(b), because Defendant has committed acts of patent infringement in this District and has an established place of business in this District. In addition, Plaintiff has suffered harm in this District.

COUNT I
(Infringement of U.S. Patent No. 9,386,094)

7. Lupercal incorporates paragraphs 1 through 6 as though fully set forth herein.

8. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,386,094 (the “’094 Patent”), entitled SYSTEM AND METHOD FOR MEDIA SUBMISSION, which issued on July 5, 2016.

9. The ’094 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

10. Defendant controlled activities related to the development, operation, promotion, and encouragement of the use of the Ally Mobile App (the “Ally App”).

11. Defendant provided the Ally Mobile App for use with Apple iOS devices and Android devices, which was available for download from Apple’s iTunes App Store and Google Play Apps:

▼ How do I download the Mobile Banking app to my iPhone®?

Download our free **iPhone app** through the App StoreSM on your iPhone.

▼ How do I download the Mobile Banking app to my Android™ phone?

Download our free **Android app** through the Google Play Store from your phone by searching for "Ally Bank".

<https://www.ally.com/help/bank/mobile.html>

▼ How do I get started with Ally eCheck DepositSM?

To make a deposit using the **Ally Mobile App**: Log in, choose your account and tap **Deposit Checks**. Snap a picture of both sides of your endorsed check then submit your deposit.

To make a deposit **online**: **Upload** scanned images of the front and back of your endorsed check then submit your deposit.

<https://www.ally.com/help/bank/deposits.html>

Ally Mobile puts everyday banking and investing tasks at your fingertips. It's fast, secure, and free. You can also access your account quickly using biometrics.

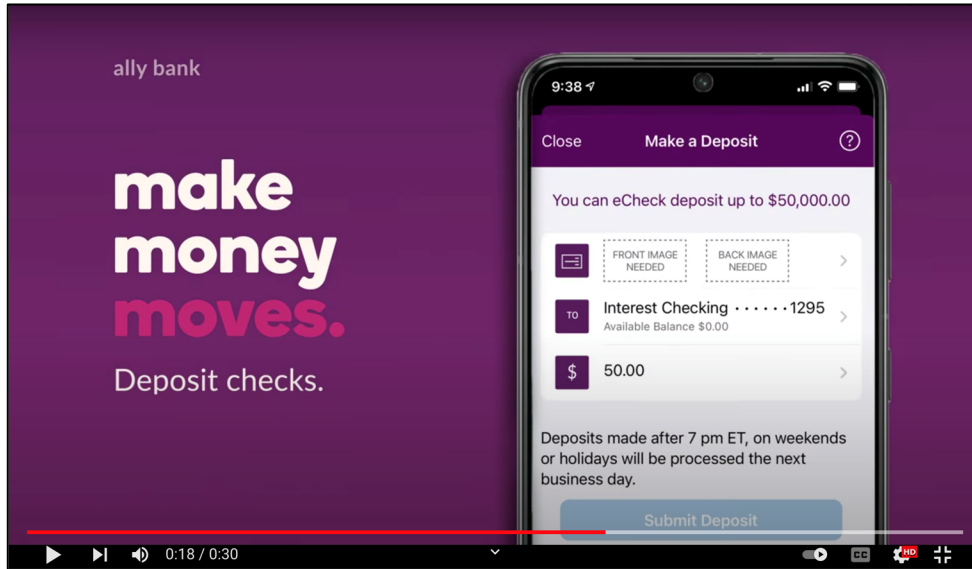
Banking features

- Deposit checks with Ally eCheck DepositSM
- Transfer money between your Ally Bank accounts and accounts at other banks
- Pay bills, see scheduled payments and review payment history
- Check balances and search transaction history
- View and download statements and tax forms
- Use Zelle® to pay anyone with a U.S. bank account
- Find nearby ATMs
- Set up and manage your debit card preferences and control when, where, and how your card is used with Card Controls
- Manage CD interest disbursement and maturity options
- Order checks
- View and send secure messages, or chat with us using Ally Messenger
- Update your contact information

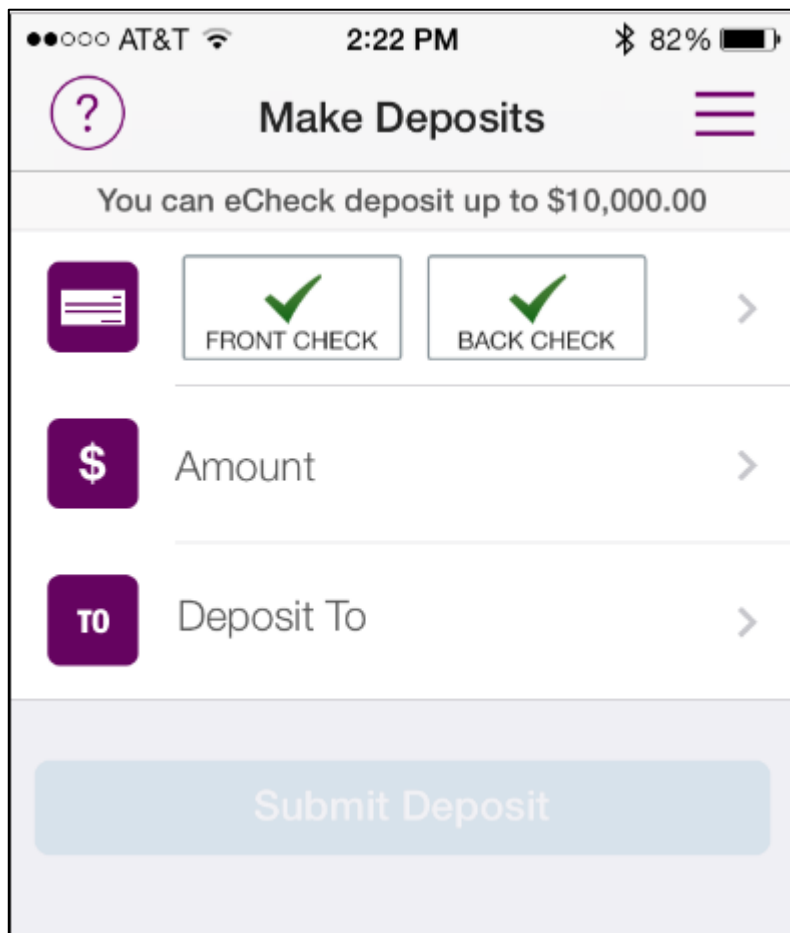
<https://play.google.com/store/apps/details?id=com.ally.MobileBanking#external>

Ally eCheck Deposit

I just happened to have a small check that I needed to deposit. It was the perfect time to try out Ally eCheck Deposit with my iPhone. The app leads you through the three basic steps. The first is to take a picture of the front and back of your endorsed check (an eCheck deposit can be up to \$10,000). The app lets you know if it accepts the photos. The second step is to enter the amount of the check and the third step is to specify the account that will receive the deposit. After you submit the deposit, you should receive a confirmation number. Ally will send you an email about your deposit status. The app instructs you to save your check for at least 60 days before destroying it.

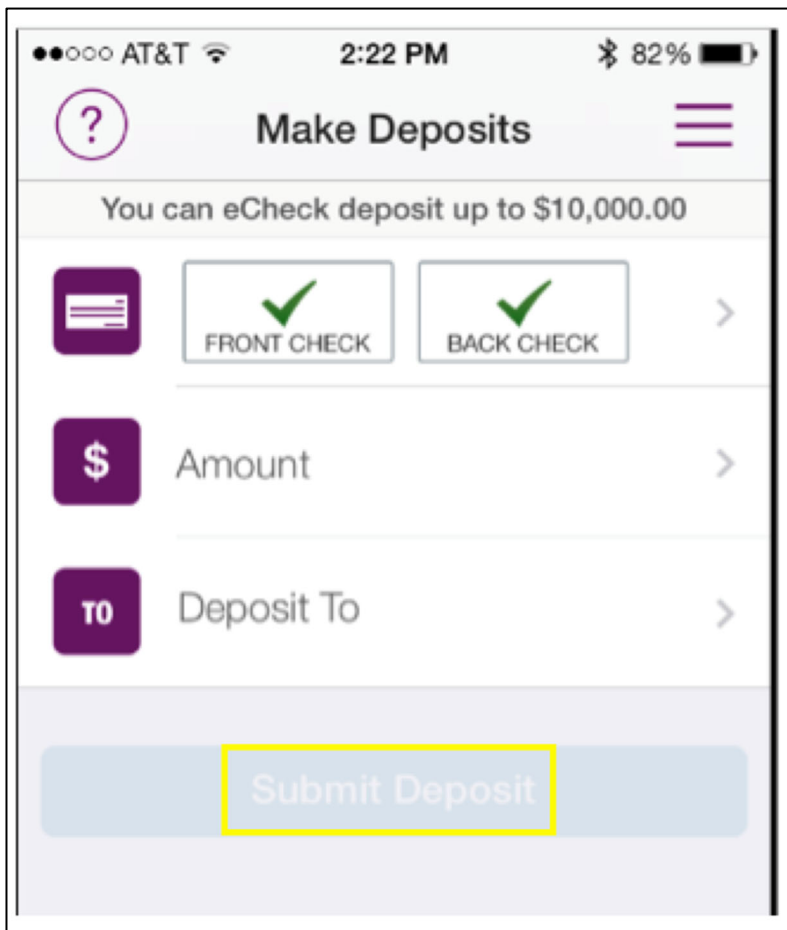


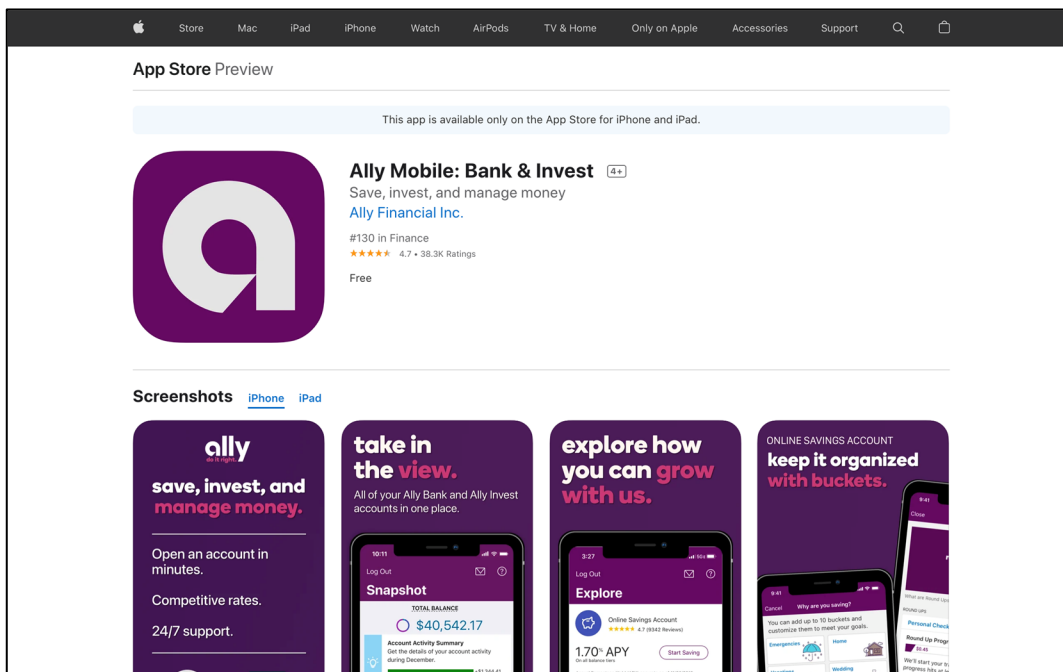
<https://www.youtube.com/watch?v=2xIIHhIX5E0>



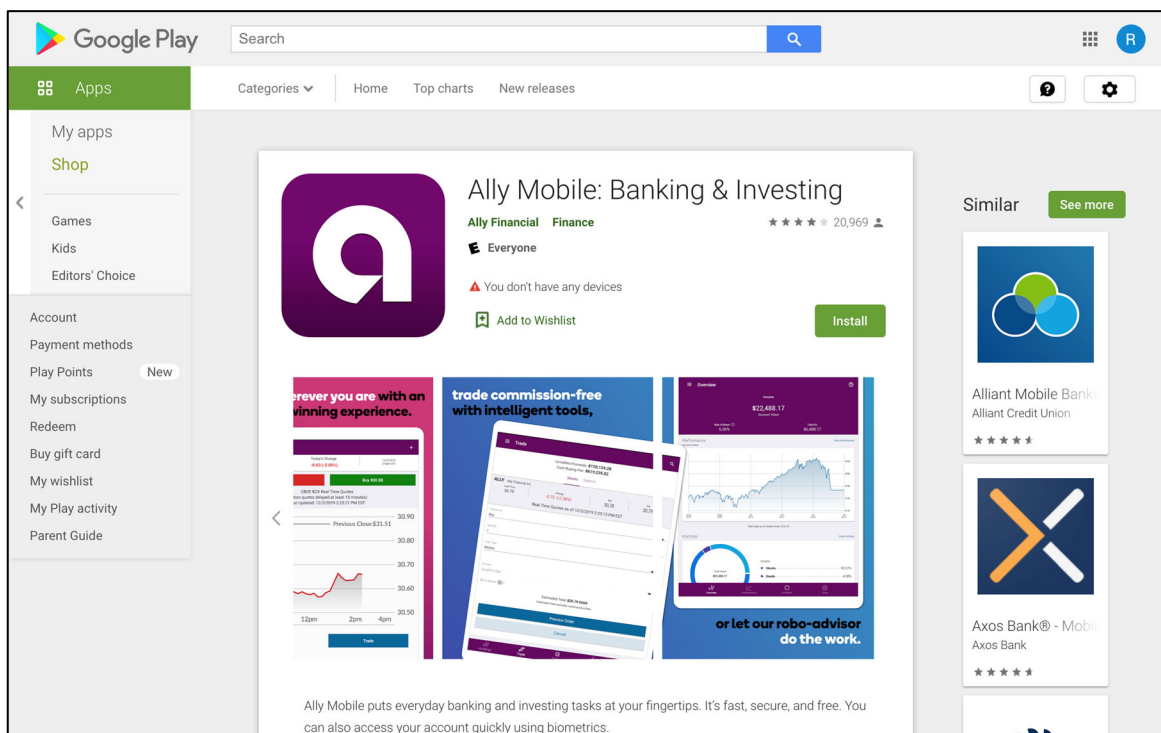
<https://www.depositaccounts.com/blog/2014/04/review-ally-mobile-banking-app.html>

\$10,000). The app lets you know if it accepts the photos. The second step is to enter the amount of the check and the third step is to specify the account that will receive the deposit. After you submit





<https://apps.apple.com/us/app/ally-mobile-banking/id514374715?ls=1#external>



<https://play.google.com/store/apps/details?id=com.ally.MobileBanking#external>

12. After selecting an account to deposit the check to, the user enters the amount of the check.

13. The Ally Mobile App enables account holders to deposit checks electronically by taking a photo of the front and back of the check. After selecting an account to deposit the check to, the user enters the amount of the check.

14. The photo of the front and back is manually taken by the user – as a result, the images produced may be blurry or otherwise undesirable, and the application enables the user to retake a given photo (front or back). A visual representation of the photos is displayed on the screen.

15. Upon being accepted by the user (via the Ally Mobile App), the application pre-processes the front and back images to produce front and back pre-processed images that is controlled by one or more preprocessing parameters received from a device (e.g., a server used to download the Ally Mobile App) separate from the user device (user's smart phone) in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party.

16. Defendant controlled the operation and use of the Ally Mobile App and encourages its customers to use the Ally Mobile App to deposit checks to the customer's accounts with Defendant. The Defendant's Ally Mobile App is the Accused Instrumentality through which Defendant and its customers infringe the '094 Patent.

17. At least by developing, distributing, operating, promoting, and encouraging the use of the Ally Mobile App, Defendant encourages its customers to use the Ally Mobile App to practice the claimed methods, which Defendant controlled the use of and derives a direct benefit and profit from.

18. Upon information and belief, defendant has infringed and continues to infringe one or more claims, including claim 42, of the '094 Patent by developing, distributing, operating, promoting, and encouraging the use of the Ally Mobile App in the United States without authority. Defendant has infringed and continues to infringe the '094 Patent either directly or through the acts of inducement in violation of 35 U.S.C. § 271.

19. Defendant has been on notice of the '094 Patent at least as early as January 14, 2019 when it received a notice letter, which included a claim chart comparing the '094 Patent claims to the Ally Mobile App.

20. Claim 42 recites:

42. A computer implemented method performed by an image submission tool on a user device, comprising:

causing the image submission tool to generate a visual representation of one or more images, the visual representation enabling a user to determine whether the one or more images should be replaced with one or more replacement images;

causing the image submission tool to enable a user to enter text information for association with the one or more images or the one or more replacement images;

causing the image submission tool to pre-process the one or more images or the one or more replacement images to produce one or more pre-processed images, the pre-processing by the image submission tool controlled by one or more pre-processing parameters received from a device separate from the user device in a conversion of the

one or more images or the one or more replacement images as specified for use by a receiving party;
causing the image submission tool to enable a user to submit the one or more pre-processed images; and
causing the image submission tool to transmit the one or more pre-processed images.

21. As indicated above, the Ally Mobile App enables account holders to deposit check electronically by taking a photo of the front and back of the check. After selecting an account to deposit the check to, the user enters the amount of the check.

22. More particularly, the Ally Mobile App is a computer implemented method performed by an image submission tool on a user device.

23. In the process of using the Ally Mobile App, the computer implemented method causes the image submission tool to generate a visual representation of one or more images, the visual representation enabling a user to determine whether the one or more images should be replaced with one or more replacement images.

24. In the process of using the Ally Mobile App, the computer implemented method causes the image submission tool to enable a user to enter text information for association with the one or more images or the one or more replacement images.

25. In the process of using the Ally Mobile App, the computer implemented method causes the image submission tool to pre-process the one or more images or the one or more replacement images to produce one or more pre-processed images, the pre-processing by the image submission tool controlled by one or more pre-processing parameters received from a

device separate from the user device in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party.

26. In the process of using the Ally Mobile App, the computer implemented method causes the image submission tool to enable a user to submit the one or more pre-processed images.

27. In the process of using the Ally Mobile App, the computer implemented method causes the image submission tool to transmit the one or more pre-processed images.

28. Lupercal has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against the Defendant:

- a. declaring that the Defendant has infringed the '094 Patent;
- b. awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '094 Patent;
- c. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and
- d. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: January 28, 2022

Respectfully submitted,

/s/ Raymond W. Mort, III

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**ATTORNEYS FOR PLAINTIFF
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