

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

<p>KIOBA PROCESSING LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TEXAS CAPITAL BANCSHARES, INC. and TEXAS CAPITAL BANK,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. Case No. 2:22-cv-00317</p> <p style="text-align: center;">Jury Trial Demanded Jury Trial Requested</p>
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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Kioba Processing LLC (“Kioba” or “Plaintiff”) files this Complaint against Defendants Texas Capital Bancshares, Inc. and Texas Capital Bank (hereinafter “Texas Capital” or “Defendant”) for infringement of U.S. Patent Nos. 6,917,902; 6,931,382; and 7,107,078 (“the patents-in-suit”).

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

THE PARTIES

2. Kioba is a Georgia limited liability company with its principal place of business at 44 Milton Ave., Suite 254, Alpharetta, GA, 30009, USA.

3. On information and belief, Defendant Texas Capital Bancshares, Inc. is a registered bank holding company organized and existing under the laws of the State of Texas, with a principal place of business at 2000 McKinney Avenue, Suite 700, Dallas, Texas 75201.

4. Texas Capital Bancshares, Inc. may be served with process through its registered agent, Corporation Service Company, d/b/a CSC-Lawyers Inc., 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

5. Texas Capital Bancshares, Inc. has been authorized to do business in the State of Texas and the Eastern District of Texas since at least April 20, 1998, under Texas SoS File Number 0012080906.

6. On information and belief, Defendant Texas Capital Bank is a Texas chartered bank organized and existing under the laws of the State of Texas, with a principal place of business at 2000 McKinney Avenue, Suite 700, Dallas, Texas 75201.

7. Texas Capital Bank may be served with process through its registered agent, Anna M. Alvarado, 2000 McKinney Avenue, Suite 700, Dallas, Texas 75201.

8. Texas Capital Bank has been authorized to do business in the State of Texas and the Eastern District of Texas since at least July 19, 2001.

9. Texas Capital Bank is a wholly-owned subsidiary of Texas Capital Bancshares, Inc.

10. Texas Capital Bank maintains locations in Austin, San Antonio, Dallas, Fort Worth, and Houston. See <https://www.texascapitalbank.com/who-we-are/locations>.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. Defendant is subject to personal jurisdiction in this District. Defendant does business in the State of Texas and in this District. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process, due at least to its substantial business in this State and judicial district, including: (A) at least part of its own infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from infringing goods offered for sale, sold, and imported and services provided to Texas residents vicariously through and/or in concert with its subsidiaries, intermediaries, and/or agents. Defendant has conducted and does conduct business within the Eastern District of Texas. Defendant, directly or through subsidiaries or intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and/or advertises (including through its web pages) its products and services (including products and/or services that infringe the asserted patents, as described more particularly below) in the United States, the State of Texas, and the Eastern District of Texas. Defendant, directly and through subsidiaries or intermediaries (including distributors, retailers, and others), has purposefully and voluntarily placed one or more infringing products and/or services, as described below, into the stream of commerce with the expectation that they will be purchased and/or used by consumers in the Eastern District of Texas. These infringing products and/or services have been and

continue to be purchased and/or used by consumers in the Eastern District of Texas. Defendant has committed acts of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas. Defendant has availed itself of the legal protections of the State of Texas by, among other things, not contesting jurisdiction in previous actions brought in this State and District.

13. Venue is proper pursuant to 28 U.S.C. §§ 1391(b), (c), (d) and/or 1400(b), at least because Defendant has committed acts of infringement, including direct infringement, in this judicial district and has regular and established places of business in this judicial district. Defendant operates full-service banking locations within this District including at 5800 Granite Parkway, Suite 150, Plano, Texas 75024 and 2350 Lakeside Boulevard, Suite 105, Richardson, Texas 75082.

THE ASSERTED PATENTS

United States Patent No. 6,917,902

14. On July 12, 2005, the USPTO duly and legally issued United States Patent No. 6,917,902 (the "'902 patent"), entitled "System and Method for Processing Monitoring Data Using Data Profiles." The inventions disclosed and claimed by the '902 patent relate to new and novel systems and methods for processing device data to provide authentication and/or security services, and more particularly, using unique data sets (e.g., biometric data) to ensure the identity of an individual, object, or event. The inventions further relate to using various monitoring mechanisms to verify the end user's identity.

15. The named inventor of the '902 patent is Bruce Alexander.

16. Each claim in the '902 patent is presumed valid.

17. Each claim in the '902 patent is directed to patent eligible subject matter under 35 U.S.C. § 101.

18. Kioba owns all rights, title, and interest in the '902 patent.

19. Kioba has not granted Defendant an approval, an authorization, or a license to the rights under the '902 patent.

20. The specification of the '902 patent discloses shortcomings in the prior art and then explains, in detail, the technical way the inventions claimed by the '902 patent resolve or overcome those shortcomings. The '902 patent explains “[s]ome monitoring systems, such as security monitoring devices, have begun to incorporate biometric data monitoring devices, such as fingerprint scanners, retinal scanners, or facial recognition devices as part of a monitoring process. Although biometric monitoring devices can potentially facilitate the identification of individuals, objects and/or events, many traditional monitoring systems have not incorporated various biometric monitoring devices as part of an integrated monitoring process.” '902 patent, 1:42-50. The '902 patent further explains that “some incoming biometric data is incompatible with the typical reference sources and/or processing rules. Thus, the use of biometric identification devices as part of an overall monitoring process is still limited. In addition to the lack of ability to integrate biometric data processing as part of a monitoring process, many traditional monitoring systems do not provide or support robust data sources required by the traditional biometric identification devices. One skilled in the relevant art will appreciate that biometric identification tools require the use of data templates and data

rules that are used to process biometric sample data coming in from the monitoring devices.” *Id.* at 1:54-66. At the time of the invention, “many closed monitoring systems [could not] efficiently support various biometric identification devices” or could not “utilize an external data template source if the data is maintained in an incompatible format.” *Id.* at 2:3-9. The ’902 patent recognized this drawback and solved the “need for a system and method for centrally processing and distributing biometric data templates and data rules to one or more processing systems,” as well as the “need for a system and method for processing specific instances and types of biometric data.” *Id.* at 2:13-17. The techniques for monitoring and processing device data disclosed and claimed by the ’902 patent were not routine or conventional at the time of their invention.

U.S. Patent No. 6,931,382

21. On August 16, 2005, the USPTO duly and legally issued United States Patent No. 6,931,382 (the “’382 patent”), entitled “Payment Instrument Authorization Technique.” The inventions claimed in the ’382 patent generally relate to a new and novel approach to protect against fraudulent credit and debit card activity.

22. The named inventors of the ’382 patent are Dominic P. Laage and Maria T. Laage.

23. Each claim in the ’382 patent is presumed valid.

24. Each claim in the ’382 patent is directed to patent eligible subject matter under 35 U.S.C. § 101.

25. Kioba owns all rights, title, and interest in the ’382 patent.

26. Kioba has not granted Defendant an approval, an authorization, or a

license to the rights under the '382 patent.

27. The specification of the '382 patent discloses shortcomings in the prior art and then explains, in detail, the technical way the inventions claimed by the '382 patent resolve or overcome those shortcomings. The '382 patent explains that online commerce creates numerous security risks associated with the storage of "sensitive financial data." '382 patent, 2:7-17. Online commerce presents numerous risks for both consumers and merchants. *Id.* Among other things, merchants face risks associated with fraudulent and unauthorized use. *See, e.g., id.* at 2:24-58. Similarly, consumers face risks associated with unauthorized access to their financial data. *See, e.g., id.* at 2:59-63. The '382 patent recognized these problems and the need for "a system and method for providing assurance to the merchant that the person attempting to make a purchase with a payment instrument is in fact the authorized user of the instrument. There also exists a need for a system and method that allows a merchant to prove that the authorized cardholder actually made the transaction. There also exists a need for a system and method for reducing the likelihood of a cardholder's issuing bank authorizing a fraudulent online transaction." *Id.* at 2:64-3:5. After identifying shortcomings in the prior art, the '382 patent provides technical solutions for preventing fraud and unauthorized transactions. More specifically, the patent discloses "technique[s] for strongly authenticating the owner of [a] payment instrument[]" and "a process by which owners of payment instruments [] have control over the usage of their payment instruments by giving them the ability selectively to block and unblock their payment instruments." *See, e.g., id.* at 3:8-21. The techniques for selectively blocking and unblocking payment

instruments disclosed by the '382 patent were not routine or conventional at the time of their invention.

U.S. Patent No. 7,107,078

28. On September 12, 2006, the USPTO duly and legally issued United States Patent No. 7,107,078 (the "'078 patent"), entitled "Method and System for the Effecting Payments by Means of a Mobile Station." The inventions claimed in the '078 patent generally relate to a new and novel user interfaces and methods for effecting mobile payments.

29. The named inventor of the '078 patent is Mariette Lehto.

30. Each claim in the '078 patent is presumed valid.

31. Each claim in the '078 patent is directed to patent eligible subject matter under 35 U.S.C. § 101.

32. Kioba owns all rights, title, and interest in the '078 patent.

33. Kioba has not granted Defendant an approval, an authorization, or a license to the rights under the '078 patent.

34. The specification of the '078 patent discloses shortcomings in the prior art and then explains, in detail, the technical way the inventions claimed by the '078 patent resolve or overcome those shortcomings. The '078 patent recognized that the burgeoning mobile payment systems did not allow for a convenient "way to select the method of payment for a particular situation that has arisen based on current circumstances or the user's wishes." *See, e.g., '078 patent, 1:36-47.* The '078 patent "makes it possible to offer the user a variety of user-selectable alternatives, suitable for

the particular purchase, for making a payment.” *Id.* at 3:12-15. The ’078 patent overcame this shortcoming by providing a secure interface for a user to select a preferred payment method. Additionally, the ’078 patent recognized the benefits of using a network application to store user- specific information relating to payments, such as credit card numbers and encryption data. *Id.* at 3:21-25. Among other things, this solution provides the user with the ability to select a secure payment method, while avoiding the risks associated with storing payment information on a mobile terminal. The techniques for securely storing and presenting payment information disclosed by the ’078 patent were not routine or conventional at the time of their invention.

CLAIMS FOR RELIEF

Count I - Infringement of U.S. Patent No. 6,917,902

35. Kioba repeats, realleges, and incorporates by reference, as if fully set forth here, the allegations of the preceding paragraphs above.

36. Defendant has infringed one or more claims of the ’902 patent in this judicial district and elsewhere in Texas and the United States.

37. On information and belief, Defendant has either by itself or via an agent, infringed at least claim 1 of the ’902 patent by, among other things, assessing data received from a device attempting to access account information or services through Defendant’s website (e.g., texascapitalbank.com) or mobile apps (e.g., the Texas Capital Bank, Texas Capital Bank Private Wealth, and Texas Capital Bank BankNow mobile apps) to determine whether access should be granted.

38. Attached hereto as Exhibit A, and incorporated herein by reference, is a claim chart detailing how Defendant infringes claim 1 of the '902 patent.¹

39. Defendant is liable for its infringement of the '902 patent pursuant to 35 U.S.C. §271.

40. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is thus liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's 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.

41. Plaintiff has complied with the requirements of 35 U.S.C. § 287 and is entitled to collect damages for Defendant's infringement of the '902 patent.

42. Prior to the filing of this action Defendant was aware of the '902 patent.

43. Plaintiff sent Defendant a letter dated October 25, 2021, attached hereto as Exhibit B, offering Defendant a license to the patents-in-suit.

44. Defendant sent no response to Plaintiff's correspondence.

45. Defendant has been aware of its infringement of the '902 patent since at least its receipt of the October 2021 communication.

46. On information and belief, despite being aware of the '902 patent and its

¹ The chart attached as Exhibit A is illustrative and provided for purposes of satisfying Plaintiff's pleading obligations and should not be construed as limiting. Plaintiff will serve infringement contentions in this case in accord with the Rules of Practice for Patent Cases Before the Eastern District of Texas (P.R. 3-1) and the schedule entered by the Court.

infringement of the '902 patent, Defendant has not changed or otherwise altered its systems or its practices in an effort to avoid infringing the '902 patent. Rather, despite having notice of the '902 patent, Defendant has, and continues to, infringe the '902 patent in disregard to Plaintiff's patent rights.

47. Defendant has acted recklessly and/or egregiously, and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '902 patent, justifying a finding of willful infringement and an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

Count II - Infringement of U.S. Patent No. 6,931,382

48. Kioba repeats, realleges, and incorporates by reference, as if fully set forth here, the allegations of the preceding paragraphs above.

49. Defendant has infringed one or more claims of the '382 patent in this judicial district and elsewhere in Texas and the United States.

50. On information and belief, Defendant has either by itself or via an agent, infringed at least claim 6 of the '382 patent by, among other things, testing and implementing its "CardValet" service.

51. Attached hereto as Exhibit C, and incorporated herein by reference, is a claim chart detailing how Defendant's support of its CardValet services infringes claim 6 of the '382 patent.²

² The chart attached as Exhibit C is illustrative and provided for purposes of satisfying Plaintiff's pleading obligations and should not be construed as limiting. Plaintiff will

52. To the extent Defendant contends that the step of claim 6 that recites “communicating by the authorized instrument holder, prior to a transaction or multiple transactions, with an authentication function to subject the authorized instrument holder to authentication and to request that the payment instrument be unblocked for future payment authorizations” (or some other step of the asserted claims) is performed by Defendant’s customers or end users of its services, Plaintiff contends that Defendant is responsible for such performance; Defendant directs and controls such performance because Defendant conditions a benefit to its customers and end users (e.g., the ability to prevent unauthorized use of Texas Capital credit or debit cards) based on its customers’ and end users’ performance of steps that were established by Defendant (e.g., the series of steps required by Defendant’s website and/or app for customers/end users to log in to defendants’ website or app and unblock a credit or debit card), and which Defendant does not allow its customers and end users to alter.

53. Defendant is liable for its infringement of the ’382 patent pursuant to 35 U.S.C. §271.

54. Plaintiff has been damaged as a result of Defendant’s infringing conduct described in this Count. Defendant is thus liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant’s 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.

serve infringement contentions in this case in accord with P.R. 3-1 and the schedule entered by the Court.

55. Plaintiff has complied with the requirements of 35 U.S.C. § 287 and is entitled to collect damages for Defendant's infringements of the '382 patent.

56. Prior to the filing of this action Defendant was aware of the '382 patent.

57. As detailed above, Plaintiff sent Defendant a letter dated October 25, 2021, attached hereto as Exhibit B, offering Defendant a license to the patents-in-suit.

58. Defendant sent no response to Plaintiff's correspondence.

59. Defendant has been aware of its infringement of the '382 patent since at least its receipt of the October 2021 communication.

60. On information and belief, despite being aware of the '382 patent and its infringement of the '382 patent, Defendant has not changed or otherwise altered its systems or its practices in an effort to avoid infringing the '382 patent. Rather, despite having notice of the '382 patent, Defendant has, and continues to, infringe the '382 patent in disregard to Plaintiff's patent rights.

61. Defendant has acted recklessly and/or egregiously, and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '382 patent, justifying a finding of willful infringement and an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

Count III - Infringement of U.S. Patent No. 7,107,078

62. Kioba repeats, realleges, and incorporates by reference, as if fully set forth here, the allegations of the preceding paragraphs above.

63. Defendant has infringed one or more claims of the '078 patent in this

judicial district and elsewhere in Texas and the United States.

64. On information and belief, Defendant has either by itself or via an agent, infringed at least claim 6 of the '078 patent by, among other things making and using, including via at least its testing of, systems that support payment functionality for Defendant's mobile apps, including the Texas Capital Bank, Texas Capital Bank Private Wealth, and Texas Capital Bank BankNow mobile apps.

65. Attached hereto as Exhibit D, and incorporated herein by reference, is a claim chart detailing how Defendant infringes claim 6 of the '078 patent.³

66. Based on the information presently available to Plaintiff, absent discovery, and in addition to and in the alternative to direct infringement, Plaintiff contends that Defendant has indirectly infringed one or more claims of the '078 patent by inducing direct infringement by end users of the systems that support payment functionality for Defendant's mobile apps, including the Texas Capital Bank, Texas Capital Bank Private Wealth, and Texas Capital Bank BankNow mobile apps.

67. Defendant is liable for its infringement of the '078 patent pursuant to 35 U.S.C. §271.

68. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is thus liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringement, which, by law, cannot

³ The chart attached as Exhibit D is illustrative and provided for purposes of satisfying Plaintiff's pleading obligations and should not be construed as limiting. Plaintiff will serve infringement contentions in this case in accord with P.R. 3-1 and the schedule entered by the Court.

be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

69. Plaintiff has complied with the requirements of 35 U.S.C. § 287 and is entitled to collect damages for Defendant's infringement of the '078 patent.

70. Prior to the filing of this action Defendant was aware of the '078 patent.

71. As detailed above, Plaintiff sent Defendant a letter dated October 25, 2021, attached hereto as Exhibit B, offering Defendant a license to the patents-in-suit.

72. Defendant sent no response to Plaintiff's correspondence.

73. Defendant has been aware of its infringement of the '078 patent since at least its receipt of the October 2021 communication.

74. On information and belief, despite being aware of the '078 patent and its infringement of the '078 patent, Defendant has not changed or otherwise altered its systems or its practices in an effort to avoid infringing the '078 patent. Rather, despite having notice of the '078 patent, Defendant has, and continues to, infringe the '078 patent in disregard to Plaintiff's patent rights. On information and belief, Defendant specifically intended for persons who use the systems that support payment functionality for Defendant's mobile apps, including the Texas Capital Bank, Texas Capital Bank Private Wealth, and Texas Capital Bank BankNow mobile apps, including Defendant's customers and end consumers, to make and use such systems in a way that infringes the '078 patent, including at least claim 6, and Defendant knew that its actions were inducing infringement.

75. Defendant instructed and encouraged users to make and use the

systems that support payment functionality for Defendant's mobile apps, including the Texas Capital Bank, Texas Capital Bank Private Wealth, and Texas Capital Bank BankNow mobile apps, in a manner that infringed the '078 patent. For example, Defendant's website (e.g., <https://www.texascapitalbank.com/personal-banking/online-banking-experience-guide>, <https://www.texascapitalbank.com/personal-banking/online-banking-guide#2254641303-1539313845-2> and <https://www.texascapitalbank.com/helpful-information/faqs#2254641303-1385177639-14>) include advertising and instructions encouraging customers to use the systems that support payment functionality for Defendant's mobile apps.

76. Defendant has acted recklessly and/or egregiously, and continues to willfully, wantonly, and deliberately engage in acts of infringement of the '078 patent, justifying a finding of willful infringement and an award to Plaintiff of increased damages under 35 U.S.C. § 284, and attorneys' fees and costs incurred under 35 U.S.C. § 285.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

Plaintiff respectfully requests the Court to enter judgment in Kioba's favor and against Defendant and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the patents-in-suit have been

infringed, either literally and/or under the doctrine of equivalents, by Defendant;

b. Judgment that one or more claims of the patents-in-suit have been willfully infringed, either literally and/or under the doctrine of equivalents, by Defendant;

c. Judgment that Defendant account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein, including an accounting for any sales or damages not presented at trial;

d. Judgment that Defendant account for and pay to Plaintiff a reasonable, ongoing, post judgment royalty because of Defendant's infringing activities, including continuing infringing activities, and other conduct complained of herein;

e. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;

f. Find this case exceptional under the provisions of 35 U.S.C. § 285 and award enhanced damages; and

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

Dated: August 17, 2022

Respectfully submitted,

/s/ Stafford Davis

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