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

RFCYBER CORP.,	§ §	Case No.
Plaintiff,	§ §	**JURY TRIAL DEMANDED**
v.	§ §	
WALMART INC.,	§ §	
Defendant.	§ § § §	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, RFCyber Corp. ("RFCyber" or "Plaintiff"), files this Complaint against Defendant Walmart, Inc. ("Walmart" or "Defendant"), for patent infringement under 35 U.S.C. § 271 and alleges as follows:

THE PARTIES

1.   RFCyber is a Texas corporation with a place of business at 7700 Windrose Avenue, Suite G300, Plano, Texas 75024. RFCyber is the exclusive licensee with the right to sue, for U.S. Patent No. 8,448,855 (the "Patent-in-Suit" or "Asserted Patent").

2.   Defendant Walmart is a corporation organized and existing under the laws of Delaware, with one or more regular and established places of business in this District at least at 1701 East End Boulevard North, Marshall, Texas 75670; 4006 Estes Parkway, Longview, Texas 75603; 515 East Loop 281, Longview, Texas 75605; 3812 Gilmer Road, Longview, Texas 75604; 2311 South Jefferson Avenue, Mt Pleasant, Texas 75455; 105 East Centennial Boulevard, Lindale, Texas 75771; 450 South SE Loop 323, Tyler, Texas 75702; 3820 State Hwy 64, Tyler, Texas 75704; 5050 Troup Highway, Tyler, Texas 75707; 6801 South Broadway Avenue, Tyler, Texas 75703; 4000 New Boston Road, Texarkana, Texas 75501; 401 East US Highway 82, Sherman,

Texas 75092; and at 8801 Ohio Drive, Plano, Texas 75024; 2025 S SW Loop 323, Tyler, Texas 75701; 1670 W University Dr, McKinney, Texas 75069; and at 8621 Ohio Dr, Plano, Texas 75024. Walmart may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3.   This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq*. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338, and 1367.

4.   This Court has specific and personal jurisdiction over Defendant consistent with the requirements of the Due Process Clause of the United States Constitution and the Texas Long Arm Statute. Upon information and belief, Defendant has sufficient minimum contacts with the forum because Defendant has physical locations and transacts substantial business in the State of Texas and in this Judicial District. Further, Defendant has, directly or through subsidiaries or intermediaries, committed and continues to commit acts of patent infringement in the State of Texas and in this Judicial District as alleged in this Complaint, as alleged more particularly below.

5.   Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(b). Walmart is registered to do business in Texas and, upon information and belief, Walmart has transacted business in this Judicial District, has committed acts of direct and indirect infringement in this Judicial District, and has regular and established places of business in this Judicial District as set forth above. Walmart is subject to personal jurisdiction in this Judicial District and has committed acts of patent infringement in this Judicial District. On information and belief, Walmart through its own acts and/or through the acts of others, makes, uses, sells, offers to sell, and/or imports infringing products within this Judicial District, regularly does and solicits business in this

Judicial District, and has the requisite minimum contacts with the Judicial District such that this venue is a fair and reasonable one. Further, upon information and belief, Walmart has admitted or not contested proper venue in this Judicial District in other patent infringement actions.

6.   Walmart operates more stores in Texas than it does in any other state. According to its 2022 Annual Report, available through https://stock.walmart.com/financials/sec-filings/default.aspx, Walmart operates over 500 Walmart stores in Texas. *See also* https://www.walmart.com/store-directory/tx.

7.   On information and belief Walmart also operates at least nineteen distribution centers in Texas. This includes distribution centers within this District, such as locations in at least the following cities in this District: Fort Worth; Palestine; Sanger; and Terrell.

PATENT-IN-SUIT

8.   On May 28, 2013, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,448,855 (the "'855 Patent") entitled "Method and Apparatus For Funding An Electronic Purse." A true and correct copy of the '855 Patent is attached as Exhibit A.

9.   RFCyber is the exclusive licensee with the right to sue for the '855 Patent, and holds the exclusive right to take all actions necessary to enforce its rights to the Patent-in-Suit, including the filing of this patent infringement lawsuit. RFCyber also has the right to recover all damages for past, present, and future infringement of the Patent-in-Suit and to seek injunctive relief as appropriate under the law.

INFRINGEMENT ALLEGATIONS

10.   The technologies of the Patent-in-Suit were variously invented by Liang Seng Koh, Hsin Pan, Futong Cho, and Fuliang Cho. The Patent-in-Suit generally covers apparatus and methods for enabling secure contactless payment with a portable device. In one exemplary

embodiment, a device may contactlessly emulate a payment card. For example, users may select one of a plurality of payment cards stored in a memory, and carry out a contactless transaction at a point of service ("POS"). In another embodiment, the device may securely conduct transactions over an open network with a payment server. By contactless payments, the inventions of the Patent-in-Suit provide significant time-savings, particularly in situations where a payment process would otherwise involve more than one contact between a merchant and consumer.

11.   Walmart has manufactured, used, marketed, distributed, sold, offered for sale, and exported from and imported into the United States devices and software that infringe the Patent-in-Suit. Walmart has distributed variants of the Walmart App and Sam's Club App that have included functionality to make contactless payments at Walmart locations on any Android or iOS mobile device (*e.g.*, Walmart Pay and Sam's Club Scan & Go functionality) since at least 2016. The current and previous versions of the Walmart App and Sam's Club App, and the hardware and software supporting the Walmart App and Sam's Club App (including supporting servers) are non-limiting instances of the Accused Products. The Accused Products practice the claims of the Patents-in-Suit to improve the shopping experience of their users, and to improve Walmart's position in the market.

https://corporate.walmart.com/news/2016/07/06/walmart-pay-now-available-in-all-walmart-stores-nationwide

12.   RFCyber has at all times complied with the marking provisions of 35 U.S.C. § 287 with respect to the Patent-in-Suit. On information and belief, any prior assignees and licensees have also complied with the marking provisions of 35 U.S.C. § 287.

COUNT I
(Infringement of the '855 Patent)

13.   Paragraphs 1 through 12 are incorporated herein by reference as if fully set forth in their entireties.

14.   RFCyber has not licensed or otherwise authorized Walmart to make, use, offer for sale, sell, or import any products that embody the inventions of the '855 Patent.

15.   Walmart infringes, contributes to the infringement of, and/or induces infringement of the '855 Patent by making, using, selling, offering for sale, distributing, exporting from, and/or importing into the United States products and/or methods covered by one or more claims of the '855 Patent including, but not limited to, at least the Accused Products.

16.   Walmart has directly infringed and continues to directly infringe the '855 Patent, either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271, by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '855 Patent. Upon information and belief, these products include the Accused Products that practice the methods and systems covered by the '855 Patent including, for example, contactless payment functionality implemented by the Walmart App and Sam's Club App. For example, the Walmart App infringes at least Claim 9 of the '855 Patent.

17.   For example, Walmart has and continues to directly infringe at least Claim 9 of the '855 Patent by making, using, offering to sell, selling, and/or importing into the United States products that practice a method for funding an e-purse, the method comprising: receiving a request from a portable device; verifying the request with an account in a bank across a network; initiating a fund transfer request by a server with a financial institution administrating the e-purse when the request is successfully verified; sending commands to the portable device to cause an emulator in

the portable device to update a transaction log in the portable device after an authenticity of the commands is verified by a midlet in the portable device, and wherein the request is a response composed by an e-purse applet after the e-purse applet receives an initial request from the midlet in the portable device and a PIN is entered by a user of the portable device and verified, the request is sent over a wireless network to the server, and wherein the e-purse in the portable device has been personalized by operations including: establishing an initial security channel between the card module and an e-purse security authentication module (SAM) external to the card module to install and personalize the e-purse applet in the card module, and creating a security channel on top of the initial security channel to protect subsequent operations of the card module with the e-purse SAM, wherein any subsequent operation of the emulator is conducted over the security channel via the e-purse applet.
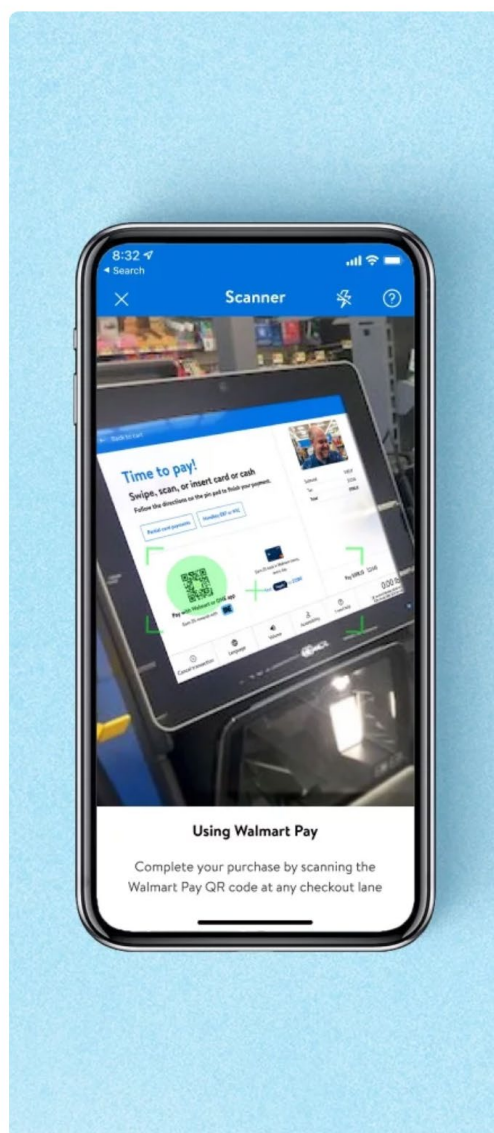
18.   The Accused Products practice a method comprising receiving a request from a portable device. For example, Walmart servers receive a request from mobile devices running the Walmart App when performing a contactless or online purchase with a saved payment method, such as a credit card, debit card, gift card value, and/or with Walmart Cash.

How it works

Get started with Walmart Pay

Step by step, we make it easy.

1   Open the Walmart app on your Android or iOS device.

2   If you've already saved credit, debit or gift cards to your Walmart account, you'll see them listed. If you haven't saved any cards yet, we'll ask you to add one or more credit or debit cards or Walmart gift cards.

3   Choose the payment method you want to use with Walmart Pay.

4   We'll use the gift card value in your account first unless you switch this option to "Off."

5   Bring paper coupons to the cashier or self-checkout as usual.

6   When you're done shopping, go to any checkout lane & scan your items, then either open Walmart Pay in the app, or open your phone's camera. Hold your phone over the QR code on the register to pay. Walmart Pay can use credit, debit or gift cards saved to your Walmart account.

7   You should hear a chime & see a confirmation. We'll send a notification to your device when your e-receipt is ready—there are no paper receipts with Walmart Pay.

Using Walmart Pay

Complete your purchase by scanning the Walmart Pay QR code at any checkout lane

https://www.walmart.com/cp/walmart-pay/3205993

19.   The Accused Products further practice a method of verifying the request with an account in a bank across a network. For example, upon verifying a request for funds (*e.g.*, to complete a transaction with a saved payment card, gift card value, or with Walmart Cash), the Walmart App servers (administering the Walmart App) initiate a fund transfer request for the requested funds with the institution administering the user's account.

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2   If you've already saved credit, debit or gift cards to your Walmart account, you'll see them listed. If you haven't saved any cards yet, we'll ask you to add one or more credit or debit cards or Walmart gift cards.

3   Choose the payment method you want to use with Walmart Pay.

4   We'll use the gift card value in your account first unless you switch this option to "Off."

https://www.walmart.com/cp/walmart-pay/3205993

Does Walmart Pay accept all payment types?
- Walmart Pay can be linked to any major card, including VISA, MasterCard, AMEX and Discover, as well as Walmart Gift Cards, eGift Cards and prepaid cards.
- Walmart Pay cannot be directly linked to checking accounts.

Can I use my new Walmart credit card with Walmart Pay?
- Walmart's Instant Access program allows you to use your new Walmart credit card immediately. Just add your temporary shopping pass credentials to Walmart Pay and use you new line of credit to pay in any Walmart store or on Walmart.com. Your temporary shopping pass is valid for 10 days, at which time you will receive your new credit card in the mail. Once you receive your permanent card information, you will need to enter your new details in Walmart Pay or in your Walmart.com account to continue using your card in stores and online.

https://web.archive.org/web/20180215110929/https://www.walmart.com/cp/walmart-pay/3205993

20.   The Accused Products further practice a method of initiating a fund transfer request by a server with a financial institution administrating the e-purse when the request is successfully verified. For example, upon verifying a request for funds (*e.g.*, to load money onto the Walmart App or complete a transaction with a saved payment card and/or with Walmart Cash), the Walmart App servers (administering the Walmart App) initiate a fund transfer request for the requested funds with the institution administering the user's account.

21.   The Accused Products practice a method of sending commands to the portable device to cause an emulator in the portable device to update a transaction log in the portable device after an authenticity of the commands is verified by a midlet in the portable device. For example,

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upon information and belief, the servers supporting the Walmart App send commands to a phone

running the Walmart Application to cause an emulator (*e.g.*, a portion of the Walmart Application

and/or associated APIs including functionality for logging transactions, rendering cards, and

rendering QR/bar codes) to update a transaction log (*e.g.*, purchase history) after the authenticity

of commands is verified by a midlet (*e.g.*, the Walmart Application), such as via SSL/TLS

certificate.

Your data is secure with us

We always maintain several layers of security & continuously update our methods & test our systems. Walmart stores only verified payment methods —including credit cards—must include CVV codes. Information is always encrypted over secure networks called Secure Sockets Layer (SSL). The card information does not transfer to the store itself. A note about location services: Our data collection remains the same as published in the Walmart Privacy Policy. We never share private information.

https://www.walmart.com/cp/walmart-pay/3205993; *see also*
https://www.walmart.com/help/article/view-store-purchases-and-find-
receipts/f56a1afbf3b5428bb69f0124daa49108

▾ **After checkout can I review my receipt details?**

- Yes, an itemized eReceipt will be available by selecting "Account" on the menu bar at the bottom of the screen, then "Store Receipts." Select the eReceipt to open it and view each item and price.
- eReceipts typically show up within 2-4 seconds, but sometimes there is a slight delay. eReceipts are saved indefinitely.

https://web.archive.org/web/20180215110929/https://www.walmart.com/cp/walmart-
pay/3205993

22.   The Accused Products practice a method wherein the request is a response

composed by an e-purse applet after the e-purse applet receives an initial request from the midlet

in the portable device and a PIN is entered by a user of the portable device and verified, the request

is sent over a wireless network to the server. For example, the request to a server supporting the

Walmart Application (*e.g.*, to load a card and/or complete a transaction) is a response composed

by an e-purse applet (*e.g.*, the software representation of a Walmart card and/or other saved payment methods) after the e-purse applet receives an initial request from the midlet (*e.g.*, the Walmart App) and a PIN (*e.g.*, a face ID, 4-digit PIN, password, fingerprint) entered by the user is verified.

How does Walmart Pay work?

- To use Walmart Pay, you must first download the Walmart app, create or sign into your Walmart.com account and update your account to include a preferred payment method. This can include any credit or debit card, prepaid account or Walmart gift card.
- While in the store, you will checkout as usual – at any lane. To launch Walmart Pay, open the Walmart app and select the Walmart Pay logo. After entering your unique security PIN or using Touch ID, hold your phone over the QR code to scan.
- When your transaction is complete, you will hear a sound signaling transaction confirmation and an eReceipt will appear on your device. A message will also appear on the debit reader stating, "TRANSACTION COMPLETE ERECEIPT SENT".

https://web.archive.org/web/20180215110929/https://www.walmart.com/cp/walmart-pay/3205993

Explain the in-store process, step by step:

- When you are ready to check out, scan your items at any staffed or self-checkout register.
- A unique QR code is displayed on the debit reader screen.
- Open the Walmart app and launch Walmart Pay.
- Enter your 4-digit PIN or Touch ID verification for security.
- Hold your Smartphone over the QR code on the PIN reader to sync with Walmart Pay. You may scan the QR code before, during or after items have been scanned at the register.
- Once the transaction is complete, you will receive a sound signaling transaction is complete and an eReceipt. You're all done!

https://web.archive.org/web/20180215110929/https://www.walmart.com/cp/walmart-pay/3205993

23.   The Accused Products practice a method wherein the e-purse in the portable device has been personalized by operations including: establishing an initial security channel between the card module and an e-purse security authentication module (SAM) external to the card module to install and personalize the e-purse applet in the card module. For example, upon information and belief, saving a card in the Walmart App comprises establishing an initial security channel (*e.g.*, SSL/TLS connection) between the card module (*e.g.*, a secure memory area in which sensitive card information is saved) and an e-purse security authentication module external to the card module (*e.g.*, a server security module) to install and personalize the software representation of a user's saved card.

- **Tokenization for Security:** Once confirmed, a unique digital token representing your chosen payment method is used to complete the transaction. This tokenization process shields your actual card details from ever being exposed.
- **Authorization and Receipt:** Walmart's servers receive the token, verify the transaction, and communicate with your bank for authorization. Upon successful authorization, you'll hear a chime and see a confirmation message on your phone. An electronic receipt for your purchase will be stored within the Walmart Pay app, eliminating the need for a paper receipt.

https://www.financialhint.com/2024/03/walmart-pay.html

24.   The Accused Products practice a method wherein the e-purse in the portable device has been personalized by operations including: creating a security channel on top of the initial security channel to protect subsequent operations of the card module with the e-purse SAM, wherein any subsequent operation of the emulator is conducted over the security channel via the e-purse applet. For example, upon information and belief, personalization further includes creating a security channel on top of the initial security channel, *e.g.*, via an additional layer of encryption such as a user device fingerprint and/or key used to encrypt transmitted card data, to protect any subsequent operation of the card module with the security module of the Walmart servers. For example, upon information and belief, any subsequent operation of the emulator portion of the Walmart App (*e.g.*, to load funds or conduct transactions with a given card applet) are protected by such fingerprints, keys, and/or certificates.

25.   Walmart has indirectly infringed and continues to indirectly infringe one or more claims of the '855 Patent, as provided by 35 U.S.C. § 271(b), by inducing infringement by others, such as Walmart's customers and end-users, in this District and elsewhere in the United States. For example, Walmart's customers and end-users directly infringe, either literally or under the doctrine of equivalents, through their use of the inventions claimed in the '855 Patent. Walmart induces this direct infringement through its affirmative acts of manufacturing, selling, distributing, and/or otherwise making available the Accused Products, and providing instructions,

documentation, and other information to customers and end-users suggesting that they use the Accused Products in an infringing manner, including technical support, marketing, product manuals, advertisements, and online documentation. Because of Walmart's inducement, Walmart's customers and end-users use Accused Products in a way Walmart intends and directly infringe the '855 Patent. Walmart performs these affirmative acts with knowledge of the '855 Patent and with the intent, or willful blindness, that the induced acts directly infringe the '855 Patent.

26.   Walmart has indirectly infringed and continues to indirectly infringe one or more claims of the '855 Patent, as provided by 35 U.S.C. § 271(c), by contributing to direct infringement by others, such as customers and end-users, in this District and elsewhere in the United States. Walmart's affirmative acts of selling and offering to sell the Accused Products in this District and elsewhere in the United States and causing the Accused Products to be manufactured, used, sold, and offered for sale contributes to others' use and manufacture of the Accused Products such that the '855 Patent is directly infringed by others. The accused components within the Accused Products are material to the invention of the '855 Patent, are not staple articles or commodities of commerce, have no substantial non-infringing uses, and are known by Walmart to be especially made or adapted for use in the infringement of the '855 Patent. Walmart performs these affirmative acts with knowledge of the '855 Patent and with intent, or willful blindness, that they cause the direct infringement of the '855 Patent.

27.   Because of Walmart's direct and indirect infringement of the '855 Patent, RFCyber has suffered, and will continue to suffer, damages in an amount to be proved at trial.

28.   Because of Walmart's direct and indirect infringement of the '855 Patent, RFCyber has suffered, and will continue to suffer, irreparable harm for which there is no adequate remedy at law, unless Walmart's infringement is enjoined by this Court.

DEMAND FOR JURY TRIAL

29.   Plaintiff hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendant as follows:

a.   Entry of judgment declaring that Defendant infringes one or more claims of each of the Patent-in-Suit;

b.   Entry of judgment declaring that Defendant's infringement of the Patent-in-Suit is willful;

c.   An order awarding damages sufficient to compensate Plaintiff for Defendant's infringement of the Patent-in-Suit, but in no event less than a reasonable royalty, including supplemental damages post-verdict, together with pre-judgment and post-judgment interest and costs;

d.   Enhanced damages pursuant to 35 U.S.C. § 284;

e.   Entry of judgment declaring that this case is exceptional and awarding Plaintiff its costs and reasonable attorney fees pursuant to 35 U.S.C. § 285;

f.   An accounting for acts of infringement;

g.   Such other equitable relief which may be requested and to which the Plaintiff is entitled; and

h.   Such other and further relief as the Court deems just and proper.

Dated: July 18, 2024

Respectfully submitted,

/s/ Alfred R. Fabricant

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