

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

ACTUS, LLC,

Plaintiff,

v.

BANK OF AMERICA CORP., et al.

Defendants.

CIVIL ACTION NO. 2:09-cv-102-TJW

JURY TRIAL DEMANDED

**PLAINTIFF'S ANSWER TO DEFENDANT
VISA, INC.'S COUNTERCLAIMS**

Plaintiff Actus, LLC ("Actus") hereby responds to each paragraph of Defendant Visa, Inc.'s ("Visa") counterclaims as follows, wherein each and every paragraph is hereby incorporated by reference into each and every answer to each and every Count:

COUNTERCLAIMS OF VISA AGAINST ACTUS

FACTS

55. Admitted, upon information and belief.

56. Admitted.

57. Actus admits that this counterclaim purports to arise under the Declaratory Judgment Act and the patent laws of the United States. Actus denies the remainder of the allegations of paragraph 57.

58. The Allegations in paragraph 58 are legal conclusions to which no response is required; however, to the extent that paragraph 58 contains any factual allegations to which Actus must respond, Actus admits same.

59. Admitted.

COUNTERCLAIM I

(Declaratory Judgment of Non-Infringement of the '189 Patent)

60. Actus restates and incorporates by reference each of its responses to the allegations in paragraphs 55 – 59 of Visa's Counterclaims above, as if fully set forth herein.

61. Admitted.

62. Actus admits that an immediate and justiciable controversy exists between Actus and Visa.

63. Denied.

64. Denied.

65. Denied.

COUNTERCLAIM II

(Declaratory Judgment of Non-Infringement of the '099 Patent)

66. Actus restates and incorporates by reference each of its responses to the allegations in paragraphs 55 – 59 of Visa's Counterclaims above, as if fully set forth herein.

67. Admitted.

68. Actus admits that an immediate and justiciable controversy exists between Actus and Visa.

69. Denied.

70. Denied.

71. Denied.

COUNTERCLAIM III

(Declaratory Judgment of Invalidity of the '189 Patent)

72. Actus restates and incorporates by reference each of its responses to the allegations in paragraphs 55 – 59 of Visa’s Counterclaims above, as if fully set forth herein.

73. Actus admits that an immediate and justiciable controversy exists between Actus and Visa.

74. Denied.

75. Denied.

COUNTERCLAIM IV

(Declaratory Judgment of Invalidity of the ‘099 Patent)

76. Actus restates and incorporates by reference each of its responses to the allegations in paragraphs 55 – 59 of Visa’s Counterclaims above, as if fully set forth herein.

77. Actus admits that an immediate and justiciable controversy exists between Actus and Visa.

78. Denied.

79. Denied

**RESPONSE TO PRAYER FOR RELIEF IN
VISA, INC.’S COUNTERCLAIMS**

Actus denies that Visa is entitled to any of the relief requested in its Prayer.

PRAYER FOR RELIEF

In addition to the relief requested in its Third Amended Complaint, Actus respectfully requests a judgment against Visa as follows:

- A. That Visa take nothing by its Counterclaims;
- B. That the Court award Actus all costs and attorneys’ fees incurred in defending against Visa’s Counterclaims; and
- C. Any and all further relief that the Court deems just and proper.

Dated: March 23, 2010

Respectfully submitted,

/s/ William E. Davis, III
William E. Davis, III
TX State Bar No. 24047416

The Davis Firm, PC
111 W. Tyler St.
Longview, TX 75601
Ph: 903-230-9090
Fx: 903-230-0661
bdavis@bdavisfirm.com

Attorney for Actus, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, the foregoing was served on all counsel of record who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d), all others not deemed to have consented to electronic service were served with a true and correct copy of the foregoing via email on this 23rd day of March, 2010.

/s/ William E. Davis, III
William E. Davis, III