

**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
M&T BANK CORP.'S COUNTERCLAIMS**

Plaintiff Actus, LLC ("Actus") hereby responds to each paragraph of Defendant M&T Bank Corp.'s ("M&T") 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 M&T AGAINST ACTUS

FACTS

55. Admitted.

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 M&T's Counterclaims above, as if fully set forth herein.

61. Admitted.

62. Admitted.

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 M&T's Counterclaims above, as if fully set forth herein.

67. Admitted.

68. Admitted.

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 66 – 71 of M&T's Counterclaims above, as if fully set forth herein.

73. Admitted.

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 M&T's Counterclaims above, as if fully set forth herein.

77. Admitted.

78. Denied.

79. Denied

**RESPONSE TO PRAYER FOR RELIEF IN
M&T BANK CORP.'S COUNTERCLAIMS**

Actus denies that M&T 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 M&T as follows:

A. That M&T take nothing by its Counterclaims;

B. That the Court award Actus all costs and attorneys' fees incurred in defending against M&T'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