

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

FEB 27 2006

DAVID J. MALAND, CLERK

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

BY
DEPUTY _____

ADVANCEME, INC.,

Plaintiff,

vs.

AMERIMERCHANT, LLC,

Defendant.

CASE NO. *6:06cv82*

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff AdvanceMe, Inc. files this complaint against AmeriMerchant, LLC:

THE PARTIES

1. Plaintiff AdvanceMe, Inc. ("AdvanceMe") is a corporation organized under the laws of Delaware having its principal place of business at 600 TownPark Lane, Kennesaw, Georgia 30144.

2. Upon information and belief, at all relevant times mentioned below, Defendant AmeriMerchant, LLC ("AmeriMerchant") has been and is a limited liability company organized under the laws of the state of New York having two principal places of business located at: 475 Park Avenue South, 15th Floor, New York, New York 10016 and 450 Geary Street, Suite 300, San Francisco, California 94102.

JURISDICTION AND VENUE

3. This lawsuit is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 *et seq.* The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1338(a).

4. Upon information and belief, this Court has personal jurisdiction over AmeriMerchant and venue is proper in this District under 28 U.S.C. 1391(c) and 1400(b) because AmeriMerchant has continuously offered for sale, and continues to offer for sale, infringing services in this judicial district.

THE PATENT IN SUIT

5. On September 6, 2005, the United States Patent and Trademark Office (“USPTO”) issued U.S. Patent No. 6,941,281 entitled “Automated Payment” (hereinafter “the ‘281 patent”). A true and correct copy of the ‘281 patent is attached hereto as Exhibit A.

6. AdvanceMe is the owner of the ‘281 patent by assignment with full and exclusive rights to bring suit to enforce this patent.

COUNT ONE:

INFRINGEMENT OF THE ‘281 PATENT

7. AdvanceMe realleges and incorporates herein the allegations of paragraphs 1 through 6 of this Complaint as if fully set forth herein.

8. Upon information and belief, in violation of 35 U.S.C. § 271, AmeriMerchant has infringed and is continuing to infringe, literally and/or under the doctrine of equivalents, the ‘281 patent by practicing one or more claims of the ‘281 patent in its use of methods and/or systems

covered by the '281 patent and offering financial services that utilize methods and/or systems covered by the '281 patent.

9. Upon information and belief, in violation of 35 U.S.C. § 271, AmeriMerchant has infringed and is continuing to infringe the '281 patent by contributing to or actively inducing the infringement by others of the '281 patent.

10. AmeriMerchant's infringement of the '281 patent has caused and continues to cause damage to AdvanceMe in an amount to be determined at trial.

11. Upon information and belief, AmeriMerchant has willfully infringed the '281 patent, entitling AdvanceMe to enhanced damages pursuant to 35 U.S.C. § 284, and to an award of attorneys' fees and costs in prosecuting this action pursuant to 35 U.S.C. § 285.

12. Upon information and belief, AmeriMerchant's acts of infringement of the '281 patent will continue after service of this complaint unless enjoined by the Court.

13. Unless AmeriMerchant is enjoined by this Court from continuing its infringement of the '281 patent, AdvanceMe will suffer additional irreparable damages and impairment of the value of its patent rights. Thus, AdvanceMe is entitled to an injunction against further infringement.

PRAYER FOR RELIEF

WHEREFORE, AdvanceMe prays for the following relief:

(a) That judgment be entered in favor of AdvanceMe that the '281 patent is valid and infringed by AmeriMerchant;

(b) That AdvanceMe be granted an accounting of all damages sustained as a result of AmeriMerchant's infringement;

(c) That AdvanceMe be awarded actual damages together with prejudgment interest according to proof, and enhanced damages pursuant to 35 U.S.C. § 284;

(d) That AmeriMerchant, its officers, agents, servants, employees, and those persons acting in active concert or in participation with them be enjoined from further infringement of the '281 patent pursuant to 35 U.S.C. § 283;

(e) That AmeriMerchant be ordered to pay attorneys' fees pursuant to 35 U.S.C. § 285;

(f) That AmeriMerchant be ordered to pay all costs associated with this action; and

(g) That AmeriMerchant be granted such other and additional relief as the Court deems just and proper.

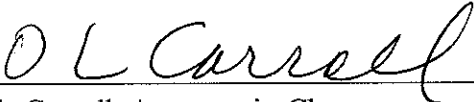
DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, AdvanceMe respectfully demands a trial by jury as to all issues so triable.

Respectfully submitted:

IRELAND, CARROLL & KELLEY P.C.

Dated: February 27, 2006

By: 

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