



## Financial Services Patent Holding Company Update

This is the February 2011 installment of Sutherland's "Financial Patent Holding Company Update." These updates are intended to provide our readers general information about the activities of patent holding companies (or non-practicing entities) in the financial services and e-commerce industries. If articles provided herein are of interest, or if additional information is desired, please contact us.

## False Patent Marking Lawsuits Filed Against Financial Services Companies

On January 20, 2011, Main Hastings LLC filed four false patent marking lawsuits against several financial institutions and subsidiaries, including JPMorgan Chase & Co., Citigroup, Inc., First Citizens Bank and Trust Co., HSBC, City National Bank, SunTrust Bank, PNC Bank, Union Bank, and Zions First National Bank. The lawsuits alleged that the patent owners had falsely marked their products with expired patent numbers. All of the lawsuits were filed in the U.S. District Court for the Eastern District of Texas.

Current patent law provides for damages against the patent owner up to \$500 per article marked with an expired patent number; however, the U.S. Congress and several courts are considering changes to the law to deter future false patent marking lawsuits. Using similar litigation and settlement tactics as patent holding companies, Main Hastings LLC is one of several "false marking trolls" pursuing litigation in the federal courts against owners of expired patents. These recent cases serve as reminders to patent owners to periodically review their patent marking procedures.

(Source: [The Wall Street Journal](#))

## Patent Holding Company Eon-Net to Pay \$631,135 in Sanctions and Fees for "Indicia of Extortion"

In a win for the financial services community, the U.S. Court of Appeals for the Federal Circuit has upheld a lower court's order that patent lawyer Jean-Marc Zimmerman and patent holding company Eon-Net pay \$631,135 in sanctions and fees for "indicia of extortion" in patent lawsuits filed by Zimmerman. The Federal Circuit denied their motion to stay execution of the judgment while they appeal the underlying order.

The order stems from, among other lawsuits, Eon-Net's suit against Flagstar Bancorp for infringement of U.S. Patent No. 6,683,697, which relates to an information processing system for inputting information from a document or file on a computer into an application program. The court stated that, "In this case, as in its various other infringement actions, Eon-Net followed service of the complaint with a cheap offer of settlement."

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Judge Ricardo Martinez of the U.S. District Court for the Western District of Washington entered a judgment of noninfringement and awarded Flagstar \$489,150 in attorney fees and expenses. He also issued a \$141,984 sanctions order against Zimmerman pursuant to Rule 11 of the Federal Rules of Civil Procedure. According to Judge Martinez's order, Eon-Net is one of three patent holding companies formed by three inventors to "enforce various continuation or divisional patents arising from an original filing in 1991."

Judge Martinez wrote that the inventors' Millennium L.P. company has filed at least 41 patent infringement cases in the Southern District of New York and 13 in the District of New Jersey. According to Judge Martinez, Eon-Net also filed 22 patent infringement cases in each court. In the Eastern District of New York, Eon-Net has filed four cases, and Millennium has filed one. The third inventors' entity, Glory Licensing LLC, has filed a total of six cases in the three courts.

Judge Martinez noted that Eon-Net's initial complaint in the Flagstar case was almost identical "to at least thirteen other complaints filed to that date against parties engaging in greatly diverse business operations."

He found that Eon-Net's settlement offers to the defendants, which ranged from \$25,000 to \$75,000 depending on the defendants' sales, were "indicia of extortion."

In the sanctions order, Judge Martinez also cited Zimmerman's "failure to perform a reasonable pre-filing inquiry, failure to identify an accused product, and failure to reasonably evaluate" the reach of the patent.

The appeal of the underlying case remains pending at the Federal Circuit, case no. 2009-1308.

(Sources: [www.corpcounsel.com](http://www.corpcounsel.com), [www.patenthawk.com](http://www.patenthawk.com), [www.law.com](http://www.law.com))

## USPTO Rejects RealTime Data Compression Patents

Since July 2009, RealTime Data, LLC ("RealTime") has targeted dozens of the nation's largest financial services companies, claiming infringement of its data compression patents (U.S. Patent Nos. 6,624,761; 7,161,506; 7,400,274; and 7,417,568). Siding with the defendants in early January 2011, the U.S. Patent and Trademark Office (USPTO) rejected by inter partes reexamination all claims of the '761 and '506 patents that were asserted in nine consolidated cases in the U.S. District Court for the Eastern District of Texas. RealTime can still challenge the reexamination decision to the Board of Patent Appeals and Interferences.

Plaintiffs have frequently asserted patents in the U.S. District Court for the Eastern District of Texas due to perceived favorable treatment and jury awards. The USPTO examiner's decision demonstrates the value to defendants of obtaining a stay of the case pending reexamination where possible.

(Source: [www.law360.com](http://www.law360.com))



## Intellectual Ventures Targets Security Software Firms in Three Lawsuits

On December 8, 2010, well-known patent aggregator Intellectual Ventures filed three patent infringement lawsuits against nine companies in the security software, memory, and chip markets. The lawsuits name as defendants several semiconductor and software businesses, including Check Point Software Technologies, McAfee, Symantec, and Trend Micro and accuse them of infringing four of Intellectual Ventures patents related to antivirus and Internet security.

The lawsuits were filed in the U.S. District Court for the District of Delaware. Intellectual Ventures, founded by Nathan Myhrvol, has a business model based on developing or acquiring patents and then licensing the technology to others. The company reportedly owns more than 30,000 patents worldwide. The company says in the lawsuits that it approached the defendants offering to sell them licenses, but the firms declined. These are the first suits filed by Intellectual Ventures to enforce patents in its portfolio.

(Sources: <http://news.cnet.com>, The Wall Street Journal)

## Secure Access Sues Banks for Web Page Authentication Patent Infringement

On December 16, 2010, Secure Access, LLC. filed a patent infringement suit against 33 banks asserting two patents related to web page authentication (U.S. Patent Nos. 7,203,838 and 7,631,191). Defendants include First Community Bancshares, Zions First National Bank, A.N.B. Holding Company, First National Bank of Omaha, Compass Bancshares, Frost National Bank, Sterling Bank, First Bank & Trust, East Texas Bank of the Ozarks, First National Bank, Texas First National Bank, Southwest Sterling Bancshares, First National of Nebraska, Arvest Bank Group, Amegy Bank, Arvest Bank, Bank of America, Harris Bank of America, American National Bank of Texas, Citizens 1st Bank, ING Direct Bancorp, Harris Bankcorp, Austin Bancorp, Intouch Credit Union, Austin Bank of Texas, Diboll State Bancshares, Compass Bank, Bank of the Ozarks, Cullen/Frost Bankers, North Dallas Bank & Trust, Zions Bancorporation, and ING Bank, fsb.

Secure Access focuses on online device authentication and identity access management, and its web site indicates that the company is “dedicated to monetization and management of Internet security patents.” This is the first federal patent suit filed by this plaintiff.

(Source: [www.law360.com](http://www.law360.com))

## Interval Licensing, LLC Update

In our last update, we reported that Paul Allen’s company, Interval Licensing, LLC, which is the exclusive licensee of U.S. Patent Nos. 6,263,507; 6,034,652; 6,788,314; and 6,757,682, filed a patent infringement



suit on November 27, 2010, in the U.S. District Court for the Western District of Washington against 11 defendants, including AOL Inc., Apple Inc., eBay, Google, Netflix, Office Depot Inc., OfficeMax Inc., Staples Inc., Yahoo Inc., Facebook, and Google's YouTube. The patents-in-suit allegedly relate to a browser for use in navigating a body of information, with particular application for browsing information represented by audiovisual data.

On December 10, 2010, Judge Marcha Pechman issued an order granting the defendants' motions to dismiss, and gave Interval Licensing until December 28, 2010 to amend the complaint. Judge Pechman urged Interval Licensing to specify precisely which of the defendants' products, web sites, hardware, or software allegedly infringe its patents. According to Judge Pechman, Interval's complaint fell short of the heightened pleading standards established by the U.S. Supreme Court in *Ashcroft v. Iqbal and Bell Atlantic Corp. v. Twombly*. Interval Licensing then amended its complaint by adding specific defendants' products and devices which allegedly infringe the patents.

(Sources: [www.law.com](http://www.law.com), 12-16-2010; Bloomberg 12-30-2010)

*If you have questions about any of these developments, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

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