

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Jean-Marc Zimmerman
Zimmerman, Weiser & Paray LLP
226 St. Paul Street
Westfield, New Jersey 07090
Tel: (908) 654-8000
Fax: (908) 654-7207
jmz@zwpllp.com

Attorneys for Plaintiff Verify Smart Corp.

VERIFY SMART CORP.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No.

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff Verify Smart Corp. (“Verify”) demands a jury trial and complains against Defendant Microsoft Corporation (“Microsoft”).

THE PARTIES

1. Verify is a corporation organized and existing under the laws of the State of Nevada, conducting business in this judicial district.

2. Upon information and belief, Microsoft is headquartered in Redmond, Washington and maintains several offices in New Jersey.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States of America, Title 35 of the United States Code. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

4. Verify is informed and believes, and based thereon alleges, that Microsoft is doing business and committing acts of infringement of the patent identified below in this judicial district, and is subject to personal jurisdiction in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENTS

6. On October 9, 2012, U.S. Patent No. 8,285,648 (“the ‘648 patent”) was duly and legally issued to Dan Scammell (“Scammell”) for an invention entitled “System and Method for Verifying A User’s Identity In Electronic Transactions”. On May 23, 2011, Scammell assigned all right, title and interest in and to the ‘648 patent to Colleen Scammell (“C. Scammell”). On July 8, 2015, C. Scammell assigned all right, title and interest in and to the ‘648 patent to Assured Mobile Technologies LLC (“Assured”). Thereafter, on July 8, 2015, Assured assigned all right, title and interest in and to the ‘648 patent to Verify. A copy of the ‘648 patent is attached to this Complaint as Exhibit 1.

7. The ‘648 patent is directed to novel systems and methods of verifying the identity of consumers initiating electronic transactions to provide enhanced security for such transactions.

DIRECT INFRINGEMENT BY MICROSOFT

8. Verify is informed and believes, and based thereon alleges, that Microsoft makes, uses, tests, markets and sells or otherwise provides a system and method for enabling a user to authenticate their identity when initiating an electronic transaction, using a one-time pass-code sent to the user’s mobile phone under the name Azure Multi-Factor Authentication (hereinafter “Azure MFA”).

9. Verify is informed and believes, and based thereon alleges, that Azure MFA is designed to enable secure transactions for Microsoft's customers.

10. Verify is informed and believes, and based thereon alleges, that Azure MFA infringes claims of the '648 patent, including without limitation at least claims 2 and 5, literally and/or under the doctrine of equivalents, in violation of Verify's rights.

MICROSOFT'S INDIRECT INFRINGEMENT

11. Verify is informed and believes, and based thereon alleges, that Azure MFA is designed specifically to enable users to authenticate their identity in a manner that infringes the claims of the '648 patent, including without limitation at least claims 2 and 5 thereof.

12. Verify is informed and believes, and based thereon alleges, that Azure MFA is material for enabling a user to authenticate their identity in a manner that infringes the claims of the '648 patent.

13. Verify is informed and believes, and based thereon alleges, that Azure MFA is using a method for authenticating an identity in a manner that infringes the method claims of the '648 patent.

14. Verify is informed and believes, and based thereon alleges, that Azure MFA does not have substantial non-infringing uses.

15. Microsoft advertises that Azure MFA "is a method of verifying who you are that requires the use of more than just a username and password. It provides a second layer of security to user sign-ins and transactions" and that it "can be used to provide multi-factor capabilities to all of your cloud applications and services hosted in Azure."

16. Microsoft also advertises that Azure MFA "helps safeguard access to data and applications while meeting user demand for a simple sign-in process. It delivers strong

authentication via a range of easy verification options — . . . text message, or mobile app notification or verification code . . .” and that the “[t]ext message contains a one-time passcode. The user is prompted to either reply to the text message with the passcode or enter the passcode into the sign in screen.”

17. Microsoft provides express instructions in its advertisement materials that teach and suggest to its customers to use Azure MFA in a way that infringes at least claims 2 and 5 of the ‘648 patent.

18. Verify is informed and believes, and based thereon alleges, that Microsoft has investigated the ‘648 patent and became aware, or should have become aware, that Azure MFA infringes the ‘648 patent.

19. Verify is informed and believes, and based thereon alleges, that Microsoft has been advertising and offering for use by its customers the infringing Azure MFA after Microsoft became aware that it infringed the ‘648 patent, and will continue with such infringing activities.

20. Verify is informed and believes, and based thereon alleges, that Microsoft has been selling or otherwise providing Azure MFA to its customers with the specific knowledge of the ‘648 patent and the specific knowledge that Azure MFA is and will be used to infringe the ‘648 patent, and that Microsoft will continue such infringing activities.

21. Microsoft is jointly responsible with each of its customers for the infringement of the ‘648 patent, through the use of Azure MFA.

22. Microsoft contributes to the infringement and induces infringement of the ‘648 patent based on its marketing, sale, distribution and teaching to its customers how to use Azure MFA, and Microsoft’s own actions in assisting its customers in the operation of Azure MFA.

23. Microsoft has been and is actively inducing the infringement of the '648 patent by encouraging its customers to use Azure MFA, that has no substantial non-infringing use and is material for enabling secure electronic transactions in a manner that constitutes direct infringement of the claims of the '648 patent. Microsoft has been and continues doing so with knowledge of the '648 patent and with the specific intent that its customers use Azure MFA in a manner that constitutes direct infringement of the claims of the '648 patent.

24. Microsoft has been and is contributorily infringing the '648 patent by providing to its customers Azure MFA, which has no substantial non-infringing use and is material for enabling secure electronic transactions in a manner that constitutes direct infringement of the claims of the '648 patent. Microsoft has been and continues doing so with knowledge of the '648 patent and with the specific intent that its customers use Azure MFA in a manner that constitutes direct infringement of the claims of the '648 patent.

25. Microsoft's customers have been using Microsoft's Azure MFA in a manner that constitutes infringement of the claims of the '648 patent.

26. Microsoft assists its customers with their infringing uses of Azure MFA, including without limitation teaching its customer how to operate Azure MFA, supporting its operation and providing testing, support and maintenance for Azure MFA, either directly or through Microsoft's authorized agents, affiliates and/or business partners.

27. Verify has been and is being damaged by the foregoing activities of Microsoft and its customers which infringe the '648 patent, and will be irreparably harmed unless such infringing activities are enjoined by this Court.

WILLFUL INFRINGEMENT BY MICROSOFT

28. Upon information and belief, Microsoft has been aware of the existence of the '648 patent since on or about August 28, 2014, and therefore all of its infringing conduct after such date has been willful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Verify prays for judgment against Defendant Microsoft on all the counts and for the following relief:

- A. Declaration that the Verify is the owner of the right to sue and to recover for infringement of the '648 patent being asserted in this action;
- B. Declaration that Microsoft has directly infringed, actively induced the infringement of, and/or contributorily infringed the '648 patent;
- C. Declaration that Microsoft's infringement of the '648 patent has been willful and the case is exceptional under 35 U.S.C. § 285;
- D. Declaration that Microsoft and its customers are jointly or severally responsible for the damages from infringement of the '648 patent through the use of Azure MFA;
- E. Declaration that Microsoft is responsible jointly or severally with its customers for the damages caused by the infringement of the '648 patent through the use of Azure MFA, by the Microsoft's customers;
- F. A preliminary and permanent injunction against Microsoft, each of its officers, agents, servants, employees, and attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons acting in active concert or participation with them, including distributors, enjoining them from continuing

acts of direct infringement, active inducement of infringement, and contributory infringement of the '648 patent;

- G. An accounting for damages under 35 U.S.C. § 284 for infringement of the '648 patent by Microsoft, and the award of damages so ascertained to Verify together with interest as provided by law;
- H. Award of Verify's costs and expenses;
- I. Award of Verify's attorney fees;
- J. Award of treble damages; and
- K. Such other and further relief as this Court may deem proper, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff Verify demands a trial by jury of all issues properly triable by jury in this action.

By: /s/Jean-Marc Zimmerman
Zimmerman, Weiser & Paray LLP
226 St. Paul Street
Westfield, New Jersey 07090
Tel: (908) 654-8000
Fax: (908) 654-7207
jmz@zwpllp.com
Attorneys for Plaintiff Verify Smart Corp.

Dated: July 17, 2015
Westfield, NJ 07090