IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

PEN-ONE ACQUISITION GROUP, LLC, Plaintiff, v. APPLE INC. Defendant.	**Civil Action No.** 1:17-cv-00179 **JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Pen-One Acquisition Group, LLC ("Pen-One" or "Plaintiff"), for its Complaint against Defendant Apple Inc. ("Apple" or "Defendant") alleges the following.

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq*.

THE PARTIES

2. Plaintiff is a limited liability company organized under the laws of the State of Alabama with a place of business at 951 Government Street, Suite B, Mobile, AL 36604.

3. Upon information and belief, Apple is organized and existing under the laws of California, with a place of business at 1 Infinite Loop, Cupertino, CA 95014. Upon information and belief, Apple sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services into the stream of commerce that incorporate infringing technology knowing that they would be sold in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c), (d) and/or 1400(b). On information and belief, the Defendant conducts business in this District, the claims alleged in this Complaint arise in this District, and the acts of infringement have taken place and are continuing to take place in this District.

7. On information and belief, the Defendant is subject to this Court's general and specific personal jurisdiction because Defendant has sufficient minimum contacts within the State of Alabama and this District, pursuant to due process and/or the Alabama Long-Arm statute under Ala. R. Civ. P. 4.2 because Defendant purposefully availed itself of the privileges of conducting business in the State of Alabama and in this District, because Defendant regularly conducts and solicits business within the State of Alabama and within this District, and because Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Alabama and this District.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,281,135

8. The allegations set forth in the foregoing paragraphs 1 through 7 are incorporated into this First Claim for Relief.

9. On October 9, 2007, U.S. Patent No. 7,281,135 ("the '135 patent"), entitled "PEN-BASED TRANSPONDER IDENTITY VERIFICATION SYSTEM" was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '135 patent is attached as Exhibit 1.

10. Plaintiff is the assignee and owner of the right, title and interest in and to the ’135 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

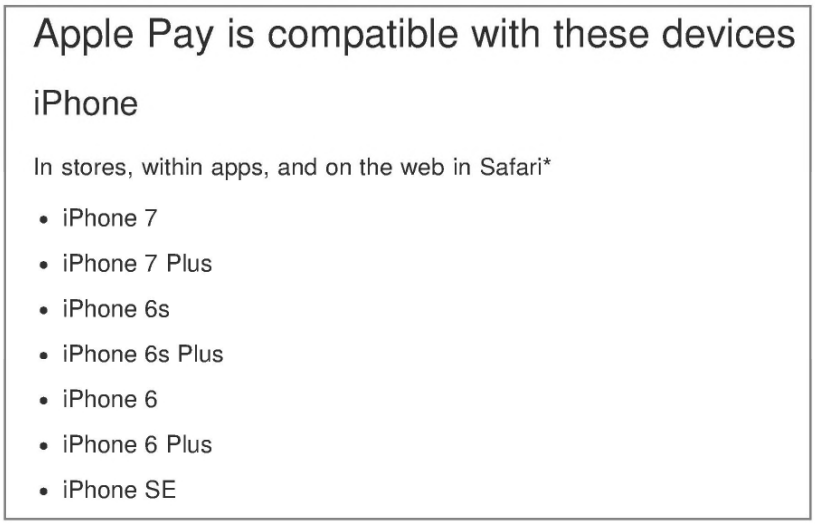
11. Upon information and belief, Defendant has and continues to directly infringe at least claims 1, 2, 3, 17, 18, and 19 of the ’135 patent by making, using, selling, importing and/or providing and causing to be used electronic device systems within the scope of claims 1, 2, 3, 17, 18, and 19 of the ’135 patent, including, but not limited to, the products with the following designations or trade names: iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone 6S Plus, iPhone 7, iPhone 7 Plus, iPhone SE, iPad, iPad mini, and iPad Pro (each an “Apple device”) operating with Apple Pay; each in conjunction with merchant devices, telecommunications equipment, and/or payment processing servers with which the Apple devices operate (the “’135 Infringing Instrumentalities”). On information and belief, Apple has developed the ’135 Infringing Instrumentalities in partnership with merchants, telecommunications companies, and/or payment processing companies, all of which cooperate to provide the ‘135 Infringing Instrumentalities. An exemplary image of an exemplary Apple device of the ‘135 Infringing Instrumentalities is provided below:



12. Claim 1 of the ‘135 patent generally recites a system for conducting a commercial transaction, a user of the commercial transaction system being registered and digitally linked with an account for payment, the system comprising a host computer having access to data that digitally links the user with the user account; a first electronic device disposed at a point-of-sale terminal, the first electronic device being digitally linked to the host computer; a second electronic device that is wireless, the second electronic device being carried by the user, the second electronic device communicating identity verification data with the first electronic device, radio frequency transmission being used for data transfer between the first electronic device and the second electronic device; and a member for capturing a digital signature image of the user while the member is being used; whereby the sensed digital signature image is compared to a reference digital signature image upon a request to process the commercial transaction, the reference digital signature image being captured during a registration process; and whereby the

request to process the commercial transaction is denied absent a match of the sensed digital signature image and the reference digital signature image.

13. As demonstrated in the exemplary images below, the ‘135 Infringing Instrumentalities infringe claim 1 of the ’135 patent because they comprise a mobile payment and digital wallet service:



https://support.apple.com/en-us/KM207105

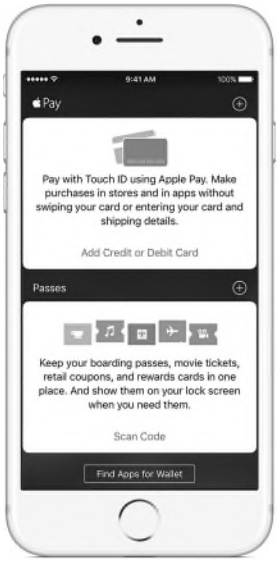
to create an electronic system that can be used by users to conduct a commercial transaction at a point-of-sale terminal (POS), the user making payment using Apple Pay by holding the Apple device near a point-of-sale terminal as shown in the following figure and further authenticating using fingerprint on the Touch ID sensor thereby completing the transaction:



where a commercial transaction using Apple Pay on the '135 Infringing Instrumentalities requires the user to register his/her payment card (*e.g.* Visa, MasterCard, American Express), that is digitally linked with an account for payment,

Add a card on your iPhone

1. Go to Wallet and tap Add Credit or Debit Card.
2. Follow the steps to add a new card. If you're asked to add the card that you use with iTunes, just enter its security code.
3. Tap Next. Your bank or card issuer will verify your information and decide if you can add your card to Apple Pay. If your bank or issuer needs more information to verify your card, they'll ask you for it. When you have the information, go back to Settings > Wallet & Apple Pay and tap your card.
4. After your bank or issuer verifies your card, tap Next. Then start using Apple Pay.



https://support.apple.com/en-us/HT204506

E.g., Apple Pay can be used to make payment with Visa using compatible Apple devices:

Visa Apple Pay Media Kit

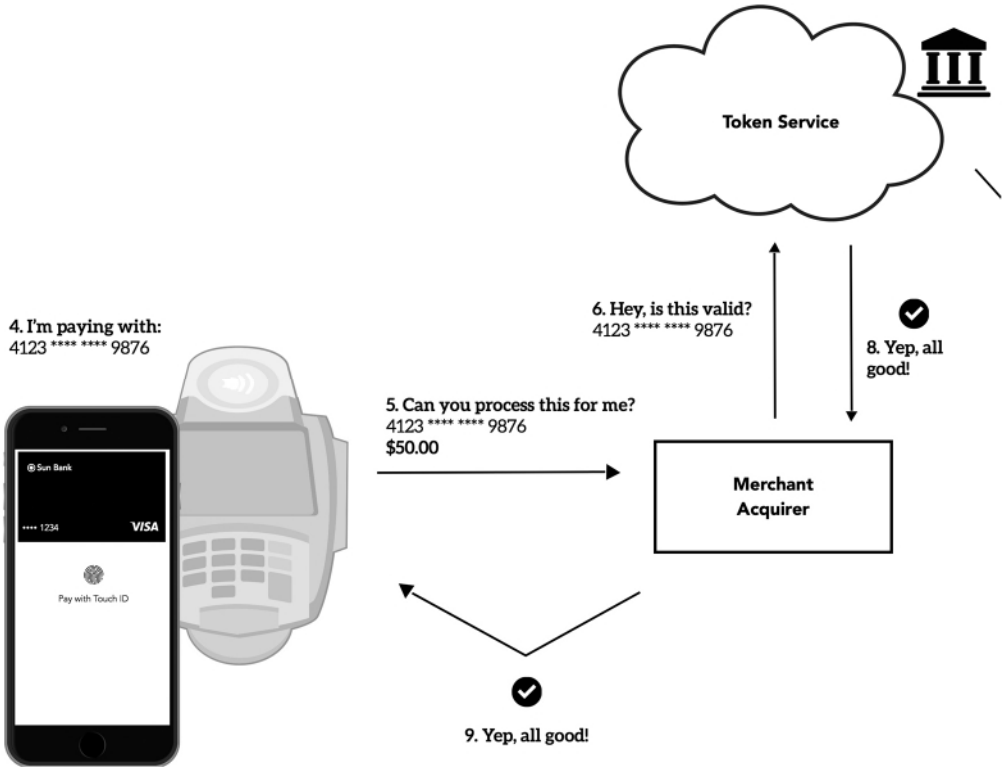
Visa and Apple® Opening a New Era of Payments on Mobile Devices

Visa is proud to support the use of Visa Cards with Apple Pay™. Apple Pay lets you make purchases with your Visa card at over 220,000 stores and within apps in the App Store with just the touch of a finger, using the new iPhone 6, iPhone 6 Plus and Apple Watch with Visa Token Services.

LOGO

https://usa.visa.com/about-visa/newsroom/media-kits/visa-apple-pay.html

where the system for conducting a commercial transaction comprises a host computer, (*e.g.* processing entity server), which has access to data that digitally links the user with the user account, the system further comprising a first electronic device (the interrogator) disposed at the POS terminal that is digitally linked to the host computer, as shown in the following figure:



the system further comprising a second electronic device that is wireless and is carried by the user (the mobile Apple device), the Apple device communicating identity verification data with the interrogator (through the fingerprint sensor on the Apple device), where radio frequency transmission is used for the data transfer between the interrogator disposed at the POS terminal and the Apple device, the system including a "member", *e.g.*, the fingerprint sensor that is part of the Apple device and is called "Touch ID", for capturing a digital fingerprint signature image while the Apple devices are being used:



When you pay using Apple Pay in stores

Paying in stores that accept contactless payments with Apple Pay uses Near Field Communication (NFC) technology between your device and the payment terminal. NFC is an industry-standard contactless technology designed to work only across short distances. If your iPhone is on and it detects an NFC field, it will present you with your default card. To send your payment information, you must authenticate using Touch ID or your passcode. No payment information is sent without your authentication.

https://support.apple.com/en-us/HT203027

where the sensed digital fingerprint signature image is compared to a reference digital fingerprint signature image upon a request to process the commercial transaction, the reference fingerprint signature image of the ‘135 Infringing Instrumentalities being captured during a registration process:

Set up Touch ID

Before you can set up Touch ID, you need to create a passcode for your device. Then follow these steps:

1. Make sure that the Home button and your finger are clean and dry.
2. Tap Settings > Touch ID & Passcode, then enter your passcode.
3. Tap Add a Fingerprint and hold your device as you normally would when touching the Home button.
4. Touch the Home button with your finger—but don't press. Hold it there until you feel a quick vibration, or until you're asked to lift your finger.



https://support.apple.com/en-us/HT201371

and where the request to process the commercial transaction is denied absent a match of the sensed digital fingerprint signature image with the reference digital fingerprint signature image.

14. Claim 2 of the ’135 patent recites the system of claim 1 where the digital signature image is a fingerprint image.

15. The ‘135 Infringing Instrumentalities infringe claim 2 of the ’135 patent. A digital fingerprint signature image is used for identity verification in the ‘135 Infringing Instrumentalities, as described in paragraph 13.

16. Claim 3 of the ’135 patent is to the system of claim 1 where the reference digital signature image is disposed in the second electronic device.

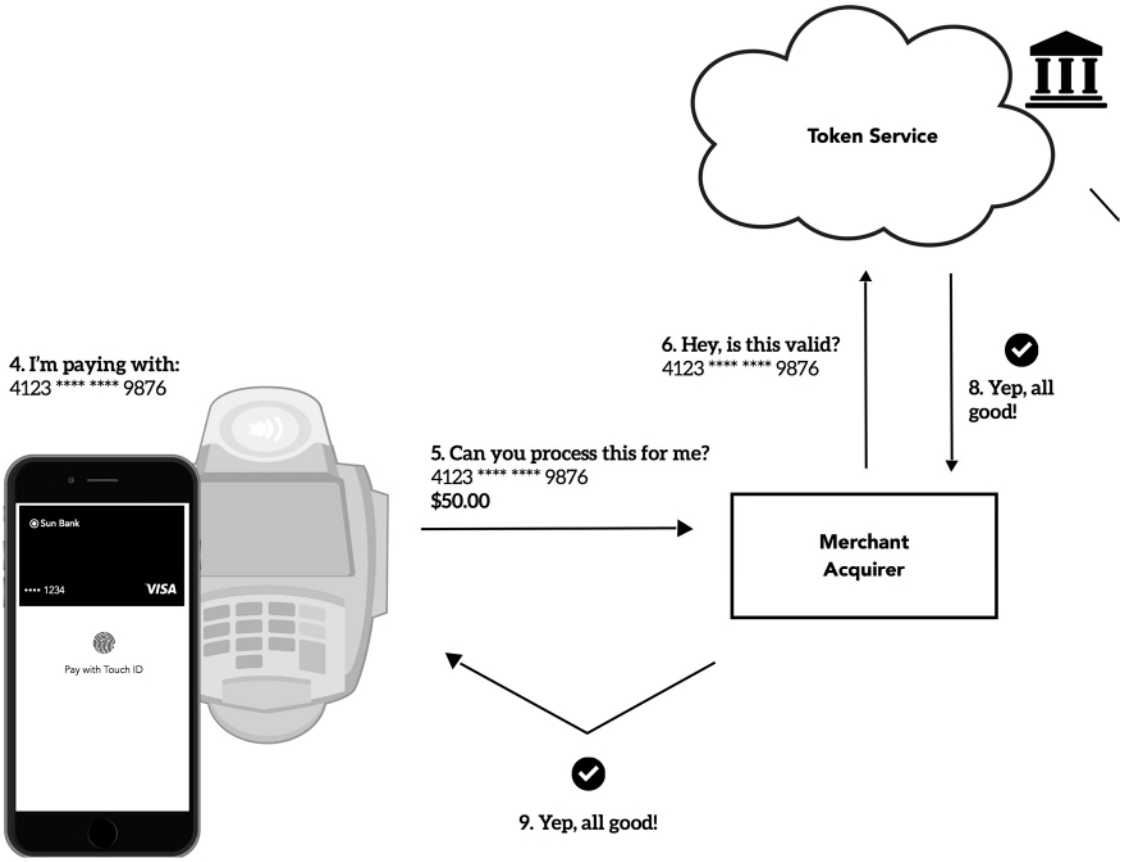
17. The ‘135 Infringing Instrumentalities infringe claim 3 of the ’135 patent. A digital fingerprint signature image can be registered in the ‘135 Infringing Instrumentalities, as described in paragraph 13.

18. Claim 17 of the ’135 patent generally recites a system for conducting a commercial transaction, a user of the commercial transaction system being registered and

digitally linked with an account for payment, the system comprising a host computer having access to data that digitally links the user with the user account; an electronic device disposed at a point-of-sate terminal, the electronic device being digitally linked to the host computer; and a member that is wireless, the member being carried by the user, the member having at least one sensor, the sensor capturing a digital signature image of the user while the member is being used, the member communicating identity verification data with the electronic device, at least some of the data transmission between the electronic device to the member being by radio frequency; where the sensed digital signature image is compared to a reference digital signature image upon a request to process the commercial transaction, the reference digital signature image being captured during a registration process; and where the request to process the commercial transaction is denied absent a match of the sensed digital signature image and the reference digital signature image.

19. As demonstrated in the exemplary images below and in Paragraph 13, the ‘135 Infringing Instrumentalities infringe claim 17 of the ’135 patent because they comprise a mobile payment and digital wallet service Apple Pay, which combine with major cellular telecommunications companies and credit card companies to create an electronic system that can be used by users to conduct a commercial transaction at a point-of-sale terminal (POS), the user making payment using Apple Pay by holding the Apple device near a POS terminal and further authenticating using fingerprint through sensor Touch ID thereby completing the transaction, where a commercial transaction using Apple Pay on the Apple device requires the user to register his/her payment card (*e.g.* Visa, MasterCard, American Express), that is digitally linked with an account for payment, where the system for conducting a commercial transaction comprises a host computer, (*e.g.* processing entity server), which has access to data that digitally

links the user with the user account, the system further comprising an electronic device (the interrogator) disposed at the POS terminal that is digitally linked to the host computer, as shown in the following figure:



the system further comprising a member with at least one sensor (the Apple devices with a digital fingerprint signature image sensor, in this case the sensor being part of the member – the mobile Apple device with "Touch ID" in the above figure) that is wireless and is carried by the user, the sensor capturing a digital fingerprint signature image while the Apple device is being used, the member with sensor - Apple device with digital fingerprint signature image sensor "Touch ID" – communicating and transmitting identity verification data with the interrogator, where radio frequency transmission is used for the data transfer between the interrogator and the

Apple device, where the sensed digital fingerprint signature image is compared to a reference digital fingerprint signature image upon a request to process the commercial transaction, the reference digital fingerprint signature image of the Apple device being captured during a registration process, and where the request to process the commercial transaction is denied absent a match of the sensed digital fingerprint signature image with the reference digital fingerprint signature image.

20. Claim 18 is to the system of claim 17 where the digital signature image is a fingerprint image.

21. The ‘135 Infringing Instrumentalities infringe claim 18 of the ’135 patent. A digital fingerprint signature image is used for identity verification in the ‘135 Infringing Instrumentalities, as described in paragraph 19.

22. Claim 19 is to a system of claim 17 where the reference digital signature image is “disposed in the second electronic device [sic]” – properly written as “disposed in the member.”

23. The ‘135 Infringing Instrumentalities infringe claim 19 of the ’135 patent. A digital fingerprint signature image can be registered in the Apple devices of the ‘135 Infringing Instrumentalities, as describe in paragraph 19.

24. On information and belief, the ‘135 Infringing Instrumentalities are used marketed, provided to, and/or used by or for the Defendant’s partners, clients, customers and end users across the country and in this District.

25. The Defendant is made aware of the ’135 patent and its infringement thereof at least as early as the filing of this Complaint.

26. Upon information and belief, since at least the time the Defendant received notice through this Complaint, the Defendant has induced and continues to induce others to infringe at

least one claim of the ’135 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to the Defendant’s partners, clients, customers, and end users, whose use of the ’135 ‘135 Infringing Instrumentalities constitutes direct infringement of at least one claim of the ’135 patent.

27. In particular, the Defendant’s actions that aid and abet others such as its partners, customers, clients, and end users to infringe include advertising and distributing the ‘135 Infringing Instrumentalities and providing instruction materials, training, and services regarding the ‘135 Infringing Instrumentalities. On information and belief, the Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because the Defendant has had actual knowledge of the ’135 patent and knowledge that its acts were inducing infringement of the ’135 patent since at least the date Apple received notice through this Complaint that such activities infringed the ’135 patent.

28. Since the date of this Complaint, Defendant’s infringement has been willful.

29. Plaintiff has been harmed by Defendant’s infringing activities

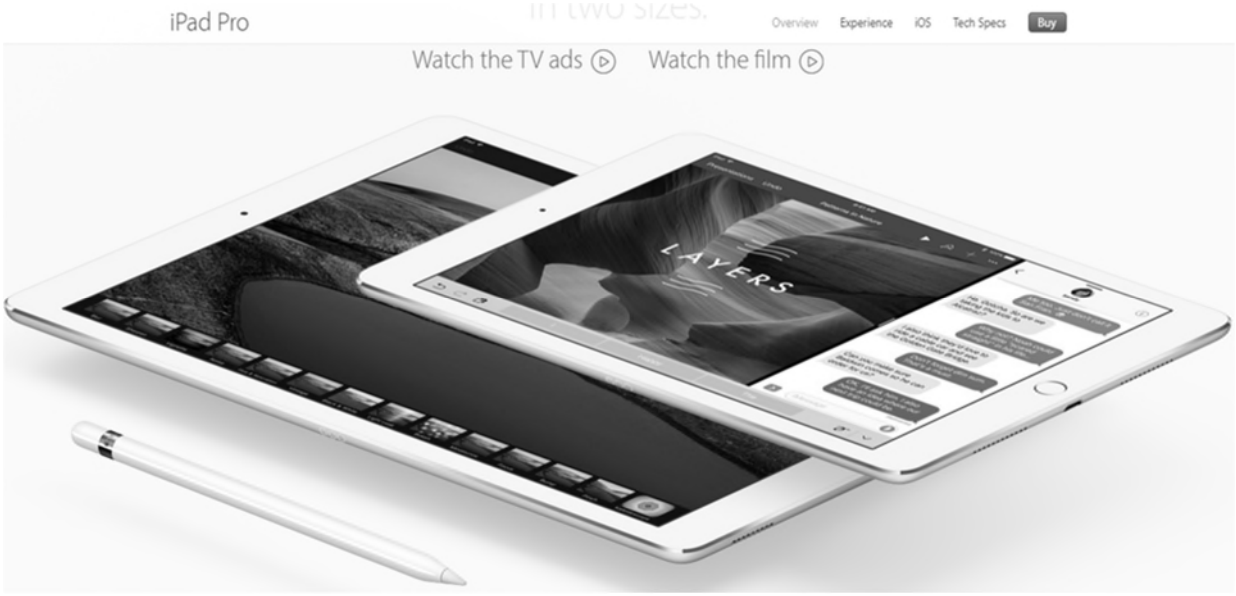
COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,374,402

30. The allegations set forth in the foregoing paragraphs 1 through 29 are incorporated into this Second Claim for Relief.

31. On February 12, 2013, U.S. Patent No. 8,374,402 (“the ’402 patent”), entitled “DATA SECURITY SYSTEM” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’402 patent is attached as Exhibit 2.

32. Plaintiff is the assignee and owner of the right, title and interest in and to the ’402 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

33. Upon information and belief, Defendant has and continues to directly infringe at least claims 1 and 2 of the ’402 patent by making, using, selling, importing and/or providing and causing to be used electronic device systems within the scope of claims 1 and 2 of the ’402 patent, including, but not limited to, the products with the following designation or trade name: iPad Pro in conjunction with Apple Pencil (the “’402 Claim 1 Infringing Instrumentalities”); iPhone 6, iPhone 6 Plus, iPhone 6S, iPhone 6S Plus, iPhone 7, iPhone 7 Plus, iPhone SE, iPad, iPad mini, and iPad Pro (the “’402 Infringing Instrumentalities”). Exemplary images of the ’402 Infringing Instrumentalities are provided below:



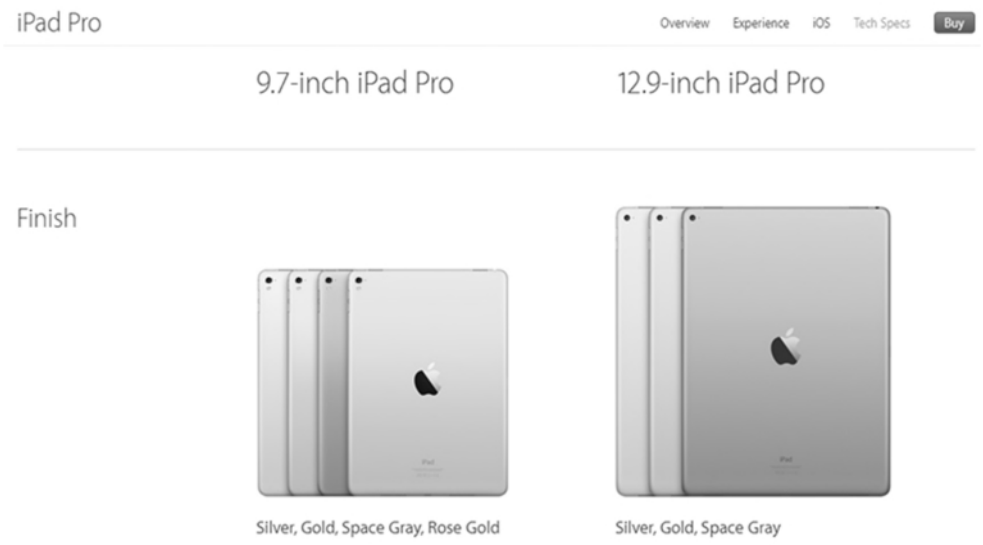


34. Claim 1 of the ’402 patent generally recites a pen-based computing device for entry of secure data into a secure network, the pen-based computing device having a casing, the device including a facial image sensor for capturing a facial image print, the facial image sensor being positioned in the pen-based computing device, whereby placement of the facial image sensor in the device enables an incidental capture of the facial image print of a user for purposes of identity authentication prior to each request to enter the secure data; and the placement of the facial image sensor in the device enables a continuous capture of a facial image print while the pen-based computing device is being used; and whereby user identity authentication is provided simultaneously with each request to enter each data stream into the secure network, providing assurance that any mobile worker seeking to enter data is authorized prior to each data entry.

35. As demonstrated in the exemplary images below, the ’402 Claim 1 Infringing Instrumentalities infringe claim 1 of the ’402 patent because they include a pen-based computing device that is a tablet for accessing and entering secure data,

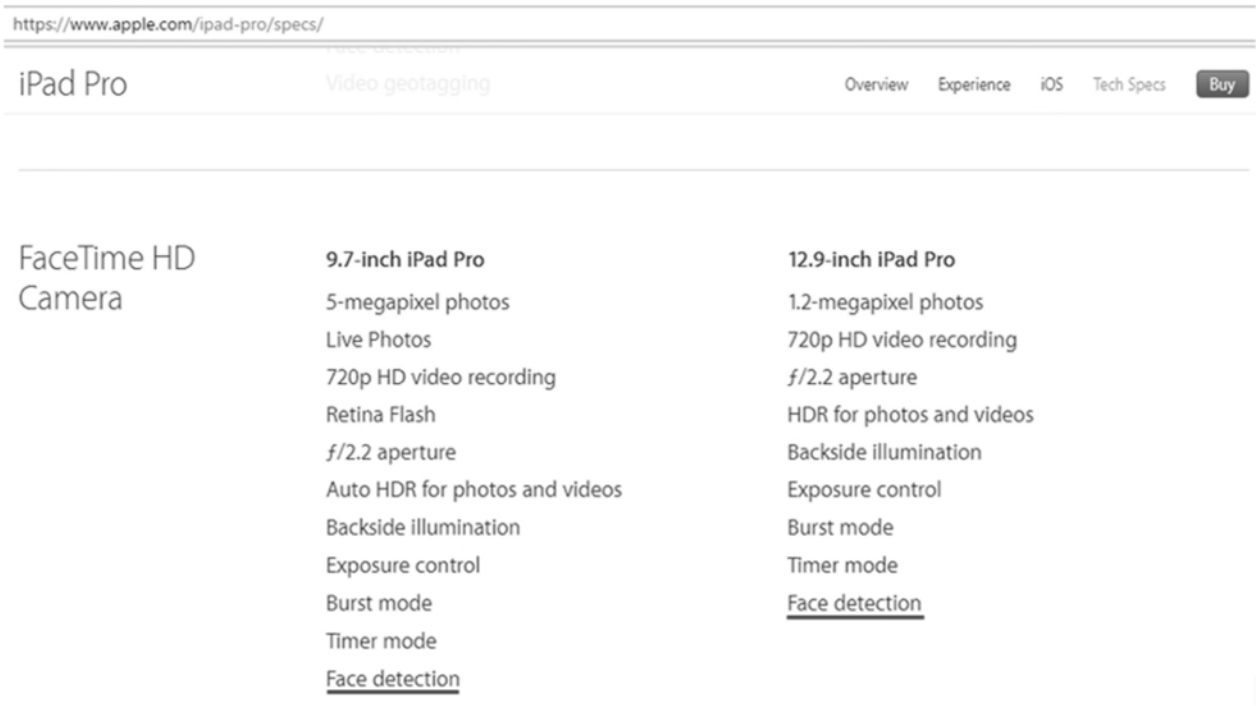


the ’402 Claim 1 Infringing Instrumentalities include a casing,



https://www.apple.com/ipad-pro/specs/

the ’402 Claim 1 Infringing Instrumentalities include a facial image sensor (a camera) for capturing a facial image print, the facial image sensor being positioned in the pen-based computing device,





https://www.apple.com/ipad-pro/

placement of the facial image sensor in the ’402 Claim 1 Infringing Instrumentalities enables an incidental capture of the facial image of a user for identity authentication prior to each request to enter the secure data, and placement of the facial image sensor enables a continuous capture of a facial image while the pen-based computing device is being used;



http://www.macworld.com/article/3045943/iphone-ipad/apples-new-97-inch-ipad-pro-brings-pencil-support-and-a-12mp-camera-to-a-smaller-screen.html

whereby user identity authentication is provided simultaneously with each request to enter each data stream into the secure network, providing assurance that any mobile worker seeking to enter data is authorized prior to each data entry.

36. Claim 2 of the ’402 patent generally recites a handheld communication device for entering secure data into a secure network, said handheld communication device selected from the group consisting of a pocket computer, a palm-type computer, a cell-phone, and a pen-based computer, said handheld communication device including a facial image sensor for capturing user facial image print, said facial image sensor being embedded in said handheld communication device; whereby placement of said facial image sensor within said handheld

communication device enables an incidental capture of said facial image print of a mobile user for purposes of identity authentication by a remote host computer prior to each request to enter the secure network data; whereby placement of said sensor in said handheld communication device enables a continuous capture of a facial image print while said handheld communication device is being used; and whereby user identity authentication is provided simultaneously with each request to enter each data stream into said secure network, providing assistance that any mobile worker seeking to enter data is authorized prior to each data entry.

37. As demonstrated in the exemplary images below, the ’402 Infringing Instrumentalities infringe claim 2 of the ’402 patent because they are handheld communication devices for entering secure data into a secure network, including palm-type computers (tablets) and cell phones,





which include a facial image sensor (a camera) for capturing user facial image print, and said facial image sensor being embedded in said handheld communication devices;

https://www.apple.com/ipad-pro/specs/

iPad Pro

Overview Experience iOS Tech Specs Buy

	9.7-inch iPad Pro	12.9-inch iPad Pro
FaceTime HD Camera	5-megapixel photos	1.2-megapixel photos
	Live Photos	720p HD video recording
	720p HD video recording	ƒ/2.2 aperture
	Retina Flash	HDR for photos and videos
	ƒ/2.2 aperture	Backside illumination
	Auto HDR for photos and videos	Exposure control
	Backside illumination	Burst mode
	Exposure control	Timer mode
	Burst mode	Face detection
	Timer mode	
	Face detection	


Capture every detail in greater detail.
iPad Pro has remarkable cameras on both the front and the back. The 12.9-inch model's 8-megapixel iSight camera lets you shoot beautiful photos and video. The 9.7-inch iPad Pro comes with a 12-megapixel iSight camera, which can capture 4K video, 240-fps slo-mo videos, and Live Photos. It's also the first iPad with True Tone flash, so skin tones look great regardless of lighting.
Things are sharper on the other side of iPad Pro, too. The front-facing FaceTime HD camera's latest sensor makes video calls more lifelike. And on the 9.7-inch iPad Pro, the 5-megapixel FaceTime HD camera features Retina Flash with True Tone for gorgeous selfies.
9.7"
12MP
iSight camera
5MP
FaceTime HD camera
12.9"
8MP
iSight camera
1.2MP
FaceTime HD camera



whereby placement of the facial image sensor within the handheld communication device enables an incidental capture of the facial image print of a mobile user for purposes of identity authentication by a remote host computer prior to each request to enter the secure network data; whereby placement of the sensor in said handheld communication device enables a continuous capture of a facial image print while the handheld communication device is being used;



and whereby user identity authentication is provided simultaneously with each request to enter each data stream into said secure network, providing assistance that any mobile worker seeking to enter data is authorized prior to each data entry.

38. Since the date of this Complaint, Defendant's infringement has been willful.

39. Plaintiff has been harmed by Defendant's infringing activities.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment for itself and against Defendant as follows:

A. An adjudication that the Defendant has infringed the '135 and '402 patents;

B. An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement of the '135 and '402 patents, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

D. An award to Plaintiff of such further relief at law or in equity as the Court deems just and proper.

Dated: April 25, 2017

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