

THE STATE OF NEW HAMPSHIRE

SULLIVAN, SS

SUPERIOR COURT

Automated Transactions, LLC
and
David Barcelou

v.

American Bankers Association,
Credit Union National Association, Inc.,
Robert H. Stier, Jr.,
Pierce Atwood LLP,
Crain Communications, Inc. d/b/a Crain's New York Business,
Charles von Simson,
W. John Funk,
Gallagher, Callahan & Gartrell, P.C.,
Networld Alliance, LLC,
Ralph E. Jocke,
Walker & Jocke Co., LPA,
Mascoma Savings Bank,
Stephen F. Christy,
and
Does 1-30.

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs Automated Transactions, LLC (“ATL”) and David Barcelou (“Mr. Barcelou”) with Complaint against Defendants American Bankers Association (“ABA”), Credit Union National Association, Inc. (“CUNA”), Robert H. Stier, Jr. (“Mr. Stier”), Pierce Atwood LLP (“Pierce Atwood”), Crain Communications, Inc. d/b/a Crain’s New York Business (“Crain’s”), Charles von Simson (“Mr. von Simson”), W. John Funk (“Mr. Funk”), Gallagher, Callahan & Gartrell, P.C. (“GCG”), Networld Alliance, LLC, Ralph E. Jocke (“Mr. Jocke”), Walker & Jocke Co, LPA (“Walker & Jocke”), Mascoma Savings Bank (“Mascoma”), Stephen F. Christy (“Mr. Christy”), and DOES 1-20 (“Doe Defendants”) (collectively, “Defendants”) and shows the Court the following:

INTRODUCTION

1. This is a defamation case. Plaintiff Mr. Barcelou is a serial inventor who always pursued businesses based on his inventions. His latest inventive and business efforts were directed at Internet-based automated transaction machines (“ATM”). Mr. Barcelou’s ATM-related efforts resulted in an extensive patent portfolio, which he intended to use to protect his business efforts. Mr. Barcelou formed ATL as a business entity through which he could conduct efforts related to exploiting his patents. When his business efforts were set back by the economic aftermath of 9/11, he offered to license the patented technology to interested parties at reasonable rates, litigated patent infringement cases where necessary, and defended his patents against attacks in the United States Patent and Trademark Office, all at a great cost. Initially, Mr. Barcelou’s efforts were successful and financially rewarding. The Defendants, instead of matching the Plaintiffs’ fair play by contesting the Plaintiffs’ patent portfolio in appropriate forums, launched a malicious, defamatory smear campaign in the public that targeted the Plaintiffs’ potential licensees. The Defendants’ defamatory smear campaign worked. It irreparably damaged Mr. Barcelou’s and Plaintiff ATL’s reputation, the value of their patented property and their licensing efforts.

PARTIES

2. ATL is a limited liability company organized and existing under the laws of the state of Delaware and is headquartered in New Hampshire, having its address and its principal place of business at 25 Hillstead Road, Claremont, NH 03743.

3. Mr. Barcelou is, and has been since its inception, the CEO and Manager of ATL. Mr. Barcelou’s address is 25 Hillstead Road, Claremont, NH 03743. Mr. Barcelou has been a

resident of New Hampshire since 2011 and has operated ATL from New Hampshire since that time.

4. ABA is a trade association for the U.S. banking industry based in Washington, DC, and is registered to do business as a foreign nonprofit in the state of New Hampshire. ABA's membership comprises financial institutions. ABA's principal place of business is located at 1120 Connecticut Avenue, N.W., Washington, DC 20036, and it has a registered agent in New Hampshire at Lawyers Incorporating Service, 10 Ferry Street, Suite 313, Concord, NH 03301.

5. CUNA is a trade association for U.S. Credit Unions, and its membership is made up of state and regional credit union leagues, including the Cooperative Credit Union Association, which represents credit unions in New Hampshire, Massachusetts, Delaware, and Rhode Island. CUNA is organized and existing under the laws of the State of Wisconsin. CUNA's principal place of business is located at 5710 Mineral Point Road, Madison, WI 53705.

6. Mr. Stier is an individual, who upon information and belief has an address at 9 Rock Crest Drive, Cape Elizabeth, ME 04107. Mr. Stier is a partner at the law firm Pierce Atwood.

7. Pierce Atwood is a limited liability partnership organized and existing under the laws of the state of Maine, with a principal place of business at Merrills Warf, 254 Commercial Street, Portland, ME 04101. Pierce Atwood is registered as a foreign limited liability partnership to conduct business in the state of New Hampshire and has a registered agent in New Hampshire of Scott E. Pueschel, Esq., 1 New Hampshire Avenue, S350, Portsmouth, NH 03801. Pierce Atwood is a law firm, with a New Hampshire office located at 1 New Hampshire Avenue, S350, Portsmouth, NH 03801.

8. Crain's is a corporation organized and existing under the laws of the state of Illinois, and it has a principal place of business at 1115 Gratiot Ave., Detroit, MI 48207-2732. Crain's is a corporation that publishes a variety of trade newspapers, including Crain's New York Business.

9. Mr. von Simson is an individual who, upon information and belief, has an address of 26 Linwood Ave., Buffalo, NY 14209. Mr. von Simson is a partner at the law firm Barclay Damon, LLC.

10. Mr. Funk is an individual who, upon information and belief, has an address of 513 Province Road, Gilmanton, NH 03237. Mr. Funk is a Shareholder-Director at the law firm Gallagher, Callahan & Gartrell, P.C.

11. GCG is a professional corporation organized and existing under the laws of the state of New Hampshire and has a registered agent of Dodd S. Griffith, Esq., 214 North Main Street, Concord, NH 03301. GCG is a law firm.

12. Networld Alliance, LLC is a media group that publishes online content for various industries and, upon information and belief, on ATMmarketplace.com. Networld Alliance, upon information and belief, is a limited liability company organized and existing under the laws of the State of Kentucky, with a principal office at 13100 Eastpoint Park Blvd., Louisville, KY 40223. Networld Alliance is also referred to as ATMMarketplace.com herein.

13. Mr. Jocke is an individual, who upon information and belief, resides at 523 E. Friendship St., Medina, OH, 44256. Mr. Jocke is a principal at the law firm Walker & Jocke.

14. Walker & Jocke is a legal professional association organized and existing under the laws of the State of Ohio, with a principal address of 231 S. Broadway, Medina, OH 44256.

15. Mascoma is a federal savings association chartered and regulated by the Office of the Comptroller of the Currency with a principal address of 67 North Park Street, Lebanon, NH 03766.

16. Mr. Christy is an individual, who upon information and belief resides at 36 Jenkins Road, Lebanon, NH 03766. Mr. Christy was or is the President and CEO of Mascoma.

17. Doe Defendants' true names, addresses, and capacities are unknown to Plaintiffs, and therefore they are sued under fictitious names. Plaintiffs will amend this Complaint to add their true names and capacities when they become known.

JURISDICTION AND VENUE

18. The Court has subject matter jurisdiction over this action pursuant to N.H. R.S.A. 491:7.

19. The Court has personal jurisdiction over ABA because it committed tortious acts in New Hampshire and is registered to do business in New Hampshire, thereby availing itself of New Hampshire law and the benefit of conducting activities within the forum state.

20. The Court has personal jurisdiction over CUNA because it committed tortious acts in New Hampshire, and upon information and belief regularly conducts lobbying efforts and other business in the State of New Hampshire, thereby availing itself of New Hampshire law and the benefit of conducting activities within the forum state.

21. The Court has personal jurisdiction over Mr. Stier because he committed tortious acts in New Hampshire, and upon information and belief, he has appeared in court within the State of New Hampshire and he has an ownership interest in a law firm with a New Hampshire office, thereby benefitting from conducting activities within the forum state.

22. The Court has personal jurisdiction over Pierce Atwood because it committed tortious acts in New Hampshire, is registered to do business in New Hampshire, and maintains a New Hampshire office, thereby availing itself of New Hampshire law and the benefit of conducting activities within the forum state.

23. The Court has personal jurisdiction over Crain's because it committed tortious acts in New Hampshire and publishes print and online content for distribution in New Hampshire, thereby availing itself of New Hampshire law and the benefit of conducting activities within the forum state.

24. The Court has personal jurisdiction over Mr. von Simson because he committed tortious acts in New Hampshire.

25. The Court has personal jurisdiction over Mr. Funk because he committed tortious acts in New Hampshire and he is a resident of the State.

26. The Court has personal jurisdiction over GCG because it committed tortious acts in New Hampshire and is organized and existing under the laws of the State of New Hampshire.

27. The Court has personal jurisdiction over Networld Alliance because it committed tortious acts in New Hampshire, and upon information and belief regularly conducts lobbying efforts and other business in the State of New Hampshire, thereby availing itself of New Hampshire law and the benefit of conducting activities within the forum state.

28. The Court has personal jurisdiction over ATMmarketplace.com because it committed tortious acts in New Hampshire and publishes online content for distribution in New Hampshire, thereby availing itself of New Hampshire law and the benefit of conducting activities in the forum state.

29. The Court has personal jurisdiction over Mr. Jocke because he committed tortious acts in New Hampshire.

30. The Court has personal jurisdiction over Walker & Jocke because it committed tortious acts in New Hampshire.

31. The Court has personal jurisdiction over Mascoma because it committed tortious acts in New Hampshire and its principal place of business is in New Hampshire, so it has availed itself of New Hampshire law and the benefit of conducting activities within the forum state.

32. The Court has personal jurisdiction over Mr. Christy because he committed tortious acts in New Hampshire and is a resident of New Hampshire.

33. The Court has personal jurisdiction over Doe Defendants because they committed tortious actions in New Hampshire, and upon information and belief, they have otherwise availed themselves of the benefit of conducting activities within the forum state or are residents of the forum state.

34. Further, New Hampshire has a strong interest in this litigation, as the tortious acts caused injury in New Hampshire; having the case heard in New Hampshire provides the Plaintiffs an effective and convenient forum to obtain relief; and the acts of the multiple defendants are intertwined, such that interstate judicial efficiency is served by avoiding multiple lawsuits.

35. Venue is proper in this Court pursuant to N.H. R.S.A. 507:9 because the Plaintiffs reside in Sullivan County.

FACTUAL BACKGROUND

The Individual Inventor and Small Businessman Only Has the Patent System for Protection

36. All inventors, including the individual inventor, have a constitutionally authorized right to have his or her inventions protected.

37. Congressional power to grant patents is derived from Art. I, Sec. 8, Clause 8 of the United States Constitution, the so-called Patent Clause. Our founding fathers deemed intellectual property rights so vitally important to the growth of the newly formed United States of America that these rights were written into the Constitution. The Constitution authorized Congress to create the patent system: "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors . . . the exclusive Right to their respective Writings and Discoveries."

38. As James Madison stated in Federalist Paper No. 43, the usefulness of the Congressional power to award both patents and copyrights "will scarcely be questioned." *Madison, Debates in the Federal Convention of 1787, at 512-13 (Hount and Scott ed. 1920)*. Accordingly, Congress has been exercising its prerogative to grant patents since the enactment of the first patent statute in 1790.

39. The patent system provides patent owners with the right to exclude others from making, using, and selling patented inventions in exchange for the early disclosure of their inventions to the public. This right to exclude afforded by the patent system is of vital importance to individual inventors, small businesses, and their investors. This is because they lack other significant resources that larger companies and organizations take for granted. For example, they lack resources such as access to plentiful financing, an abundant supply of

employees, and lobbying power. Individual inventors only have their individual talents and the patent system to rely on.

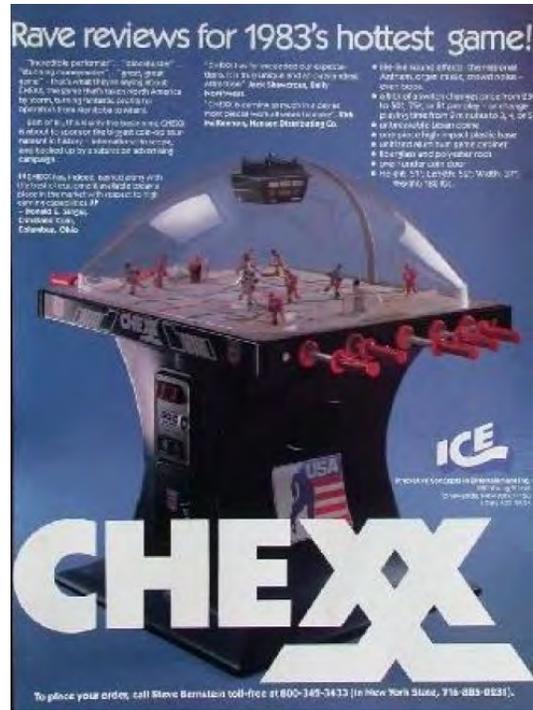
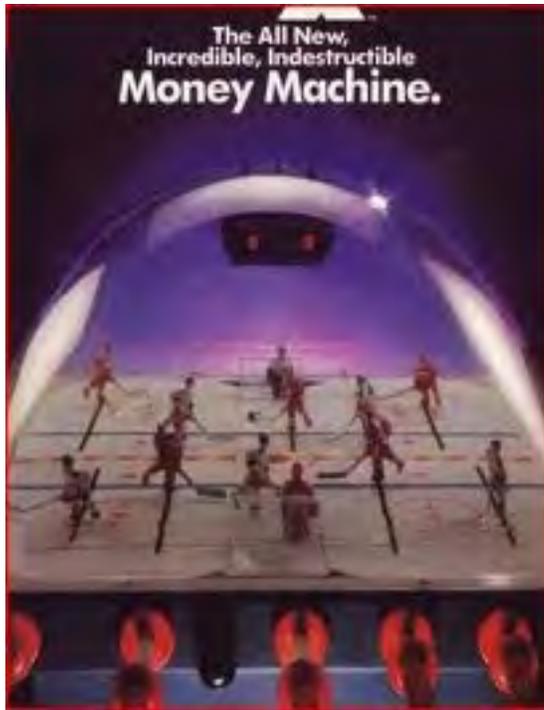
40. Historically, the Patent Act does not cater to special interests. Rather the Patent Act as a whole has been a stable and cohesive statute, not relying on the market power of large companies to foster their corporate power in the marketplace by using the financial powers of their large existing businesses, to the detriment of the smaller inventors, entrepreneurs, or businesses. Lobbyists, attorneys and others, however, have challenged the time-honored patent system by denigrating the important patent rights of inventors, entrepreneurs, and small businesses by preventing them from making, using, licensing and selling patented inventions. In effect special interests represented by lawyers, associations, and lobbyists representing the special interests of their clients and others they serve, have and are causing the Patent Act to succumb to special interest needs of these powerful groups. Recently, large companies began a multi-hundred-million-dollar attack on our time-honored patent system by trying to eliminate the powerful patent property right to exclude others from making, using, and selling patented inventions that they wanted only for themselves. These actions include, among other things, using the news media, publications and other forms of communications to denigrate the property rights of the patent owner and holder.

41. The results of this attack have been detrimental to many inventors, entrepreneurs and smaller companies. While the effect of these attacks have yet to be fully realized, if permitted to continue, there will likely be a slowing of innovations as large companies will not be incentivized to quickly adapt to new technologies. Instead they will be allowed to focus on marketing existing products, and will be able to do so with limited competition from individual

inventors and small business owners who no longer have the patent system to rely on, allowing big companies to maintain higher margins and greater economic power.

Dave Barcelou is a Small Inventor Who Relied on the Patent System

- 42. Mr. Barcelou is a recognized inventor who resides in New Hampshire.
- 43. He has a history of inventing and then developing businesses based on his inventions.
- 44. For example, in 1977, Mr. Barcelou developed an idea for an ice-hockey game, and raised over \$1million to develop it. His five years of R&D efforts resulted in the well known **CHEXX™** ice hockey game, pictured below.



- 45. Even in the 1980's Mr. Barcelou understood the importance of patent protection. A United States patent was issued on his CHEXX™ Hockey Game - U.S. Patent No. 4,480,833.

When a competitor came out with a cheaper knockoff that infringed his patent, his company, ICE, (“Innovative Concepts in Entertainment”) sued the competitor for patent infringement. ICE was awarded an injunction and the case was settled entirely in favor of Mr. Barcelou’s company.

46. By late 1983, Mr. Barcelou left ICE and moved to his next idea based on “in-car-camera” technologies. Mr. Barcelou again successfully raised millions of dollars to develop his idea. After almost a decade of R&D, his last product in a series, “**The Chameleon™**,” won the **International Association of Amusement Parks and Attractions [“IAAPA”]** top honor, the “**1991 Best New Technology Award**”, and a production model was sent to Six Flags® Texas.

47. Mr. Barcelou was featured in a Business Week magazine Science & Technology article publicizing his invention of the first professional race-car simulator at the 1989 Long Beach Grand Prix. Drivers’ such as Formula One World Champion Mario Andretti, his son Michael Andretti, Indy 500 winner Johnny Rutherford, and others gave it high grades for realism.

Science & Technology
BusinessWeek

RECREATION

THE ROAR OF THE ENGINE, THE GLOW OF THE SCREEN

David Barcelou's computer-fueled 'Stimulator' makes simulated auto racing terrifyingly real

There are those among us who just can't resist the latest thrill. So when *Los Angeles Correspondent Eric Schein* heard that a local entrepreneur was developing an amusement-park race-car ride that relies on the high-tech gadgetry used to train pilots, he quickly signed on for a test ride.

Having recently completed a course in race-car driving, I felt strongly ready for the Stimulator. The experience turned out to be more than I bargained for. Developed by Driver Seat Inc., the Stimulator is a new kind of high-tech amusement-park ride that lets thrill-seekers actually control the action, not just tag along passively.

The basic idea is similar to Hollywood's wildly successful *Star Tours*. That ride adapts flight simulators to create the suspense—lights, sounds, and motions—that feature space tourists might experience on a visit to some distant galaxy. But unlike *Star Tours*, the Stimulator is interactive. You climb into a simulator, sit behind the controls of a Formula One racing car, and your off-screen wheels almost a real race. By remote control, you drive a half-ton car with its own gasoline engine, barreling around a track at speeds equivalent to 200 mph.

Everything that happens to the car is instantly transmitted to the Stimulator and translated by a computer into movements of the cockpit. And every twist of the steering wheel is instantly relayed to the race car. Your "windshield" is a video screen that shows the track from multiple camera angles inside the car. You even hear the roar of your car's engine through its audio speakers.

HARTY END From the cockpit, the Stimulator is a windowed capsule suspended from a large steel arm that can whirl in circles at 20 revolutions per minute. Next-generation versions will have four capsules attached to one arm. By flipping a lightning capsule outward or in, the

combination of forces mimics the sensation of feeling the accelerator or squeezing the brakes.

The capsule can also spin like a car skidding out of control. If your car, which is built to withstand crashes out on the track, has a serious accident, the capsule will follow its motion, rolling over sideways or even flipping end over end. About the only thing you can't do in



SECTIONS FUND BARCELOU'S 'TELECAR' COST \$25,000 EACH—AND THE COMPUTER IS 10 TIMES THAT

built by Electronics Technology Corp. for training Yeoc pilots, cost \$250,000, and each car runs \$25,000. Add an enclosed race track, a grandstand and accommodations for parking spectators, and the total investment comes to \$15.8 million.

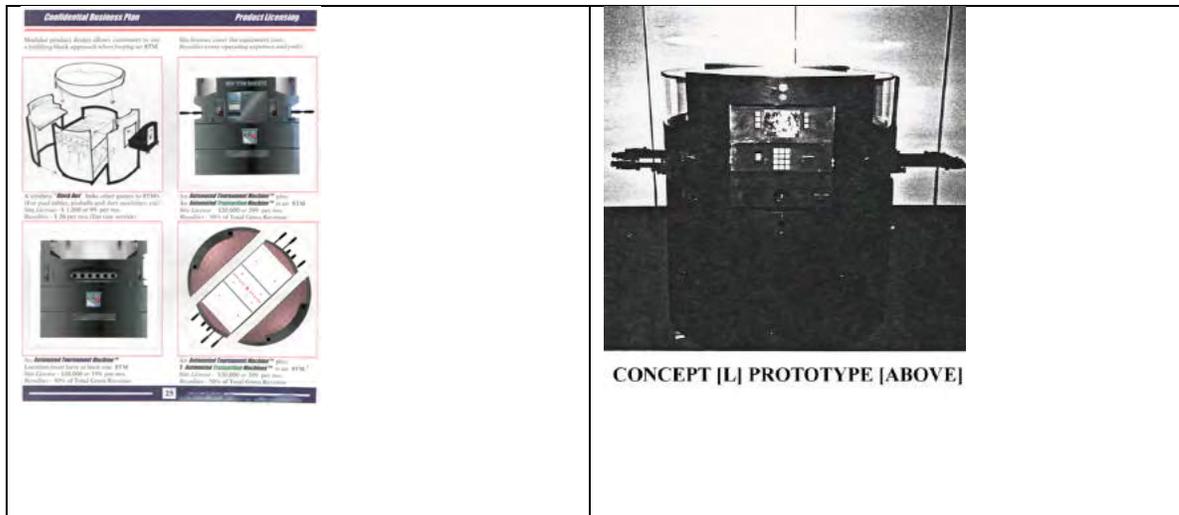
It is a early morning when I arrive for a test ride. Up a 10-foot ladder I get the capsule into the cramped cockpit. A technician helps me strap in. "Whatever you

48. In 1993 Mr. Barcelou began working toward automating tournaments, where any “game of skill” could automatically accept an entry fee, administrate a winner, and award the winner an immediate cash prize, anywhere in the world. Mr. Barcelou’s original idea was to add “ATM” functionality, that is, actual cash dispensing automated teller machine functionality into his “Automated Tournament Machine.” Mr. Barcelou spent most of **1993** researching the automated teller machine “ATM” industry.

49. Mr. Barcelou consulted many experts in the industry via in-person Q&A sessions, attended various trade shows, and conducted exhaustive research into the field to no avail. ATMs were literally considered bank branches back then. Undaunted, he decided to make one anyway, since it appeared the automated teller machine “ATM” business could be very profitable, indeed.

50. He used his CHEXX™ Hockey Game as a prototype to get ATM part suppliers to simply talk to him, while simultaneously crafting what his new idea would actually look like. By late 1994, Mr. Barcelou had already reduced to practice the ‘inventions’ embodied in his patents. Mr. Barcelou was satisfied his idea had commercial merit when his 1994 prototype was completed.

51. Mr. Barcelou had hired a computer scientist to document his invention using conventional diagrams for both hardware and software. He also retained an ‘industrial design’ firm to help create the “look” of his new ATM. Those designers’ captured Mr. Barcelou’s ATM concept, shown below:



52. Mr. Barcelou built prototypes of his inventive ATM. Those prototypes provided many advances over existing ATMs. In general, it was designed to provide a plurality of services that were not previously available to a consumer over the Internet via an ATM.

53. Mr. Barcelou started filing patents to protect his ideas and started a business to commercialize his inventions. He explored relationships with CoreStates Bank and with Hitachi. He began building a management team to build his business. He shipped his prototype ATM to Hitachi for review and sought capital investments.

54. By 2001, Mr. Barcelou was ready to deploy his ATM machine in NYC. But then the terrorist attack on 9/11 derailed these plans. Following the attacks, Mr. Barcelou continued his efforts to commercialize his ideas but was unsuccessful.

55. In 2005, after ten years of examination in the Patent Office, Mr. Barcelou was granted his first ATM patent, U.S. Patent No. 6,945,457. Having seen his business efforts fail, but observing other companies had begun utilizing his inventions, Mr. Barcelou's company filed suit against 7-Eleven alleging its VCOM machines infringed his patent.

56. In 2008, one of Mr. Barcelou's companies signed an exclusive licensing agreement with ATL to allow ATL to offer Mr. Barcelou's patented technology to the world at reasonable royalty rates. ATL began offering patent licenses, suing when necessary and defending the patents in the Patent Office when necessary. Mr. Barcelou's companies also began to pursue patents on all of his inventions described in the originally filed patent.

57. ATL's results were mostly successful although there were set backs. In 2011-2012, ATL generated over \$3 Million in licensing revenues from 200 licensees. Mr. Barcelou's patent portfolio also grew as the United States Patent and Trademark Office continued to issue patents to Mr. Barcelou's company. Mr. Barcelou also suffered some setbacks, as one court found a very limited number of a special type of ATM did not infringe selected claims in a patent and some, but not all, of the claims in one patent were held invalid. These results, however, did not affect the vast majority of Mr. Barcelou's patent portfolio.

58. Importantly, by virtue of Mr. Barcelou's inventorship of the patents, Mr. Barcelou and ATL are the original owners of the patents they sought to license and enforce. They never bought or sold any patents to enforce, and only pursued their patent licensing program after Mr. Barcelou's unsuccessful attempts to pursue his business.

59. After the suit against 7-Eleven, ATL began investigating the marketplace and found that the industry had widely began using Mr. Barcelou's technology and concluded that many aspects of Mr. Barcelou's technology that were not yet adopted would be beneficial to the industry. ATL therefore began sending out letters to ATM owners and/or operators offering them a license to ATL's ATM patents. ATL was encouraged by several valuation reports it received. For example, an Ocean Tomo, LLC ("Ocean Tomo") report, determined that the fair

market value of ATL's ATM Patents ranged from a low of \$17.7 million to as much as \$71.9 million.

60. Initially, numerous banks agreed to take a license. About \$3 Million in licensing revenues were generated from about 200 entities, indicating that Ocean Tomo's valuation may have been low.

61. Some banks and other ATM owners and/or operators choose to fight ATL in court. ATL understood that was their right and, where necessary, it engaged in very expensive litigation efforts. But the Defendants wanted a shortcut to avoid this fight.

62. They found their shortcut in a malicious defamatory smear campaign launched in the public against Mr. Barcelou and ATL.

Defamatory Statements

63. At first, Mr. Barcelou was referred to as an "inventor." For example, on August 31, 2010, an article in the American Banker described Mr. Barcelou as "inventor" pursuing his patent rights. See http://www.americanbanker.com/issues/175_168/inventor-presses-cardtronics-case-1024908-1.html. Given Mr. Barcelou's extensive history of inventing and then trying to build businesses around his inventions, as described in the preceding paragraphs, this was a fair and accurate depiction of Mr. Barcelou.

64. But as ATL's legitimate licensing efforts became successful, a defamatory smear campaign against Mr. Barcelou and ATL started in a malicious effort to destroy Mr. Barcelou's and ATL's legitimate licensing efforts.

65. The decline in licensing revenues, eventually to no revenues, experienced by ATL was caused by the defamatory smear campaign by the Defendants. Upon information and belief, the following paragraphs are a partial list of the Defendants' defamatory false statements.

66. Upon information and belief, the first negative comments concerning ATL and Mr. Barcelou started in October of 2012. An article entitled “Mass. Banks address ATM patent ‘nuisance’” appeared on the Internet at <http://www.bizjournals.com/boston/print-edition/2012/10/12/mass-banks-address-atm-patent.html>. This article analogized ATL’s licensing efforts to bank robbery:

In a bank robbery, the safety of employees and customers is most important. Banks are advised by law enforcement to fork over the money. In a patent claim, the decision is purely economic. Although banks can make a strong defense against patent claims, the small amount of money required to settle can make doing so seem a little easier.

67. Upon information and belief, this was the start of the defamatory smear campaign.

68. On April 3, 2013, an article entitled “Banks fighting ‘patent troll’ can move forward together” appeared on the Internet at <http://www.bizjournals.com/boston.print-edition/2013/04/02/mass-banks-address-atm-patent.html>. Bob Stier is quoted as saying “Automated Transaction’s suit amounts to nothing more than a shakedown of community banks and that the company has intimidated more than 140 banks into settling.” Upon information and belief, this article continued to appear on the Internet.

69. Upon information and belief, on or about September 24, 2013, Robin Cook, Assistant General Counsel for the Credit Union National Association, presented a Powerpoint presentation entitled “Hot Topics In Litigation.” See Exhibit A. This presentation makes extremely defamatory statements regarding ATL.

70. For example, it includes a derogatory picture of a troll:



71. The presentation defined patent troll as an entity that had no intention of marketing a product and acknowledged that the term patent troll is pejorative. It also referred to ATL as a “well-known patent troll.” As set forth in earlier paragraphs in this Complaint, ATL was simply pursuing a return on its constitutionally authorized patent rights after having failed in its business efforts to bring Mr. Barcelou’s inventions to market. Mr. Cook’s statements on behalf of CUNA, highlighted herein and in Exhibit A, were false defamatory statements that damaged ATL and Mr. Barcelou.

72. Upon information and belief, on November 12, 2013, a transcript of an interview with John Funk appeared on the website of Gallagher, Callahan and Gartrell. The webpage was entitled “Businesses Offering ATM Services – Beware Patent Trolls” with John Funk, Gallagher, Callahan & Gartrell in New Hampshire.” Funk refers to ATL and Mr. Barcelou and notes that there’s a whole industry of patent trolls . . .” This implication that ATL is a patent troll was a

false defamatory statement that has damaged ATL. See Exhibit B. Mr. Funk and GCG have made numerous other references to ATL as a patent troll.

73. In November 13, 2013, Crain's published an article entitled "ATM guru David Barcelou goes on a suing spree against small banks." In that article, Mr. von Simpson, an attorney at Barclay Damon, is quoted as stating "He's nothing but a patent troll." Upon information and belief, Crain's also included a photo representing Mr. Barcelou as a troll hiding in wait. The photo, which paints Mr. Barcelou in a disparaging light, and is defamatory, is shown below.



See Exhibit C.

74. Crains' publication depicting Mr. Barcelou as a troll and von Simpson's statement in the publication that Mr. Barcelou is a patent troll are false and defamatory statements that have damaged Mr. Barcelou and ATL.

75. On December 17, 2013, the ABA and CUNA made statements for the record before the Senate Committee on the Judiciary. The ABA's statements are published in a publication entitled "Protecting Small Businesses and Promoting Innovation by Limiting Patent Troll Abuse." The statement was republished on ABA's website at <http://www.aba.com/Advocacy/LetterstoCongress/Pages/default.aspx> and continues to be republished on ABA's website as of the date of the filing of this Complaint. See Exhibit D.

76. The title of the ABA Statement includes the phrase "limiting patent troll abuse." The ABA's statement describes ATL's legitimate licensing efforts and then refers to "patent trolls," plainly calling ATL a patent troll. This references to ATL as a patent troll are false and defamatory and have damaged ATL.

77. The CUNA also testified before the Senate and republished its testimony under the same title as the ABA did. See Exhibit E. The CUNA representative stated patent trolls made a business out of what "might look like extortion." It also referred to ATL's licensing activities as being generated based on the "cost of a stamp." It also states the need to control "trolls." These statements are all false and defamatory and have damaged ATL. ATL's business was based on decades of research and development, manufacturing, and business development efforts as set forth in the prior paragraphs, and was based on far more than the cost of a stamp. ATL's efforts were not akin to extortion, but were instead the efforts to make its technology that was protected through the constitutionally authorized Patent System. Further, ATL was attempting to license patents that resulted from the inventive and business efforts of its manager, David Barcelou over many years. ATL was not a patent troll.

78. From 2013 until late January 2014, Stier and Pierce Atwood were publishing a defamatory web page on their web site that referred to ATL as a patent troll. ATL was involved

in patent litigation at the time, and ATL's counsel wrote to the judge in the case to bring these defamatory remarks to the Court's attention. See Exhibit F, which is two different web pages that were downloaded from Pierce Atwood's web site in January 2014. ATL's trial counsel wrote a letter to Court requesting an order barring the defendants from referring to Mr. Barcelou as a patent troll. The Court issued such as order. See Exhibit G. Stier's and Pierce Atwood's defamatory statements irreparably harmed the plaintiffs.

79. On or about April 6, 2014, the Washington Examiner published an article by the Associated Press entitled "New Hampshire bill aims to nip false patent claims" on the Internet. In the article, Steve Christy, as President of Mascoma, describes his bank's business with ATL and is quoted as calling ATL's activities as "outright blackmail." See Exhibit H.

80. On April 7, 2014, the article referred to in the preceding paragraph was published by the Concord Monitor on the Internet and in print.

81. On April 8, 2014, Rheo Brouillard testified on behalf of the ABA in the House of Representatives. See Exhibit I. He described ATL as a "patent troll." He stated that

These patent trolls use overly broad patents, threats of litigation, and licensing fee demands in an effort to extort payments from banks across the country. . . . At present patent trolls are able to make patent infringement claims for nothing more than the price of a postage stamp and the paper the claim is written on.

82. Mr. Brouillard's statements on behalf of the ABA were false and defamatory statements that damaged ATL. ATL was trying to capitalize on its extensive research and development and marketing efforts that resulted in numerous patents – it was not extorting payments. Further, ATL's efforts cost far more than a postage stamp and a few sheets of paper.

83. On August 27, 2014, an article entitled "Why is ATM patent troll ATL selling its stock-in-trade?" was published on the Internet by ATMMarketplace.com. See Exhibit J. ATL

had announced plans to sell its ATM related patent portfolio. In the article, ATMMarketplace.com also noted that “it seems pretty obvious that these were just the sort of intellectual properties that patent trolls have used for years . . .” Also in the article, Ralph Jocke, a patent attorney at Walker & Jocke Co. LPA, who has written more than 700 granted U.S. patents related to ATMs, states that ATL is a patent troll. Mr. Jocke also mischaracterizes ATL’s licensing efforts. Mr. Jocke’s and ATMMarketplace.com’s statements were false defamatory statements that damaged ATL. These Defendants were aware that ATL planned to try to sell its patent portfolio. Driving the last nail into ATL’s coffin, they continued the defamatory smear campaign to destroy ATL’s ability to auction its patent portfolio.

84. In January 2015, Pierce Atwood published an article entitled “Pierce Atwood Successfully Defends Community Banks and Credit Unions Against Aggressive Licensing Demands from Unscrupulous Patent Troll. See Exhibit K. In the article, which upon information and belief was written by Mr. Stier, ATL was referred to as a patent troll. For the reasons previously discussed, this was a false and defamatory statement that damaged ATL.

85. In September 2015, Mr. Stier presented at a Maine Bankers Association Banking Law Seminar, and upon information and belief, referred to ATL as a patent troll. See Exhibit L. Mr. Stier’s statements were false and defamatory and damaging to ATL.

86. Upon information and belief, the above-listed statements are just some of the defamatory statements aimed at destroying ATL’s legitimate licensing efforts. Additionally, there were many other misleading and false statements by the Defendants that painted Plaintiffs’ licensing efforts in a false and misleading light that harmed the Plaintiffs.

87. Each of these defamatory statements described herein were published by the respective Defendants to third parties, without a privilege to do so. Each is also false. Neither

ATL nor Mr. Barcelou are trolls, shakedown artists, extortionists or blackmailers. Mr. Barcelou is the inventor of certain ATM technology and ATL is the licensing agent for the ATM Patents covering the ATM technology. Mr. Barcelou and ATL expended significant sums of money developing the technology in the ATM Patents. The ATM Patents are presumed valid, and ATL, after failing to manufacture and sell ATMs, was attempting to make the patented technology available to the banking industry.

The Damaging Effects of Defendants' Defamatory Smear Campaign

88. It is well known that being labeled a patent troll, an extortionist, as conducting a shakedown, and the like, are disparaging and damaging, particularly to businesses. The damaging effects of being labeled a “patent troll” are well known. For example, one law review article noted “Everyone hates patent trolls.” See Connecticut Law Review, Vol. 47, No. 2 (2014). Additionally, courts routinely prohibit alleged infringers from referring to patent owners as “patent trolls” because of the disparaging and harmful nature of the term and because the patent owners would not be able to receive a fair trial. In fact, Judge Robinson issued an Order in a lawsuit that ATL was involved in prohibiting any derogatory reference to ATL or Mr. Barcelou:

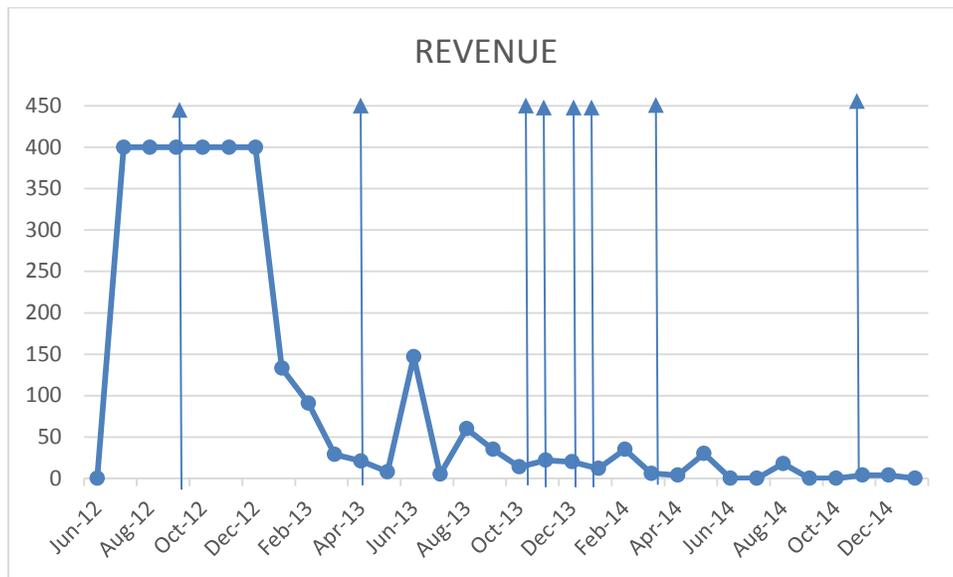
Mr. Barcelou is the named inventor of the patents-in suit. Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party.

See, e.g., Docket Entry 75 in Civil Action No. 1:06-cv-00043-SLR in the United States District Court for the District of Delaware.

89. The Defendants made their defamatory statements to harm ATL’s ability to license its patents and technology and they did so knowingly. At least one Defendant, CUNA,

has admitted to knowing that patent troll is a pejorative term and falsely referred to ATL as a patent troll anyway, showing malice.

90. The Defendants' strategy of destroying ATL's licensing efforts without a fair fight worked. The chart below shows ATL's revenues from licensing and enforcing the ATM Patents in 6 month intervals and the arrows show the timing of the defamatory statements by the Defendants. As the chart shows, the decline in revenues correlates with the timing of the statements. The chart also demonstrates how the statements effectively destroyed ATL's licensing efforts.



91. The above chart clearly demonstrates that the Defendants' statements were the proximate cause of ATL's drop in revenues. After successes in the last half of 2012, the defamatory smear campaign started and caused a severe decline in ATL's revenues. Despite the initial smear campaign, ATL had some limited success in 2013, but that caused the Defendants to increase their defamatory comments, wiping out ATL's business.

92. Based on inventor Dave Barcelou's investment in developing his ATM technology and the related patent portfolio, ATL generated over \$2.5 Million in revenue in the last half of 2012 by licensing about 200 banks and credit unions. As a result of the defamatory smear campaign, the remaining 12,000 or so banks and credit unions would not even consider licensing ATL's patented technology, damaging ATL and Mr. Barcelou.

93. In addition to destroying ATL's business of licensing the technology it spent years and millions developing, the Defendants' defamatory smear campaign permanently destroyed the reputation of Plaintiff Dave Barcelou.

94. The Defendants' defamatory smear campaign also caused Mr. Barcelou to suffer from emotional distress.

COUNT I - DEFAMATION

95. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if they were set forth herein.

96. Each of the Defendants, has either made false and defamatory statements of fact about either ATL or Mr. Barcelou or both, or is liable to the Plaintiffs as a result of its agent's statements.

97. The false and defamatory statements made by the Defendants were made without privilege to do so, concern the personal, professional and business reputation of ATL and Mr. Barcelou, and were made maliciously and with the intent to destroy the Plaintiffs' business, professional reputation and career.

98. As a direct and proximate result of the Defendants' conduct, Plaintiffs ATL and Mr. Barcelou have suffered economic losses in amounts that will be established at trial, as the

third parties that the defamatory statements were published to were caused to have lower esteem for the Plaintiffs as a result of these statements.

99. As a direct and proximate result of Defendants' conduct, Mr. Barcelou has suffered damage to his professional, business and personal reputation, as the third parties that the defamatory statements were published to were caused to have lower esteem for the Plaintiffs as a result of these statements.

100. As a direct and proximate result of the Defendants' conduct, Plaintiff Mr. Barcelou has suffered and will continue to suffer extreme mental anguish and emotional distress.

COUNT II- NEW HAMPSHIRE CONSUMER PROTECTION ACT (RSA 358-A)
against Defendants ABA, CUNA, Mr. Stier, Pierce Atwood, Crain's, Mr. von Simson, Mr. Funk, GCG, ATM Industry, ATMmarketplace.com, Mr. Jocke, Walter & Jocke, Mr. Christy, and Doe Defendants (collectively "CPA Defendants")

101. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if they were set forth herein.

102. Plaintiff ATL and Barcelou are "person[s]" as that term is defined by RSA 358-A:1.

103. The statements made by CPA Defendants about Plaintiffs violated RSA 358-A:2 generally as they were an unfair method of competition that attains a level of rascality that raises the eyebrow of someone inured to the rough and tumble of the world of commerce.

104. The statements made by CPA Defendants about Plaintiffs were made in connection with trade or commerce within the State.

105. The statements made by CPA Defendants about Plaintiffs violated RSA 358-A:2(VII) as they were false representations regarding Plaintiffs' goods and services.

106. The statements made by CPA Defendants about Plaintiffs violated RSA 358-A:2(VIII) as they disparaged the goods, services and business of Plaintiffs with misleading representations of fact.

107. The statements made by CPA Defendants about Plaintiffs were a willful or knowing violation of New Hampshire's Consumer Protection Act because they made the statements despite knowing of their falsehood in order to negatively impact the Plaintiffs' business.

108. The statements made by Defendant Crain's and Defendant ATMMarketplace.com were made despite their knowledge of the deceptive character of the statements.

109. As a direct and proximate result of CPA Defendants' statements, Plaintiffs ATL and Mr. Barcelou have suffered economic losses in amounts that will be established at trial.

110. As a direct and proximate result of CPA Defendants' statements, third parties had a false or inaccurate view of Plaintiffs' business, goods and services.

111. The false or inaccurate view held by third parties as a result of CPA Defendants' statements caused Plaintiffs economic harm.

112. As a direct and proximate result of CPA Defendants' statements, Plaintiff Mr. Barcelou has suffered damage to his professional, business and personal reputation.

WHEREFORE, the Plaintiffs, Automated Transactions, LLC and David Barcelou, respectfully request:

- A. An award of general, special, and punitive damages within the jurisdictional limits of the Court;
- B. Attorneys' fees pursuant to RSA 358-A:10(I);
- C. Injunctive relief pursuant to RSA 358-A:10(I);

- D. Double or Treble damages pursuant to RSA 358-A:10(I);
- E. An award of interest and all costs incurred in connection with this matter; and
- F. Such other and further relief that the Court deems just, equitable, and proper.

JURY DEMAND

PLAINTIFFS, AUTOMATED TRANSACTIONS, LLC AND DAVID BARCELOU,
DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
AUTOMATED TRANSACTIONS, LLC
AND DAVID BARCELOU

By their attorneys,
HAGE HODES, P.A.

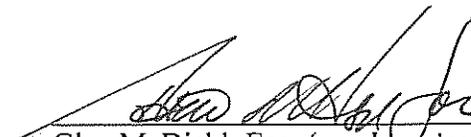
Dated: 12-27-16



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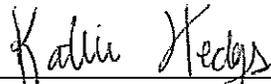
Dated: 12-27-16



Glen M. Diehl, Esq. (*pro hac vice* pending)
Diehl Law LLC
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Watchung, NJ 07069
Tel.: 908-310-2764
gdiehl@diehltrials.com

CERTIFICATION

I certify that copy of the Plaintiffs' First Amended Complaint and Demand for Jury Trial as approved by the Court has this 27th day of December, 2016 been forwarded to Defendants as listed on the attached Service List.



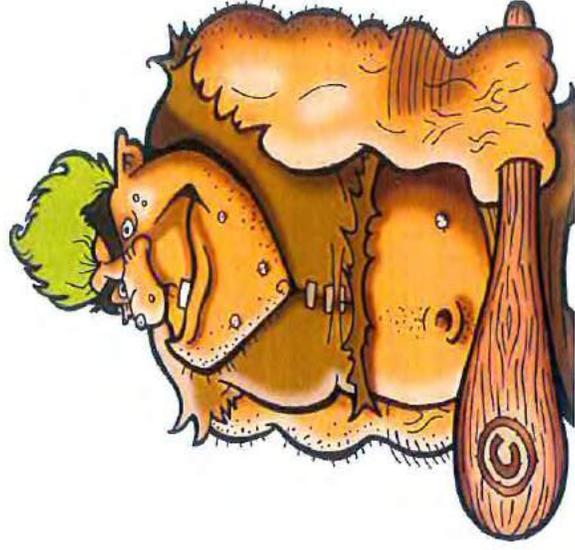
Katherine E. Hedges

Exhibit

A

Hot Topics in Litigation

Robin Cook
Assistant General Counsel, Special Projects
Credit Union National Association
Washington, DC



Patents? Wait, what?

- Credit unions aren't out there stealing someone's technology. Rather, they are buying technology from vendors in efforts to better serve their members
 - **They can get sued for that?**
- Unfortunately, no end user protection in current law
 - iPhone example

What is a Patent Troll?

- A “patent troll” is an entity that owns patents and enforces them in an aggressive way with no intention to market the patented invention.
 - Patent trolls buy or license patents from inventors (often failing/bankrupt companies)
 - “Patent troll” is a pejorative term – polite term is “non-practicing entity”
- Lawsuits filed by practicing entities (*i.e.*, companies that actually make stuff) happen too, but those cases are rarer—and almost unheard of against financial institutions.

How Does a Patent Troll Make Money? (1)

Infringement Litigation:

- If successful in the lawsuit, the troll is awarded damages, a “reasonable royalty” together with interest and costs.
- They seldom actually go to trial (and usually don’t want to). Most cases settle.
- Trolls can’t be countersued for patent infringement because they don’t make anything. *They’ve got nothing to lose.*

How Does a Patent Troll Make Money? (2)

Demand Letters—Threats of litigation used to strong-arm entities into accepting a license:

- Demand letters target mostly small and medium-sized entities
- *It's a shakedown* – they know that you will pay for a license instead of going to court

The Demand Letter Scenario

- A credit union gets a certified letter in the mail
- The letter claims that the targeted credit union's mobile banking app is infringing the troll's software patent
 - Perhaps the CU actually has a mobile banking app
 - No evidence linking CU products/services to patent
- The troll threatens to sue the targeted credit union for significant royalties
- Faced with possible safety and soundness problems on the one hand, and huge legal fees on the other, the credit union has limited choices

Why Credit Unions? Why Now?

- **Victim of our own success**
 - As credit unions have grown in visibility and assets, their attractiveness as litigation targets has grown as well.
- **Problem for all businesses**
 - Since 2005, the number of defendants sued by patent trolls has quadrupled.
 - Last year, patent trolls sued more than 7,000 defendants and sent thousands more threat letters. The activity cost the U.S. economy \$80 billion in 2011, and productive companies made \$29 billion in direct payouts.
- **Small size makes an attractive target**
 - Smaller entities are especially vulnerable because they do not have the resources to defend themselves, and see settlement as an easy option.
 - Trolls see targeting small institutions as a way to a quick payday.
 - Major problem for community banks as well.
 - America Invents Act of 2011 may have made problem worse for small institutions (Section 18, joinder)

Well Known Trolls

- **Automated Transactions, LLC (ATMs)**
 - Targets all financial institutions within a given area – even ones that don't own or operate ATMs
 - Federal Circuit has invalidated 7 of 13 patents
 - Suing many Vermont CUs, as well as CUs or community banks in Maine, New York, New Hampshire, and Georgia
- **DataTreasury (check capture)**
 - Suing Texas CUs; has collected hundreds of millions against JPM, Citi, etc.
- **Pi-Net (certain network technologies)**
 - Suing California CUs; has had some success with large banks
- **Invadio (WiFi)**
 - CU received demand because of WiFi in a lobby
 - Cisco RICO suit

What Credit Unions Should Do

- Indemnify, indemnify, indemnify
- Sample clauses in packets
- Insist on this from vendors
 - You don't want to do business with someone who won't agree to stand behind you
- Check your vendor contracts when you get a demand letter
- UCC § 2-312(2) and common law indemnifications may be available in some circumstances
 - “Unless otherwise agreed a **seller** who is a **merchant** regularly dealing in **goods** of the kind **warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement** or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.”

What Credit Unions Should Do

- Subject to the risk tolerance of the Board and staff, consider fighting back
 - Trolls talk to each other
 - “Feeding the troll” may not be the right strategy:
 - Credit unions that earn a reputation as easy targets may be targeted repeatedly
 - Credit unions that earn a reputation for shielding themselves against trolls may deter further attacks

How to Fight Back (1)

- Be annoying - make the process as slow, painful and difficult as possible
- Find other credit unions (or community banks) that are being targeted by the same patent troll and get them to join you in your fight.
 - Leagues can help with this
 - Combine legal and financial resources
 - Joint defense – pool knowledge and strategy
 - May negotiate better licensing terms

How to Fight Back (2)

- Don't Respond to a Demand Too Quickly
 - Initial response to a demand is critical
 - Sometimes ignoring the demand can be the right strategy
 - Asking for verification they have rights to assert the patent, or for detail on why they believe the CU is infringing (*i.e.*, a factual link between the CU and patent asserted), can slow trolls down

How to Fight Back (3)

- Section 18 -- Covered Business Method patent proceedings before Patent & Trademark Office
 - Amazing tool -- Panel of 3 independent, experienced PTAB judges that will hear invalidity claims
 - Strong stay provisions -- including interlocutory appeal if denied
 - Challenges available on broad grounds
 - Enormous risk to troll -- effective threat for settlement leverage
 - Multiple institutions can pool costs, but even at that: not a tool for nuisance cases (\$50,000 filing fee)
 - Estoppel risk, but only for the institution that brings the claim

What CUNA is Doing

- Patent reform legislation
- Weighing in on a targeted basis
 - *Akami* induced infringement theory
- Building lawyer network
 - Sharing knowledge is essential, and lawyers need to learn who to call

Thank you!

Exhibit

B



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Resources Index
Financial Services

FINANCIAL SERVICES

Businesses Offering ATM Services — Beware Patent Trolls

This USLAW Radio podcast features John Funk describing in detail recent ATM patent infringement lawsuits.

November 12, 2013

USLAW Radio | [Listen to/download podcast here](#)

The transcript of this interview follows.

“Protecting Against ATM Patent Infringements Suits” with John Funk, Gallagher, Callahan & Gartrell in New Hampshire

WALKER: Hi Everybody. This is Dan Walker. Welcome to another edition of [US Law Radio](#) and if part of your routine is using an ATM machine, and particularly if you happen to own a business that offers the services of an ATM machine, the next few minutes will be of real interest. A company called Automated Transactions LLC has been quite busy with suits around patent infringement, which has impacted quite a few businesses large and small. Let’s find out more from New Hampshire USLAW NETWORK member [John Funk](#), partner in the firm [Gallagher, Callahan and Gartrell](#). John, great to have you here.

FUNK: My pleasure. Good to be here.

WALKER: Well our discussion today centers around that company I mentioned Automated Transactions LLC. Can you tell us who they are?

FUNK: Sure. I’ve known about Automated Transactions LLC for

ShareThis



You may contact John Funk at 603-545-3607.

See also:
[What Banks Need to Know About ATL's ATM Patent Infringement Claims](#)
American Banker

[Attorney Funk Negotiates ATM Patent Agreements for 22 More Banks](#)

about two years. I had clients who first started receiving letters from Automated Transactions claiming that they had infringed a patent that it holds that relates to an interface between automated teller machines, so-called ATMs, and the internet. The company has been in existence since probably the early 2000s. Its organizer and owner is a gentleman by the name of David Barcelou, who had applied for a patent back in 1995. Automated Transactions was assigned his patent rights and is the one that is making the claims. I've represented probably two hundred companies that have received letters from Automated Transactions claiming the patent infringement. The letters claim the patent infringement not only with regard to the direct connection between an ATM and the internet, but they also claim patent violations with respect to access to the internet through wireless networks, satellite networks or other internal operations within a company. So, Automated Transactions pretty much covers the board in terms of how it is claiming that companies that use ATMs processing information over the internet are violating its patents.

WALKER: You know, right off the bat, it kind of sounds like suing for patent infringement is Mr. Barcelou's primary source of income.

FUNK: Well, there's a whole industry of patent trolls these days that secure patents that may or may not be valid when challenged, proceed to make claims on companies and harvest monies that they may not be entitled to. Automated Transactions' patent isn't a technological breakthrough. It's a method that Barcelou contends was unique and not utilized prior to his applying for the patent. As I mentioned, he originally applied for it back in 1995 and if you put yourself back in the 90s with regard to ATMs, the networks back then were basically what I would call regional networks that were connected either through T1 lines or dial up lines. They weren't connected through the internet, and Barcelou claims he developed this notion that the internet could be utilized for the transmission of information and there could be a much greater use financial devices that were connected through the internet. That's the basis of his original patent and then he secured a number of continuation patents on different aspects of the original concepts. There are a total of 13 patents that Automated Transaction holds with respect to these types of transactions.

WALKER: So what happens if there's an ATM not directly connected to the internet? Would that mean that it's not

violating the patents?

FUNK: Well, that's a good question and this came up a lot when I was first contacted by companies that received the letter. They would say "Look, our system is not directly connected to the internet. We have automated teller machines that are either connected to our company which sends this data to a service provider or are directly connect to a service provider through T-1 or dial up lines and then the service provider takes the information that's been provided and through whatever means it utilizes connects with other parties down the line which credit and debit accounts appropriately with respect to a transaction on an ATM.

Typically, the type of transaction we're talking about is a cash withdrawal from an ATM and so the information with respect to the cash withdrawal is transmitted through a number of intermediaries to the ultimate bank from which the money is withdrawn and then it is credited back through these same intermediaries to our company". So these companies would say, "We don't think we're violating the patents because we're not connected to the internet and we just simply transmit the data to our service provider and then the service provider takes care of it after that". The response that Automated Transactions came back with is, "No no no, we take the view that any access to the internet, whether it's directly by yourself or indirectly through service providers, violates our patent because at some point there's an interface between a machine and the internet that transmits the information and that's what our patent is all about".

I liken its argument to an interstate highway system. If you have an ATM that's directly connected to the internet, you're one of the entrance ramps onto the internet through this access point and your information goes directly from the ATM onto the internet and then it gets off loaded at some point down the line. Whereas if you have a T1 line or a dial up, you're on a secondary road and you're transmitting your information over the secondary road down the line to a service provider who then has access to the internet through its entrance ramp. That's what Automated Transactions is claiming – that it is that interface that triggers the patent violation. So, its view is, "If you have an ATM, basically you're transmitting information at some point over the internet, either directly or indirectly, and you're violating our patent and we're going after you".

WALKER: Well talk to us about the law suits that have been filed so far and how did they work out?

FUNK: The most important case was filed in 2006 and involved a company called IYG Holdings, which is the majority shareholder of 7 Eleven. That case was filed in Delaware and it was one of the early cases that Automated Transactions was involved with. It was based on Automated Transactions' original patent that was secured in 2005 as well as three of its continuation patents. There was extensive testimony in Delaware. As a result of that testimony, the court concluded that there was not a violation of the patent because 7 Eleven was using a virtual private network, a VPN, and because it was using a VPN, it was not part of the "public internet" and so therefore the court concluded there wasn't any violation.

There was also at that time an administrative action that was filed with the US Patent and Trademark Office claiming that the patent was improperly granted with respect to a number of its claims, stating that the patent was based on prior art. Not all of the 13 patents were challenged, only a number of them, but on review, the conclusion was that indeed the patents were based on prior art and invalid. That was appealed and was consolidated with the Delaware action and ended up at the circuit court. The circuit court concluded that the lower court and administrative decision were correct and affirmed those decisions, and then Automated Transactions filed a petition for certiorari with the United States Supreme Court which was not granted.

So, as a consequence, in the major lawsuit Automated Transactions ended up on the losing side. Now, it is also involved in a host of other lawsuits that have been brought to enforce its claim that are working their way through the judicial system. Most of those cases are in various stages of discovery and there hasn't been a final resolution of them.

WALKER: Gotcha. Nice to see the good guys win here. So what about indemnity claims against manufacturers and the service providers John?

FUNK: That's an excellent question because one of the issues that comes up right from the beginning when a company receives one of these letters is, "Look, I didn't invent this technology. I bought the technology from a vendor. I bought an ATM machine and the manufacturer of the machine confirmed to me that it had all the proper patents to utilize the technology, and I'm using a service provider and the service provider tells me it has all the licenses it needs to conduct business. So shouldn't I be able to make a claim on either the service

provider or the manufacturer and be indemnified". That seems very logical. One would think that if you're buying technology from third parties you ought to be able to rely upon their contractual commitments to you and be able to recover funds in the event that you find yourself subject to a patent claim.

The problem is that first of all, because the case law has gone against Automated Transactions thus far, these companies claim that there hasn't been a patent violation. Secondly, they employ what I would call a water's edge mentality in which the manufacturer says, "Well, our ATM machines are fully licensed" and the service provider says, "Yes, our services have the appropriate license, and we're not violating anything". But it is the marriage of the service provider's technology and the ATM technology that creates the interface. Since it's the interface where the patent infringement claim is being made, they say that it's not their problem, it's yours.

Ultimately, the company that has the patent infringement letter is caught in the middle, and if it wants to file an indemnity claim, it's going to end up costing the company more money than simply trying to work out a resolution with Automated Transactions. It's been very frustrating. The irony of the whole thing is that the 7 Eleven case that I talked about earlier was actually handled by one of the ATM manufacturers because 7 Eleven's a good size company and made a claim against it, so the manufacturer decided it had to step up to the plate to protect its interests. Smaller banks and credit unions and ATM operators have not had the luxury of that kind of defense on their behalf.

WALKER: Well John as we're getting ready to wrap things up here, what are my options and do I have to worry about a lawsuit?

FUNK: There are a number of options out there. First of all, you have to look at it very practically. Patent litigation can be very expensive, take a very long time, and be very frustrating so each company has to look at it from a dollars and cents standpoint. There have basically been two approaches that have been carved out, one of which has been procuring a license from Automated Transactions; the other is litigation.

I put together some large settlement groups of companies that have been able to negotiate favorable licensing terms from Automated Transactions. They procure a license and they don't have to think about it again. It's an irritant. It's a relatively minor expense but they put it behind them.

Other companies that think it's a matter of principle and don't want to succumb to the kind of extortion they think Automated Transactions is exerting, have joined together in jointly-funded lawsuits and have contested the claim. As I mentioned earlier, they're working their way through the court system. So basically you can go either way depending on a cost benefit analysis.

Generally if you're a small institution, it probably makes sense to consider some type of license. If you're a larger institution and your exposure is greater, you might consider joining in with a common lawsuit and fighting the claim.

WALKER: Well, John Funk you are a wealth of information on the topic and I'm sure there's a lot more to know. Where can we go to find out more?

FUNK: You can go to our website, www.gcglaw.com. I've written a number of articles about this. The articles over time have added more content and material as information has been learned. Also, the internet is a pretty good source of information so that once you focus in on some cases that have been filed involving Automated Transactions, you can get information as to what the status of those cases are and you can learn in that manner as well.

WALKER: John, we appreciate you taking the time to enlighten us on the topic and notching out a few minutes for us here on US Law Radio. Hope you'll come back and see us again sometime.

FUNK: I would love to. It was great talking to you.

WALKER: That's it folks. We are out of time.

For more information, please contact John Funk.

* John Funk is admitted in New Hampshire, Massachusetts and Vermont.

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Exhibit

C

BLOGS › IN THE MARKETS

November 24, 2013 12:01 a.m.

In the Markets

Inventor or patent troll?

ATM guru David Barcelou goes on a suing spree against small banks.



By Aaron Elstein K

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Back in the 1990s, an inventor named David Barcelou developed technology that he contends helped connect ATMs to a newfangled thing called the Internet. He was just about to start building his own cutting-edge ATMs when 9/11 happened, and banks cut off his funding as they hunkered down to cope with that era's recession. Now Mr. Barcelou is getting even. His company, Automated Transactions, has filed patent-infringement lawsuits against dozens of banks, demanding that each pay him for using ATMs that incorporate his ideas.

His targets tend to be small banks, such as Astoria Federal Savings and Buffalo Community Federal Credit

Union. Retailers that offer ATMs, including 7-Eleven and Stewart's Shops, have also been sued.

"He's nothing but a patent troll," snarled Charles von Simson, an attorney who has defended banks sued by Mr. Barcelou's company.

No way, responded Mr. Barcelou's lawyer, Albert Jacobs: "My client is trying to get paid what he deserves for ideas that he developed and patented."

Mr. Barcelou's suing spree has caught the attention of regulators. The Federal Reserve recently warned community banks that Automated Transactions has filed 60 patent-infringement suits against banks. "Financial institutions should be aware of this issue," the Fed said.

Patent-troll lawsuits have become a big issue lately. The Obama administration in June told the U.S. Patent and Trademark Office to make sure claims for new patents aren't overly broad, and the Federal Trade Commission is studying patent trolls. The attorneys general of Vermont, Minnesota and Nebraska have filed suits against them.

For banks presented with a suit from Automated Transactions, the calculation is this: Is it more cost-effective to duke it out in court or settle quickly? Mr. Jacobs estimates a courtroom battle costs a bank up to \$6 million. So most banks decide to lay down arms and settle. Mr. Jacobs won't say how much his client has collected in settlements, but John Funk, a lawyer who defends the banks, estimated it's no more than \$5 million.

One puzzling thing about Mr. Barcelou's legal strategy is that he's pursuing small banks and leaving alone giants such as JPMorgan Chase and Bank of America, which presumably have done him much greater financial harm because they have lots more ATMs. Mr. Funk claimed Mr. Barcelou hasn't sued them because the big banks have the resources to fight him in court for years.

Mr. Jacobs disagrees with that analysis, adding, "I'm not going to discuss my client's legal strategy."

A version of this article appears in the November 25, 2013, print issue of Crain's New York Business as "Inventor or patent troll?"

FEDERAL TRADE COMMISSION FINANCE OPINION TECHNOLOGY IN THE MARKETS TOP STORIES ASTORIA
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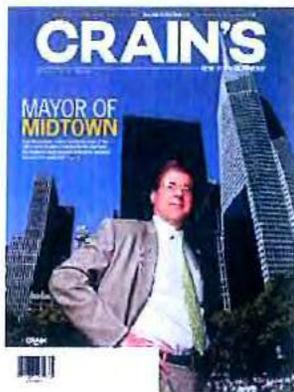
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Exhibit

D

Statement for the Record

On Behalf of the

AMERICAN BANKERS ASSOCIATION

For the Hearing

**“Protecting Small Businesses and Promoting Innovation by
Limiting Patent Troll Abuse”**

Before the

Senate Committee on the Judiciary

December 17, 2013



Chairman Leahy, Ranking Member Grassley, and Members of the Committee:

On behalf of the members of the American Bankers Association (ABA) we appreciate the opportunity to submit this written statement for the above-entitled hearing. The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. ABA members are often end users of technology and the recipients of abusive and deceptive demand letters.

Abusive patent litigation has been a serious concern for banks and financial institutions of all sizes across the country for many years. That is why we supported the reforms Congress put in place in 2011 through enactment of the America Invents Act (AIA), in particular the process for review of overly broad business methods patents by the Patent and Trademark Office (PTO) put in place by Section 18 of the Act.

Unfortunately, the abuses continue and have in fact increased despite those reforms. Banks continue to be barraged by patent assertion entities (PAEs) who use overly broad patents, threats of litigation, and licensing fee demands in an effort to extort payments from banks across the country. As a result, resources and capital that could go toward lending or otherwise serving bank customers, small businesses, and communities have necessarily been re-allocated to defend against abusive patent claims from PAEs.

Faced with threats of expensive patent litigation, many banks, and especially smaller banks, find that their only option is to settle rather than face paying millions to defend against extortive claims of patent infringement. Well-funded and sophisticated PAEs take advantage of community banks with limited resources and little patent experience, and have amassed significant "licensing" fees from banks literally for the cost of mailing a threatening letter.

A recent example of this involves a PAE known as Automated Transactions, LLC (ATL), which targeted banks throughout New England, New York, New Jersey, Georgia, Virginia, Pennsylvania, in addition to an ever-growing number of states. ATL claims that transactions facilitated by the use of the banks' ATMs infringe one or more of its patents. What ATL failed to mention, however, is that several of ATL's claims have been invalidated by courts. In particular, the Supreme Court denied certiorari on ATL's appeal of an April 23, 2012, decision by the Federal Circuit to affirm a ruling by the Board of Patent Appeals and Interferences invalidating several of ATL's patent claims.¹ Despite this, the company continues to assert those patents and sue banks across the country, including banks that do not even have ATMs.² While ATL is only one of many different

¹ See, *In re Transaction Holdings, Ltd., LLC*, 484 Fed. Appx. 469 (Fed. Cir. Apr. 23, 2012) (Not selected for publication in the Federal Reporter, NO. 2011-1361, 2011-1492), *reh'g and reh'g en banc denied* (July 2, 2012), *cert. denied Transaction Holdings, Ltd. V. Kappos*, 133 S.Ct. 955 (Jan. 14, 2013).

² See, generally *Automated Transactions, LLC v. 7-Eleven and Cardtronics USA, Inc.*, No. 1:13-md-02429-SLR (D.DE) (2013); see also *Automated Transactions, LLC v. Mascoma Savings Bank*, No. 1:13-cv-00503-SLR (D.DE) (2013) (banks located in NH and VT); *Automated Transactions, LLC v. Northfield Savings Bank*, No. 1:13-cv-00504-SLR (D.DE.) (2013) (bank located in VT); *Automated Transactions, LLC v. New England Fed. Credit Union*, No. 1:13-cv-00505-SLR (D.DE.) (2013) (credit union located in VT); *Automated Transactions, LLC v. Heritage Family Credit Union*, No. 1:13-cv-00506-SLR (D.DE) (2013) (credit union

entities that operate as PAEs filing frivolous patent infringement cases against all industries, ATL's tactics and efforts are a prime example of the problem banks and other companies face, primarily with regard to vague and threatening demand letters. An example of ATL's demand letter is attached to this testimony in redacted form.

We are pleased that members in both the House and Senate—including a number of members of this Committee³—have sponsored legislation intended to alleviate some of the incentives that drive abusive litigation by patent PAEs and we strongly support legislation to correct these abuses. In particular, S. 1720, introduced by Chairman Leahy and Senator Lee, includes several provisions that could potentially deter patent trolls from sending abusive demand letters, but we hope that these can be strengthened as the process moves forward in the Judiciary Committee and the Senate, in particular by requiring them to be more “transparent” by providing greater details about the alleged patent infringement.

In addition, a demand letter registry available to the public should be created at either the PTO or the Federal Trade Commission. Any entity that sends more than 10 demand letters in a single year should be required to enter them into the registry. This would provide the FTC and other agencies with the information needed to identify and take action against PAE's that are sending abusive demand letters. It would also allow those targeted in the letters to more effectively form joint defense groups by pooling their knowledge about certain trolls, identifying counsel familiar with those trolls and potentially reduce defense costs. It is vitally important that strong language dealing with abusive demand letters is included in final legislation enacted into law.

Legislation seeking to remedy abusive activities by patent trolls must also deal effectively with a pervasive dilemma facing “end users.” End users are purchasers of products from vendors that actually use the final product. This includes embedded technology such as software that accompanies a product. Financial institutions, such as banks, are, in almost all circumstances, end users of technology and should not be threatened with infringement simply for buying something in good faith from a vendor. Simply purchasing a product and using it in the way that was intended by the manufacturer, distributor, or producer should not warrant a lawsuit by a third party claiming a patent violation. This theory turns jurisprudence on its head and is a direct threat to businesses across all sectors of the U.S. economy.

There must be meaningful reforms to provide a solution to the problem faced by end users. Specifically, there should be mandatory joinder or at least a “right of contribution” added to patent law to help put in place a more equitable distribution of liability between end users and suppliers.

There are several other provisions that should be included in patent troll legislation. In particular, we share the views of others in the financial services industry that section 18 should be made a permanent rather than a transitional program and it could be improved further by granting the PTO

located in VT); *Automated Transactions, LLC, v. Automated Transactions, LLC, v. New York Community Bank*, No. 1:13-cv-00591-SLR (D.DE) (2013) (bank located in New York).

³ See The Patent Quality Improvement Act of 2013, S.866, 113th Cong. (2013) (introduced by Senator Schumer); The Patent Abuse Reduction Act of 2013, S.1013, 113th Cong. (2013) (introduced by Senator Cornyn); and The Patent Litigation Integrity Act of 2013, S.1612, 113th Cong. (introduced by Senator Hatch).

discretionary authority to waive the filing fee for these proceedings to encourage its use by smaller institutions. To discourage vaguely worded demand letters, it is also important for the Committee to clarify the intent of Congress in enacting Section 18 as part of the AIA that a demand letter or other pre-litigation communication suggesting that infringement has occurred constitutes an accusation of infringement giving rise to a real and substantial controversy for purposes of a Section 18 review.

To further discourage abusive litigation, S. 1720 should also include provisions to allow the courts the discretion to shift the costs of litigation to the prevailing party and to require bonding to assure that parties are able to meet this obligation. We are concerned that the bill as introduced requires PTO to conduct claims construction proceedings in a manner similar to the federal courts because this shift away from the current "broadest reasonable interpretation" could weaken PTO's ability to invalidate or narrow-low quality patents. We look forward to working with the Committee on these and other issues as legislation is developed.

Abusive patent litigation is a serious problem for the U.S. economy, businesses, and banking institutions of all sizes. We strongly support your efforts to end abusive patent litigation and look forward to working with members of the Committee to address these matters.

TANNENBAUM HELPERN SYRACUSE & HIRSCHTRITT LLP

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Albert L. Jacobs, Jr.
Writer's Direct Dial: 212 508-7528
Writer's Direct Fax: 212 858-5713
Email: jacobs@tshs.com

September 25, 2013

VIA FEDERAL EXPRESS

(Redacted)

Re: ATL Patent Portfolio Covering ATMs-FRE 408

Dear Mr. (Redacted)

We represent Automated Transactions LLC ("ATL") which has a patent portfolio covering ATMs attached hereto as Exhibit A. These issued patents, together with newly allowed and several pending patent applications, cover the way ATMs provide automated services via a variety of transaction and network service providers. We understand that your Bank has at least one ATM which ATL believes operates in a manner which infringes one or more of the patents in the portfolio of Exhibit A.

ATL has granted close to 200 sublicenses under its patent portfolio to a wide range of Banks, from those as large as *First Niagara*, the 30th largest network of Bank ATMs, to small independent ATM deployers [IADs] with just a single ATM. ATL has prepared a special one-time *limited time offer* for smaller Banks such as yours to receive a fully paid up sub-license for \$2,000 per automated teller machine [ATM]. This offer must be accepted on or before October 9, 2013 to avoid further action.

If you would like to reach an amicable resolution with respect to your infringing ATMs, or you have any questions as to why you have received this notice, please contact the undersigned directly.

Very truly yours,



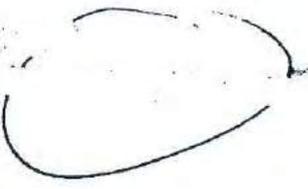
Albert L. Jacobs, Jr.



EXHIBIT A

United States Patents

7,751,850
7,575,158
7,591,420
7,597,248
7,597,251
7,600,677
7,617,973
7,621,444
7,669,220
7,793,830
7,802,718
7,837,101
8,118,222
8,132,714
8,132,715



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November 1, 2013

(Redacted)

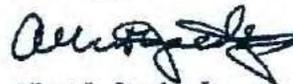
Re: ATL Patent Portfolio Covering ATMs-FRE 408

Dear Mr. (Redacted)

We have not received a response from you to our letter of September 25, 2013 offering a sublicense under ATL's patent portfolio for \$2,000 per ATM. Attached hereto is a draft of a Complaint which ATL is prepared to file if we are unable to reach an amicable resolution. However, in view of your declination to respond to our earlier letter the cost per ATM is now \$5,000 per ATM.

This offer is only good until November 15, 2013 and we would expect to hear from you not later than that date.

Sincerely yours,



Albert L. Jacobs, Jr.



EXHIBIT A
United States Patents

7,751,850
7,575,158
7,591,420
7,597,248
7,597,251
7,600,677
7,617,973
7,621,444
7,669,220
7,793,830
7,802,718
7,837,101
8,118,222
8,132,714
8,132,715
8,543,507

A large, handwritten mark or signature, possibly a stylized 'C' or a similar symbol, located in the lower-left quadrant of the page.

UNITED STATES DISTRICT COURT

X

AUTOMATED TRANSACTIONS LLC,

Plaintiff,

- v. -

(Redacted)

Defendant.

Civil Action No. _____

**COMPLAINT AND
DEMAND FOR JURY
TRIAL.**

X

COMPLAINT

Plaintiff Automated Transactions LLC ("Automated Transactions") alleges as follows:

PARTIES

1. Automated Transactions is a limited liability company organized and existing under the laws of the state of Delaware, having a principal place of business at 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

2. Upon information and belief, (Redacted) has a principal place of business at (Redacted)

NATURE OF ACTION

3. This is an action for patent infringement pursuant to 35 U.S.C. §101, et. seq.



Exhibit

E

TESTIMONY
OF
JOHN DWYER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
NEW ENGLAND FEDERAL CREDIT UNION
WILLISTON, VERMONT
ON BEHALF OF THE
CREDIT UNION NATIONAL ASSOCIATION
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
HEARING ON
PROTECTING SMALL BUSINESSES AND PROMOTING INNOVATION
BY LIMITING PATENT TROLL ABUSE
DECEMBER 17, 2013

Testimony
of
John Dwyer
President and Chief Executive Officer
New England Federal Credit Union
Williston, Vermont
On behalf of the
Credit Union National Association
Before the Committee on the Judiciary
United States Senate
Hearing on
Protecting Small Businesses and Promoting Innovation by Limiting Patent Troll Abuse
December 17, 2013

Chairman Leahy, Ranking Member Grassley, and Members of the Committee:

Thank you for inviting me here to testify at today's hearing. My name is John Dwyer, and I am President and Chief Executive Officer of New England Federal Credit Union, a member-owned not-for-profit financial cooperative headquartered in Williston, Vermont. Nearly 89,000 members have entrusted us with \$982 million of their assets. I am testifying today on behalf of the Credit Union National Association (CUNA), the largest credit union advocacy organization in the United States, representing nearly 90% of America's 6,800 state and federally chartered credit unions and their 98 million members.

Mr. Chairman, the mere fact that someone like me is here today is emblematic of how the problem of patent trolls has gotten out of control. I am an accountant by trade, serve a relatively small community that I love, and with the supervision of my volunteer Board of Directors, am in the business of empowering our member-owners to make good financial decisions so they can improve their overall quality of life.

Although my institution sometimes buys technology to use in the service of our members, until about a year and a half ago, patents are not something that ever crossed

my mind. I believe that is what Congress intended when it created the patent system to begin with. Financial institutions like ours are the quintessential end-users of technology. Every piece of technology we have in our institution was purchased with good money from a reputable vendor, who we assumed was selling us something free of any claims like these. Legal issues are also generally something that we try our hardest to avoid; although we operate in one of the most highly regulated sectors of our nation's economy, we operate without an attorney on our staff.

My institution is now in the middle of expensive discovery in a patent infringement case I never could have imagined related to our 23 ATM machines. A total of 25 financial institutions, gas stations, and convenience stores from at least six states are or have been part of this case. The case has been a costly and distracting headache, and due to the fact my case is pending, I hope the Committee can appreciate that there are certain things I won't be able to discuss with you today.

But I am happy to discuss how I got here, beginning with an ill-researched, vague demand letter from a company that has made a business out of what, in my opinion, in another context, might look like extortion. It's a business model that has become a drain on the economy, one that tens of thousands of American financial institutions and small businesses hope this Committee will commit to stopping. During my testimony today, I will focus my remarks on my own experience with demand letters, and what the Committee can do to address the problems, including clarifying the Federal Trade Commission's (FTC) enforcement authority, increased transparency requirements, and providing protections to end-users of technology.

A Business Model Based on the Cost of a Stamp: Unfair and Deceptive Demand Letters and their Harmful Effects

In June 2012, my credit union received a letter from an entity vaguely suggesting that one or more of our ATM machines infringed one or more of 13 patents. The letter did not specify which of our, at that time, 21 ATM machines it believed infringed, nor did it link specific ATM machines to specific patents. In fact, it was obvious to me that

the entity and its lawyers performed little or absolutely no research prior to demanding money from our credit union, as the letter was addressed to my predecessor, who departed our credit union a full two years earlier. It had other elements that pointed to it being a form letter, as it referred to us as a “bank,” even though, as a credit union, we have a different legal structure, are supervised by a different regulator, and have many other ways in which we are substantively different from other types of financial institutions.

The letter also contained absolutely no information as to why the entity believed we infringed, leaving us with no way to evaluate the claims. Rather, the letter provided a simple list of patent numbers. It also did not provide us with a comprehensive list of prior licensees, so we could not tell if the manufacturer of our ATMs entered into a licensing agreement in the past. The letter also did not include a key fact that we later learned: two months earlier, many of the patents on that list were declared invalid by the Federal Circuit, after being held invalid at the Patent and Trademark Office (PTO) and by a district court years before.

Nevertheless, I consulted with a lawyer and conducted due diligence both into the patents and the way our machines work, learning that the way modern ATMs function, there was no possible way our ATMs could infringe. I wanted to confirm a few things with our ATM vendor, however, and dispatched a reply letter to the troll in July 2012 asking for more time to evaluate the claims.

In October, I received another letter from the entity, again addressed to my predecessor, which again repeatedly referred to us as a bank. This letter did not acknowledge my earlier reply. It merely included the same list of patents, including those held invalid at the Federal Circuit, and more explicitly threatened litigation if we could not “amicably settle this matter.”

During this letter writing campaign, a scary feeling was wondering if I was alone. When you receive a series of letters like these, you begin to think that maybe the author knows something you don't. Perhaps, you think, the author personally visited one of

your ATMs while he was on vacation, and recognized something that triggered an infringement claim in his mind. I'm not a lawyer, but I knew litigation is expensive, risky, and time consuming, so I started to wonder whether I was better off just writing a check to make the issue go away.

Before doing so, I reached out to our state trade association to see if other credit unions were receiving similar demands. I learned that nearly every other credit union across Vermont received similar letters, including, amazingly, some that do not own or operate ATMs.

I also sit on the Community Depository Institution Advisory Council for the Federal Reserve Bank of Boston. Through this group, I learned numerous financial institutions across New England received the exact same letter. I started to conclude that the business model of this entity was to take a directory of financial institutions, dump it into a mail merge program, send out letters, and wait for the settlement checks to roll in.

The troll has recently turned up the heat in its rhetoric. The troll is now sending an initial letter offering "a special one-time *limited time offer* for smaller Banks such as yours to receive a fully paid up sub-license" for \$2,000 per ATM. (Emphasis in original). Frankly, this language sounds a bit more like a late-night infomercial than a serious attempt at dispute resolution. For my institution, this demand would be \$46,000 based on our current number of ATMs. Should the financial institution fail to respond, they receive a follow-up letter stating that the entity is prepared to file suit "if we are unable to reach an amicable resolution," and attaching the front page of a draft "complaint," containing nothing more than a case caption. In addition, the second letter states that the price to reach a settlement has increased to \$5,000 per ATM – an amount 250% higher than the initial demand. For my institution, this demand would be \$115,000 based on our current number of ATMs.

In addition, the troll has recently become more aggressive at filing suit. In 2013, this entity actually filed a case against a New York credit union that has no ATMs. We

are unaware of a single instance where this entity has prevailed when it has decided to actually go to court.

CUNA believes that the troll has sent many hundreds, if not thousands, of demand letters across the Northeast, Southeast, and Midwest—perhaps coast to coast. Financial institutions are also not unique. A 2013 White House report noted that one patent troll sent eight thousand demand letters to coffee chains, hotels, and retailers seeking compensation for use of Wi-Fi equipment made by several manufacturers that the patent troll alleged to infringe on its patents.

Economic Realities

These letter writing campaigns work because trolls know that an early settlement is much, much cheaper for a defendant than fighting. In almost every case, just to pick up the phone to consult a patent lawyer to determine the validity of the infringement claim and evaluate the demand costs tens of thousands of dollars. Litigation, whether in court or before the PTO in a covered business method proceeding, is even more expensive—and in the latter, as discussed below, the fees just to bring the proceeding could exceed the cost of the demand. Although it violates one's basic sense of right and wrong, paying up makes some economic sense for a credit union of my size.

It is because of their size that small financial institutions are especially vulnerable. Banks and credit unions are filled with staff in the business of managing risk, and in targeting small institutions that may not have a lawyer on staff competent to evaluate the claims, demand letters are sure to reach a captive mass of people who will be afraid of getting sued. Community bank and credit union CEOs like me will be willing to do almost anything to avoid the risk and uncertainty litigation creates.

Unchecked, the problem of demand letters will deter institutions like mine from using new technologies at all. The technologies for which patent demand letters and litigation have become common against credit unions and community banks include some of the things that make financial services most accessible to consumers – ATMs, online and mobile banking, remote check capture, and check processing, just to name a

few. CUNA has received calls from credit unions worried about making things like smartphone applications available to their members because they are afraid of getting sued. Many institutions will decide these technologies – however much they help their members – aren't worth the risk. If that happens, consumers lose.

Solving the Demand Letter Problem

CUNA strongly supports Section 5 of the Patent Transparency and Improvements Act of 2013, and though it is not a silver bullet that would solve the demand letter problem, appreciates its inclusion in the introduced legislation. The provision would clarify that the Federal Trade Commission has enforcement authority over patent trolls that operate in unfair or deceptive ways, but it does not provide the FTC with the ability to make rules in this area. We believe the FTC should have the ability to evolve in its enforcement powers as trolls evolve, and rulemaking authority would provide the agency with the means to do this.

Increased Transparency and Disclosure Standards in Demand Letters. In the same way heightened pleading requirements can help keep frivolous lawsuits out of court, minimum disclosure standards would help ensure that only demand letters truly asserting a potentially valid claim of infringement are sent. This would also benefit small businesses and small financial institutions by providing them with information necessary to evaluate the merits of the demand. There are a variety of requirements the Committee could consider, including some or all of the following:

- 1) A detailed description of each patent allegedly infringed and each claim of each patent that is allegedly infringed;
- 2) Each claim must include a detailed description of which product, feature, method or process is allegedly infringed, including the name or model number; and how the terms of the asserted claim correspond to the functionality of the accused product/method;
- 3) A description of the direct infringement, the acts of the alleged indirect infringement that contribute to or are inducing direct infringement;

- 4) A description of the right of the party alleging infringement to assert each patent identified and patent claim identified;
- 5) A description of the principal business of the party alleging infringement and ownership of the principal business;
- 6) A detailed description of any past litigation involving direct or indirect infringement and the status or validity of each patent infringed; and
- 7) The party alleging infringement must identify and disclose any licenses associated with the asserted patent.

Registry. In addition, an entity that sends more than 10 demand letters in a single calendar year should be required to enter all letters into a registry that would be publicly available and maintained by a federal agency, perhaps the PTO or FTC. This is important for a variety of reasons. First, it would provide businesses that receive a demand letter with the ability to communicate with one another. Knowledge is power in these situations, and knowing who else is dealing with the same problem from the same entity provides information necessary to get others to join in your fight. This would allow the efficient forming of joint defense groups to pool knowledge and strategy, assist small businesses in identifying competent counsel familiar with the specific troll at issue, and could reduce defense costs. A registry would also provide the FTC with the information it needs to conduct enforcement proceedings against abusive trolls, and would also remove one of the biggest factors of intimidation – the fear that you, alone, are being targeted.

End-User and Indemnification Issues

As noted above, credit unions and banks are mainly buyers or end-users of technology and rarely develop it themselves. A particularly frustrating problem for small financial institutions, including mine, is that the vendors that sell us the technology very often refuse to stand by it when an infringement claim is brought. In my case, the manufacturer of our ATMs explicitly told us that we are on our own in defending this case. CUNA understands that other vendors, particularly those that make key

technologies necessary for financial institutions to operate in a safe and sound manner, are now explicitly *disclaiming* any representation or warranty as to intellectual property in their agreements. I find this trend troubling for a variety of reasons, especially because vendors are in the best position to know who has the best prior art, what licenses they entered into when they manufactured their technology, the terms of those licenses, and how the technologies they built work from the ground up. Some companies, such as Cisco Systems, have made it a very public priority to defend their customers, and they should be commended for doing so. We worry, however, that companies like Cisco are the exception, rather than the rule.

We appreciate the efforts to address the concerns of end-users in Section 4 of the Patent Transparency and Improvements Act of 2013. However, we encourage the Committee to go further. Because this section makes a stay of a customer's infringement case available only if the manufacturer consents in writing, it may not address the problem faced by many end-users. Indeed, if the trend of technology service providers refusing to stand behind their customers continues, we expect few will consent. We believe that adding a right of contribution and/or mandatory joinder to the patent law would enable a more equitable distribution of liability between end-users and suppliers.

Enhanced Pleading Standards

For many of the same reasons minimum demand letter disclosure standards will provide much-needed transparency related to the merits or weaknesses of a demand, enhanced pleading standards will give would-be defendants better information able to make determinations regarding licensing or litigation. CUNA commends Ranking Member Grassley and Senator Cornyn's efforts in this area. The limitations on discovery and fee shifting in their bill would also help balance the costs of litigation, and would be of great benefit to credit unions like mine when confronting cases like these.

Covered Business Method Patent Program

We also urge the committee to make improvements to the Transitional Program for the Review of Covered Business Method Patents (CBM), which was created in

Section 18(a) of the America Invents Act of 2011. As implemented by the PTO, the program is out of reach to most small financial institutions because the filing and post-institution fees charged by PTO together are more than \$30,000. This is more than the total settlement amount involved in many of the cases confronted by small financial institutions, and comes before the substantial legal fees involved in bringing the case to the PTO. We urge the Senate to follow the lead of the House and grant the Director of the PTO the authority to waive the program fees to accommodate community banks and credit unions.

We also encourage the Committee to follow the lead of the House and include language in any Committee Report that clarifies that a demand letter or other pre-litigation communication suggesting that infringement may have occurred can trigger the right to bring a Section 18 proceeding. While we understand this was Congress's intent, outside patent attorneys involved in CBM cases advise us this is not always the case in the real world; much depends on the substance of the demand letter. It is our understanding that the key question is if an entity has been "charged with infringement" in the demand letter such that the petitioner would have standing to bring a declaratory judgment action in federal court. A vague demand letter that does not explicitly say something to the effect of "you infringe" may not meet the PTO's standard. As trolls are savvy, they may word the letter such that it may not rise to the level of being charged with infringement.

We also share the views of many other members of the financial services industry in encouraging the Committee to make the CBM program permanent, and commend Senator Schumer's efforts to do this. We believe that to artificially constrain the program is to ensure that low-quality business method patents remain in the hands of trolls.

Conclusion

Mr. Chairman, for those operating community-based financial institutions, demand letters represent a great and growing threat. We applaud the Committee for

addressing these issues and recognizing the threats demand letters can pose to end users of technology.

On behalf of America's credit unions and their 98 million members, thank you very much for allowing me to testify at today's hearing. I am happy to answer any questions the Members of the Committee may have.

Exhibit

F

Community Banks and Credit Unions: Don't pay the ATM patent troll before you read this!

HELPING COMMUNITY BANKS AND CREDIT UNIONS HARNESS THE POWER OF A JOINT DEFENSE AGAINST A PATENT TROLL

In the summer of 2012, community bankers all over New England started receiving letters from a New York lawyer. The letters informed them that a firm called Automated Transactions claimed to have patents that covered the way their ATM machines work. A list of 13 patents was attached. The letter stated: "I write to you in the spirit of inquiring whether there is an interest in a sub-license prior to our bringing a suit for patent infringement."

Some bankers thought they could simply ignore the letters. But then Automated Transactions started filing lawsuits against banks. It also started threatening and suing credit unions, even including a credit union that had no ATMs!

Most of the bankers knew very little about patents. Maybe they had heard that patent litigation was very expensive. On the other hand, the cost of a sub-license was only a few thousand dollars per ATM. So a lot of banks decided to pay ATM to go away. Over a hundred. They figured they had no alternative.

But there is an alternative. Bob Stier, a Pierce Atwood trial lawyer with over 30 years experience handling patent cases nationwide, studied the patents. What he found was especially disturbing: the appellate court with jurisdiction over patent cases had invalidated the oldest and broadest of these patents, the scope of the other patents had been significantly limited by court rulings, and there were many grounds to attack the validity of the remaining patents and their coverage of the ATMs used by most banks. In short, there was no reason to believe that any bank needed a sub-license. The demand for a sub-license was a classic shakedown.

So in the fall of 2012, Pierce Atwood assembled a group of banks and credit unions willing to resist the shakedown. It is known as the National Automated Transactions Opposition or NATO. Together, the group is committed to defending any member bank or credit union that is sued by Automated Transactions. Each NATO member contributes an amount to the joint defense that is less than it would have to pay for a sub-license. Over time the size of the group has snowballed and there are now more than 75 members, enough to fund a vigorous defense. Pierce Atwood worked hard to consolidate all the cases in a single court and it currently represents seven bank and credit union defendants in the patent litigation. NATO's goal is to win, not to settle.

But the shakedown continues. Now community banks outside New England are starting to receive the same threat letters from Automated Transactions. What should they do?

If your bank has received a threat letter from the lawyer for Automated Transactions or you would like more information about the patent litigation or the NATO joint defense, contact Bob Stier at 207.791.1163 or rstier@pierceatwood.com.

Exhibit

G

From: Jacobs, Albert L.
To: [David M. Barcelou \(TheRTMachine@outlook.com\)](mailto:David M. Barcelou (TheRTMachine@outlook.com)); [David M. Barcelou \(TheRTMachine@outlook.com\)](mailto:David M. Barcelou (TheRTMachine@outlook.com))
Subject: FW: Activity in Case 1:06-cv-00043-SLR Automated Transactions LLC v. 7-Eleven Inc. et al Order
Date: Wednesday, February 12, 2014 2:54:07 PM

Dave,
How do you like that for an Order!
Best
Al

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U.S. District Court

District of Delaware

Notice of Electronic Filing

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Case Name: Automated Transactions LLC v. 7-Eleven Inc. et al
Case Number: [1:06-cv-00043-SLR](#)
Filer:
Document Number: [302](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Cumberland Farms, Inc.
Case Number: [1:13-cv-00134-SLR](#)
Filer:
Document Number: [75](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Southbridge Savings Bank et al
Case Number: [1:13-cv-00502-SLR](#)
Filer:
Document Number: [54](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Mascorna Savings Bank
Case Number: [1:13-cv-00503-SLR](#)
Filer:
Document Number: [55](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Northfield Savings Bank
Case Number: [1:13-cv-00504-SLR](#)
Filer:
Document Number: [55](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. New England Federal Credit Union
Case Number: [1:13-cv-00505-SLR](#)
Filer:
Document Number: [57](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Heritage Family Credit Union
Case Number: [1:13-cv-00506-SLR](#)
Filer:
Document Number: [60](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Bath Savings Institution
Case Number: [1:13-cv-00582-SLR](#)
Filer:
Document Number: [53](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Winchester Co-Operative Bank
Case Number: [1:13-cv-00583-SLR](#)
Filer:
Document Number: [59](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Adams Community Bank
Case Number: [1:13-cv-00584-SLR](#)
Filer:
Document Number: [56](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. First Bank
Case Number: [1:13-cv-00590-SLR](#)
Filer:
Document Number: [22](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Dannemora Federal Credit Union
Case Number: [1:13-cv-00594-SLR](#)
Filer:
Document Number: [37](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: Automated Transactions LLC v. Sunoco, Inc. et al.
Case Number: [1:13-cv-00596-SLR](#)
Filer:
Document Number: [44](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or

Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

Case Name: In re: Automated Transactions LLC - Patent Litigation
Case Number: [1:13-md-02429-SLR](#)
Filer:
Document Number: [118](#)

Docket Text:

ORDER that the February 14, 2014 hearing is cancelled. Mr. Barcelou shall not communicate, except through his counsel, with any defendant. Mr. Barcelou is the named inventor of the patents-in suit; Transaction Holdings is the named assignee. No defendant, for the remainder of this litigation in this jurisdiction, shall describe Mr. Barcelou or Transaction Holdings otherwise. Sanctions shall be imposed on the offending party (and/or his/her counsel) for any violations of this order. Signed by Judge Sue L. Robinson on 2/12/2014. Associated Cases: 13-MD-2429-SLR et al. (nmfn)

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Exhibit

H



New Hampshire bill aims to nip false patent claims

By ASSOCIATED PRESS • 4/6/14 11:14 AM

CONCORD, N.H. (AP) — Lawmakers are considering making it harder for companies with false patent claims — known as patent trolls — to demand that businesses pay licensing fees or be sued.

Sen. Sharon Carson is sponsoring legislation she hopes will identify false claims so businesses don't feel their only recourse is to pay up to avoid costly litigation rather than test the validity of the patents in federal court. She says her bill, which passed the Senate last month, attempts to identify companies that buy up patents of questionable validity and use them to demand licensing fees from other companies.

Vermont passed the nation's first law last year to make it harder for patent trolls to operate. Now, other states and Congress are considering laws.

The measures are in response to a growing trend of a product's end-user being sent letters demanding license payments for

using equipment like an ATM or scanners that convert a document into an email.

The U.S. patent system is designed to protect inventors and allow them to profit from their ideas, but some now question whether the system fosters abuse. Litigation can cost millions of dollars even when the business being sued wins.

Carson's bill would treat the issue as a deceptive practice and authorize New Hampshire's attorney general to seek to block patent holders' demands in state court. She would require letters demanding payment to contain more information showing the patent holder has analyzed the targeted business's operation to identify specific violations. Demand letters often require the recipient to respond within two weeks, but Carson's bill would allow a state court to consider unreasonably short response times in judging whether a claim was made in bad faith.

If the state court found a claim was made in bad faith, it could order the patent holder to post a bond of up to \$250,000 to cover the business's litigation costs.

Curtis Barry, lobbyist for the Retail Merchants Association of New Hampshire, said something must be done to stop patent holders from squeezing small businesses that don't have the resources to defend themselves.

Carson's bill "is a sincere attempt at preventing abusive demands for money when an individual business has

purchased something with the understanding it can plug it in and use it," he said.

University of New Hampshire Law professor Chris Frerking said for state courts to determine whether a claim was made in bad faith, they would have to "get into the business of determining patent validity and infringement."

"That's something I suspect the state courts can't do," said Frerking, who is director of the school's patent procedure program.

Over the past three years, New Hampshire banks and credit unions — with one exception so far — have paid license fees when accused of patent infringement for dispensing cash through their ATMs. Two years ago, Mascoma Savings Bank joined 96 other banks and credit unions in challenging the claim in court.

"It's outright blackmail and we're not going to be a party to it," said Mascoma President Steve Christy.

Christy paid a lawyer a fee that was less than the roughly \$40,000 demanded by patent holder Automated Transaction LLC.

The banks have argued they use closed circuits to handle cash transactions and aren't infringing on the patented process of transactions involving the Internet. Automated Transaction

says a separate service provider uses the Internet to complete the ATM transactions, a process covered by the patent.

"I think there are some companies that are patent trolls. They go out and buy up patents. My client isn't one of them," said Albert Jacobs, lawyer for Automated Transactions.

Marc Sedam, executive director of UNH Innovation, worries efforts to stop inventors from asserting their rights will stifle innovation. A patent is property that can be rented or sold regardless of whether the patent holder uses it, he said.

"The original definition of a troll is a nonpracticing entity," he said. "The university is also a patent troll by that definition. We invent things. We don't use them. We license them to other people for money."

Exhibit

I

April 8, 2014

Testimony of

Rheo Brouillard

On behalf of the

American Bankers Association

for the hearing

“Trolling for a Solution: Ending Abusive Patent Demand Letters.”

before the

Subcommittee on Commerce, Manufacturing, and Trade

of the

Committee on Energy and Commerce

United States House of Representatives



American
Bankers
Association

Rheo Brouillard
On behalf of the
American Bankers Association
before the
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United States House of Representatives
April 8, 2014

Chairman Terry and Ranking Member Schakowsky, my name is Rheo Brouillard, Director, President and Chief Executive Officer of the Savings Institute Bank & Trust. My bank is a \$1.3 billion community bank headquartered in Willimantic, Connecticut. We serve communities throughout eastern Connecticut and Southern Rhode Island and have been in business since 1842. I appreciate the opportunity to be here to represent the American Bankers Association (ABA) regarding the impact of abusive patent demand letters on businesses. The ABA represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees.

Abusive patent litigation remains a serious threat for banks and financial institutions of all sizes across the country. Banks are often end users of technology and as a result, have been inundated by abusive and deceptive patent demand letters by patent assertion entities (PAEs), commonly referred to as "patent trolls." These patent trolls use overly broad patents, threats of litigation, and licensing fee demands in an effort to extort payments from banks across the country. These demand letters often prey on small businesses of all kinds, which do not have the resources to fight such false claims. Fighting these claims has a real cost: for banks it means less capital and fewer resources available for making the loans that drive economic growth.

At present patent trolls are able to make patent infringement claims for nothing more than the price of a postage stamp and the paper the claim is written on. These claims are often intentionally vague and based on shaky legal standing. However, when confronted with threats of expensive litigation, many banks—especially smaller banks—find that their only option is to settle, rather than paying millions to defend against extortive claims of patent infringement. Well-funded and sophisticated patent trolls take advantage of community banks with limited resources and little patent experience, and have amassed significant "licensing" fees from banks.

I have seen this first hand at my bank. We, along with 30+ other Connecticut banks, received a vague notice from a firm called Automatic Transactions LLC (ATL). The notice asserted that our ATMs operated in a way that infringed upon their “patent portfolio,” and simply listed thirteen sets of seven digit numbers as proof. What the notice failed to mention was that similar suits in other states had already been overturned. A settlement would have cost at least \$27,000 for my bank alone, and would likely have amounted to \$300,000 for the 30 Connecticut banks targeted. Fortunately, we found out about the cases that were dismissed and did not settle. My bank’s case is far from unique, and ATL is far from the only perpetrator using intimidation to target small businesses.

We thank Congress for seriously addressing this issue, and in particular commend the House for passing bipartisan legislation—H.R. 3309, the Innovation Act. This bill contains important reforms to help deal with the patent troll problem and is an important first step, but more could be done, especially by this committee. There are a number of actions that can be taken to protect small businesses against these abusive patent demand letters, which will also help protect the holders of legitimate patents. Chief among these is to ensure that more details are included, in other words more “transparency,” in any allegation of a patent infringement.

In my testimony today I would like to make the following three points:

- Patent trolls prey on small businesses, seeking to extort payments via underhanded tactics;
- The costs of “patent trolling” are real and measurable for the institutions targeted; and
- There are additional measures that Congress can take to protect American businesses while strengthening the rights of legitimate patent holders.

Patent trolls are able to prey on all small businesses¹—not just banks—because they believe that these companies lack the resources in either time or money to fight back. These targeted businesses face enormous costs from such unfounded lawsuits. We urge Congress to take action to ensure that our small businesses cannot be taken advantage of by patent trolls.

I. Patent Trolls Prey on Small Businesses, Seeking to Extort Payments Via Underhanded Tactics

Banks and small businesses of all types, face a serious threat from patent trolls that acquire portfolios of patents for the express purpose of extracting payments from anyone to whom the patent could possibly apply.

¹ ABA is working with the Main Street Patent Coalition, which consists of organizations representing banks, credit unions, retailers, app developers, hotels, restaurants, grocery stores, advertisers, direct marketers, and many other businesses that have been similarly victimized by patent trolls. www.mainstreetpatents.org

Protecting the rights of legitimate patent holders is critical for our economy; however, unlike legitimate patent holders, patent trolls use underhanded tactics to intimidate businesses into paying “licensing fees” to make them go away.

There is almost no cost for a patent troll to make a patent infringement claim. They are able to acquire numerous patents from bankrupt companies for next to nothing. They then must simply pay for the postage to send a letter alleging a patent infringement.

The letters that these patent trolls send are often purposely vague, providing little if any information that would justify the claim or enable a reasonable investigation of it. As noted above, some demand letters provide nothing more than a series of patent numbers as proof of a violation. My understanding is that in many cases there is little legal standing to their claim.

Typically, the patent troll strategy is to present a very short timeline—such as two weeks—within which to pay a settlement, threatening to escalate the action if payment is not made. The goal is clearly to scare targets into paying. Finally, to further encourage banks and other businesses to settle quickly, the patent troll will often file suit against one or more smaller entities in a particulate state in order to drive settlements and serve to intimidate others in that state to settle.

Simply put, patent trolls often target small businesses believing that these companies lack the resources in either time or money to fight back. Often these companies do not have a lawyer on staff competent to evaluate the demands. Even if a business can properly evaluate a patent demand letter and determine it has no legal standing, the legal costs involved in fighting the false claim often outweigh the cost of simply paying the patent troll. Patent trolls count on small businesses to take the least costly route and pay them regardless of their legitimacy.

II. The Costs of “Patent Trolling” are Real and Measurable for the Institutions Targeted

The costs of settling allegations of patent infringement are significant for the businesses targeted by patent trolls. As I noted at the outset, my bank was targeted by just such an attack. In some respects we were luckier than other troll victims, as we learned this patent troll had already had its claims overturned in another state. But settling would have cost my bank \$27,000 plus attorney fees, which would have been a needless loss that would have had a real impact on my bank.

Let me give some specifics of this attack. On January 3, 2013, my bank, and more than 30 other banks in Connecticut, received a single page letter (Exhibit A) from a firm called Automatic Transactions LLC (ATL). This firm purported that it held a “patent portfolio” which covers the manner in which ATMs communicate over the internet. The letter included an exhibit which simply listed thirteen sets of seven digit

numbers (Exhibit A). Further it claimed that an investigation had shown that our ATMs operated in a way that made them subject to the patents. It is interesting to note that among the Connecticut banks that received this demand letter, at least one does not operate any ATMs of its own thus drawing into question the validity of the claim of having conducted an investigation.

The letter stated that the sender had sub-licensed to more than one hundred financial institutions the right to continue to operate with the patents. It added that it had thus far brought suit against approximately ten financial institutions where an amicable solution could not be reached and provided a two week window for resolution.

On January 15, 2013, I wrote back indicating that two weeks was insufficient time to conduct research into the claim and make a decision and noted that, contrary to his claim, our ATMs did not operate on the internet but were rather connected to our core IT processor by hard land based phone line. On the 17th of January ATL responded with an offer to extend his deadline until February, 4, 2013.

For the \$0.44 cost of postage and several pieces of stationary, trolls like this one prey on the fact that litigation to defend one's self against patent infringement claims are very expensive, often times reaching seven figures. This type of conduct is not an appropriate use of both the U.S. mail system the U.S. patent systems.

ATL is far from the only patent troll targeting banks, and banks are not the only industry being targeted. This is a widespread problem, with businesses of all sizes seeing such attacks. Not only is the problem widespread, but it is getting worse, with the number of demand letters rising sharply each year. The costs associated with this problem are real for American businesses of all kinds and a significant drain on the U.S. economy.

III. Congress Should Take Action to Protect American Businesses While Strengthening the Rights of Legitimate Patent Holders

The issue of abusive patent demand letters is a serious one. Thankfully, there is straightforward action Congress can take that will both protect businesses as well as legitimate patent holders. We applaud Congress for actions it has already taken on the issue, such as passing H.R. 3309, the Innovation Act. This is a good first step, but more must be done. Any action to address this issue should include the following:

First and foremost, all patent demand letters must be made more transparent. Congress should fight deceptive practices by requiring basic information be included in letters seeking to enforce patents and there needs to be an effective enforcement mechanism for this at the Federal level. Requiring greater details about the patent that is allegedly infringed, how the person receiving the letter is infringing, who the real owner of the patent is, whether the patent has expired or has been invalidated, will disrupt the business model of those that are abusing the system. Patent trolls will have to do their homework and cannot simply send out

hundreds or thousands of letters without due diligence. This would also benefit legitimate patent holders as they would know what clearly constitutes a deceptive demand letter, providing them with certainty of how to assert a patent without any risk that it could be labeled unfair or deceptive.

Second, a demand letter registry should be created and made available to the public. Any entity that sends numerous demand letters in a single year should be required to enter them into the registry. This would provide patent troll victims and enforcement authorities with the information needed to identify and take action against the trolls that are sending abusive demand letters. It would also allow those targeted in the letters to more effectively form joint defense groups by pooling their knowledge about certain patent trolls, identifying counsel familiar with these trolls, and potentially reducing defense costs.

Third, entities found to be abusing the U.S. patent system should be required to reimburse the business that they have harmed for the costs associated with fighting the false claims. As it stands now, trolls face little risk in making claims, as the worst that can happen to them is for their case to be thrown out. This would discourage them by making them liable for the costs they force upon businesses if they are found to be at fault.

Finally, vendors should take responsibility regarding allegations of patent infringement. Any legislation enacted into law seeking to remedy abusive activities by patent trolls must also deal effectively with a related dilemma facing banks and other “end users” of technology. As I have experienced, simply purchasing a product and using it in the way that was intended by the manufacturer, distributor, or producer triggered a demand letter. No business should be threatened by a lawsuit from a patent troll simply for buying a product or service that they had nothing to do with creating. Vendors should protect their customers and intervene in cases where patent trolls are making infringement allegations based on the purchase of their products or services.

Conclusion

Abusive and deceptive patent demand letters are a serious risk for businesses of all sizes across the country. Small businesses—including banks—are the most vulnerable because these patent trolls know these firms have much fewer resources or experience to defend themselves. The demand letters use deceptive and threatening language and set short timeframes for payments in an attempt to scare businesses into settlements. Congress should act and lift this unnecessary risk from the shoulders of our small businesses.

April 8, 2014

Exhibit A

TANNENBAUM HELPERN SYRACUSE & HIRSCHTRITT LLP

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January 3, 2013

Mr. Rhee Brouillard, President
Savings Institute Bank & Trust Company
803 Main Street
Willimantic, CT 06226

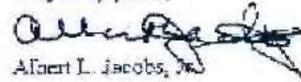
Re: ATL Patent Portfolio Covering ATMs

Dear Mr. Brouillard:

In case you are not already aware from the banking associations, Automated Transactions LLC has a Patent Portfolio, a copy of which is attached to this Exhibit A hereto, which covers the manner in which ATMs communicate with the end point in a retail transaction such as a financial transaction with the bank. This is particularly relevant in terms of customers using your institution's ATMs to conduct a retail transaction such as a withdrawal of money from an account other than from your bank. Our investigation has shown that your ATMs would connect with a service provider and the service provider in turn communicates over the Internet to complete the financial transaction or if it is not able to be completed for some reason to communicate that result to the customer. The Portfolio listed in Exhibit A includes various combinations of direct or indirect access of the ATM to the Internet, communications between ATMs via an intranet to the Internet, connections via a network services and other various methods by which financial institutions and others who have ATMs communicate to complete their transactions for their customers. ATL has to date sub-licensed more than one hundred (100) financial institutions and is amenable to granting further sub-licenses. ATL has also filed approximately ten (10) lawsuits against various financial institutions when it was not possible to reach an amicable agreement. ATL hopes that your institution will be amenable to an amicable resolution, but in the event it is not we are then we prepared to place it on the list of institutions against which ATL will ultimately file patent infringement suits.

Please let me know within two (2) weeks from the date of this letter whether you are interested in discussions toward an amicable resolution. Otherwise, ATL will proceed accordingly.

Very truly yours,


Albert L. Jacobs, Esq.

(973577-1)

EXHIBIT A

United States Patents

7,575,158
7,597,248
7,600,677
7,699,220
6,945,457
7,571,850
7,597,420
7,597,251
7,617,973
~~7,621,444~~
7,793,830
7,802,718
7,837,101

[562857-1]

Exhibit

J

Why is ATM patent troll ATL selling its stock-in- trade?



Last Friday, ATM Marketplace published a news item about a package of 28 ATM patents (and two more pending) to be sold at auction in October. From the description, it seemed pretty obvious that these were just the sort of intellectual properties that patent trolls have used for years to cudgel ATM deployers into paying what are politely called "licensing fees."

Shortly after the item ran, I traded emails with Ralph Jocke, a patent attorney at Walker & Jocke Co. LPA, who has written more than 700 granted U.S. patents related to ATMs and also has been involved in many patent infringement lawsuits. Given his familiarity with the subject

of ATM patents, Jocke was able to fill in the very interesting backstory of the patents up for sale.

According to Jocke, the seller is Automated Transactions LLC, a patent troll that has filed about 100 patent infringement cases, mostly against small banks, contending (among other things) that any ATM system that assesses a transaction fee violates its patents.

In a case filed against 7-Eleven, this particular patent was held not to be infringed, and (except for a couple claims related to selling florist services through an ATM) was held invalid in a reexamination proceeding in the U.S. Patent Office. ATL appealed all the way to the U.S. Supreme Court and lost every step of the way, Jocke said. But, he added:

The loss did not deter ATL, which continued to file more lawsuits. In these later cases, ATL usually alleged infringement of 13 patents, most of which had nothing to do with any ATM or system that a bank or other accused infringer was operating.

Then something unusual happened with a spate of ATL claims: The defendants asked to have them consolidated.

It should be said here that the law usually requires patent infringement lawsuits to be brought separately against each accused infringer. In fact, Jocke explained, Congress implemented this law to protect the defendant from the hazards of a multidefendant action:

The entities being sued were often competitors whose products had nothing in common other than they were accused of infringement. Because all of the entities were defendants in the same case, it was common for the defendants to have disputes over things like trying to avoid disclosing trade secret information about their products or business practices to the competition who were co-defendants, while having to disclose the information to the patent troll. Also in such cases, a strategy that might be beneficial for one defendant was detrimental for another defendant. Factors like this often made it difficult for defendants to coordinate on the defense of the

case, and made it easier for the patent troll to win and/or to extract substantial settlements.

The ATL lawsuits were consolidated into a single case at the request of the entities being sued. And while unusual, the strategy has been successful in this instance — since the consolidation, ATL has not been able to effectively threaten each small bank with having to defend an infringement case on its own. Settlement payments to ATL have apparently dried up, Jocke said:

The public filings in the Delaware case show that the attorneys that have been representing ATL for several years have withdrawn. Also, ATL has been trying to end the lawsuits without having to fight the defendants' counterclaims for patent invalidity and noninfringement, and possibly later, claims for attorneys fees for bringing baseless lawsuits.

The issue over counterclaims is ongoing, Jocke said, and the fact that the ATL patents are now up for sale suggests that the company and its lawyers no longer wish to fund pending lawsuits.

I asked Jocke whether he saw the ATL development as the beginning of a trend following a Supreme Court [ruling](#) in June that said: 1) Abstract ideas cannot be protected by patents; and 2) A defendant who wins should be able to recover attorney's fees if the case stands out in terms of the plaintiff having a weak case, or the plaintiff acting in an unreasonable manner.

“ The fact that the ATL patents are now up for sale suggests that the company and its lawyers no longer wish to fund pending lawsuits. ”

Jocke said that while he didn't see that the Supreme Court ruling had a particular bearing on the ATL sale, the decision still might have ATL nervous that if it continues to pursue its weak claims and ultimately loses, the PAE (or its counsel) might have to pay defendants' attorney fees.

By dropping its current cases, ATL preserves the patents' current presumption of validity — and their potential usefulness to another patent troll. Jocke explained that if the patents are sold, the new owner

could continue to bring claims, and would be free of the current constraints on ATL to make these new claims part of the lawsuit in the Delaware Court:

[T]hat entity can bring infringement lawsuits against any bank or ATM user that ATL has not previously settled with and granted a license, or given a covenant not to sue. This still leaves a large number of potential defendants. Also, the new owner of the patents would likely not be saddled with the requirement to bring all of its new cases as part of a single action in Delaware. The new owner would be free to pick on accused infringers in separate cases in multiple different courts, providing greater leverage to extract settlements.

But there is this: Any future defendants have the Delaware example to use as a boilerplate for fighting fire with fire. Better yet, the industry could pool its resources to buy those ATL patents in October. And then burn them.

Topics: [ATM Innovation](#) , [Regulatory Issues](#) , [Trends / Statistics](#)



Suzanne Cluckey / Suzanne's editorial career has spanned three decades and encompassed all B2B and B2C communications formats. Her award-winning work has appeared in trade and consumer media in the United States and internationally.

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Pierce Atwood Successfully Defends Community Banks and Credit Unions Against Aggressive Licensing Demands From Unscrupulous Patent Troll

January 2015

Pierce Atwood trial attorney and patent lawyer Bob Stier successfully defended a group of 108 banks and credit unions against claims that the ATMs they were using were infringing on patents held by an organization calling itself Automated Transactions LLC (ATL). In the end, after the defendants persuaded the court to conduct an early claim construction to establish the narrow scope of ATL's patent claims, plaintiff gave up, dismissed its trial counsel, dismissed its claims against all the defendants, and gave covenants not to sue to all the members of the joint defense group.

The story began in the summer of 2012, when scores of community banks and credit unions received letters from Automated Transactions LLC (ATL), claiming that its patented inventions covered every ATM in the country, and threatening lawsuits for patent infringement if the banks did not pay for a sub-license to a portfolio of 13 patents. ATL purposely kept license fees low, typically in the range of \$10,000-\$50,000, depending upon the number of ATMs at the target bank. Thus, no bank could realistically mount an independent defense to the spurious infringement claims because the cost to defend was so much greater than the cost to settle.

Many of the banks figured they had no alternative, so more than 100 of them paid ATL to go away. But there was an alternative, and that was Pierce Atwood trial lawyer Bob Stier.

Bob Stier, who has more than 30 years experience handling patent cases nationwide, started digging into ATL's questionable claims. Bob studied the patents and found that the appellate court with jurisdiction over patent cases had invalidated the oldest and broadest of these patents. In addition, the scope of the other patents had been significantly limited by court rulings, and there were many grounds to attack the validity of the remaining patents and their coverage of the most commonly used ATMs. In short, there was no reason to believe that any bank needed a sub-license.

So in the fall of 2012, Pierce Atwood formed a joint defense group known as the National Automated Transactions Opposition (NATO). Each member of NATO contributed a fee based on the number of ATMs it had, which was less than the cost for a sub-license, and significantly less than the cost to defend a typical patent infringement action.

After 18 months, NATO consisted of 108 community banks and credit unions from seven states. The group funded the successful defense of seven defendant NATO banks that persuaded the Judicial Panel on Multidistrict Litigation to consolidate their cases for pretrial proceedings in the District of Delaware, where the court had already ruled one of ATL's patents invalid.

In discussing the success of the defense group and the approach used to defend the banks, Bob Stier noted that "it was gratifying to see how the strategy that we adopted and executed played out and successfully protected an entire class of institutions from harassment by an unscrupulous patent troll." Feedback from clients was overwhelmingly positive, with comments like, "*It's great to get such complete win in this case. This group idea ought to be a template for others to follow in matters such as this,*" and "*Thank you so much for representing us in this case. I knew from the beginning that this was the right thing to do.*"

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Exhibit

L



Bob Stier to Present Patent Troll Update at Maine Bankers Association Banking Law Seminar

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Thursday, September 24, 2015

Augusta, ME

Patent trolls continue to target banks.

After more than 100 banks were brought together in 2012 to defend against a patent troll that demanded licenses for their ATMs, that particular patent troll lost its appetite for the patent litigation and abandoned its claims.

That case demonstrated the power of a joint defense group. The question remaining is whether the same defense strategy can be duplicated in other situations involving different patents and different "trolls." This question is relevant because patent trolls continue to assert claims against banks throughout the United States. Bob Stier, who successfully assembled the joint defense group that stood up to Automated Transactions, LLC, will share his thoughts about the nature of the continuing threat and the best practices in mounting an effective defense.

The [Maine Bankers Association](#) provides Maine banks with a forum to exchange valuable industry information; gain maximum representation in state and federal legislative and regulatory matters; receive education, training and staff certification; and wield greater collective purchasing power.

PROFESSIONALS

People

Robert H. Stier, Jr. ▶

PRACTICE AREAS

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Patent ▶

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