

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SMART AUTHENTICATION IP, LLC,

Plaintiff,

v.

ETSY, INC.,

Defendant.

Civil Action No. 2:17-cv-278

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Smart Authentication IP, LLC (“Smart Authentication”), by way of this Complaint against Defendant Etsy, Inc. (“Etsy”) alleges as follows:

PARTIES

1. Plaintiff Smart Authentication is a limited liability company organized and existing under the laws of the State of Texas, having its principal place of business at 1400 Preston Road, Suite 400 Plano, TX 75093.
2. On information and belief, Defendant Etsy is a corporation organized and existing under the laws of the State of Delaware with its principle place of business located at 117 Adams Street, Brooklyn, NY 11201, and it conducts business in this judicial district.

JURISDICTION AND VENUE

3. This is an action under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*, for infringement by Etsy of claims of U.S. Patent No. 8,082,213 (“the ’213 patent” or “Patent-in-Suit”).
4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Etsy is subject to the personal jurisdiction of this Court because, *inter alia*, upon information and belief, (i) Etsy is registered to transact business in the State of Texas, (ii) Etsy has done and continues to do business in the State of Texas, and (iii) Etsy has committed and continues to commit acts of patent infringement in the State of Texas, including by making, using, offering to sell, and/or selling accused products and services in Texas.

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because, *inter alia*, on information and belief, (i) Etsy has done and continues to do business in this district; (ii) Etsy has committed and continues to commit acts of patent infringement in this district, including making, using, offering to sell, and/or selling accused products and services in this district, and/or importing accused products and services into this district, including by Internet sales; (iii) Plaintiff Smart Authentication is located in this district, and (iv) the Patent-in-Suit is assigned to Plaintiff.

BACKGROUND

7. On December 20, 2011, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. 8,082,213. A true and correct copy of the '213 patent is attached as Exhibit A.

8. Jarlath Lyons invented the technology claimed in the Patent-in-Suit.

9. Smart Authentication is the assignee and owner of the right, title, and interest in and to the '213 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement.

10. The inventions of the '213 Patent generally relate to methods and systems for multi-factor authentication of users over multiple communications mediums.

11. The Patent-in-Suit discloses an Authentication Service Provider ("ASP"), which "is

generally implemented above a software and hardware platform or platforms ... that include operating systems, lower-level applications, and computer-server hardware.” Ex. A, col. 4:13-16. “In many embodiments, the ASP ... is a software implemented service that runs on one or more computer systems interconnected by various communications media with both ASP clients and users.” Ex. A, col. 2:47-50. In certain embodiments, the “ASP may interact with the user via two different communications media, such as a combination of the Internet and a cell phone.” Ex. A, col. 3:23-25.

12. In another example of disclosed embodiments, “[t]he [] third interface 208 allows the ASP to interface with user devices through alternative communications media, such as a cell phone, fax machine, telephone, or other communications devices. The third interface 208 allows the ASP to interface with virtually any network enabled resource through an appropriate medium, including both physical devices such as a cell phone, fax machine, telephone, or other communications devices, and also soft devices, such as an instant messaging account, or an email account.” Ex. A, col. 3:37-46.

13. As one example of an asserted claim, the ’213 Patent recites a novel method of authenticating a user of an authentication service where an authentication-service client communicates with the user through a first communication medium. The authentication service receives user-identifying information from the authentication-service client, and uses the received user-identifying information to carry out an authentication procedure to authenticate the user by sending information to the user through a communications medium different from the first communications medium. The authentication result is then returned to the authentication service client.

14. In another example of an asserted claim, the ’213 Patent recites the novel method

described above, wherein the user authentication service further uses electronically-encoded information about the user to retrieve all stored user authentication policies for the user, and conducting the user authentication procedure as permitted by the stored policies. The authentication result is then returned to the authentication service client.

15. Etsy provides an electronic commerce platform used to sell products and services to customers. Etsy's platform is accessible to users via Etsy's website at www.etsy.com, and Etsy's iOS and Android apps.

16. Etsy's platform uses two-factor authentication over multiple communications mediums by first requiring the user to enter an Etsy "Email or Username" and password over the Internet via a browser or mobile app, and then by requiring the user to verify his or her identity by entering a one-time code (also referred to as a "security code" in various Etsy implementations) received by means of a phone call or text message.

17. During the two-factor authentication process, Etsy also uses the electronically-encoded information about the user to retrieve all authentication-related policies for that user. For example, the user may set up several methods of receiving the one-time security code. Once the authentication-related policies are retrieved, Etsy conducts the authentication procedure and returns the authentication results.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,082,213

18. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

19. Upon information and belief, Etsy has infringed, and continues to infringe at least claims 1, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, and 16 of the '213 patent pursuant to 35 U.S.C. § 271(a) by making, using, offering to sell, and/or selling in the United States products and/or services, including, its electronic commerce platform and related services to customers, including Etsy's

products and services accessible to users via Etsy's website at www.etsy.com (Ex. B), and Etsy's mobile apps (Ex. C).

20. Upon information and belief, Etsy's products and services infringe claim 1 by, for example, using, making, selling, and/or offering for sale, a user authentication service comprising one or more computer systems, stored user-authentication policies specified by the user, account interface routines by which the user specifies, modifies, adds, and deletes user-authentication policies, and authentication-interface routines that implement an authentication interface. In Etsy's user-authentication service, the user initiates a transaction with the authentication-service client (such as Etsy's website) (Ex. B), and the authentication-service client submits an authentication request to Etsy's authentication-service through a first communications medium (such as the Internet via a browser) (Ex. B) or through a second communications medium (such as a mobile application running on a tablet or on a computer) (Ex. C). In Etsy's user-authentication service, when specified by stored user-authentication policies, the authentication-interface routines employ a variable-factor authentication, such as providing secret information (such as a password or one-time code generated by Etsy's authentication service) and demonstrating control of a tangible object (such as a user's phone) (Ex. D). During Etsy's authentication process, the user communicates with the user-authentication service through a third communications medium (such as receiving a security code via a phone call or SMS text message) and a user device different from that employed by the user to initiate the transaction with the authentication-service client (such as a mobile phone) (Ex. D).

21. In another example, Etsy's products and services infringe claim 3, in which the user-authentication service of claim 1 retrieves all stored user-authentication policies for the user,

which include alternative authentication methods. *See* Ex. D. In accordance with the retrieved policies, Etsy's user authentication service conducts the alternative authentication procedure, and returns the authentication result to the authentication service client.

22. In another example, Etsy's products and services further infringe claim 4, in which the authentication policy may comprise a uni-directional or bi-directional exchange of information with the user through the third communications medium, such as receiving a security code via a phone call or SMS text message (Ex. D).

23. In another example, Etsy's products and services infringe claim 5, in which the information of claim 4 is a password (such as Etsy's security code) that the user can subsequently input to the authentication-service client (such as Etsy's website) to prove to the authentication-service client that the user has been authenticated by the user-authentication service.

24. In another example, Etsy's products and services infringe claim 7, wherein the stored user information includes one or more of the user's name, the user's address, a password specified by the user, and the user's contact information.

25. In another example, Etsy's products and services infringe claim 8, wherein the user's contact information includes one or more of the user's landline and cell phones, and an email address.

26. In another example, Etsy's products and services infringe claim 9, wherein a user-authentication policy specifies constraints and parameters for authentication of a specified user, such as whether a phone call or text message authentication has been enabled and the corresponding telephone numbers.

27. In another example, Etsy's products and services infringe claim 10, wherein constraints

include a communications-medium-related constraint, such as whether SMS/text Message or Phone Call authentication has been enabled.

28. Upon information and belief, Etsy's products and services infringe claim 12 by, for example, performing "Two-Factor Authentication." *See* Ex. D. In one example, Etsy's user authentication client, such as the etsy.com website, communicates with the user via a mobile application or the Internet via a browser. *See* Ex. D. Etsy's user authentication service receives user-identifying information, such as the user's Etsy "Email or Username." Etsy's user authentication service then uses the user-identifying information to carry out an authentication procedure by sending to the user a security code via a text message, which is a communication medium that is different from the mobile application or the Internet via a browser. *See* Ex. D. Etsy's user authentication service then returns an authentication result to the user authentication client.

29. In another example, Etsy's products and services infringe claim 13, by, for example, performing the method of claim 13, wherein, as part of the authentication procedure, the authentication service transmits information (such as a security code) to the user of the authentication service which the user of the authentication service then subsequently transmits to the authentication-service client (such as Etsy's website).

30. In another example, Etsy's products and services infringe claim 14 by, for example, performing the method of claim 12, and further retrieving all stored user-authentication policies for the user, which includes the alternative authentication methods. *See* Ex. D. In accordance with the retrieved policies, Etsy's user authentication service conducts the alternative authentication procedure, and returns the authentication result to the authentication service client.

31. In another example, Etsy's products and services infringe claim 15, in which the

authentication policy may comprise a uni-directional or bi-directional exchange of information with the user through the third communications medium (such as receiving a security code via a phone call or SMS text message).

32. Upon information and belief, Etsy has committed and continues to commit the foregoing infringing activities without a license.

33. Smart Authentication has been and will continue to be irreparably harmed and damaged by Etsy's infringement of the '213 patent and has no adequate remedy at law. Smart Authentication has no adequate remedy at law and is entitled to an injunction against Etsy's continuing infringement of the '213 patent.

34. The acts of infringement by Etsy will continue unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Smart Authentication prays for the judgment in its favor against Etsy, and specifically, for the following relief:

- A. Entry of judgment in favor of Smart Authentication against Etsy on all counts;
- B. Entry of judgment that Etsy has infringed the Patent-in-Suit;
- C. An order permanently enjoining Etsy from infringing the Patent-in-Suit;
- D. Award of compensatory damages adequate to compensate Smart Authentication for Etsy's infringement of the Patent-in-Suit, in no event less than a reasonable royalty as provided by 35 U.S.C. § 284;
- E. Smart Authentication's costs;
- F. Pre-judgment and post-judgment interest on Smart Authentication's award; and
- G. All such other and further relief as the Court deems just or equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Fed. R. Civ. Proc., Plaintiff hereby demands trial by jury in this action of all claims so triable.

Dated: March 31, 2017

Respectfully submitted,

/s/ Dmitry Kheyfits

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