

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

CRYPTOPEAK SOLUTIONS, LLC,

Plaintiff,

v.

CHARLES SCHWAB & CO., INC.,

Defendant.

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Civil Action No. 2:15-cv-1294

JURY TRIAL DEMANDED

**DEFENDANT CHARLES SCHWAB & CO., INC.’S ANSWER TO
PLAINTIFF’S COMPLAINT AND DEFENSES**

Defendant Charles Schwab & Co., Inc. (“Schwab”), by its attorneys of record, responds to the allegations of the Complaint of CryptoPeak Solutions, LLC (“CryptoPeak”) as follows:

ANSWER

1. Schwab admits that the Complaint purports to state a claim for patent infringement and purports to seek injunctive relief and damages. Schwab denies all of the remaining allegations in Paragraph 1, including any allegation that Schwab has infringed U.S. Patent No. 6,202,150 (the “150 patent”).

2. Schwab admits that the Complaint purports to state a claim for patent infringement under the patent laws of the United States. At this time, Schwab does not contest this Court’s subject matter jurisdiction over CryptoPeak’s claims. Schwab denies all remaining allegations in Paragraph 2 of the Complaint.

3. Schwab lacks knowledge or information to form a belief as to the truth of the allegations in Paragraph 3 and therefore denies the same.

4. Schwab admits that it is a California corporation with an office located at 211 Main Street, San Francisco, California 94105. Schwab does not contest that the Court has personal jurisdiction over it. Schwab denies the remaining allegations in Paragraph 4.

5. Schwab denies the allegations in Paragraph 5.

6. Schwab denies the allegations in Paragraph 6. Schwab incorporates by reference its Motion to Transfer Venue (Dkt. 17) filed with the Court on October 1, 2015.

COUNT I
(INFRINGEMENT OF UNITED STATES PATENT NO. 6,202,150)

7. Schwab incorporates by reference its responses to Paragraphs 1-6 as if fully stated herein.

8. Schwab admits that the Complaint purports to state a claim for patent infringement under the laws of the United States, and in particular 35 U.S.C. §§ 271, *et seq.* Schwab denies the remaining allegations in Paragraph 8.

9. Schwab lacks knowledge or information to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies the same.

10. Schwab admits that a copy of the '150 patent, entitled "Auto-Escrowable and Auto-Certifiable Cryptosystems," appears to have been attached to the Complaint as Exhibit A.

11. Schwab denies the allegations in Paragraph 11.

12. Schwab denies the allegations in Paragraph 12.

(Direct Infringement)

13. Schwab denies the allegations in Paragraph 13.

14. Schwab denies the allegations in Paragraph 14.

15. Schwab lacks knowledge or information to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies the same.

DEMAND FOR JURY TRIAL

Schwab admits that CryptoPeak has requested a trial by jury.

ANSWER TO PRAYER FOR RELIEF

Schwab incorporates by reference its responses to paragraphs 1 through 15 of the Complaint and denies that CryptoPeak is entitled to any relief requested in Paragraphs (a) through (f) of CryptoPeak's Prayer for Relief or any judgment against Schwab.

DEFENSES

Pursuant to Federal Rule of Civil Procedure 8(c), Schwab asserts the following defenses to the causes of action asserted in the Complaint, undertaking to prove only those defenses on which it bears the burden of proof under the applicable law:

FIRST DEFENSE (No Infringement)

1. Schwab has not and does not infringe any valid and enforceable claim of the '150 patent, either literally or under the doctrine of equivalents, willfully or otherwise.

SECOND DEFENSE (Invalidity, Unenforceability)

2. The '150 patent, and each claim thereof, is invalid and/or unenforceable for failing to satisfy one or more of the requirements under the Patent Laws of the United States set forth in 35 U.S.C. §§ 101, *et seq.*, including without limitation 35 U.S.C. §§ 101, 102, 103, 112, and/or 282.

3. The '150 patent is unenforceable because CryptoPeak has misused the patent by attempting to enforce it despite knowing that it is invalid and/or not infringed.

THIRD DEFENSE (Notice, Damages, and Costs)

4. Pursuant to 35 U.S.C. § 286, CryptoPeak's recovery for alleged infringement of the '150 patent is limited to any alleged infringement committed no more than six years prior to the filing of its Complaint against Schwab.

5. To the extent CryptoPeak failed to comply with the notice provisions of 35 U.S.C. § 287, CryptoPeak may not recover damages for alleged infringement of the '150 patent committed prior to the filing of its Complaint against Schwab.

6. CryptoPeak is barred from recovering costs in connection with this action under 35 U.S.C. § 288.

FOURTH DEFENSE
(Failure to State a Claim)

7. The Complaint fails to state a claim upon which relief can be granted, including without limitation because all of the claims in the '150 patent are invalid under 35 U.S.C. § 101 for being directed to unpatentable abstract ideas.

FIFTH DEFENSE
(Not an Exceptional Case)

8. CryptoPeak cannot prove that this is an exceptional case justifying an award of attorney fees against Schwab pursuant to 35 U.S.C. § 285.

SIXTH DEFENSE
(No Injunctive Relief)

9. CryptoPeak is not entitled to injunctive relief because any alleged injury to CryptoPeak is not immediate or irreparable, and CryptoPeak has an adequate remedy at law.

SEVENTH DEFENSE
(Equitable Defenses)

10. CryptoPeak's claims are barred in whole or in part by waiver, laches, and equitable estoppel.

11. CryptoPeak's claims and/or the relief sought in the Complaint are barred by the doctrine of unclean hands.

Dated: October 1, 2015

Respectfully submitted

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COUNSEL FOR DEFENDANT

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CERTIFICATE OF SERVICE

I certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on this 1st day of October 2015. Any other counsel of record will be served by facsimile transmittal and/or U.S. Mail.

/s/ Aimee Housinger
Aimee Housinger