

# IP Bulletin

## Financial Institutions Under Attack

Over the last several months, Wolf Run Hollow LLC has sued no less than 34 financial institutions in Texas, Mississippi and Alabama alleging infringement of U.S. Patent No. 6,115,817 related to sending secure messages across unsecured networks. The requested relief includes compensatory damages, pre- and post-judgment interest, trebled damages for any infringement after notice of the patent and attorneys' fees. Many of the banks have settled by entering into a nonexclusive license agreement, though further details of the agreements were not disclosed. However, some have answered the complaint and counterclaimed that the '817 patent is invalid. This is classic patent troll activity that may expose your clients or contacts to bothersome and costly patent litigation or settlements.

Does your financial institution direct users of its Website(s) to send or receive messages via the institution's secure messaging systems?

Does your financial institution use methods and systems for facilitating the transmission of secure messages across unsecured networks?

If so, then your financial institution may be at risk from suit by Wolf Run Hollow. We can provide value by determining if we believe that an infringement question exists, assisting in a design-around process if we believe that an infringement question may be present, counseling with respect to obtaining and enforcing patent rights, and defending against allegations of infringement.

Wolf Run Hollow is based in Kinnelon, N.J., but all of the lawsuits have been filed in the Eastern District of Texas or the Northern District of Texas. Wolf Run Hollow alleges to be the exclusive licensee under the '817 patent and that each of the defendant financial institutions

infringed the claims of the '817 patent by making, using, providing, offering to sell and selling (directly or through intermediaries) secure messaging systems and methods via the defendant's website and by acting as the mastermind to direct or control users to request, transmit and/or receive secure messages via their secure messaging systems and methods. The '817 patent issued on September 5, 2000, and matured from application number 09/072,986, filed on May 6, 1998. David R. Whitmire was the sole inventor who assigned ownership of the '817 patent to Rapa Nui Marble LLC, 501 Silverside Road, Suite #149, Wilmington, Delaware 19809, as recorded at Reel/Frame 023148/0991 in the U.S. Patent & Trademark Office.

The financial institutions that have been sued include: Herring Bank, American State Bank, Benchmark Bank, Meridian Bank Texas, Plainscapital Bank, Plainscapital Corporation, United Central Bank, Mills County State Bank, Happy State Bank, HCSB, Wellington State Bank, First Bank & Trust Childress, State Bank of Texas, Compass Bancshares, Inc., Compass Bank, BancorpSouth Bank, Bank of Texas NA, Texas Capital Bancshares, Inc., Texas Capital Bancshares, NA, ViewPoint Bank, Woodforest Financial Group, Inc., Peoples State Bank, First International Bank, First Federal Bank Texas, First State Bank, Community Bank, Huntington State Bank, American State Bank, Guaranty Bond Bank, American Bank of Texas, First State Bank of Ben Wheeler, Southside Bank, Citizens State Bank, Independent Bank, Prosperity Bancshares, Inc., Prosperity Bank, Valliance Bank, Access 1st Capital Bank and Sanger Bank. ■

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We also have been principal counsel for both vendors and users of information technology products and services.

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We welcome your input for future articles. Please call Angelo J. Bufalino, the Intellectual Property and Technology Practice Chair, at 312-609-7850 with suggested topics, as well as other questions or comments concerning materials in this bulletin.

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