

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

FINTIV, INC.,

Plaintiff,

v.

PAYPAL HOLDINGS, INC.

Defendant.

§
§
§
§
§
§
§
§

Civil Action No.: 6:22-cv-00288-ADA

JURY TRIAL DEMANDED

**FINTIV, INC.’S RESPONSES AND OBJECTIONS TO
DEFENDANT’S FIRST SET OF INTERROGATORIES (NOS. 1-18 corrected)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Fintiv, Inc. (“Fintiv” or “Plaintiff”) hereby provides its responses and objections to Defendant PayPal Holdings, Inc.’s (“PayPal” or “Defendant”) First Set Interrogatories (Nos. 1-18 corrected).

GENERAL OBJECTIONS

1. All General Objections are hereby incorporated into each specific response. Any objection or lack of objection to any portion of an interrogatory is not to be deemed an admission.

2. Fintiv objects to each and every definition, instruction, and/or interrogatory to the extent that it purports to impose duties or obligations upon Fintiv in excess of or different from the rules and obligations imposed by the Federal Rules of Civil Procedure, the Local Rules for the Western District of Texas, and any other rules or applicable law.

3. Fintiv objects to each and every definition, instruction, and/or interrogatory as overly broad, unreasonably burdensome, and oppressive to the extent that it seeks, individually or collectively, information that is not relevant to any claim or defense of the case and therefore not

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

the attorney work-product immunity, settlement privilege and/or any other applicable privilege or immunity from discovery. Fintiv hereby applies all such privileges and/or immunities.

Subject to, and without waiving the foregoing objections, Fintiv responds as follows: This interrogatory is premature. If PayPal satisfies its burden by making a prima facie case of invalidity through its expert report, Fintiv will rebut PayPal’s position through its expert report. Fintiv reserves the right to supplement this response, including by supplementing it after receiving PayPal’s expert report and after submitting Fintiv’s expert report.

Discovery and Fintiv’s investigation in this case are ongoing, and Fintiv expressly reserves the right to amend and/or supplement this response, if necessary, as further information is discovered in this matter.

INTERROGATORY NO. 8:

For each Asserted Claim, Identify and Describe in detail Your contentions as to any secondary considerations (also known as objective indicia) relating to the alleged non-obviousness of the claimed subject matter, including but not limited to, Identifying any alleged long felt but unfulfilled need, failure of others, commercial success, commercial acquiescence, licensing, professional approval, lack of contemporaneous invention, copying, laudatory statements by others, or any other factors You contend are pertinent, and all relevant Documents and Things related to the subject matter of this interrogatory, and the Persons who are most knowledgeable of this subject matter.

RESPONSE TO INTERROGATORY NO. 8:

Fintiv incorporates by reference its General Objections as if fully set forth herein. Fintiv objects to this interrogatory as vague, ambiguous, overbroad, and unduly burdensome in its use of the terms “identify,” “describe,” “relating to,” “alleged,” and “subject matter.” Fintiv objects to

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

this interrogatory as overly broad and unduly burdensome as it purports to require Fintiv to “Identify and Describe in detail Your contentions as to any secondary considerations (also known as objective indicia) relating to the alleged non-obviousness of the claimed subject matter, including but not limited to, Identifying any alleged long felt but unfulfilled need, failure of others, commercial success, commercial acquiescence, licensing, professional approval, lack of contemporaneous invention, copying, laudatory statements by others, or any other factors You contend are pertinent, and all relevant Documents and Things related to the subject matter of this interrogatory, and the Persons who are most knowledgeable of this subject matter.” Fintiv further objects to this interrogatory because it imposes burdens and obligations different from, and beyond those imposed by, the local rules of the Western District of Texas or those imposed by the Federal Rules of Civil Procedure. Fintiv objects to this interrogatory to the extent that it prematurely requires expert discovery, opinions and/or testimony and improperly seeks Fintiv to marshal all its available proof and limit the evidence that Fintiv may present at the trial of this matter. Fintiv objects to this interrogatory to the extent that it seeks legal conclusions. As an initial matter, the ’845 Patent is entitled to a presumption of validity. *See* 35 U.S.C. § 282(a). PayPal bears the burden of proving invalidity by clear and convincing evidence, including any factors it contends support a finding of obviousness. *See Tech Licensing Corp. v. Videotek Inc.*, 545 F.3d 1316, 1327 (Fed. Cir. 2008); *Microsoft Corp. v. i4i Ltd. Partnership*, 131 S. Ct. 2238, 2243 (2011) (“[T]he burden of proving invalidity [is] on the attacker. That burden is constant and never changes.”); *Greenwood v. Hattori Seiko Co., Ltd.*, 900 F.2d 238, 241 (Fed. Cir. 1990) (“[O]ne attacking the validity of a patent must present clear and convincing evidence establishing the facts which lead to the legal conclusion that the patent is invalid.”). Fintiv objects to this interrogatory as compound to the extent it contains discrete subparts that each count separately toward the total number of

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

interrogatories allowed by the Court’s Scheduling Order (D.I. 33). Fintiv objects to this interrogatory to the extent it seeks information that is protected by the attorney-client privilege, the attorney work-product immunity, settlement privilege and/or any other applicable privilege or immunity from discovery. Fintiv hereby applies all such privileges and/or immunities.

Subject to, and without waiving the foregoing objections, Fintiv responds as follows:

This interrogatory is premature. If PayPal satisfies its burden by making a prima facie case of invalidity through its expert report, Fintiv will rebut PayPal’s position through its expert report. Fintiv reserves the right to supplement this response, including by supplementing it after receiving PayPal’s expert report and after submitting Fintiv’s expert report.

Discovery and Fintiv’s investigation in this case are ongoing, and Fintiv expressly reserves the right to amend and/or supplement this response, if necessary, as further information is discovered in this matter.

INTERROGATORY NO. 9:

For each Asserted Claim, Identify and Describe in detail Your complete contentions as to the primary improvements and benefits offered by the alleged invention over the prior art, including but not limited to, Identifying what the claim is directed to, whether and how the specification provides any illumination as to what the claim is directed to, whether and why, on an element-by-element basis, each claim element was or was not well understood, routine, and/or conventional to a person of ordinary skill before the earliest alleged priority date, whether and why each claim element recites or requires specific computer hardware that was not known to a person of ordinary skill before the earliest alleged priority date, and all relevant Documents and Things related to the subject matter of this interrogatory, and the Persons who are most knowledgeable of this subject matter.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

Discovery and Fintiv’s investigation in this case are ongoing, and Fintiv expressly reserves the right to amend and/or supplement this response, if necessary, as further information is discovered in this matter.

Dated: March 8, 2023

Respectfully submitted,

By: /s/ Jonathan K. Waldrop
Jonathan K. Waldrop (CA Bar No. 297903)
(Admitted in this District)
jwaldrop@kasowitz.com
Darcy L. Jones (CA Bar No. 309474)
(Admitted in this District)
djones@kasowitz.com
Marcus A. Barber (CA Bar No. 307361)
(Admitted in this District)
mbarber@kasowitz.com
John W. Downing (CA Bar No. 252850)
(Admitted in this District)
jdowning@kasowitz.com
Heather S. Kim (CA Bar No. 277686)
(Admitted in this District)
hkim@kasowitz.com
ThucMinh Nguyen (CA Bar No. 304382)
(Admitted in this District)
tnguyen@kasowitz.com
KASOWITZ BENSON TORRES LLP
333 Twin Dolphin Drive, Suite 200
Redwood Shores, California 94065
Telephone: (650) 453-5170
Facsimile: (650) 453-5171

Paul G. Williams (GA Bar No. 764925)
(Admitted in this District)
pwilliams@kasowitz.com
KASOWITZ BENSON TORRES LLP
1230 Peachtree Street N.E., Suite 2445
Atlanta, Georgia 30309
Telephone: (404) 260-6080
Facsimile: (404) 260-6081

Jeceaca An (NY Bar No. 5849898)
(Admitted *pro hac vice*)
jan@kasowitz.com
KASOWITZ BENSON TORRES LLP

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

1633 Broadway
New York, NY 10019
Telephone: (212) 506-1700
Facsimile: (212) 506-1800

Raymond W. Mort, III
Texas State Bar No. 00791308
raymort@austinlaw.com
THE MORT LAW FIRM, PLLC
100 Congress Ave, Suite 2000
Austin, Texas 78701
Tel/Fax: (512) 865-7950

Attorneys for Plaintiff
FINTIV, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served or delivered electronically to all counsel of record on this 8th day of March, 2023.

/s/ Jonathan K. Waldrop
Jonathan K. Waldrop