

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

CPI CARD GROUP - COLORADO, INC.,

Plaintiff,

vs.

LEIGHTON TECHNOLOGIES, LLC,

Defendants.

---

**COMPLAINT BY CPI CARD GROUP FOR DECLARATORY JUDGMENT**

---

Plaintiff CPI Card Group - Colorado, Inc. (CPI), hereby complains of Defendant Leighton Technologies, LLC (Leighton), and alleges as follows:

**PARTIES**

1. Plaintiff CPI is a corporation organized and existing under the laws of the state of Colorado with its principal place of business at 10368 W. Centennial Road, Littleton, Colorado 80127.

2. On information and belief, Defendant Leighton is a corporation organized and existing under the laws of the State of New York with its principal place of business at 75 Montebello Road, Suffern, New York 10901.

**JURISDICTION AND VENUE**

3. This is an action for a declaratory judgment of patent non-infringement, patent invalidity, and patent unenforceability. This Court has subject matter jurisdiction over this action on these grounds:

(a) The Declaratory Judgments Act, 28 U.S.C. § 2201, this being a complaint for a declaratory judgment pursuant to the laws of the United States;

(b) 28 U.S.C. § 1331, this being a civil action arising under the laws of the United States; and

(c) 28 U.S.C. § 1338 (a), this being a civil action arising under the Patent Laws of the United States.

4. As set forth below, a justiciable controversy has arisen and exists between CPI and Leighton concerning U.S. Patent Nos. 6,214,155 (the '155 Patent); 6,514,367 (the '367 Patent); 5,817,207 (the '207 Patent); 6,036,099 (the '099 Patent); 6,441,736, reissued as RE40,145 (the '736 Patent); and 6,557,766 (the '766 Patent) (collectively, the Leighton Patents).

5. This Court has personal jurisdiction over Leighton inasmuch as Leighton sent cease-and-desist letters to CPI in this State and District; it has significant contacts with this State and District; and it has committed acts in this State and District that are the subject of the allegations set forth herein.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c).

### **FACTUAL ALLEGATIONS**

#### **The Controversy Between Leighton and CPI**

7. CPI is the premier plastic credit, debit, and identity-card manufacturer in the world today. Its state-of-the-art facilities allow it to create virtually any card for any project, including memory, microprocessor, EMV, contact and contactless cards for the financial and ID card markets.

8. Keith R. Leighton claims to be the inventor of several United States patents, the Leighton Patents, relating to the processes of the manufacture of certain plastic cards containing embedded microchips, including the '155 Patent, the '367 Patent, the '207 Patent, the '099 Patent, the '736 Patent (reissued as RE40,145), and the '766 Patent.

9. Leighton is the recorded owner by assignment of the Leighton Patents.

10. The Leighton Patents all generally relate to the lamination process for RFID (or “contactless”) cards that use an embedded chip to enable secure financial payments and access to secure locations. Leighton makes this claim on its website <http://www.leighton-tech.com>.

11. Leighton does not make any products. It was “formed for the purposes of enforcing a portfolio of patents.” Its “enforcement campaign for the Leighton patents is being conducted by General Patent Corporation, which offers patent enforcement on a contingency basis.”

12. Leighton is a patent troll whose business is litigation and who in no way advances the “Progress of Science and useful Arts.” U.S. Const. Art. 1, Sec. 8.

13. On March 24, 2004, counsel for General Patent Corporation International wrote to CPI, asserting that certain CPI-manufactured cards allegedly infringed one or more of the Leighton patents.

14. CPI responded that its products and services did not infringe any valid claim of any Leighton patent.

15. Leighton did not contact CPI again for nearly six years. Then, on November 9, 2009, counsel for Leighton Technologies LLC wrote a letter to CPI, again asserting that certain CPI-manufactured cards allegedly infringed one or more of the Leighton patents

16. CPI responded that its products and services did not infringe any valid claim of any Leighton patent, and asked Leighton to specifically state the basis for Leighton’s allegations against CPI.

17. It has been more than six years since a Leighton-affiliated entity first claimed that CPI-manufactured cards allegedly infringed one or more of the Leighton patents.

18. Leighton has never filed suit against CPI, yet the threat of litigation now hangs over CPI.

19. In January 2010, Leighton filed suit against the United State of America in the United States Court of Federal Claims, Case No. 10-3C.

20. In Leighton's complaint against the United States, Leighton asserted that any product complying with International Standards Organization (ISO) standard no. 14443 infringes one or more claims of the Leighton patents. Paragraphs 14-15 of Leighton's complaint state that "smart cards that comply with ISO 14443 infringe one or more claims of the [Leighton Technologies] Patents."

21. CPI sells products that comply with ISO 14443.

22. In Leighton's complaint against the United States, Leighton specifically names Athena Smartcard Inc. and TecSec, Inc., as providing products that infringe one or more claims of the Leighton patents.

23. CPI has supplied products to Athena Smartcard and TecSec.

24. In 2010, in response to Leighton's litigation in United States Court of Federal Claims, TecSec demanded indemnity in connection with the Leighton Patents from CPI for sales to both the United States Government and private entities.

25. In 2010, in response to Leighton's litigation in United States Court of Federal Claims, Athena Smartcard demanded indemnity in connection with the Leighton patents from CPI for sales to both the United States Government and private entities.

26. In light of (a) Leighton's 2004 and 2009 correspondence, (b) its public assertion that ISO 14443 infringes one or more claims of the Leighton Patents in its lawsuit against the United States of America, and (c) the 2010 indemnity demands from TecSec and Athena, a justiciable controversy has arisen and exists between CPI and Leighton concerning the infringement and validity of the Leighton Patents.

### **The Leighton Patents Are Invalid**

27. Upon information and belief, Leighton is not the inventor of the subject matter claimed in the Leighton Patents. Therefore, the patents are invalid for failure to meet the requirements of 35 U.S.C. § 101.

28. Upon information and belief, the subject matter of the Leighton Patents are invalid for failure to meet the patentability requirements of 35 U.S.C. §§ 102 (a) and/or (b).

29. Upon information and belief, the Leighton Patents are invalid for failure to name the actual inventors and/or to name proper co-inventors. During the prosecution of the applications for all of the Leighton Patents, Leighton failed to disclose that he is not the inventor of and/or that another is the actual inventor of and/or that there are other co-inventors of the subject matter claimed in the Leighton Patents by virtue of Leighton's employment and consulting relationships at the time the Leighton Patents were conceived and applied for. A Federal judge already has observed that "it seems to me that it is possible to conclude from the evidence that Mr. Leighton did not conceive of 'his' invention at all." Memo, 12/3/07, *Leighton v. Oberthur*, U.S. D.C., S.D. N.Y., Case No. 04 Civ. 2496 (CM)(LMS) (McMahon, J.).

30. Upon information and belief, the claimed subject matter of the Leighton Patents would have been obvious to one of skill in the relevant art, upon the respective dates of invention of these patents. Therefore, the Leighton Patents are invalid for failure to meet the patentability requirements of 35 U.S.C. § 103(a).

31. The judicially-created doctrine of obviousness-type double patenting prohibits an inventor from obtaining a second patent for claims that are not patentably distinct from the claims of a first patent – any such patent is rendered invalid. The Leighton Patents are invalid under the doctrine of obvious-type double patenting.

### **The Leighton Patents Are Unenforceable**

32. Upon information and belief, Leighton and his attorneys were aware of information material to the claims of the Leighton Patents and, with a deceitful intent, chose not to disclose that information to the United States Patent and Trademark Office thereby violating their duty of candor.

33. Upon information and belief, Leighton is aware of the failure to disclose material information with an intent to deceive the United States Patent and Trademark Office, and the resulting unenforceability of at least some of the Leighton Patents. Despite this knowledge, Leighton has attempted, and continues to attempt, to extort licensing fees from CPI for these unenforceable patents.

34. *First*, the information set forth above with respect to the inventorship and ownership of the Leighton Patents was material to the patentability of the inventions claimed in the Leighton Patents.

35. Upon information and belief, Leighton intentionally withheld this information from the United States Patent and Trademark Office with an intent to deceive the United States Patent and Trademark Office.

36. *Second*, during the prosecution of the `155 Patent application, Leighton and his attorneys failed to disclose the existence of co-pending applications for U.S. Patent No. 6,441,736 (the `736 Patent) and `367 Patents, as well as prior art cited by the Examiner in the co-pending application for the `367 Patent, including GB 2279610 to named inventor Charles R. Jarvis (the Jarvis Patent). This information was material to the patentability of the inventions claimed in the `155 Patent.

37. Similarly, during prosecution of the `367 Patent application, Leighton and his attorneys failed to disclose the existence of the co-pending applications for the `155 and `736

Patents. This information was material to the patentability of the inventions claimed in the `367 Patent.

38. Upon information and belief, Leighton and his attorneys intentionally withheld the existence of the co-pending applications for the `736 and `367 Patents and the Jarvis Patent with an intent to deceive the United States Patent and Trademark Office in connection with the `155 Patent application.

39. Upon information and belief, Leighton and his attorneys intentionally withheld the existence of the co-pending applications for the `155 and `736 Patents with an intent to deceive the United States Patent and Trademark Office in connection with the `367 Patent application.

40. At least the `155 and `367 Patents are therefore unenforceable due to inequitable conduct by Leighton and his attorneys during the application therefor.

#### **FIRST CLAIM FOR RELIEF**

##### **(Declaration of Non-Infringement of the Leighton Patents)**

41. CPI incorporates its factual allegations by reference.

42. Leighton has asserted that CPI's products infringe one or more of the Leighton Patents.

43. As properly interpreted, CPI's products do not infringe upon any valid and enforceable claim of the Leighton Patents.

44. CPI is entitled to a declaration of non-infringement of the Leighton Patents, pursuant to 28 U.S.C. § 2201.

#### **SECOND CLAIM FOR RELIEF**

##### **(Declaration of Invalidity of the Leighton Patents)**

45. CPI incorporates its factual allegations by reference.

46. Should any of the claims of the Leighton Patents be interpreted to cover CPI's products, those claims would be invalid pursuant to 35 U.S.C. §§ 101, 102, and/or 103. Further, upon information and belief, the Leighton Patents are invalid for one or more of the provisions codified at 35 U.S.C. § 101 *et seq.*

47. CPI is entitled to a declaration of invalidity of the Leighton Patents, pursuant to 28 U.S.C. § 2201.

### **THIRD CLAIM FOR RELIEF**

#### **(Declaration of Unenforceability of the Leighton Patents Due to Inequitable Conduct)**

48. CPI incorporates its factual allegations by reference.

49. For at least the reasons set forth above, the Leighton Patents were procured by inequitable conduct and therefore, are unenforceable.

50. CPI is entitled to a declaration that the Leighton Patents are unenforceable due to inequitable conduct, pursuant to 28 U.S.C. § 2201.

### **FOURTH CLAIM FOR RELIEF**

#### **(Declaration of Unenforceability of the Leighton Patents Due to Patent Misuse)**

51. CPI incorporates its factual allegations by reference.

52. For the reasons set forth above, Leighton has misused one or more of the Leighton Patents by attempting to obtain licenses therefor, knowing that the Leighton Patents are invalid and/or were procured by inequitable conduct.

53. CPI is entitled to a declaration that the Leighton Patents are unenforceable for patent misuse, pursuant to 28 U.S.C. § 2201.

### **FIFTH CLAIM FOR RELIEF**

#### **(Declaration of Unenforceability of and Unavailability of Damages Related to the Leighton Patents Due to Laches, Estoppel, and 35 U.S.C. § 286)**

54. CPI incorporates its factual allegations by reference.

55. For the reasons set forth above, Leighton may no longer enforce the Leighton Patents against CPI. It made allegations of infringement against CPI over six years ago. CPI informed Leighton that its allegations were unfounded. Leighton never filed suit.

56. CPI is entitled to a declaration that the Leighton Patents are unenforceable or that Leighton may recover no damages by reason of laches, estoppel, and/or 35 U.S.C. § 286.

### **PRAYER FOR RELIEF**

WHEREFORE, CPI requests entry of judgment in its favor and against Leighton as follows:

A. That Leighton, its agents, servants, officers, directors, employees, attorneys, privies, representatives, successors, assigns, and parent and subsidiary entities, and any and all persons in act of concert or participation with any of them, be temporarily, preliminarily and permanently enjoined from:

1. Threatening to assert or asserting any of the Leighton Patents against CPI, it's agents, employees, suppliers or customers;

2. Claiming that CPI's products infringe any claim of the Leighton Patents;

3. Claiming that any of the Leighton Patents are valid and enforceable;

B. That the Leighton Patents are not infringed by the importation, exportation, manufacture, advertising, distribution, sale or use of CPI's products

C. That the Leighton Patents and the claims thereof are invalid;

D. That the Leighton Patents are unenforceable due to inequitable conduct;

E. That the Leighton Patents are unenforceable due to patent misuse;

F. That this is an exceptional case pursuant to 35 U.S.C. § 285;

G. Awarding CPI its attorneys' fees and costs incurred in prosecuting this action, including expert witness fees; and

H. Awarding such other and further preliminary and permanent relief to CPI as the Court deems equitable and appropriate.

Dated: October 22, 2010

WINSTON & STRAWN LLP

By: /s/ - David S. Bloch  
David S. Bloch

David S. Bloch (Cal. Bar. No. 184530)  
[dbloch@winston.com](mailto:dbloch@winston.com)  
Matthew A. Scherb (Cal. Bar. No. 237461)  
(application for admission to this Court forthcoming)  
[mscherb@winston.com](mailto:mscherb@winston.com)  
WINSTON & STRAWN LLP  
101 California Street  
San Francisco, California 94111  
Telephone: 415-591-1000  
Facsimile: 415-591-1400

Attorneys for Plaintiff  
CPI Card Group

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
**PI CARD GROUP - COLORADO, INC.**

**(b)** County of Residence of First Listed Plaintiff \_\_\_\_\_  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorney's (Firm Name, Address, and Telephone Number)  
**David S. Bloch, Matthew A. Scherb, WINSTON & STRAWN LLP**  
**01 California Street, San Francisco, CA 94111 (415) 591-1000**

**DEFENDANTS**  
**LEIGHTON TECHNOLOGIES, LLC**

County of Residence of First Listed Defendant \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION	FEDERAL TAX SUITS
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Patent Act, 35 U.S.C. 101 et seq.**

Brief description of cause:  
**Action for declaratory relief seeking declaration of non-infringement, invalidity, and unenforceability of patents**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$** \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 10/22/2010

SIGNATURE OF ATTORNEY OF RECORD: /s/ - David S. Bloch

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Court Name: U.S. District Court, Colorado  
Division: 1  
Receipt Number: COX032293  
Cashier ID: sg  
Transaction Date: 10/22/2010  
Payer Name: MATTHRE A SCHERB

---

CIVIL FILING FEE  
For: MATTHRE A SCHERB  
Amount: \$350.00

---

CREDIT CARD  
Amt Tendered: \$350.00

---

Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

10-CV-02583

A fee of \$45.00 will be assessed on any returned check.