

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>TRINITY TECHNICAL GROUP, INC.</b>	§	<b>Civil Action No. 3:12-CV-04602-N</b>
	§	
<i>Plaintiff and Counter-Defendant</i>	§	
	§	
<b>v.</b>	§	<b>Patent Infringement Case</b>
	§	
<b>SIEMENS INDUSTRY, INC.</b>	§	<b>Jury Trial Requested</b>
	§	
<i>Defendant and Counterclaimant</i>	§	

**PLAINTIFF’S SECOND AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, Trinity Technical Group, Inc., and files this its Second Amended Complaint against Siemens Industry, Inc., and respectfully shows the Court as follows:

**I.**  
**THE PARTIES**

1. Trinity Technical Group, Inc. (“TTG”) is a Texas Corporation with its principal place of business at 2118 Royal Dominion Court, Arlington, Texas 76006-4836.

2. Defendant, Siemens Industry, Inc. (“Siemens”) is a Delaware Corporation having its principal place of business at 170 Wood Avenue South, Iselin, New Jersey 08830-2741. Siemens may be served by and through its Registered Agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

**II.**  
**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising out of the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction of the patent infringement, and other related claims that are part of the same controversy, pursuant to 28 U.S.C. § 1331, 1338, and 1367.

4. Personal jurisdiction exists over Siemens because it has sufficient minimal contacts with the forum as a result of business conducted within the State of Texas and within the Northern District of Texas, including maintaining offices throughout the State of Texas and at 1401 Nolan Ryan Expressway, Arlington, Texas. Siemens has further subjected itself to jurisdiction by its conduct in making, using, selling, offering to sell and/or importing infringing products within the State of Texas and within the Northern District of Texas.

5. Venue is proper in this Court under 28 U.S.C. § 1391 because Siemens may be found in this Judicial District (having offices at 1401 Nolan Ryan Expressway, Arlington, Texas); Siemens is subject to personal jurisdiction within this Judicial District; and a substantial part of the events or omissions giving rise to this lawsuit occurred in this Judicial District. Venue is also proper under 28 U.S.C. § 1400(b) because Siemens may be found in this Judicial District, has a regular and established place of business in the Judicial District, and has committed acts of infringement in the Judicial District.

**III.**  
**THE PATENTS**

6. On December 27, 2011, U.S. Patent No. 8,086,346 entitled “Processing of Undeliverable as Addressed Mail” (the “346 Patent”) was duly and legally issued by the

United States Patent and Trademark Office (“USPTO”). A true and correct copy of the 346 Patent is attached as Exhibit A. TTG holds all rights, title and interest to the 346 Patent, including the right to enforce this Patent.

7. On November 13, 2012, U.S. Patent No. 8,311,667, entitled “Processing of Undeliverable as Addressed Mail,” (the “667 Patent”) a continuation of the 346 Patent, was duly and legally issued by the USPTO. A true and correct copy of the 667 Patent is attached as Exhibit B. TTG holds all rights, title and interest to the 667 Patent, including the right to enforce this Patent.

8. On January 8, 2013, U.S. Patent No. 8,350,173 entitled “Determining Disposition of Undeliverable as Addressed Mail” (the “173 Patent”) was duly and legally issued by the USPTO. A true and correct copy of the 173 Patent is attached as Exhibit C. TTG holds all rights, title and interest to the 173 Patent including the right to enforce this Patent.

9. On April 2, 2013, U.S. Patent No. 8,412,372 entitled “Processing of Undeliverable as Addressed Mail” (the “372 Patent”) was duly and legally issued by the USPTO. A true and correct copy of the 372 Patent is attached as Exhibit D. TTG holds all rights, title and interest to the 372 Patent, including the right to enforce this Patent.

10. The timeline with regard to these patents is as follows:

- a. April 24, 2007: filing of U.S. Provisional Patent Application Ser. No.: 60/925,874 entitled “Method And System For Undeliverable As Addressed Item Detection And Interception.”

- b. December 4, 2007: filing of U.S. Provisional Patent Application Ser. No.: 61/005,225 entitled “Method and System For Optimized Undeliverable As Addressed Item Detection And Interception.”
- c. March 17, 2008: filing of U.S. Provisional Patent Application Ser. No.: 61/069,537 entitled “Method And System For Optimized Characterization, Resolution, Finalization And Handling Of Undeliverable As Addressed Items.”
- d. April 24, 2008: filing of application Ser. No.: 12/108,681 (now U.S. Patent No. 8,086,346) “Processing of Undeliverable as Addressed Mail” claiming the benefit of priority to U.S. Provisional Patent Application Ser. No.: 60/925,874.
- e. July 29, 2008: filing of application Ser. No.: 12/181,884, (now U.S. Patent No. 8,350,173) “Determining Disposition Of Undeliverable As Addressed Mail” claiming the benefit of priority to U.S. Provisional Patent Application Ser. No.: 61/005,225 and U.S. Provisional Patent Application Ser. No.: 61/069,537.
- f. October 30, 2008: publication of application Ser. No.: 12/108,681, (now U.S. Patent No. 8,086,346) “Processing of Undeliverable as Addressed Mail”, Publication No.: US 2008/0269946.
- g. June 04, 2009: publication of application Ser. No.: 12/181,884 (now U.S. Patent No. 8,350,173) entitled “Determining Disposition of Undeliverable as Addressed Mail”, Publication No.: US 2009/0143898.

- h. November 28, 2011: filing of application Ser. No.: 13/305,420 (now U.S. Patent No. 8,331,667) “Processing Of Undeliverable As Addressed Mail” a continuation of application Ser. No.: 12/108,681, (now U.S. Patent No. 8,086,346) “Processing of Undeliverable as Addressed Mail” claiming the benefit of priority to U.S. Provisional Patent Application Ser. No.: 60/925,874.
- i. December 27, 2011: grant of U.S. Patent No. 8,086,346 “Processing of Undeliverable as Addressed Mail” (application Ser. No.: 12/108,681).
- j. March 22, 2012: publication of application Ser. No.: 13/305,420 (now U.S. Patent No. 8,331,667) “Processing Of Undeliverable As Addressed Mail”, Publication No.: US 2012/0072014.
- k. October 8, 2012: filing of application Ser. No.: 13/647,370 (now U.S. Patent No. 8,412,372) “Processing of Undeliverable as Addressed Mail” a continuation of application Ser. No.: 13/305,420 (now U.S. Patent No. 8,331,667) “Processing of Undeliverable as Addressed Mail” which is a continuation of application Ser. No.: 12/108,681 (now U.S. Patent No. 8,036,346) “Processing of Undeliverable as Addressed Mail”. Application Ser. No.: 13/647,370 (now U.S. Patent No. 8,412,372) claims the benefit of priority to U.S. Provisional Patent Application Ser. No.: 60/925,874.
- l. November 13, 2012: grant of U.S. Patent No. 8,331,667 “Processing Of Undeliverable As Addressed Mail” (application Ser. No.: 13/305,420).

- m. January 8, 2013: grant of U.S. Patent No. 8,350,173 “Determining Disposition of Undeliverable as Addressed Mail” (application Ser. No.: 12/181,884).
- n. January 21, 2013: publication of application Ser. No.: 13/647,370 (now U.S. Patent No. 8,412,372) entitled “Processing of Undeliverable Addressed Mail”, Publication No.: US 2013/0030564.
- o. April 2, 2013: grant of U.S. Patent No. 8,412,372 “Processing of Undeliverable as Addressed Mail” (application Ser. No.: 13/647,370).

**IV.**  
**FACTUAL OVERVIEW**

11. Trinity Technical Group, Inc. and its current and former principals are the inventors of the Patents, technology, and intellectual property at issue in this lawsuit, which generally represent significant improvements in the methods for intercepting, handling and processing of mail that is “Undeliverable as Addressed” (“UAA”). TTG’s methods and technology would eliminate various steps and/or pieces of machinery and/or phases of processing for UAA mail, by the creation and use of various new processes and technological improvements that, upon implementation, would represent a substantial savings to any postal service entity that processes UAA mail.

12. In April, 2008, TTG had discussions with Siemens regarding the potential benefit for Siemens to acquire and/or license TTG’s intellectual property, including TTG’s now patented fingerprint and IMB technology and other improvements for processing of UAA mail. As part of those discussions, on or about May 1, 2008, TTG provided Siemens with a summary description of its “Optimized Undeliverable as Addressed (UAA) Detection,

Interception, and Processing” technology. That document explained the “Opportunity” provided by TTG’s new technology, methods and processes which, when applied, would result in an estimated \$160 million in annual cost savings to the United States Postal Service (“USPS”) from reduced mail handling and processing related to UAA mail.

13. Siemens was interested in TTG’s technology because it is a major contractor with the USPS and it recognized that TTG’s technology could provide Siemens with additional business opportunities within its existing agreements with USPS. As a result, TTG provided Siemens with a confidential and proprietary PowerPoint presentation, titled “Optimized UAA Detection, Interception and Processing” including two case examples, specifically annotated as “Patents Pending,” on May 20, 2008. That presentation used flow charts and diagrams to depict the specific improvements in current UAA mail processing that would be achieved if TTG’s new methods, processes, and technology were implemented.

14. In June of 2008, Siemens told TTG that it had not yet decided how it wanted to proceed with regard to TTG’s technology but was “currently evaluating several scenarios.” In July, Siemens requested a position paper from TTG “concerning pursuit of common business with the USPS, notably enhanced waste mail treatment in the context of PARS.” TTG outlined its position and thoughts in a letter to Siemens. Siemens thanked TTG for its interest and told TTG that before it could “consider employing any of the processes” disclosed, it would need “to better understand the potential innovations” and requested copies of TTG’s pending patent applications. According to Siemens, further discussions would take place “after Siemens had a chance to review [TTG’s] patent

applications.” TTG believed these representations from Siemens, relied upon them, and provided a detailed overview and its pending patent applications to Siemens for “evaluation.”

15. In August of 2008, Siemens told TTG that its review of TTG’s intellectual property was taking longer than planned but specifically told TTG that it would be back in touch once it had “completed [its] review and determined the applicability and value of your claims” as reflected in the information provided. TTG relied on these representations, made several follow-up inquiries, and provided additional information in September.

16. In October of 2008, Siemens provided TTG with an update indicating that it was still reviewing the “value and patentability” of TTG’s intellectual property and suggesting that “applicability and value” could be “more meaningfully” addressed once Siemens completed its review of the patentability questions. However, Siemens told TTG that it was “committed to assuring the evaluation will be done quickly, constructively and with your involvement.”

17. TTG continued to believe and rely upon these representations by Siemens and discussions regarding the patentability of TTG’s intellectual property continued. In late November of 2008, Siemens reported it was “making progress” and requested additional time to “evaluate” TTG’s technology. Again, TTG believed Siemens and relied upon such representations as it continued to provide details regarding its technology to Siemens.

18. To facilitate further discussions between Siemens and TTG, Siemens told TTG that all parties would be required to sign a non-disclosure agreement prepared by Siemens, titled “Confidentiality Agreement,” for the stated “*Purpose: To determine whether TTG has additional technology that Siemens may desire to procure in order to supplement the*

*Information.*” “Information” is defined in the Confidentiality Agreement as “*Siemens and USPS related technological and business information related to the postal automated redirection system, including undeliverable as addressed mail, mail sorting and image capture and video encoding.*” TTG relied upon the representations of Siemens, signed the Confidentiality Agreement as requested, and continued to participate in discussions and provide requested information and details concerning TTG’s technology to Siemens.

19. Siemens continued to review TTG’s intellectual property, including the patent applications and associated drawings specifically requested and received, and in December of 2008 requested a meeting with the representatives of TTG, purportedly to discuss a potential sale or licensing agreement in more detail.

20. Siemens requested that TTG deliver another presentation that included the content and application domain of TTG’s intellectual property. Siemens specifically asked for “charts and highlighted drafts of” the TTG claims, as contained in the application for the 346 Patent entitled “Processing of UAA Mail,” and the application for the 173 Patent entitled “Determining Disposition of UAA Mail.” Siemens stated it wanted to “[u]nderstand precisely from TTG what your patents cover and in that context review and discuss your Claims – so we will all agree what are the crucial assets you wish to sell or license.” Siemens agreed that it would present information regarding the volume of UAA mail that would be positively impacted through the use of TTG’s intellectual property, and then “begin discussion of various purchasing and licensing arrangements and payment model thereof.” Again, TTG believed Siemens’ representations and relied on them by agreeing to provide the additional information requested.

21. At a meeting on January 27, 2009, TTG presented Siemens with the additional requested information concerning TTG's intellectual property. After TTG disclosed the additional requested details of its technology to Siemens, Siemens identified what it recognized as the potential revenue to be generated using TTG's technology within Siemens' then-existing contracts and costs models with the USPS. However, while Siemens clearly recognized the substantial value of its using TTG's technology in conjunction with its Postal Automated Redirection System (recognized by Siemens to be between 26 and 32 million dollars, at that time), Siemens made no meaningful offer to purchase or license TTG's technology.

22. In reliance on Siemens' representations and the stated value of Siemens using TTG's technology, TTG continued discussions with Siemens regarding the potential uses and value of its technology, believing at the time that Siemens was negotiating in good faith. However, Siemens never made a meaningful offer for TTG's technology and — after stringing TTG along for a year, during which time Siemens had sought and received confidential information from TTG regarding TTG's technology — Siemens announced on March 19, 2009 that it would not participate in further negotiations to license or purchase TTG's technology.

23. Approximately 18 months later, and two years after Siemens began gathering TTG's confidential information, Siemens announced it had been awarded an \$80 million contract with the United States Postal Service ("USPS"), for Postal Automated Redirection System ("PARS") "*software and computer hardware enhancements...to increase system*

*performance, read rates, error rates, and processing functionality.*”<sup>1</sup> PARS is the system used by the USPS to process UAA mail. According to the statement of work from the USPS, the PARS upgrade contract awarded to Siemens included “*a new fingerprinting technique known as Advanced Reader Technology (ARTid) to yield significantly improved interception rates.*”<sup>2</sup> Siemens’ Logistics newsletter for January 2011 referred to its new “*fingerprint technology...which goes by the name of ARTid*” and “*works with the visible features of the parcel throughout the process.*”<sup>3</sup> These descriptions of the “enhancements . . . to increase system performance, read rates, error rates, and processing functionality” within the PARS system that Siemens had sold to the USPS, in fact, describe TTG’s intellectual property, which TTG first began discussing with Siemens in April of 2008 and which is the subject matter of the various patents and technology owned by TTG and at issue here. It is believed that Siemens sought and received the \$80 million contract with the USPS, using TTG’s patented technology and confidential information that was provided to Siemens for the limited purpose of exploring a possible transaction.

24. Upon information and belief, Siemens holds no U.S. patents for the improvements to the PARS system referenced in the announcement of the August 2010 USPS contract awarded to Siemens.

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<sup>1</sup> See August 16, 2010 contract announcements at Exhibit E.

<sup>2</sup> See Exhibit F, PARS Phase 4, General Requirement.

<sup>3</sup> See Exhibit G, January 2011 Siemens’ Logistics Newsletter, page 4.

**V.**  
**PATENT INFRINGEMENT**

**A) U.S. Patent No. 8,086,346**

25. TTG repeats and reasserts the allegations above as if fully set forth herein.

26. The 346 Patent is valid and enforceable.

27. Upon information and belief, Siemens has infringed and continues to infringe the 346 Patent by making, using, selling, offering for sale and/or importing in or into the United States, without authority, products that fall within the scope of the 346 Patent, in violation of 35 U.S.C. § 271, specifically including, but not necessarily limited to, the products and services sold to the United States Postal Service in accordance with the August 12, 2010 contract.

28. Upon information and belief, Siemens' conduct in making, using, selling, offering for sale and/or importing in or into the United States, without authority, products that fall within the scope of the 346 Patent has also induced infringement of the 346 Patent under 35 U. S. C. § 271(b).

29. Upon information and belief, Siemens' conduct in making, using, selling, offering for sale and/or importing in or into the United States, without authority, components that fall within the scope of the 346 Patent has also contributed to the infringement of the claims of the 346 Patent under 35 U. S. C. § 271(c). Upon information and belief, Siemens has offered to sell, sold, or imported components that fall within the scope of the 346 Patent — which form a material part of the invention of the 346 Patent, are uniquely made or adapted for patented use and have no substantial non-infringing uses — for use in practicing a patented process.

30. Siemens knew or should have known of the 346 Patent, but engaged in the infringing, inducing and contributing conduct nonetheless. Siemens had actual knowledge of the claims and components contained in the application for the 346 Patent, but has engaged in the infringing, inducing and contributing conduct nonetheless. Therefore, Siemens' infringement is willful.

31. As a direct and proximate result of Siemens' acts of patent infringement, TTG has been and continues to be injured and has sustained and will continue to sustain substantial actual damages in an amount not presently known.

32. TTG has incurred and will continue to incur attorneys' fees, costs and expenses in the prosecution of this action for patent infringement. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285 such that TTG is entitled to recover its reasonable and necessary fees. Additionally, TTG is entitled to up to three times actual damages as a result of Siemens willful infringement under 35 U.S.C. § 271. Siemens' conduct with regard to the intellectual property of TTG was and is deliberate, intentional, malicious, motivated by a desire for maximum financial gain combined with harm to TTG, and without just cause or excuse.

**B) U.S. Patent No. 8,331,667**

33. TTG repeats and reasserts the allegations above as if fully set forth herein.

34. The 667 Patent is valid and enforceable.

35. Upon information and belief, Siemens has infringed and continues to infringe the 667 Patent by making, using, selling, offering for sale and/or importing in or into the United States, without authority, products that fall within the scope of the 667 Patent, in

violation of 35 U.S.C. § 271, specifically including, but not necessarily limited to, the products and services sold to the United States Postal Service in accordance with the August 12, 2010 contract.

36. Upon information and belief, Siemens' conduct in making, using, selling, offering for sale and/or importing in or into the United States, without authority, products that fall within the scope of the 667 Patent has also induced infringement of the 667 Patent under 35 U. S. C. § 271(b).

37. Upon information and belief, Siemens' conduct in making, using, selling, offering for sale and/or importing in or into the United States, without authority, components that fall within the scope of the 667 Patent has also contributed to the infringement of the claims of the 667 Patent under 35 U. S. C. § 271(c). Upon information and belief, Siemens has offered to sell, sold, or imported components that fall within the scope of the 667 Patent — which form a material part of the invention of the 667 Patent, are uniquely made or adapted for the patented use and have no substantial non-infringing uses — for use in practicing a patented process.

38. Upon information and belief, Siemens had actual knowledge, knew or should have known of the claims and components contained in application for the 667 Patent, but has engaged in the infringing, inducing and contributing conduct nonetheless. Therefore, Siemens' infringement is willful.

39. As a direct and proximate result of Siemens' acts of patent infringement, TTG has been and continues to be injured and has sustained and will continue to sustain substantial actual damages in an amount not presently known.

40. TTG has incurred and will continue to incur attorneys' fees, costs and expenses in the prosecution of this action for patent infringement. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285 such that TTG is entitled to recover its reasonable and necessary attorneys' fees and expenses. Additionally, TTG is entitled to up to three times actual damages as a result of Siemens' willful infringement under 35 U.S.C. § 271. Siemens' conduct with regard to the intellectual property of TTG was and is deliberate, intentional, malicious, motivated by a desire for maximum financial gain combined with harm to TTG, and without just cause or excuse.

**C) U.S. Patent No. 8,350,173**

41. TTG repeats and reasserts the allegations above as if fully set forth herein.

42. The 173 Patent is valid and enforceable.

43. Upon information and belief, Siemens has infringed and continues to infringe the 173 Patent by making, using, selling, offering for sale and/or importing in or into the United States, without authority, products that fall within the scope of the 173 Patent, in violation of 35 U.S.C. § 271, specifically including, but not necessarily limited to, the products and services sold to the United States Postal Service in accordance with the August 12, 2010 contract.

44. Upon information and belief, Siemens' conduct in making, using, selling, offering for sale and/or importing in or into the United States, without authority, products that fall within the scope of the 173 Patent has also induced infringement of the 173 Patent under 35 U. S. C. § 271(b).

45. Upon information and belief, Siemens' conduct in making, using, selling, offering for sale and/or importing in or into the United States, without authority, components that fall within the scope of the 173 Patent has also contributed to the infringement of the claims of the 173 Patent under 35 U. S. C. § 271(c).

46. Upon information and belief, Siemens has offered to sell, sold, or imported components that fall within the scope of the 173 Patent — which form a material part of the invention of the 173 Patent and have no substantial non-infringing uses — for use in practicing a patented process.

47. Siemens had actual knowledge, knew or should have known of the claims and components of the 173 Patent, but has engaged in the infringing, inducing and contributing conduct nonetheless. Therefore, Siemens' infringement is willful.

48. As a direct and proximate result of Siemens' acts of patent infringement, TTG has been and continues to be injured and has sustained and will continue to sustain substantial actual damages in an amount not presently known.

49. TTG has incurred and will continue to incur attorneys' fees, costs and expenses in the prosecution of this action for patent infringement. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285 such that TTG is entitled to recover its reasonable and necessary attorneys' fees and expenses. Additionally, TTG is entitled to up to three times actual damages as a result of Siemens' willful infringement under 35 U.S.C. § 271. Siemens' conduct with regard to the intellectual property of TTG was and is deliberate, intentional, malicious, motivated by a desire for maximum financial gain combined with harm to TTG, and without just cause or excuse.

**D) U.S. Patent No. 8,412,372**

50. TTG repeats and reasserts the allegations above as if fully set forth herein.

51. The 372 Patent is valid and enforceable.

52. Upon information and belief, Siemens has infringed and continues to infringe the 372 Patent by making, using, selling, offering for sale and/or importing in or into the United States, without authority, products that fall within the scope of the 372 Patent, in violation of 35 U.S.C. § 271, specifically including, but not necessarily limited to, the products and services sold to the United States Postal Service in accordance with the August 12, 2010 contract.

53. Upon information and belief, Siemens' conduct in making, using, selling, offering for sale and/or importing in or into the United States, without authority, products that fall within the scope of the 372 Patent has also induced infringement of the 372 Patent under 35 U. S. C. § 271(b).

54. Upon information and belief, Siemens' conduct in making, using, selling, offering for sale and/or importing in or into the United States, without authority, components that fall within the scope of the 372 Patent has also contributed to the infringement of the claims of the 372 Patent under 35 U. S. C. § 271(c). Upon information and belief, Siemens has offered to sell, sold, or imported components that fall within the scope of the 372 Patent — which form a material part of the invention of the 372 Patent, are uniquely made or adapted for patented use and have no substantial non-infringing uses — for use in practicing a patented process.

55. Siemens knew or should have known of the 372 Patent, but engaged in the infringing, inducing and contributing conduct nonetheless. Siemens had actual knowledge of the claims and components contained in the application for the 372 Patent, but has engaged in the infringing, inducing and contributing conduct nonetheless. Therefore, Siemens' infringement is willful.

56. As a direct and proximate result of Siemens' acts of patent infringement, TTG has been and continues to be injured and has sustained and will continue to sustain substantial actual damages in an amount not presently known.

57. TTG has incurred and will continue to incur attorneys' fees, costs and expenses in the prosecution of this action for patent infringement. The circumstances of this dispute create an exceptional case within the meaning of 35 U.S.C. § 285 such that TTG is entitled to recover its reasonable and necessary fees. Additionally, TTG is entitled to up to three times actual damages as a result of Siemens willful infringement under 35 U.S.C. § 271. Siemens' conduct with regard to the intellectual property of TTG was and is deliberate, intentional, malicious, motivated by a desire for maximum financial gain combined with harm to TTG, and without just cause or excuse.

**E) Reservation**

58. TTG hereby gives notice of its intent to assert claims of patent infringement with regard to any additional patents that may be granted for the protection of TTG Intellectual Property at issue, once such patents are granted.

**VI.**  
**MISAPPROPRIATION AND UNFAIR COMPETITION**

59. TTG repeats and reasserts the allegations above as if fully set forth herein.

60. TTG (and those from whom it has properly obtained assignment of intellectual property rights) invented, created and/or developed the intellectual property at issue, through the expenditure of substantial labor, skill, and money, including but not necessarily limited to the intellectual property described in the applications submitted to the USPTO in connection with (a) the now granted 346 Patent, (b) the now granted 667 Patent, (c) the now granted 173 Patent, (d) the now granted 372 Patent, and (e) additional intellectual property, including additional improvements to PARs, discussed and/or provided to Siemens during the offer/purchase/lease negotiation process that has not been part of the prosecution of the four patents granted to date.

61. The intellectual property of TTG provides TTG with a unique pecuniary interest not available to others who do not own and/or possess the same intellectual property.

62. Upon information and belief, Siemens appropriated and used the intellectual property of TTG, without permission, without the burden of the time and expense of development of that intellectual property, and in competition with TTG.

63. Siemens' conduct, including unlawful appropriation and use of TTG's intellectual property, constitutes Misappropriation and Unfair Competition under Texas common law.

64. Siemens' conduct, including unlawful appropriation and use of TTG's intellectual property, was also intentional, malicious, and without just cause or excuse, for which TTG seeks exemplary damages.

65. TTG has suffered, and will continue to suffer, substantial commercial damage as a direct and proximate result of Siemens' unlawful appropriation and use of TTG's intellectual property.

**VII.**  
**CIVIL THEFT**

66. TTG repeats and reasserts the allegations above as if fully set forth herein.

67. TTG (and those from whom it has properly obtained assignment of intellectual property rights) invented, created and/or developed the intellectual property at issue, through the expenditure of substantial labor, skill, and money, including, but not necessarily limited to the intellectual property described in the applications submitted to the USPTO in connection with (a) the now granted 346 Patent, (b) the now granted 667 Patent, (c) the now granted 173 Patent, (d) the now granted 372 Patent, and (e) additional intellectual property, including additional improvements to PARS, discussed and/or provided to Siemens during the offer/purchase/lease negotiation process that has not been part of the prosecution of the four patents granted to date.

68. Upon information and belief, Siemens took, used, offered to sell, and/or sold intellectual property of TTG, which Siemens knew belonged to TTG, without TTG's consent, and with the intent to deprive TTG of the intellectual property and the substantial benefits of same in violation of Texas Civil Practice and Remedies Code Chapter 134 and Texas Penal Code § 31.05(b).

69. TTG suffered and is entitled to recover for its substantial actual damages caused as a direct and proximate result of Siemens' unlawful theft of intellectual property.

TTG is further entitled to recover its costs and reasonable and necessary attorneys' fees under Texas Civil Practice and Remedies Code § 134.005(b).

**VIII.**  
**FRAUD**

70. TTG repeats and reasserts the allegations above as if fully set forth herein.

71. Siemens' conduct in connection with the intellectual property of TTG, as set forth in more detail in the preceding paragraphs, constitutes common-law fraud and/or fraud by non-disclosure under Texas law. Siemens made various misrepresentations and/or omissions of material facts (a) relating to the purpose of meetings and discussions between the parties and Siemens' purported desire to purchase and/or license the intellectual property of TTG, (b) that were designed to induce TTG to reveal details regarding its intellectual property sufficient to allow Siemens to copy and sell TTG's intellectual property as its own and for its own gain, and (c) designed to exclude TTG from realizing the benefits of its own intellectual property, including but not limited to the following conduct: (1) Siemens repeatedly represented to TTG that the purpose of discussion between the parties was to explore Siemens' potential purchase of and/or license to use TTG's technology, when it was actually designed to allow Siemens to copy and use TTG's technology as its own; (2) Siemens repeatedly represented to TTG that it was evaluating scenarios for purchase and/or license of TTG's technology and the appropriate value to be assigned to TTG's technology, including seeking more time to do so, when those representations were actually designed to continue the flow of information from TTG to Siemens and allow Siemens time to copy and sell TTG's technology; and (3) Siemens failed to disclose its true purpose in these

discussions and the fact that it was attempting to develop and sell TTG's intellectual property as its own.

72. Siemens made false material representations in its dealings with TTG and TTG's principals, which Siemens knew were false or made recklessly without regard to truth. Siemens intended that TTG rely upon the false representations in ongoing discussions regarding the potential sale or licensing of TTG's intellectual property. TTG did, in fact, rely on the false representations and disclosed significant confidential and proprietary details regarding its intellectual property to Siemens which were not otherwise available to Siemens, which has resulted in substantial harm to TTG and its rights to and value in its intellectual property.

73. Siemens further concealed and/or deliberately failed to disclose material facts to TTG in connection with its dealings with TTG and TTG's principals regarding TTG's intellectual property, which Siemens had a duty to disclose under the circumstances and which Siemens knew TTG did not know and did not have an equal opportunity to discover. Siemens intended to induce TTG to reveal details of its intellectual property not otherwise available to Siemens, which TTG did disclose and Siemens then used, resulting in substantial harm to TTG and its rights to and value in the intellectual property.

74. Siemens' fraud was the direct and proximate cause of economic injury to TTG. Further, because Siemens acted fraudulently, with gross negligence, and with malice in its dealings with TTG, TTG is entitled to recover exemplary damages, under Texas Civil Practice and Remedies Code 41.003.

**IX.**  
**STATUTES OF LIMITATION/DISCOVERY RULE**

75. Siemens is estopped from asserting any statute of limitation defense by its own misrepresentations and concealment of facts from TTG, as set forth more fully herein at paragraphs 10-23 and 61-65. Siemens made misrepresentations and concealed facts intending that TTG rely on the information or lack thereof and delay any action against Siemens. TTG did not have knowledge of the truth, or the means of obtaining knowledge of the truth, which was solely within Siemens' control. Therefore, Siemens may not avail itself of any statute of limitations defense.

76. Based on the same operative facts, the accrual of the applicable limitation periods in this case have been deferred by the discovery rule (for inherently undiscoverable and objectively verifiable injuries) and Siemens' fraudulent concealment of materials facts. Furthermore, Siemens' continuing tortious behavior delayed the accrual date for claims against Siemens until the tortious behavior ceased.

**X.**  
**35 U.S.C. § 287**

77. The provisions of §287 are either inapplicable to TTG's claims or have been met. With regard to subsection (a) TTG has not made, sold or licensed the patented inventions, such that there is no product that it could have marked. With regard to subsection (b) Siemens either "practices the patented process;" or "had knowledge before the infringement that a patented process was used to make the product the importation, use, offer for sale, or sale of which constitutes infringement." Siemens had actual knowledge of the claims in suit and received written notification of the claims in suit, as set forth herein,

before the infringement of the patented processes. Subsection (c) has no applicability in this case.

**XI.**  
**PRAYER FOR RELIEF**

78. TTG respectfully requests that judgment be entered in its favor on all claims against Siemens, and that the Court enter an order containing the following findings and relief:

- a) a finding that 346 Patent is valid and enforceable;
- b) a finding that Siemens has infringed the 346 Patent;
- c) a finding that 667 Patent is valid and enforceable;
- d) a finding that Siemens has infringed the 667 Patent;
- e) a finding that the 173 Patent is valid and enforceable;
- f) a finding that Siemens has infringed the 173 Patent;
- g) a finding that the 372 Patent is valid and enforceable;
- h) a finding that Siemens has infringed the 372 Patent;
- i) a finding that Siemens willfully infringed the patents at issue;
- j) a finding that this case is exceptional pursuant to 35 U.S.C. § 285;
- k) treble damages for Siemens' willful infringement;
- l) findings that Siemens misappropriated and committed acts of unfair competition with regard to TTG's intellectual property, committed civil theft of TTG's intellectual property, and committed fraud in connection with TTG's intellectual property;
- m) actual and consequential damages;
- n) exemplary damages;

- o) attorneys' fees, costs and expenses;
- p) pre and post-judgment interest; and
- q) such other and further relief to which TTG may show itself justly entitled and/or as the Court may deem just and proper.

**XII.**  
**JURY DEMAND**

79. In accordance with Federal Rules of Civil Procedure 38 and 39, TTG asserts its right under the Seventh Amendment to the United States Constitution and demands a trial by jury on all issues.

Respectfully submitted,  
**SHANNON, GRACEY, RATLIFF & MILLER, L.L.P.**

By: /s/ Sydney B. Hewlett

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on the 19th day of April, 2013, I electronically filed the foregoing document using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record for Defendant:

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