

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ENDEAVOR MESHTECH, INC.,

Plaintiff,

v.

ELSTER SOLUTIONS, LLC,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Endeavor MeshTech, Inc. (“Plaintiff” or “Endeavor”), by and through its undersigned counsel, files this Original Complaint for Patent Infringement against Elster Solutions, LLC (“Defendant” or “Elster Solutions”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of Plaintiff’s United States Patent No. 7,379,981 entitled “*Wireless Communication Enabled Meter and Network*” (hereinafter, the “’981 Patent” or “Patent-in-Suit”; a copy of which is attached hereto as Exhibit A). Plaintiff is the owner of the Patent-in-Suit. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. Endeavor is a corporation organized and existing under the laws of the State of Delaware. Plaintiff maintains its principal place of business at 36 Fairway Place, Half Moon Bay, San Mateo County, California, 94019. Plaintiff is the owner of the Patent-in-Suit, and

possesses all rights thereto, including the exclusive right to exclude the Defendant from making, using, selling, offering to sell or importing in this district and elsewhere into the United States the patented invention(s) of the Patent-in-Suit, the right to license the Patent-in-Suit, and to sue the Defendant for infringement and recover past damages.

3. Upon information and belief, Elster Solutions is a limited liability company duly organized and existing under the laws of Delaware since October 16, 2002 and having its principal place of business located at 208 South Rogers Lane, Raleigh, Wake County, North Carolina, 27610. Upon information and belief, Defendant may be served through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

4. Upon information and belief, Defendant ships, distributes, makes, uses, offers for sale, sells, and/or advertises its infringing products under the EnergyAxis Systems brand name.

JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

6. The Court has personal jurisdiction over Defendant because: Defendant has minimum contacts within the State of Delaware and in the District of Delaware; Defendant has purposefully availed itself of the privileges of conducting business in the State of Delaware and in the District of Delaware; Defendant has sought protection and benefit from the laws of the State of Delaware; Defendant regularly conducts business within the State of Delaware and within the District of Delaware, and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Delaware and in the District of Delaware.

7. More specifically, Defendant, directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its products and affiliated services in the United States, the State of Delaware, and the District of Delaware. Upon information and belief, Defendant has committed patent infringement in the State of Delaware and in the District of Delaware. Defendant solicits customers in the State of Delaware and in the District of Delaware. Defendant has many paying customers who are residents of the State of Delaware and the District of Delaware and who use Defendant's products in the State of Delaware and in the District of Delaware.

8. Venue is proper in the District of Delaware pursuant to 28 U.S.C. §§ 1391 and 1400(b).

BACKGROUND INFORMATION

9. The Patent-in-Suit was duly and legally issued by the United States Patent and Trademark Office on May 27, 2008 after full and fair examination. Plaintiff is the owner of the Patent-in-Suit, and possesses all right, title and interest in the Patent-in-Suit including the right to enforce the Patent-in-Suit, and the right to sue Defendant for infringement and recover past damages.

10. On information and belief, Defendant Elster Solutions owns, operates, advertises, and/or controls the website www.elster.com/en/elster-solutions, through which said Defendant advertises, sells, offers to sell, provides and/or educates customers about its products.

COUNT I **INFRINGEMENT OF U.S. PATENT NO. 7,379,981 BY ELSTER SOLUTIONS**

11. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-10 above.

12. Plaintiff is informed and believes that Elster Solutions has infringed and continues to infringe the Patent-in-Suit either literally or under the doctrine of equivalents through the manufacture and sale of infringing products under the EnergyAxis Systems brand and affiliated services. Upon information and belief, Elster Solutions has infringed and continues to infringe one or more claims of the Patent-in-Suit because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises a self-configuring wireless network, including but not limited to the EnergyAxis System. Elster Solutions provides a self-configuring wireless network that incorporates a network cluster, virtual gate, and virtual network operations entity through the use of devices which may, but do not necessarily, include Zigbee® devices, Gatekeepers, and various-enabled smart meters (i.e., the “Accused Products”). Specifically, one or more of Elster Solutions’ Accused Products and Services, including but not limited to the EnergyAxis System, infringes one or more of the claims of the Patent-in-Suit. Elster Solutions’ Accused Products and affiliated services are available for sale on its website and through various retailers located in this district and throughout the United States.

13. Elster Solutions’ aforesaid activities have been without authority and/or license from Plaintiff.

14. Plaintiff is entitled to recover from Elster Solutions the damages sustained by Plaintiff as a result of Elster Solutions’ wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

15. Elster Solutions’ acts of infringement of Plaintiff’s rights under the Patent-in-Suit has caused, is causing and, unless such acts and practices are enjoined by the Court, will

continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, and for which Plaintiff is entitled to injunctive relief under 35 U.S.C. § 283.

JURY DEMAND

16. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

Plaintiff respectfully requests the following relief:

- A. An adjudication that one or more claims of the Patent-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant;
- B. An award of damages to be paid by Defendant adequate to compensate Plaintiff for its past infringement and any continuing or future infringement up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Plaintiff for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;
- C. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further acts of infringement with respect to any one or more of the claims of the Patents-in-Suit;
- D. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,
- E. Any further relief that this Court deems just and proper.

Dated: July 26, 2013

/s/ Stamatios Stamoulis

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