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Attorneys for Plaintiff
Joao Control & Monitoring Systems, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOAO CONTROL & MONITORING
SYSTEMS, LLC,
Plaintiff,

ECF CASE

1:12 Civ. 7734 (KBF)

- against -

Jury Trial Demanded

CITY OF YONKERS, VEHICLE
TRACKING SOLUTIONS, LLC,
Defendants

and

AMERICAN TRAFFIC SOLUTIONS
INC.,
Defendant – Intervenor.

SECOND AMENDED COMPLAINT

Plaintiff Joao Control & Monitoring Systems, LLC (“Plaintiff”), by and through its undersigned counsel, files this Second Amended Complaint against City of Yonkers (“City of Yonkers”), Vehicle Tracking Solutions, LLC (“VTS”), and American Traffic Solutions, Inc. (“Defendant-Intervenor” or “ATS”) (collectively, “Defendants”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendants' infringement of Plaintiff's United States Patent No. 6,587,046 entitled "*Monitoring Apparatus and Method*" (the "'046 patent"; a copy of which is attached hereto as Exhibit A), United States Patent No. 7,277,010 entitled "*Monitoring Apparatus and Method*" (the "'010 patent"; a copy of which is attached hereto as Exhibit B), United States Patent No. 6,542,076 entitled "*Control, Monitoring and/or Security Apparatus*" (the "'076 patent"; a copy of which is attached hereto as Exhibit C), United States Patent No. 5,917,405 entitled "*Control Apparatus and Methods for Vehicles*" (the "'405 patent"; a copy of which is attached hereto as Exhibit D), United States Patent No. 6,549,130 entitled "*Control Apparatus and Method for Vehicles and/or For Premises*" (the "'130 patent"; a copy of which is attached hereto as Exhibit E), and United States Patent No. 7,397,363 entitled "*Control and/or Monitoring Apparatus and Method*" (the "'363 patent"; a copy of which is attached hereto as Exhibit F) (collectively, "the patents-in-suit"). Plaintiff is the owner of the '046 patent, the '010 patent, the '076 patent, the '405 patent, the '130 patent, and the '363 patent. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff is a limited liability company organized and existing under the laws of the state of Delaware. Plaintiff maintains its principal place of business at 122 Bellevue Place, Yonkers, New York 10703. Plaintiff is the owner of the patents-in-suit and possesses the right to sue for infringement and recover past damages.

3. Upon information and belief, City of Yonkers is an incorporated city of the state of New York, and maintains its principal place of business at City of Yonkers, City Hall, 40 South Broadway, Yonkers, New York 10701.

4. Upon information and belief, Vehicle Tracking Solutions, LLC ("VTS") is a New York limited liability company with a principal place of business at 10 East 5th Street, Deer Park, New York 11729. At all times relevant, Vehicle Tracking Solutions, LLC owns the Silent Passenger GPS Vehicle application.

5. Upon information and belief, ATS is incorporated in the state of Kansas and maintains its principal place of business at 1330 West Southern Avenue, Tempe, Arizona 85282.

JURISDICTION AND VENUE

6. 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).

7. The Court has personal jurisdiction over the Defendants because: Defendants are present within or have minimum contacts with the State of New York and the Southern District of New York; Defendants have purposefully availed themselves of the privileges of conducting business and/or other activities in the State of New York and in the Southern District of New York; Defendants have sought protection and benefit from the laws of the State of New York; Defendants regularly conduct business and/or other activities within the State of New York and within the Southern District of New York; Plaintiff's causes of action arise directly from Defendants' business contacts and other activities in the State of New York and in the Southern District of New York; and Plaintiff maintains its principal place of business within the State of New York and the Southern District of New York.

8. More specifically, Defendants, directly and/or through authorized intermediaries, make, sell, offer to sell, distribute, import and/or use products and services in the United States, the State of New York, and the Southern District of New York as described more fully below, and which products and services are infringing the Patents-in-Suit. Upon information and belief, Defendants have committed patent infringement in the State of New York and in the Southern District of New York. Upon information and belief, Defendants ATS and VTS solicit customers in the State of New York and in the Southern District of New York, including the City of Yonkers. Upon information and belief, Defendants ATS and VTS have many paying customers who are residents of the State of New York and the Southern District of New York and specifically

the City of Yonkers and who each use Defendants ATS and VTS's products and services in the State of New York and in the Southern District of New York.

9. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I – PATENT INFRINGEMENT BY DEFENDANT CITY OF YONKERS

10. The '010 patent was duly and legally issued by the United States Patent and Trademark Office on October 2, 2007, after full and fair examination for systems and methods for premises video monitoring. Plaintiff is the owner of the '010 patent and possesses all substantive rights and rights of recovery under the '010 patent, including the right to sue for infringement and recover past damages.

11. The '046 patent was duly and legally issued by the United States Patent and Trademark Office on July 1, 2003, after full and fair examination for systems and methods for premises video monitoring. Plaintiff is the owner of the '046 patent and possesses all substantive rights and rights of recovery under the '046 patent, including the right to sue for infringement and recover past damages.

12. The '076 patent was duly and legally issued by the United States Patent and Trademark Office on April 1, 2003, after full and fair examination for systems and methods for premises video monitoring. Plaintiff is the owner of the '076 patent and possesses all substantive rights and rights of recovery under the '076 patent, including the right to sue for infringement and recover past damages.

13. The '405 patent was duly and legally issued by the United States Patent and Trademark Office on June 29, 1999, after full and fair examination for systems and methods for vehicle control and monitoring. Plaintiff is the owner of the '405 patent and possesses all substantive rights of recovery under the '405 patent, including the right to sue for infringement and recover past damages.

14. The '130 patent was duly and legally issued by the United States Patent and Trademark Office on April 15, 2003, after full and fair examination for systems and methods for vehicle and/or premises control and monitoring. Plaintiff is the owner of the '130 patent and possesses all substantive rights of recovery under the '130 patent, including the right to sue for infringement and recover past damages.

15. The '363 patent was duly and legally issued by the United States Patent and Trademark Office on July 8, 2008, after full and fair examination for systems and methods for vehicle control and monitoring. Plaintiff is the owner of the '363 patent and possesses all substantive rights of recovery under the '363 patent, including the right to sue for infringement and recover past damages.

16. Defendant City of Yonkers has infringed and continues to infringe one or more claims of the patents-in-suit, by making, using, providing, and/or importing, directly or through intermediaries, in this district and elsewhere in the United States, systems and methods for receiving and monitoring video information by a video recording device or camera, including its "Red Light Camera" Program and associated website www.violationinfo.com (the "Accused System"). Defendant has also contributed to and/or induced the infringement of one or more claims of the patents-in-suit by providing to users in this district and elsewhere in the United States, the Accused System solely useful for permitting users to monitor video obtained by one or more premises video cameras and/or video recording devices in a manner claimed in both the '010 patent and the '046 patent.

17. City of Yonkers has infringed and continues to infringe one or more claims of the patents-in-suit, by making, using, providing, and/or importing, directly or through intermediaries, in this district and elsewhere in the United States, systems and methods for receiving and monitoring vehicle information for its vehicles using the VTS Silent Passenger system (the "Silent Passenger System"). Defendant has also contributed to and/or induced the infringement of one or more claims of the '076 patent, the '405 patent, the '130 patent, and the '363 patent by providing to users in this district and elsewhere in the United States, the Silent Passenger System

solely useful for permitting users to monitor vehicles using the GPS devices and its associated hardware and software in a manner claimed in the '076 patent, the '405 patent, the '130 patent, and the '363 patent.

18. Defendant has induced the infringement of one or more claims of the patents-in-suit by providing to users and/or using in this district and elsewhere in the United States, the Accused System and the Silent Passenger System. The aforementioned Accused Systems configurations are only useful for permitting users to monitor video obtained by one or more premises video cameras and/or video recording devices in a manner claimed in both the '010 patent and the '046 patent. The aforementioned Silent Passenger Systems' configuration(s) are only useful for permitting users to monitor vehicles using the GPS unit and associated hardware and software in a manner claimed in the '076 patent, the '405 patent, the '130 patent, and the '363 patent.

19. Defendant City of Yonkers has been aware of the patents-in-suit and specifically the '046, patent, the '010 patent since at least as early as the filing of the Original Complaint on October 17, 2012.

20. Defendant City of Yonkers has been aware of the '076 patent since at least as early as the filing of the Amended Complaint on March 21, 2013.

21. Despite being aware of the patents-in-suit, and being aware that the Accused Systems and/or Silent Passenger Systems infringe the patents-in-suit, Defendant has persisted in offering and/or using the Accused Systems and/or Silent Passenger Systems.

22. The Defendant's conduct has induced and continues to actively induce its users to commit direct infringement of one or more claims of the Patents-in-Suit, and by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, aided, abetted and otherwise caused its customers, personnel and/or employees ("Users") to use the Accused System(s) and the Silent Passenger System(s) clearly demonstrating Defendant's intent to induce the infringement by its users. Despite its knowledge of the existence of Patents-in-Suit, Defendant, upon information and belief, continues to encourage, instruct, enable and otherwise

cause their Users to use their products and services (Accused Systems and Silent Passenger Systems) in a manner which infringes the Patents-in-Suit. Upon information and belief, Defendant has specifically intended that their Users use the Accused Systems and Silent Passenger Systems in a manner that infringes the Patents-in-Suit by, at a minimum, providing access to, support for, and instructions for using the Accused Systems and Silent Passenger Systems, in such a way that infringes the Patents-in-Suit; and Defendants knew that these actions, would induce, have induced, and will continue to induce infringement by its customers.

23. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

24. Plaintiff is entitled to recover from the Defendant City of Yonkers the damages sustained by Plaintiff as a result of the City of Yonkers's 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.

25. City of Yonkers's infringement of Plaintiff's exclusive rights under the '010 patent, the '046 patent, the '076 patent, the '405 patent, the '130 patent, and the '363 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II – PATENT INFRINGEMENT BY DEFENDANT-INTERVENOR ATS

26. Plaintiffs incorporate by reference paragraphs 1 through 25 as if fully set forth herein.

27. Defendant-Intervenor ATS has infringed and continues to infringe one or more claims of the patents-in-suit, by making, using, providing, and/or importing, directly and/or through intermediaries, in this district and elsewhere in the United States, systems and methods for receiving and monitoring video information by a video recording device or camera, by

supplying the support, technology and other materials for its “Red Light Camera” Program, AutoPatrol, CrossingGuard, CleanSweep, SafeTrax, and Axis Bus Lane Compliance System products and services (“Accused Products and Services”) alongside Defendant-Intervenor’s websites, www.atsol.com and www.violationinfo.com, and other Internet-related services. Defendant City of Yonkers specifically utilizes and operates ATS’s “Red Light Camera” Program and associated website www.violationinfo.com (the “Accused System”). Defendant-Intervenor ATS has also contributed to and/or induced the infringement of one or more claims of the patents-in-suit by providing to users in this district and elsewhere in the United States, and specifically to the City of Yonkers, as well as to other unnamed customers, the Accused Products and Services only useful for permitting users to monitor video obtained by one or more premises video cameras and/or video recording devices in a manner claimed in both the ’010 patent and the ’046 patent.

28. Defendant has induced the infringement of one or more claims of the patents-in-suit by providing to users and/or using in this district and elsewhere in the United States, the Accused Products and Services. The aforementioned Accused Products and Services configurations are only useful for permitting users to monitor video obtained by one or more premises video cameras and/or video recording devices in a manner claimed in both the ’010 patent and the ’046 patent.

29. Upon information and belief, Defendant ATS has been aware of the patents-in-suit since at least as early as the filing of the Original Complaint on October 17, 2012, or shortly thereafter through communications with Defendant City of Yonkers.

30. Despite being aware of the patents-in-suit, and being aware that the Accused Products and Services infringe the patents-in-suit, Defendant has persisted in offering and/or

using the Accused Products and Services.

31. The Defendant's conduct has induced and continues to actively induce its users to commit direct infringement of one or more claims of the Patents-in-Suit, and by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, aided, abetted and otherwise caused its customers, personnel and/or employees ("Users") to use the Accused Products and Services clearly demonstrating Defendant's intent to induce the infringement by its Users. Despite its knowledge of the existence of Patents-in-Suit, Defendant, upon information and belief, continues to encourage, instruct, enable and otherwise cause their Users to use their Accused Products and Services in a manner which infringes the Patents-in-Suit. Upon information and belief, Defendant has specifically intended that their Users use the Accused Products and Services in a manner that infringes the Patents-in-Suit by, at a minimum, providing access to, support for, and instructions for using the Accused Products and Services, in such a way that infringes the Patents-in-Suit; and Defendant knew that these actions, would induce, have induced, and will continue to induce infringement by its customers.

32. Defendant-Intervenor's aforesaid activities have been without authority and/or license from Plaintiff.

33. Plaintiff is entitled to recover from the Defendant-Intervenor the damages sustained by Plaintiff as a result of the Defendant-Intervenor's 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.

34. Defendant-Intervenor's infringement of Plaintiff's exclusive rights under the '010 patent and the '046 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT III – PATENT INFRINGEMENT BY DEFENDANT VTS

35. Plaintiffs incorporate by reference paragraphs 1 through 34 as if fully set forth herein.

36. Defendant VTS has infringed and continues to infringe one or more claims of the patents-in-suit, by making, using, providing, and/or importing, directly or through intermediaries, in this district and elsewhere in the United States, systems and methods for receiving and monitoring information about a vehicle using a GPS tracking device and associated hardware and software, by supplying, distributing, importing, offering to sell, and selling the support, technology and other materials through which Defendant City of Yonkers and other unnamed customers utilize and operate its Silent Passenger™ vehicle tracking GPS system for tracking vehicles of City of Yonkers (the “Silent Passenger System”). VTS, by and through its distribution, support, offer for sale and sales of the Silent Passenger System (and related add-on services), has contributed to and/or induced the infringement of one or more claims of the ‘076 patent, the ‘405 patent, the ‘130 patent, and the ‘363 patent by providing to users in this district and elsewhere in the United States, and specifically the City of Yonkers, the Silent Passenger System only useful for permitting users to monitor vehicles using the Silent Passenger System in a manner claimed in the ‘076 patent, the ‘405 patent, the ‘130 patent, and the ‘363 patent.

37. Defendant has induced the infringement of one or more claims of the patents-in-suit by providing to users and/or using in this district and elsewhere in the United States, the Silent Passenger System. The aforementioned Silent Passenger Systems’ configuration(s) are only useful for permitting users to monitor vehicles using the GPS unit and associated hardware and software in a manner claimed in the ‘076 patent, the ‘405 patent, the ‘130 patent, and the ‘363 patent.

38. Defendant VTS has been aware of the patents-in-suit and at least the ‘010 patent, since at least as early as the filing of the Amended Complaint on March 21, 2013.

39. Despite being aware of the patents-in-suit, and being aware that the Silent Passenger Systems infringe the patents-in-suit, Defendant VTS has persisted in offering and/or using the Silent Passenger Systems.

40. The Defendant VTS's conduct has induced and continues to actively induce its users to commit direct infringement of one or more claims of the Patents-in-Suit, and by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, aided, abetted and otherwise caused its customers, personnel and/or employees ("Users") to use the Silent Passenger System(s) clearly demonstrating Defendant's intent to induce the infringement by its Users. Despite its knowledge of the existence of the Patents-in-suit Defendant, upon information and belief, continues to encourage, instruct, enable and otherwise cause their Users to use their products and services (Silent Passenger Systems) in a manner which infringes the Patents-in-Suit. Upon information and belief, Defendant has specifically intended that their Users use the Silent Passenger Systems in a manner that infringes the Patents-in-Suit by, at a minimum, providing access to, support for, and instructions for using the Silent Passenger Systems, in such a way that infringes the Patents-in-suit, and Defendant knew that these actions, would induce, have induced, and will continue to induce infringement by its customers.

41. VTS's aforesaid activities have been without authority and/or license from Plaintiff.

42. Plaintiff is entitled to recover from VTS the damages sustained by Plaintiff as a result of the VTS 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.

43. VTS's infringement of Plaintiff's exclusive rights under the '076 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '010 patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendant City of Yonkers and Defendant-Intervenor ATS;
- B. An adjudication that one or more claims of the '046 patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendant City of Yonkers and Defendant-Intervenor ATS;
- C. An adjudication that Defendant City of Yonkers and Defendant-Intervenor ATS has contributed to and/or induced the infringement of one or more claims of the '010 patent and/or the '046 patent, either literally and/or under the doctrine of equivalents;
- D. An adjudication that one or more claims of the '076 , the '405 patent, the '130 patent, and the '363 patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendants City of Yonkers and VTS;
- E. An adjudication that Defendants City of Yonkers and VTS has contributed to and/or induced the infringement of one or more claims of the '076 patent, , the '405 patent, the '130 patent, and the '363 patent either literally and/or under the doctrine of equivalents;
- F. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendants' acts of infringement together with pre-judgment and post-judgment interest;

- G. That, should Defendants' acts of infringement be found to be willful from the time that Defendants became aware of the infringing nature of its actions, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- H. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of infringement with respect to the claims of the '010 patent, the '046 patent, and the '363 patent;
- I. 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
- J. Any further relief that this Court deems just and proper.

Respectfully submitted,

Dated: New York, New York
September 16, 2013

By: _____

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- G. That, should Defendants' acts of infringement be found to be willful from the time that Defendants became aware of the infringing nature of its actions, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- H. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of infringement with respect to the claims of the '010 patent, the '046 patent, and the '363 patent;
- I. 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
- J. Any further relief that this Court deems just and proper.

Respectfully submitted,

Dated: New York, New York
September 16, 2013

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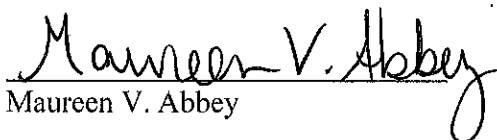
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Attorneys for Plaintiff
JOAO CONTROL & MONITORING SYSTEMS,
LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing is being served upon counsel of record for Defendants via electronic mail.

Date: September 16, 2013


Maureen V. Abbey