

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

INTERCAP CAPITAL PARTNERS, LLC,

Plaintiff,

v.

BUILDINGIQ, INC.,

Defendant.

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

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Intercap Capital Partners, LLC (“Intercap” or “Plaintiff”), for its complaint against Defendant BuildingIQ, Inc. (“BuildingIQ” or “Defendant”), seeking damages, injunctive relief and other relief for patent infringement, alleges as follows:

**NATURE OF ACTION**

1. This is an action for patent infringement arising under Title 35 of the United States Code, seeking monetary damages and injunctive relief against Defendant due to its violation of Intercap’s rights in U.S. Patent No. 8,078,330.

**PARTIES**

2. Plaintiff Intercap is a limited liability company organized and existing under the laws of the State of Florida, having a principal place of business at 13643 Deering Bay Drive, Suite 165, Coral Gables, FL 33158.

3. On information and belief, BuildingIQ is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 1065 East Hillsdale Blvd, Suite 310, Foster City, CA 94404.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant is incorporated under the laws of the State of Delaware and therefore resides in this district.

6. Upon information and belief, venue in this district is proper pursuant to 28 U.S.C §§ 1391(b) and (c) and 1400(b).

### **PATENT-IN-SUIT**

7. On August 14, 2007, a nonprovisional utility patent application entitled “Automatic Energy Management and Energy Consumption Reduction, Especially in Commercial and Multi-Building Systems” was filed in the United States Patent and Trademark Office, which application resulted in the granting of United States Patent No. 8,078,330, issued on December 13, 2011 (the “’330 patent”). A true and accurate copy of the ’330 patent, which is valid and subsisting, is attached hereto as Exhibit A and incorporated herein by reference.

8. Intercap is the owner by assignment of all rights, title and interest in and to the ’330 patent and possesses all rights of recovery thereunder, including the right to sue for infringement and recover past damages.

### **COUNT I (Infringement of U.S. Patent No. 8,078,330)**

9. Intercap hereby incorporates by reference the allegations contained in paragraphs 1 through 8 of this Complaint as if stated herein.

10. Defendants, without Intercap’s authorization and in violation of 35 U.S.C. § 271, have infringed and continue to infringe the ’330 patent, literally and/or under the doctrine of

equivalents, by making, using, performing, importing, offering to sell and/or selling methods, including, without limitation, the methods performed by or in connection with Defendant's "BuildingIQ" software or system (collectively, "Accused Functionality"), which are covered by one or more claims of the '330 patent, including, without limitation, claim 1.

11. To the extent that the facts learned in discovery show that Defendant's infringement of the '330 patent is or has been willful, Intercap reserves the right to request such a finding at the time of trial.

12. Defendant's infringement of the '330 patent has caused damage to Intercap, including, without limitation, deprivation of rights, remunerations and/or profits which would have otherwise come to Intercap but for the infringement, and Intercap is entitled to recover damages.

13. Defendant's continuing infringement of the '330 patent will continue to damage Intercap, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by the Court.

14. As a result of Defendant's wrongful conduct, Intercap is entitled to injunctive relief.

### **RELIEF REQUESTED**

WHEREFORE, Intercap prays:

A. That this Court order, adjudge and decree that Defendant has infringed claims of the '330 patent in violation of 35 U.S.C. § 271.

B. That injunctions, preliminary and permanent, be issued out of this Court restraining Defendant, and its officers, agents, servants and employees, and all persons within Defendant's control, from directly or indirectly making or causing to be made, selling, or causing

to be sold, or offering for sale, importing, or using or causing to be used in any way the inventions of the claims of the '330 patent, or otherwise directly infringing, contributorily infringing or inducing infringement of the '330 patent.

C. That this Court order Defendant, its officers, agents, servants and employees to deliver up to this Court for destruction all products infringing upon, directly or otherwise, any claim of the '330 patent or the use of which would infringe, directly or otherwise, any claim of the '330 patent.

D. That Defendant be ordered to account for and pay over all proceeds and profits made by them from its wrongful infringing acts, and to account for and pay to Intericap damages in a sum to be determined by the Court, but no less than a reasonable royalty.

E. That, if the evidence warrants, the damages awarded by the Court to Intericap be trebled in view of intentional copying of Intericap's patented inventions and willful and wanton violation of Intericap's patent rights.

F. That, if the evidence warrants, this Court find this to be an exceptional case under 35 U.S.C. § 285 and order Defendants to pay to Intericap reasonable attorneys' fees and all other costs which may be incurred by Intericap.

G. That this Court order Defendant to pay the costs of this action, pre-judgment interest and post-judgment interest.

H. That this Court grant to Intericap such other and further relief as may be deemed just and equitable.

#### **JURY DEMAND**

Intericap hereby demands trial by jury on all issues so triable.

Dated: April 3, 2014

/s/ Richard K. Herrmann

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