

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

3RD EYE	§	
SURVEILLANCE, LLC,	§	
	§	
Plaintiff,	§	ACTION NO. 6:14-cv-00725
	§	
v.	§	
	§	DEMAND FOR JURY TRIAL
	§	
THE CITY OF FORT	§	
WORTH, TEXAS,	§	
AND	§	
E-WATCH CORPORATION	§	
Defendants.		

**PLAINTIFF’S FIRST AMENDED COMPLAINT**

Plaintiff 3rd Eye Surveillance, LLC (“3rd Eye”) files this, its First Amended Complaint for infringement of U.S. Patent No. 7,323,980 (attached hereto as “Exhibit A”) against Defendants, the City of Fort Worth, Texas (“Fort Worth”) and e-Watch Corporation (“e-Watch”) under 35 U.S.C. §271; and against Fort Worth for Inverse Condemnation under U.S.C. § 1983 for violation of the Fifth and Fourteenth Amendments to the Constitution of the United States of America and Article I, § 17 of the Texas Constitution for the taking in part of U.S. Patent No. 7,323,980 without adequate or just compensation, and in support thereof would respectfully show the Court as follows:

**THE PARTIES**

1. Plaintiff 3rd Eye is a limited liability company organized under the laws of the State of Texas, with its principal place of business at 2616 Boedeker Drive, Plano, Texas 75074.

2. Defendant Fort Worth is a city located in Tarrant County, Denton County, and Wise County, Texas. Fort Worth may be served through its City Secretary, Mary J. Kayser, at 1000 Throckmorton Street, Fort Worth, Texas 76102.

3. Defendant e-Watch is a Texas Corporation with its principal place of business at 23011 IH 10 West, San Antonio, Texas 78257. e-Watch may be served through its registered agent, David A. Monroe, at 720 Lincoln Center, 7800 IH 10 West, San Antonio, Texas 78230.

**JURISDICTION AND VENUE**

4. This action arises under the United States Patent Laws, codified at 35 U.S.C. §§ 1, et seq., including §§ 271 and 281. This Court has exclusive subject matter jurisdiction over this action pursuant to Article III, Section 2 of the United States Constitution; and 28 U.S.C. §§ 1331, 1343(3), 1367 and 1338(a). Additionally, this action is brought seeking injunctive relief pursuant to 42 U.S.C. § 1983.

5. This Court may exercise jurisdiction over Fort Worth because Fort Worth is located in part within this forum and because this forum has an interest in adjudicating this dispute.

6. This Court may exercise jurisdiction over e-Watch because it conducts business within this forum.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. § 1391(b) and 1391(c).

8. Defendant Fort Worth waived immunity and consented to subject matter jurisdiction with respect in a contractual agreement with e-Watch agreeing to indemnify Fort Worth for inter alia, patent infringement.

### **PATENT INFRINGEMENT AND INVERSE CONDEMNATION**

9. United States Patent No. 6,778,085 (the ‘085 Patent”), entitled “Security System and Method with Realtime Imagery” was duly and lawfully issued by the USPTO on August 17, 2004, after full and fair examination. The ‘085 Patent relates generally to video security systems, and in particular to such systems that record, store, and transmit images through the use of computer equipment, digital storage, and an electronic communications network. Plaintiff 3rd Eye is the exclusive licensee of all rights in the ‘085 Patent and possesses all rights of enforcement and recovery under the ‘085 Patent.

10. United States Patent No. 6,798,344 (“the ‘344 Patent”), entitled “Security Alarm System and Method with Realtime Streaming Video” was duly and lawfully issued by the USPTO on September 28, 2004, after full and fair examination. The ‘344 Patent relates generally to video security systems, and in particular to such systems that store, retrieve, and transmit images through the use of computer equipment, digital storage, and an electronic communications network.

Plaintiff 3rd Eye is the exclusive licensee of all rights in the '344 Patent and possesses all rights of enforcement and recovery under the '344 Patent.

11. United States Patent No. 7,323,980 ("the '980 Patent"), entitled "Security System and Method with Realtime Imagery" was duly and lawfully issued by the USPTO on January 29, 2008, after full and fair examination. The '980 Patent relates generally to video security systems, and in particular to such systems that store, retrieve, and transmit images through the use of computer equipment, digital storage, and an electronic communications network. Plaintiff 3rd Eye is the exclusive licensee of all rights in the '980 Patent and possesses all rights of enforcement and recovery under the '980 Patent.

12. Fort Worth has been using and continues to use Patent '980, Patent '344 and Patent '085 without compensation.

#### COUNT I – PATENT INFRINGEMENT BY FORT WORTH

13. Plaintiff re-alleges and incorporates by reference Paragraphs 1-12 as though fully set forth herein.

14. Defendant Fort Worth waived immunity and consented to subject matter jurisdiction with respect in a contractual agreement with e-Watch agreeing to indemnify Fort Worth for inter alia, patent infringement.

15. Fort Worth has committed, and continues to commit, acts of infringement in violation of 35 U.S.C. § 271(a) by using security systems that infringe one or more claims of the '980 Patent. Examples of such infringing security

systems are described in the Professional Services Agreement between e-Watch Corporation and Fort Worth.

16. Fort Worth's infringement of the '980 Patent has been and continues to be willful.

17. Fort Worth has caused and will continue to cause Plaintiff substantial damage and irreparable injury by virtue of its past and continuing infringement of the '980 Patent. Plaintiff will suffer further damage and irreparable injury unless and until Fort Worth is enjoined by this Court from continuing such infringement.

18. 3rd Eye is currently investigating whether Fort Worth infringes the '085 and the '344 Patents, but needs more information before making its determination.

#### COUNT II – PATENT INFRINGEMENT BY E-WATCH

19. Plaintiff re-alleges and incorporates by reference Paragraphs 1-18 as though fully set forth herein.

20. Defendant e-Watch has committed, and continues to commit, acts of infringement in violation of 35 U.S.C. § 271(a) by using security systems that infringe one or more claims of the '980 Patent.

21. Defendant e-Watch's infringement of the '980 Patent has been and continues to be willful.

22. Defendant e-Watch has caused and will continue to cause Plaintiff substantial damage and irreparable injury by virtue of its past and continuing infringement of the '980 Patent. Plaintiff will suffer further damage and

irreparable injury unless and until e-Watch is enjoined by this Court from continuing such infringement.

23. Plaintiff 3rd Eye is currently investigating whether e-Watch infringes the '085 and the '344 Patents, but needs more information before making its determination.

COUNT III  
ALTERNATIVE CAUSE OF ACTION FOR INVERSE CONDEMNATION

24. Plaintiff re-alleges and incorporates by reference Paragraphs 1-23 as though fully set forth herein.

25. Plaintiff 3rd Eye is the exclusive licensee with all rights to the '980 Patent, '344 Patent and '085 Patent.

26. Fort Worth has, in part, taken 3rd Eye's '980 Patent, and possibly the '344 Patent and '085 Patent, and has used and continues to use it/them without just or adequate compensation to 3rd Eye in violation of the Fifth and Fourteenth Amendment to the United States Constitution and Article I, § 17 of the Texas Constitution. Further, there has been no due process for the partial taking of any of the patents.

27. Fort Worth has caused and will continue to cause Plaintiff substantial damage and irreparable injury by virtue of its past and continuing partial taking of the '980 Patent. Plaintiff will suffer further damage and irreparable injury unless and until Fort Worth is enjoined by this Court from continuing such taking of Plaintiff's intellectual property, namely '980 Patent, '344 Patent and '085 Patent.

28. With respect to the alternative claim for inverse condemnation, the defendants are jointly and severally liable for the damages caused by this claim. Defendant e-Watch provided the equipment and means for Fort Worth to take the property at issue and is therefore jointly liable for the damages.

#### JOINT AND SEVERAL LIABILITY

29. Plaintiff re-alleges and incorporates by reference Paragraphs 1-28 as though fully set forth herein.

30. With respect to the patent infringement claims, the defendants are jointly and severally liable for the damages caused to Plaintiff.

31. With respect to the alternative claim for inverse condemnation, the defendants are jointly and severally liable for the damages caused by this claim. Defendant e-Watch provided the equipment and means for Fort Worth to take the property at issue and is therefore jointly liable for the damages.

#### **JURY DEMAND**

32. Pursuant to Federal Rule of Civil Procedure 38, 3rd Eye demands a trial by jury.

**PRAYER**

**WHEREFORE**, Plaintiff 3rd Eye Surveillance, LLC, prays that Defendants the City of Fort Worth, Texas, and e-Watch Corporation be cited to appear and answer herein, and that 3rd Eye be granted the following relief:

- a. Judgment that Fort Worth has infringed, induced others to infringe, and committed acts of contributory infringement with respect to one or more claims of the '980 Patent;
- b. An Alternative Judgment that Fort Worth has violated 3<sup>rd</sup> Eye's constitutional rights under the Constitution of the United States, and the Constitution of the State of Texas, as claimed herein.
- c. A permanent injunction enjoining Fort Worth from further violations of 3<sup>rd</sup> Eye's constitutional rights.
- d. Judgment that e-Watch has infringed, induced others to infringe, and committed acts of contributory infringement with respect to one or more claims of the '980 Patent;
- e. A permanent injunction enjoining Fort Worth, its officers, agents, servants, employees, and those persons in active concert or participation with Fort Worth, from making, using, offering for sale, selling, or importing any device or product that is found to infringe the '980 Patent, and/or committing acts that induce others to infringe or contribute to others infringement of the '980 Patent;



f. A permanent injunction enjoining e-Watch, its officers, agents, servants, employees, and those persons in active concert or participation with e-Watch, from making, using, offering for sale, selling, or importing any device or product that is found to infringe the '980 Patent, and/or committing acts that induce others to infringe or contribute to others infringement of the '980 Patent;

g. Damages adequate to compensate for Fort Worth's patent infringement, and/or its violation of 3<sup>rd</sup> Eye's constitutional rights, but in no event less than a reasonable royalty for Fort Worth's practicing of the inventions claimed in the '980 Patent, together with interest and costs under 35 U.S.C. § 284;

h. Damages adequate to compensate for e-Watch's patent infringement, but in no event less than a reasonable royalty for e-Watch's practicing of the inventions claimed in the '980 Patent, together with interest and costs under 35 U.S.C. § 284;

i. A finding that Fort Worth has willfully infringed the '980 Patent and enhanced damages of up to three times the amount of 3<sup>rd</sup> Eye's actual damages;

j. A finding that e-Watch has willfully infringed the '980 Patent and enhanced damages of up to three times the amount of 3<sup>rd</sup> Eye's actual damages;

k. Pre-judgment and post-judgment interest on the damages assessed;

- l. Declaring this case exceptional pursuant to 35 U.S.C. § 285, and awarding 3rd Eye its reasonable attorney's fees and expenses; and
- m. Such other and further relief, both at law and in equity, to which 3rd Eye may be entitled.

Respectfully submitted,

/s/ Stephen A. Kennedy

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