

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PGS EM LIMITED,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
ELECTROMAGNETIC GEOSERVICES ASA)	DEMAND FOR JURY TRIAL
and EMGS AMERICAS, INC.,)	
)	
Defendants.)	

COMPLAINT

Plaintiff PGS EM Limited (“PGS”), by counsel, alleges as follows and demands a jury trial on all issues so triable:

NATURE OF THE ACTION

1. PGS brings this civil action to enjoin the sale, use, offer to sell, and importation by Defendants Electromagnetic Geoservices ASA and EMGS Americas, Inc. (collectively, “EMGS”) of products and methods that infringe valid and enforceable U.S. Patent No. 6,914,433 (“the ’433 patent” attached as Exhibit A) that PGS owns and for monetary damages for Defendants’ infringement.

PARTIES

2. Plaintiff PGS EM Limited is a corporation organized and existing under the laws of Scotland and having a registered office at Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN, Scotland, UK.

3. Upon information and belief, Defendant Electromagnetic Geoservices ASA (“EMGS ASA”) is a corporation organized and existing under the laws of Norway and having a principal place of business at Stiklestadveien 1, N-7041 Trondheim, Norway.

4. Upon information and belief, Defendant EMGS Americas, Inc. (“EMGS Inc.”) is a Delaware corporation having a principal place of business at 15021 Katy Freeway, Houston, TX 77094. Upon information and belief, EMGS Inc. is a wholly-owned subsidiary of EMGS ASA.

JURISDICTION AND VENUE

5. This is a civil action for patent infringement arising under the United States patent laws, 35 U.S.C. § 1, et seq.

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

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

8. Upon information and belief, EMGS Inc. is subject to this Court’s personal jurisdiction because it is incorporated in the State of Delaware. Accordingly, EMGS Inc. is subject to personal jurisdiction in Delaware because, among other things, EMGS Inc. is a corporation that has systematic and continuous contacts with the State of Delaware.

9. Upon information and belief, EMGS ASA is subject to this Court’s personal jurisdiction because it fully owns, operates, directs, and controls the activities of EMGS Inc., both in Delaware and in the United States generally. Thus, EMGS ASA, itself and through its wholly-owned subsidiary EMGS Inc., has purposely availed itself of the benefits and protections of Delaware’s laws such that it should reasonably anticipate being haled into court here. Upon information and belief, EMGS ASA, itself and through its whole-owned subsidiary EMGS Inc., markets, offers and/or sells the performance of marine electromagnetic surveys (“EM surveys”), electromagnetic data processing services (“EM data processing”), as well as products associated with or derived from those surveys and data processing services (“EM products”), throughout the United States and within the State of Delaware, and therefore transacts business within the State

of Delaware related to Plaintiffs' claims and/or has engaged in systematic and continuous contacts with the State of Delaware. In addition, EMGS ASA is subject to personal jurisdiction in Delaware because, upon information and belief, it directs the actions of, controls, and dominates EMGS Inc., and therefore the activities of EMGS Inc. in this jurisdiction are attributable to EMGS ASA.

THE PATENT-IN-SUIT

10. On July 5, 2005, the '433 Patent, titled "Detection of Subsurface Resistivity Contrasts With Application to Location of Fluids," was duly and legally issued to the University Court of the University of Edinburgh ("the University"). The patent issued from U.S. Application No. 10/482,554, a U.S. national stage application derived from International Application No. PCT/GB02/04121, filed on September 9, 2002.

11. PGS EM Limited is the current assignee of all right, title, and interest in the '433 Patent. Recorded assignments in the USPTO reflect that the '433 Patent was assigned from the University to MTEM Limited on January 15, 2008. On December 4, 2012, the '433 Patent was assigned from MTEM Limited to PGS EM Limited. A copy of the '433 Patent is attached as Exhibit A.

BACKGROUND

12. EMGS markets, offers to sell, and sells electromagnetic surveys, data processing services, and related products to customers located within the United States, including U.S. companies. Such products include representations of the resistivity contrasts of the earth's subsurface, including maps of such resistivity contrasts. These maps are derived from data generated by EMGS's EM surveys and result from EM data processing. In some cases, customers contract with EMGS to perform the EM surveys and/or EM data processing that generate these maps and purchase the processed or unprocessed data underlying these surveys.

In other cases, EMGS performs the EM surveys and/or EM data processing on behalf of multiple clients, who may pre-fund the surveys.

13. EMGS negotiates with customers in the United States for its survey products and services and offers its survey products and services for sale to customers in the United States.

14. EMGS performs marine electromagnetic surveys and/or processes the underlying data for its customers, including customers in the United States and in United States territory (the “EMGS surveys”).

15. The EMGS surveys are performed using a source, which generates transient electromagnetic signals that are transmitted into the earth’s subsurface, and receivers, which record electromagnetic responses to those transmitted signals.

16. In conducting the EMGS surveys, EMGS attaches the receivers to the seabed of the Gulf of Mexico and/or the U.S. Outer Continental Shelf. EMGS operates sources that send electromagnetic waves to the receivers as part of the method EMGS employs to conduct EMGS surveys and to create its survey products.

17. The EMGS surveys practice each step of the method set forth in the ’433 Patent claims.

18. Upon information and belief, the EMGS surveys produce information which is then incorporated into a product (such as a compilation of data, map, 3D map, and/or model of resistivity contrasts) that is recorded onto a tangible medium that EMGS imports into the United States and/or which EMGS offers for sale, sells, or uses within the United States.

19. The EM survey maps and other EM products created and/or used in connection with EMGS’s infringing EM survey and EM data processing activities are specially made from

those infringing processes, do not have substantial non-infringing uses, and are not staple articles of commerce.

20. EMGS had actual knowledge of the '433 patent on or before September 4, 2014.

21. By letter dated September 4, 2014, receipt of which EMGS confirmed on September 10, 2014, PGS provided EMGS notice of the '433 patent and that it was infringed by EMGS activities.

22. In further correspondence between PGS and EMGS, PGS further explained its basis for concluding that EMGS infringes the '433 Patent in connection with its EM surveys, EM data processing and EM products, including documentation authored by EMGS and its representatives. EMGS has declined to provide any basis that would support a conclusion of non-infringement.

23. PGS has requested confirmation that EMGS would agree to cease its infringing activities in relation to EM surveys. EMGS has not agreed to cease its infringing activities.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 6,914,433 UNDER 35 U.S.C. § 271

24. PGS incorporates each of the preceding paragraphs 1 – 23 as if fully set forth herein.

25. Upon information and belief, EMGS makes, uses, sells, or offers to sell in the United States, and/or imports into the United States methods of performing EM surveys and EM data processing which infringe one or more of the claims of the '433 patent.

26. Upon information and belief, EMGS is, without authority, importing into the United States and/or offering to sell, selling, and/or using within the United States a product which is made by a process that infringes one or more of the claims of the '433 patent.

27. Upon information and belief, EMGS is, without authority, indirectly infringing the '433 patent by inducing and/or contributing to the importation into the United States and/or the use within the United States of a product which is made by a process that infringes one or more of the claims of the '433 patent. EMGS does so with intent to induce and/or contribute to the infringement of the '433 patent. EMGS does not have any license or other authority from PGS or any other person or entity to practice the subject matter claimed by the '433 patent.

28. PGS has, at all relevant times, complied with the notice provisions of 35 U.S.C. § 287(a) with respect to the '433 patent, to the extent required.

29. EMGS has acted with full knowledge of the '433 patent and without a reasonable basis for believing that it would not be liable for infringing the '433 patent.

30. The foregoing actions by EMGS constitute and/or will constitute willful infringement of the '433 patent pursuant to 35 U.S.C. § 271(a) and/or 35 U.S.C. § 271(g).

31. EMGS's willful infringement of the '433 patent renders this an exceptional case pursuant to 35 U.S.C. § 285.

32. Unless EMGS is enjoined from infringing the '433 patent, PGS will suffer irreparable injury. PGS has no adequate remedy at law for the future infringement of the '433 patent.

COUNT II
DECLARATORY JUDGMENT OF INFRINGEMENT OF U.S. PATENT NO. 6,914,433

33. PGS incorporates each of the preceding paragraphs 1 – 32 as if fully set forth herein.

34. EMGS has actual knowledge of the '433 patent dating at least from September 2014.

35. There is an actual controversy between PGS on the one hand and EMGS on the other hand as to whether EMGS surveys and survey products infringe the '433 patent.

36. Upon information and belief, EMGS is planning to expand its operations in the United States and imminently intends to use, offer for sale, or sell in the United States methods of performing EM surveys, which would infringe one or more of the claims of the '433 patent.

37. Upon information and belief, EMGS imminently intends, without authority, to import, offer to sell, sell, and/or use within the United States a product which is made by a process that infringes one or more of the claims of the '433 patent prior to the expiration of the patent.

38. Upon information and belief, EMGS imminently intends, without authority, to indirectly infringe the '433 patent by inducing and/or contributing to the importation into the United States and/or use within the United States a product which is made by a process that infringes one or more of the claims of the '433 patent. EMGS does so with intent to induce and/or contribute to the infringement of the '433 patent.

39. For example, EMGS has represented that it completed a major multi-client project in the U.S. Gulf of Mexico in August 2014, and has indicated that it will “[c]ontinue to invest in key multi-client libraries and capitalize on existing investments,” including in the U.S. Gulf of Mexico. EMGS Third Quarter Presentation 2014 (Nov. 6, 2014) (attached as Exhibit B). EMGS obtained a permit to conduct EM surveys on the Outer Continental Shelf of the U.S. Gulf of Mexico from November 2014 to January 2015. U.S. Dep’t of the Interior, Bureau of Ocean Energy Mgmt. (Gulf of Mex.), Permit L14-054 for Geophysical Exploration for Mineral Res. or Scientific Research on the Outer Continental Shelf (issued to EMGS Americas on Nov. 17, 2014) (Attached as Exhibit C).

40. Upon information and belief, EMGS intends to import EM survey products resulting from its infringing EM survey and EM data processing methods into the United States, including subsurface resistivity maps from the multi-client libraries referred to above.

41. EMGS does not have any license or other authority from PGS or any other person or entity to practice the subject matter claimed by the '433 patent.

42. PGS has, at all relevant times, complied with the notice provisions of 35 U.S.C. § 287(a) with respect to the '433 patent.

43. EMGS has acted with full knowledge of the '433 patent and without a reasonable basis for believing that it would not be liable for infringing the '433 patent.

44. The foregoing actions by EMGS constitute and/or will constitute willful infringement of the '433 patent pursuant to 35 U.S.C. § 271(a) and/or 35 U.S.C. § 271(g).

PRAYER FOR RELIEF

45. WHEREFORE, Plaintiffs respectfully request the following relief:

- a. A judgment holding Defendant EMGS liable for infringement of the '433 patent;
- b. A judgment holding EMGS liable for willful infringement of the '433 patent;
- c. A permanent injunction against EMGS, its officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert and participation with them, enjoining them from continued acts of infringement of the '433 Patent;

- d. Damages to compensate PGS for injuries resulting from Defendant EMGS's infringement of the '433 Patent, together with pre-judgment and post-judgment interest;
- e. A declaration that EMGS's use, sale, offer for sale, or sale in the United States of its EM surveys infringes the '433 Patent.
- f. A declaration that EMGS's importation, offer for sale, sale, or use in the United States of its EM products infringe the '433 Patent.
- g. A declaration that EMGS induces and/or contributes to infringement of the '433 Patent.
- h. A judgment holding that this Action is an exceptional case and an award to PGS of attorneys' fees and costs pursuant to 35 U.S.C. § 285; and
- i. Such other relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs hereby demands a trial by jury for all the issues so triable.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Jack B. Blumenfeld

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