

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

OLIVISTAR LLC,

Plaintiff,

v.

CIMAREX ENERGY CO.,

Defendant.

Civil Action No. 2:15-cv-401

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Olivistar LLC ("Plaintiff" or "Olivistar"), by and through its undersigned counsel, files this Original Complaint against Defendant Cimarex Energy Co. ("Cimarex") 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. 8,239,481 entitled "System and Method for Implementing Open-Control Remote Device Control" (the "481 patent"; a copy of which is attached hereto as Exhibit A). Olivistar is the owner by assignment of the '481 patent. Olivistar seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff Olivistar LLC is a limited liability company organized under the laws of the State of Texas. Plaintiff maintains its principal place of business at 2150 S. Central Expressway, Suite 200, McKinney, Texas 75070.

3. Upon information and belief, Defendant Cimarex Energy Co. is a business organized and existing under the laws of the State of Delaware, with its principal place of business located at 1700 North Lincoln Street, Suite 3700, Denver, Colorado 80203. Defendant conducts business in the State of Texas and its Registered Agent for service of process is

Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § *et seq.*, including 35 U.S.C. § 271, 281, and 284-85, among others. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §1331 and §1338(a).

5. The Court has personal jurisdiction over Defendant because: Defendant is present within or has minimum contacts with the State of Texas and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

6. More specifically, Defendant, directly and/or through authorized intermediaries, ships, distributes, offers for sale, sells, and/or advertises products and services in the United States, the State of Texas, and the Eastern District of Texas including but not limited to the Accused Instrumentalities as detailed below. Defendant makes use of the Accused Instrumentality in the State of Texas and/or in the Eastern District of Texas. Defendant has paying customers who are residents of the State of Texas and the Eastern District of Texas and who use the Defendant's products and services in the State of Texas and in the Eastern District of Texas. Defendant derives substantial revenue from goods and services provided to individuals in Texas and in this district.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§1391 and 1400(b). On information and belief, Defendant has transacted business in this district, is located in this district and has directly and/or jointly committed acts of patent infringement in this district.

COUNT I – INFRINGEMENT OF U.S. PATENT 8,239,481

8. Olivistar refers to and incorporates herein the allegations of Paragraphs 1-20 above.

9. The ‘481 patent was duly and legally issued by the United States Patent and Trademark Office on August 7, 2012, after full and fair examination. The ‘481 patent is in full force and effect. Plaintiff is the owner by assignment of the ‘481 patent and possesses all rights of recovery under the ‘481 patent, including the exclusive right to sue for infringement and recover past damages.

10. Defendant owns, uses, operates, advertises, controls, sells, and otherwise provides systems that infringe the ‘481 patent. The ‘481 patent provides, among other things, a “method for controlling devices in a computer system, the method comprising: (1) obtaining a user selection of one or more of a plurality of networked devices to be manipulated from a user interface, wherein at least one of the plurality of networked devices requires device-specific protocol instructions that are different from protocol instructions required by at least one of the other plurality of networked devices; (2) obtaining a user interface application corresponding to the selected one or more networked devices; (3) transmitting, to at least one user interface selection device, the user interface application corresponding to the selected one or more networked devices so that the user interface can be displayed on the at least one user interface selection device; (4) obtaining a user selection of an operation corresponding to at least one selected networked device; (5) encoding the selected operation according to a standard communication protocol instruction; (6) transmitting the selected standard protocol instruction

to a server corresponding to the selected networked device; and (7) obtaining an output corresponding to the selected operation of the selected networked device.

11. Defendant directly or through intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems and methods for implementing open-control remote device control that infringed one or more claims of the '481 patent in this district and elsewhere in the United States. Particularly, Cimarex Energy ("Defendant") uses a method for controlling devices in a computer system. Defendant uses third-generation, web-based SCADA, which is a system that enables centralized control of geographically dispersed field devices, over a wide area network (WAN) using standard TCP/IP protocols to control field-device operation. The purpose of this SCADA system is to maintain accurate forecasts on all properties of the company through ongoing monitoring and timely updates of operating and economic parameters. ("Accused Instrumentality") which directly infringes the '481 patent. Defendant has at least made or used the Accused Instrumentality in an infringing manner, directly or through intermediaries for purposes of development, testing, quality assurance, deployment, and maintenance.

12. Defendant is willfully and intentionally infringing the '481 Patent from at least the date of the filing of the Original Complaint. Defendant is fully aware of their infringement and Defendant's infringement at this point is willful and intentional as evidenced by Defendant continuing to make, use, provide, and offer, the Accused Instrumentality.

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

14. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of the Defendant'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.

15. Defendant's infringement of Plaintiff's exclusive rights under the '481 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 the Defendant, and that the Court grant Plaintiff the following relief:

- A. A judgment in favor of Plaintiff that Defendant has infringed one or more of the claims of the '481 patent, directly, and/or jointly;
- B. A permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and their officers, directors, agents servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '481 patent, or such other equitable relief the Court determines is warranted;
- C. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;
- D. That, should Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of their actions, which is the

time of filing of Plaintiff's Original Complaint at the latest, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

E. 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

F. Any further relief that this Court deems just and proper.

Dated: March 20, 2015

Respectfully submitted,

By: /s/ Austin Hansley
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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2015, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Marshall Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. All other counsel was served by email, mail, or fax.

/s/ Austin Hansley
Austin Hansley