

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

MARSHALL DIVISION

**SPECIALIZED MONITORING
SOLUTIONS, LLC,**

Plaintiff,

v.

EMERSON NETWORK POWER, INC.,

Defendant.

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Civil Action No. 2:15-CV-32-RWS-RSP

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff SPECIALIZED MONITORING SOLUTIONS, LLC files this Complaint against EMERSON NETWORK POWER, INC., EMERSON ELECTRIC COMPANY, and LIEBERT CORPORATION (collectively “Emerson” or “Defendants”) for infringement of U.S. Patent No. 6,657,553 (the “553 Patent”).

I. THE PARTIES

1. Plaintiff Specialized Monitoring Solutions, LLC (“Plaintiff” or “SMS”) is a Texas limited liability company, with its principal place of business at 104 East Houston Street, Suite 165, Marshall, Texas 75670.

2. Defendant Emerson Network Power, Inc. is a Texas corporation with its principal place of business at 8000 Florissant Avenue, P.O. Box 4100, Saint Louis, Missouri 63136. Emerson has appointed its agent for service as follows: CT Corporation, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

3. Defendant Emerson Electric Company is a Missouri corporation with its principal place of business at 8000 W Florissant Avenue, P.O. Box 4100, Saint Louis, Missouri 63136. Emerson Electric has appointed its agent for service as follows: Frank L. Steeves, 8000 W Florissant Avenue, Saint Louis, Missouri 63136.

4. Defendant Liebert Corporation is an Ohio corporation with its principal place of business at 1050 Dearborn Drive, Columbus, Ohio 43085. Liebert has appointed its agent for service as follows: CT Corporation, 1300 East Ninth Street, Cleveland, Ohio 44114.

II. JURISDICTION AND VENUE

5. This is an action for patent infringement arising under 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction of this action under Title 28 U.S.C. §1331 and §1338(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendants are deemed to reside in judicial district, have committed acts of infringement in this judicial district, have purposely transacted business involving their accused products in this judicial district, and/or have regular and established places of business in this judicial district.

7. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this State and judicial district, including: (A) at least part of their infringing activities alleged herein; and (B) regularly doing or soliciting business and, accordingly, deriving substantial revenue from goods and services provided to Texas residents. Thus, Defendants have purposefully availed themselves of the benefits of the state of Texas and the exercise of jurisdiction is proper.

III. FACTUAL BACKGROUND

8. The '553 Patent is generally directed towards methods and apparatuses for monitoring a protected space. At a high level, the claimed methods and apparatuses detect signal events occurring at a protected space, code the signal events into a packetized message, and transfer these coded packet messages to a database. The coded packet messages are stored in reserved areas and subareas of the database in accordance with the type of signal event and the respective protected space. Additionally, the coded message packets are accessible via the internet.

9. Defendants' accused instrumentalities—including the Liebert SiteScan building management system and Emerson Network Power-branded hardware—enable Defendants and their customers to integrate and monitor building systems for a respective building or group of buildings. For instance, the accused products enable a facility manager to utilize any internet-connected computer with a web browser to log on to a site to check a monitored variable of a protected space (e.g. the temperature or humidity levels in a server room). On information and belief, the infringing combinations include, but are not limited to, Defendants' software and sensors, controllers, routers, databases, and computers used in conjunction with this software.

10. Defendants install and implement the accused instrumentalities for their customers, who operate them in accordance with Defendants' specific instructions. Defendants also provide support and maintenance for the accused instrumentalities.

11. On information and belief, Defendants operate offices throughout the State of Texas, including offices in Houston, Kingsland, Heath, Addison, Pflugerville, El Paso, Bellaire, San Antonio, and Plano.

IV. PATENT INFRINGEMENT

COUNT I — INFRINGEMENT OF U.S. PATENT NO. 6,657,553

12. Plaintiff is the assignee of the '553 Patent, entitled "METHOD OF MONITORING A PROTECTED SPACE," with ownership of all substantial rights. Among other rights, Plaintiff has the exclusive right to exclude others, the exclusive right to enforce, sue and recover damages for past and future infringements, the exclusive right to settle any claims of infringement, and the exclusive right to grant sublicenses, including the exclusive right to exclude Defendants, the exclusive right to sue Defendants, the exclusive right to settle any claims with Defendants, and the exclusive right to grant a sublicense to Defendants. A true and correct copy of the '553 Patent is attached as Exhibit A.

13. Defendants have infringed and continue to directly infringe one or more claims of the '553 Patent in this judicial district and elsewhere in the United States by, among other things, making, having made, using, offering for sale, and/or selling the claimed method and system. At a minimum, Defendants have been, and now are, directly infringing claims of the '553 Patent, including (for example) at least claims 1 and 35, by making, having made, offering for sale, selling and/or using their Liebert SiteScan monitoring software and associated hardware.

14. Defendants have knowledge of the '553 Patent at least as early as the date of service of this Complaint.

15. Defendants have indirectly infringed the '553 Patent by inducing the infringement of the '553 Patent. With knowledge of the '553 Patent, Defendants instruct, direct and aid their customers in using the infringing apparatus and method by the provision of their software, sensors, networking hardware, and instruction (including, by way of example, the white papers,

case studies, and service and support resources available at <http://www.emersonnetworkpower.com/en-MEA/Brands/Liebert/Pages/LiebertServiceandSupport.aspx>) to customers with knowledge that the induced acts constitute patent infringement. Defendants possess specific intent to encourage infringement by their customers.

16. Plaintiff alleges that each and every element is literally present in the accused systems. To the extent not literally present, Plaintiff reserves the right to proceed under the doctrine of equivalents.

17. Plaintiff has been damaged as a result of Defendants' infringing conduct. Defendants are, thus, liable to Plaintiff in an amount that adequately compensates it for Defendants' infringements, 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.

IV. JURY DEMAND

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

V. PRAYER FOR RELIEF

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

- a. Judgment that one or more claims of U.S. Patent No. 6,657,553 has been infringed, either literally and/or under the doctrine of equivalents, by Defendants;
- b. Judgment that Defendants account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendants' infringing activities and other conduct complained of herein;
- c. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;

- e. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule. As such, this document was served on all counsel who are deemed to have consented to electronic service. Pursuant to Fed. R. Civ. P. 5(d), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 6th day of April 2015.



Eric M. Albritton