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

MORPHO KOMODO LLC	§	
	§	
Plaintiff,	§	**CIVIL ACTION NO.**
	§	
v.	§	**JURY TRIAL DEMANDED**
	§	
ZKTECO, INC.; and	§	
ZK TECHNOLOGY LLC;	§	
	§	
Defendants.	§	
	§	

COMPLAINT FOR PATENT INFRINGEMENT

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Morpho Komodo LLC ("Morpho" or "Plaintiff"), through the undersigned attorneys, and for its Complaint against ZkTeco, Inc. and ZK Technology LLC (collectively "ZkTeco" or "Defendants") states, alleges and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code ("U.S.C.") to prevent and enjoin Defendants from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or consent from Morpho, in connection with U.S. Patent No. 7,350,078 (the "'078 Patent"), U.S. Patent No. 8,429,415 (the "'415 Patent") and U.S. Patent No. 9,026,798 (the "'798 Patent") (collectively, the "Asserted Patents")(attached hereto as Exhibits A, B, and C, respectively) pursuant to 35 U.S.C. §271, and to recover damages, attorneys' fees, and costs.

THE PARTIES

2. Plaintiff Morpho is a limited liability company organized under the laws of the State of Texas with its principal place of business at 214 W Fannin St., Marshall, TX 75670.

3. On information and belief, ZkTeco, Inc. is a Chinese corporation, having its principal place of business at ZK Mansion, Wuhe Road, Gangtou, Bantian, Buji Town, Longgang District, Shenzhen, China. ZkTeco, Inc. can be served with process through its U.S. subsidiary, ZK Technology LLC, or through the Texas Secretary of State. ZkTeco, Inc. does business in the State of Texas and in the Eastern District of Texas.

4. On information and belief, ZK Technology LLC is a New Jersey corporation, having its principal place of business at 201 Circle Drive North, Suite 116, Piscataway, NJ 08854. Defendant can be served with process through its registered agent, Jaiman Shah, located at 201 Circle Drive North, Suite 116, Piscataway, NJ 08854. Defendant does business in the State of Texas and in the Eastern District of Texas.

5. On information and belief, ZkTeco is in the business of making, using, selling, offering for sale and/or importing biometric access control and time and attendance devices and related software.

JOINDER

6. Defendants are properly joined under 35 U.S.C. §299(a)(1) because a right to relief is asserted against the parties jointly, severally, and in the alternative with respect to the same transactions, occurrences, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, and/or selling the same Infringing Products. Specifically, as alleged in detail below, Defendants are alleged to infringe the Asserted Patents by using a computer-implemented for creating a signature for subsequent authentication.

7. Defendants are properly joined under 35 U.S.C. §299(a)(2). Questions of fact will arise that are common to all defendants, including for example, whether Defendants' products

have features that meet the features of one or more claims of the Asserted Patents, or what reasonable royalty will be adequate to compensate the owner of the Asserted Patents for their infringement.

8. At least one right to relief is asserted against these parties jointly, severally or, in the alternative, with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same Infringing Product and/or process.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) because the action arises under the patent laws of the United States, 35 U.S.C. §§1 et seq.

10. This Court has personal jurisdiction over Defendants by virtue of their systematic and continuous contacts with this jurisdiction, as well as because of the injury to Morpho and the cause of action Morpho has raised, as alleged herein.

11. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long-Arm Statute, due to at least their substantial business in this forum, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in this District.

12. Defendants have conducted and do conduct business within this District, directly or through intermediaries, resellers, agents, or offer for sale, sell, and/or advertise (including the use of interactive web pages with promotional material) products in this District that infringe the Asserted Patents.

13. In addition to Defendants' continuously and systematically conducting business in this District, the causes of action against Defendants are connected (but not limited) to Defendants' purposeful acts committed in this District, including Defendants' making, using, importing, offering for sale, or selling products which include features that fall within the scope of at least one claim of the Asserted Patents.

14. Venue lies in this District under 28 U.S.C. §§1391 and 1400(b) because, among other reasons, Defendants are subject to personal jurisdiction in this District, and have committed and continue to commit acts of patent infringement in this District. For example, Defendants have used, sold, offered for sale, and/or imported infringing products in this District.

THE PATENTS-IN-SUIT

The '078 Patent

15. On March 25, 2008, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '078 Patent, entitled "User selection of computer login" after a full and fair examination.

16. Morpho is presently the owner by assignment of the '078 Patent, having received all right, title, and interest in and to the '078 Patent from the previous assignee of record. Morpho possesses all rights of recovery under the '078 Patent, including the exclusive right to recover for past infringement.

17. The '078 Patent is valid and enforceable.

18. The '078 Patent contains five independent claims and eighteen dependent claims.

The '415 Patent

19. On April 23, 2013, the USPTO duly and legally issued the ’415 Patent, entitled “User-selectable signatures” after a full and fair examination.

20. Morpho is presently the owner by assignment of the ’415 Patent, having received all right, title and interest in and to the ’415 Patent from the previous assignee of record. Morpho possesses all rights of recovery under the ’415 Patent, including the exclusive right to recover past infringement.

21. The ’415 Patent is valid and enforceable.

22. The ‘415 Patent contains one independent claim and 16 dependent claims.

The ’798 Patent

23. On May 5, 2015, the USPTO duly and legally issued the ’798 Patent, entitled “User-selectable signature” after a full and fair examination.

24. Morpho is presently the owner by assignment of the ’798 Patent, having received all right, title and interest in and to the’ 798 Patent from the previous assignee of record. Morpho possesses all rights of recovery under the ’798 Patent, including the exclusive right to recover past infringement.

25. The ‘798 Patent is valid and enforceable.

26. The ‘798 Patent contains one independent claim and 16 dependent claims.

DESCRIPTION OF THE ACCUSED INSTRUMENTALITIES

27. Defendants’ identification devices (the “Infringing Products”), including but not limited to the ZKTeco iFace402 device, perform a computer-implemented method for creating a signature for subsequent authentication.

28. Infringing Products marketed, used, and sold by the Defendants, such as the ZKTeco iFace402 device, include each and every feature of the patented device.

29. For example, the Infringing Product includes a program memory, a data storage memory, and first and second input devices which are selectable by a user to allow the user to generate a reference signature that can be compared to a future submitted signature for authentication purposes to determine whether access should be granted.

30. Specifically, the ZKTeco iFace402 device has a menu that allows users to select among various authentication methods (i.e., provide secured access) such as fingerprint and password, which are configured using the Infringing Product's fingerprint sensor and touchscreen accordingly (i.e., other than by using a keyboard).

COUNT I: DIRECT INFRINGEMENT OF THE '078 PATENT

31. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-30.

32. Taken together, either partially or entirely, the features included in the Infringing Products, such as the exemplary product ZKTeco iFace402 device, perform the process recited in one or more of the claims of the '078 Patent.

33. Defendants directly infringe one or more of the claims of the '078 Patent by making, using, selling, offering to sell and/or importing the computer-implemented method for creating a signature for subsequent authentication described in the '078 Patent in violation of 35 USC § 271(a).

COUNT II: INDIRECT INFRINGEMENT OF THE '078 PATENT

Inducing Infringement

34. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-33.

35. Defendants have had knowledge of infringement of the ’078 Patent at least as of the service of the complaint.

36. Defendants indirectly infringe one or more claims of the ’078 Patent by actively inducing the infringement of their respective customers, users, and/or licensees who directly infringe by performing the patented process in violation of 35 USC § 271(b).

37. Defendants actively induce others, such as their customers, users, and/or licensees, to use the Infringing Products, including but not limited to the ZKTeco iFace402 device, which perform every step of the process recited in one or more claims of the ’078 Patent.

38. Such use by the Infringing Products performs the computer-implemented method identified in one or more of claims of the ’078 Patent. For example, the ZKTeco iFace402 device User Guide instructs, among others, its customers, users, and/or licensees to perform certain acts by virtue of their use of the ZKTeco iFace402 device. Defendants’ customers, users, and/or licensees perform those acts when they use the ZKTeco iFace402 device.

Contributory Infringement

39. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-38.

40. With knowledge of the patent in suit, Defendants indirectly infringe the ’078 Patent by contributing to the direct infringement of a class of actors which includes the end-users of their devices, as well as customers, users, and/or licensees, by encouraging the class of actors to use the Infringing Products which perform all the steps of the patented process as described in one or more claims of the ’078 Patent, aware of the fact that such acts amount to

infringement of one or more claims of the ‘078 Patent and with the specific intent to contribute to the infringement.

41. Defendants employ authentication methods in their devices, including but not limited to the Infringing Products, which are components of a patented machine covered by one or more claims of the ’078 Patent, constitute a material part of the invention, and are not a staple article or commodity of commerce suitable for substantial non-infringing use.

42. Defendants have known that such authentication method employed by their devices, including but not limited to the Infringing Products, was especially made or especially adapted for use in infringement of the ’078 Patent at least of the service of the present complaint.

43. By engaging in the conduct described herein, Defendants have injured Morpho and are thus liable for indirectly infringing the ’078 Patent by contributing to the direct infringement of one or more claims of the ’078 Patent, in violation of 35 U.S.C. §271(c).

COUNT III: DIRECT INFRINGEMENT OF THE ’415 PATENT

44. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-43.

45. Taken together, either partially or entirely, the features and elements embodied in the Infringing Products, including but not limited to the ZKTeco iFace402 device, meet each and every element of the computing device recited in one or more of the claims of the ’415 Patent.

46. Defendants directly infringe one or more of the claims of the ’415 Patent by making, using, selling, offering to sell and/or importing the computing device providing secured access described in the ’415 Patent in violation of 35 USC § 271(a).

COUNT IV: INDIRECT INFRINGEMENT OF THE '415 PATENT

Inducing Infringement

47. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-46.

48. Defendants have had knowledge of infringement of the '415 Patent at least as of the service of the present complaint.

49. Defendants indirectly infringe one or more claims of the '415 Patent by actively inducing the infringement of their respective customers, users, and/or licensees who directly infringe by making, using, selling, offering to sell, and/or importing the patented computing device in violation of 35 USC § 271(b).

50. Defendants actively induce others, such as their customers, users, and/or licensees, to use the Infringing Products, including but not limited to the ZKTeco iFace402 device, which contain each and every element of the computing device recited in one or more of the claims of the '415 Patent.

51. Such use of the Infringing Products meets each and every feature recited in one or more of claims of the '415 Patent infringes the patent. For example, the ZKTeco iFace402 device User Guide instructs, among others, its customers, users, and/or licensees to perform certain acts for using the ZKTeco iFace402 device. Defendants' customers, users, and/or licensees perform those acts when using, among others, the ZKTeco iFace402 device.

Contributory Infringement

52. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-51.

53. With knowledge of the patent in suit, Defendants indirectly infringe the ’415 Patent by contributing to the direct infringement of a class of actors which includes the end-users of their identification devices, as well as customers, users, and/or licensees, by encouraging the class of actors to use the Infringing Products which meet each and every element of the patented computing device as described in one or more claims of the ’415 Patent, aware of the fact that such acts amount to infringement of one or more claims of the ’415 Patent and with the specific intent to contribute to the infringement.

54. Defendants employ authentication features in their computing devices, including but not limited to the Infringing Products, which are components of a patented machine covered by one or more claims of the ’415 Patent, constitute a material part of the invention, and are not a staple article or commodity of commerce suitable for substantial non- infringing use.

55. Defendants have known that such authentication features employed by their computing devices, including but not limited to the Infringing Products, were especially made or especially adapted for use in infringement of the ’415 Patent at least of the service of this complaint.

56. By engaging in the conduct described herein, Defendants have injured Morpho and are thus liable for indirectly infringing the ’415 Patent by contributing to the direct infringement of one or more claims of the ’415 Patent, in violation of 35 U.S.C. §271(c).

COUNT V:DIRECT INFRINGEMENT OF THE ’798 PATENT

57. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-56.

58. Taken together, either partially or entirely, the features included in the Infringing Products, including but not limited to ZKTeco iFace402 device, perform the process recited in one or more of the claims of the ’798 Patent.

59. Defendants directly infringe one or more of the claims of the ’798 Patent by making, using, selling, offering to sell and/or importing the computer-implemented method for creating a user-selectable signature described in the ’798 Patent in violation of 35 USC § 271(a).

COUNT VI: INDIRECT INFRINGEMENT OFTHE ‘798 PATENT

Inducing Infringement

60. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-59.

61. Defendants have had knowledge of infringement of the ’798 Patent at least as of the service of the present complaint.

62. Defendants indirectly infringe one or more claims of the ’798 Patent by actively inducing the infringement of their respective customers, users, and/or licensees who directly infringe by performing the patented process in violation of 35 USC § 271(b).

63. Defendants actively induce others, such as their customers, users, and/or licensees, to use the Infringing Products, including but not limited to the ZKTeco iFace402 device, that perform all the steps of the process recited in one or more claims of the ’798 Patent.

64. Such use by the Infringing Products performs the computer-implemented method identified in one or more of claims of the ’798 Patent. For example, the ZKTeco iFace402 device User Guide instructs, among others, its customers, users, and/or licensees to perform

certain acts by virtue of their use of the ZKTeco iFace402 device. Defendants' customers, users, and/or licensees perform those acts when they use the ZKTeco iFace402 device.

Contributory Infringement

65. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-64.

66. With knowledge of the patent in suit, Defendants indirectly infringe the '798 Patent by contributing to the direct infringement of a class of actors which includes the end-users of their identification devices, as well as customers, users, and/or licensees, by encouraging the class of actors to use the Infringing Products which perform all the steps of the patented method as described in one or more claims of the '798 Patent, aware of the fact that such acts amount to infringement of one or more claims of the '798 Patent and with the specific intent to contribute to the infringement.

67. Defendants employ authentication methods in their computing devices, including but not limited to the Infringing Products, which are components of a patented machine covered by one or more claims of the '798 Patent, constitute a material part of the invention, and are not a staple article or commodity of commerce suitable for substantial non-infringing use.

68. Defendants have known that such authentication method employed by their computing devices, including but not limited to the Infringing Products, was especially made or especially adapted for use in infringement of the '798 Patent at least of the service of this complaint.

69. By engaging in the conduct described herein, Defendants have injured Morpho and are thus liable for indirectly infringing the '798 Patent by contributing to the direct infringement of one or more claims of the '798 Patent, in violation of 35 U.S.C. §271(c).

DEMAND FOR JURY TRIAL

70. Morpho demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Morpho prays for the following relief:

1. That Defendants be adjudged to have infringed the Asserted Patents, directly and/or indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents;
2. That Defendants, their officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly and/or indirectly infringing the Asserted Patents;
3. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Morpho for the Defendants' past infringement and any continuing or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement, including compensatory damages;
4. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;
5. That Defendants be directed to pay enhanced damages, including Morpho's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C.

§285; and

6. That Morpho has such other and further relief as this Court may deem just and proper.

Dated: July 24, 2015

Respectfully Submitted,

By:

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