

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

DATAMOTION TEXAS, LLC,

Plaintiff,

v.

AMERICAN HERITAGE LIFE INSURANCE
COMPANY,

Defendant.

Civil Action No. 2:15-cv-01683

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Plaintiff, DataMotion Texas, LLC (“DataMotion”), by and through its undersigned counsel, submits this Original Complaint¹ against the above-named Defendant, as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of United States Patent No. 8,447,967 (the “’967 patent” or “patents-in-suit”).

THE PARTIES

2. Plaintiff, DataMotion Texas, LLC, is a Texas company.

3. Upon information and belief, Defendant, American Heritage Life Insurance Company ("AHLIC") is a corporation established under the laws of the State of Florida, with its principal place of business located at 1776 American Heritage Life Drive, Jacksonville, Florida 32224.

JURISDICTION AND VENUE

¹ DataMotion is also seeking leave to amend its complaint in Civil Action No. 2:15-cv-00890, styled DataMotion Texas, LLC v. American Heritage Life Insurance Company, et al., to add the ‘967 patent-in-suit to that case. If such leave is granted, then this case will either be moot, and it can be dismissed as such, or it could be consolidated into the earlier filed case.

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant, including because Defendant has minimum contacts within the State of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas; Defendant regularly conducts business within the State of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas, including at least by virtue of Defendant's secured email systems and methods, including those accused systems and methods described herein, which are at least used in and/or accessible in the State of Texas. Further, this Court has general jurisdiction over Defendant, including due to its continuous and systematic contacts with the State of Texas, including because Defendant has committed patent infringement in the State of Texas.

6. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b), including because Defendant has purposefully availed themselves of the privileges of conducting business in this District; Defendant regularly conducts business within this District; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in this District, including at least by virtue of Defendant's secured email systems and methods which are at least used in and/or accessible in this District.

BACKGROUND

A. DataMotion, Inc.

7. DataMotion's affiliated entity, DataMotion, Inc., was founded in 1999 by security software veterans with experience in developing and architecting data security products for

military and enterprise customers. It has grown into a company that now employs 36 people.

8. DataMotion, Inc. is an online communications security company that has invested substantial resources into the development and sale of software for securely delivering data, such as email, files, and other information.

9. DataMotion, Inc. has received accolades in recognition of its groundbreaking technological developments and outstanding service in the field of online security and encryption. Notably, DataMotion has been recognized by Gartner, in its “Platform as a Service: Definition, Taxonomy and Vendor Landscape, 2011,” and was named to CIO Review’s “20 Most Promising Healthcare Consulting Providers” list. DataMotion has received full accreditation by the Direct Trusted Agent Accreditation Program (DTAAP) for HISPs from DirectTrust.org and the Electronic Healthcare Network Accreditation Commission (EHNAC). Additional recognition has come from the SC Magazine Awards, the MSD2D People’s Choice awards, and the Microsoft Partner Network. DataMotion, Inc. has invested a significant amount of financial and intellectual capital into the development of pioneering technologies such as the method for secure transmission of a message via a network where a recipient of the message need not be a party to the network or maintain an active address in the network, which is disclosed in the ‘967 patent.

B. The ‘967 patent

10. On May 21, 2013, the ‘967 patent, entitled “Controlled Message Distribution” was duly and lawfully issued by the United States Patent and Trademark Office. The claims of the ‘967 patent are entitled to the benefit of U.S. Provisional Application No. 60/214,934 filed June 29, 2000. *See* ‘967 Patent.

11. The claims of the ‘967 patent cover, *inter alia*, electronic mail systems comprising an email application having an interface for selectively initiating a first email sending process or a

second email sending process; a first email server that routes email content without encryption; and a second email server for delivering encrypted email content for a secure message transaction that provides secure access to the email content, irrespective of whether the intended recipient's email application is decryption enabled.

12. The claims of the '967 patent also cover, *inter alia*, methods for transmitting an email comprising the steps of: launching an email application, the email application including an interface; selecting one of a plurality of email transmitting processes via the interface; if the selected email transmitting process requires secure message transmission to a recipient, inserting email content into an electronic message addressed to a server that initiates a secure link with the recipient.

13. The technology recited in the claims of the '967 patent provides an inventive concept and does not claim an abstract idea. The inventive concept greatly enhances and facilitates the operation of an electronic messaging system, so that, *inter alia*, electronic messages may be transmitted securely to a recipient who has not installed any specialized software. '967 Patent; Col. 5:55-61.

14. One inventive component of the '967 patent comprises providing a secure transfer of electronic message content from a sender to an out of network recipient who lacks decryption software by selecting an email process from an interface.

15. The technology claimed in the '967 patent does not preempt all ways for transferring message content securely. For example, certain claims comprise selecting or selectively initiating an email process to cause a secure server to initiate a secure link to a client computer, providing access to secure electronic message content without the client needing to have decryption software.

16. Defendant can securely transfer message content without infringing the '967 patent using systems and methods that lack the inventiveness of the claimed invention. For example, the prior art cited on the face of the '967 patent remains available for practice by the Defendant, and the claims of the '967 patent do not preempt practice of those prior art methods. Further, message content may be encrypted using public/private key encryption.

17. The claims of the '967 patent cannot be practiced by a human alone and there exists no human analogue to the systems or methods claimed in the '967 patent. The claims are specifically directed to the secure transfer of data over a network, using a server as an intermediary- a process that is only possible in the realm of computer networks.

18. The dependent claims of the '967 patent add additional limitations demonstrating that they are also not directed to any abstract ideas, contain inventive concepts, and do not preempt all ways of securely transferring data. Claims 2 and 5, for example, specifically limit the type of link established between the server and client. Claim 3 limits the locations of the servers. Claim 6 limits the type of data being transferred.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,447,967

19. DataMotion repeats and realleges the allegations of paragraphs 1 through 18 as if fully set forth herein.

20. DataMotion is the assignee and owner of the right, title and interest in and to the '967 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

21. Defendant has infringed and are now infringing, including literally, jointly, and/or equivalently, the '967 Patent in this judicial district, the State of Texas, and elsewhere in the United States, in violation of 35 U.S.C. § 271 through actions comprising the practicing, making, using,

and/or hosting, without authority from Plaintiff, methods for transmitting an email comprising the steps of: launching an email application, the email application including an interface; selecting one of a plurality of email transmitting processes via the interface; if the selected email transmitting process requires secure message transmission to a recipient, inserting email content into an electronic message addressed to a server that initiates a secure link with the recipient.

22. Defendant infringes the '967 Patent by and through at least its practicing, making, using, offering for sale, selling, and/or hosting of methods comprising at least the Allstate Secure Messaging system.

23. On information and belief, Defendant has had at least constructive notice of the '967 Patent pursuant to the Patent Act. Plaintiff reserves the right to take discovery regarding Defendant's first actual notice of the '967 Patent.

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

DAMAGES

25. By way of its infringing activities, Defendant has caused and continue to cause Plaintiff to suffer damages, and Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of 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.

26. Defendant's use of DataMotion's patented technology has caused, is causing and will continue to cause DataMotion irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

27. Plaintiff also requests that the Court make a finding that this is an exceptional case

entitling Plaintiff to recover its attorneys' fees and costs pursuant to 35 U.S.C. § 285.

JURY DEMAND

28. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on all issues so triable.

PRAYER FOR RELIEF

29. Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the Patent-in-Suit have been directly infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- B. A preliminary and permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with it, from making, using, offering to sell, or selling in the United States or importing into the United States any devices, methods or systems that infringe any claim of the Patent-in-Suit, or contributing to or inducing the same by others;
- C. An award of damages to be paid by Defendant adequate to compensate DataMotion for Defendant's past infringement of the Patent-in-Suit and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- D. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285;
- E. A judgment and order requiring Defendant to pay Plaintiff its damages, costs, expenses,

fees, and prejudgment and post-judgment interest for Defendant's infringement of the Patent-in-Suit as provided under 35 U.S.C. §§ 284 and/or 285; and

F. Any and all further relief for which Plaintiff may show itself justly entitled that this Court deems just and proper.

October 27, 2015

Respectfully submitted,

/s/ John J. Edmonds

John J. Edmonds – Lead Counsel

Texas Bar No. 789758

Stephen F. Schlather

Texas Bar No. 24007993

Shea N. Palavan

Texas Bar No. 24083616

COLLINS, EDMONDS, POGORZELSKI,

SCHLATHER & TOWER, PLLC

1616 South Voss Road, Suite 125

Houston, Texas 77057

Telephone: (281) 501-3425

Facsimile: (832) 415-2535

Email: jedmonds@cepiplaw.com

sschlather@cepiplaw.com

spalavan@cepiplaw.com

*Attorneys for Plaintiff,
DataMotion Texas, LLC*