

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

WEATHER INSIGHTS, LLC,	)	Case No. _____
Plaintiff,	)	
v.	)	<b>COMPLAINT FOR PATENT INFRINGEMENT</b>
EPOKE NORTH AMERICA, INC.,	)	
Defendant.	)	<b>DEMAND FOR JURY TRIAL</b>
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**PLAINTIFF WEATHER INSIGHTS, LLC’S  
COMPLAINT FOR PATENT INFRINGEMENT  
AND DEMAND FOR JURY TRIAL**

Plaintiff Weather Insights, LLC (“Weather Insights” or “Plaintiff”) by and for its Complaint against defendant Epoke North America, Inc. (“Epoke” or “Defendant”) hereby alleges as follows:

**NATURE OF THE CASE**

1. This is an action for patent infringement arising under the patent laws of the United States. Weather Insights holds the rights in U.S. Patent Nos. 8,044,823 (“the ‘823 patent”), 7,683,804 (“the ‘804 patent”) and 6,938,829 (“the ‘829 patent”). The United States patent laws grant the holder of a patent the right to exclude infringers from making, using, selling or importing the invention claimed in a patent, and to recover damages for the infringer’s violations of these rights, and to recover treble damages where the infringer willingly infringed the patent. Under 35 U.S.C. § 282(a), the ‘823 Patent, the ‘804 Patent and the ‘829 Patent are entitled to a presumption of validity. Weather Insights is suing Defendant for infringing its

patents, and doing so willfully. Weather Insights seeks to recover damages from Defendant, including treble damages for willful infringement.

**THE PARTIES**

2. Weather Insights is a limited liability company, organized and existing under the laws of the State of Ohio, with its principal place of business located at 3558 Lee Road, Shaker Heights, Ohio 44120.

3. Upon information and belief, Defendant Epoke North America, Inc., is a corporation organized and existing under the laws of Canada, with its principal place of business located at 2458 Huntley Road, Stittsville, Ontario K2S 1B8. Epoke North America, Inc., also has a place of business located at 875 N Michigan Avenue, Suite 3950, Chicago, Illinois 60611, USA.

4. Upon information and belief, Defendant has engaged in the design, manufacture, marketing and sale of one or more Epoke-branded intelligent mobile spreading systems which infringe the '823 patent, including but not limited to the Epoke EpoMaster IV and Epoke Epotherm (collectively the "823 Accused Products").

5. Upon information and belief, Defendant has engaged in the design, manufacture, marketing and sale of one or more Epoke-branded intelligent mobile spreading systems which infringe the '804 patent, including but not limited to the Epoke EpoSat (collectively the "804 Accused Products").

6. Upon information and belief, Defendant has engaged in the design, manufacture, marketing and sale of one or more Epoke-branded intelligent mobile spreading systems which infringe the '829 patent, including but not limited to the Epoke EpoSat (collectively the "829 Accused Products").

**JURISDICTION**

7. This is an action for patent infringement arising under the patent laws of the United States of America, more specifically under 35 U.S.C. § 100, *et seq.* Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338.

8. The Court has personal jurisdiction over Defendant because Defendant, among other things, conducts business in, and avails itself of the laws of, the State of New York. In addition, upon information and belief, Defendant through its own acts and/or through the acts of its affiliated companies (acting as its agents or alter egos) makes, uses, offers to sell, sells (directly or through intermediaries), imports, licenses and/or supplies, in this District and elsewhere in the United States, products, through regular distribution channels, knowing such products would be used, offered for sale and/or sold in this District. Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of New York and in this District.

9. Upon information and belief, Defendant directly or through its subsidiaries or intermediaries, makes, uses, offers for sale, sells, imports, advertises, makes available and/or markets and, at all relevant times has made, used, offered for sale, sold, imported, advertised and made available and/or marketed products within the Southern District of New York, through its website: [www.epokena.com](http://www.epokena.com), and including but not limited to, through the [www.lisanitation.net](http://www.lisanitation.net), [www.timmermanequipment.com](http://www.timmermanequipment.com), and [www.jjei.com](http://www.jjei.com) websites thereby infringing the '823, '804 and '829 patents.

**VENUE**

10. Venue properly lies within this judicial district and division, pursuant to 28 U.S.C. §§ 1391(b), (c), and (d), and 1400(b).

11. Upon information and belief, Defendant resides in this District for the purposes of venue, insofar as it is subject to the personal jurisdiction in this District, has committed acts of infringement in this District, solicits business in this District, and conducts other business in this District.

**INFRINGEMENT OF U.S. PATENT NO. 8,044,823**

12. Weather Insights incorporates by reference the allegations set forth in the preceding paragraphs.

13. On October 25, 2011, the '823 patent, entitled "Systems and Method for Monitoring and Controlling a Vehicle Travel Surface," was duly and lawfully issued based upon an application filed by the inventors, John A. Doherty and Charles A. Kalbfleisch. A true and correct copy of the '823 Patent is attached hereto as Exhibit 1.

14. Weather Insights is the assignee and the owner of all right, title and interest in and to the '823 patent, and has the right to sue and recover damages for infringement thereof.

15. Upon information and belief, Defendant has been and continues to be engaged in making, using, importing, selling and/or offering for sale infringing products, including, but not limited to, the 823 Accused Products in the United States generally, and in the Southern District of New York specifically. The 823 Accused Products are available for sale at [www.epoke.com](http://www.epoke.com).

16. Upon information and belief, Defendant has actively and knowingly induced infringement and is continuing to induce infringement of the '823 patent by, without limitation, engaging in acts including the encouragement, instructing, directing and/or advising of third parties as to how to infringe the '823 patent via the unauthorized copying and/or making and/or using and/or selling and/or offering to sell within the United States, during the term of the patent,

products and/or services that embody the patented invention/design described and claimed in the '823 patent and is thus liable to Weather Insights pursuant to 35 U.S.C. § 271.

17. Defendant has indirectly infringed and continues to infringe at least claims 1 and 7 of the '823 patent by inducement under 35 U.S.C. 271(b) and contributory infringement under 35 U.S.C. 271(c). Defendant has induced and continues to induce users and retailers of the 823 Accused Products to directly infringe at least claims 1 and 7 of the '823 patent.

18. Defendant has infringed, and continues to infringe, has contributed to and continues to contribute to acts of infringement, and/or has actively and knowingly induced and continues to actively and knowingly induce the infringement of one or more claims of the '823 patent, including at least claims 1 and 7, either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale within the United States and/or importing into the United States the EpoMaster IV and EpoTherm systems.

19. Defendant has actual knowledge of the '823 patent at least as of the date of filing of this complaint. Defendant actively induces and contributes to the infringement of others, including purchasers who deploy the 823 Accused Products in their vehicles, to directly infringe one or more claims of the '823 patent. Specifically, in light of the above, Defendant knowingly induces infringement of the '823 patent with specific intent to do so including by providing at least manuals, white papers, training, and/or other support to purchasers to perform acts intended by Defendant to cause direct infringement of one or more claims of the '823 patent. Additionally, the 823 Accused Products were especially designed, made, and/or adapted for use in an infringing manner. The Accused Products, including without limitation Defendant's EpoMaster IV and EpoTherm Systems, embody either the claimed inventions on their own or are

material, non-staple components of end-use products that embody the claimed inventions, which components have no substantial non-infringing uses.

20. Defendant's infringement of the '823 patent is without consent of, authority of, or license from Weather Insights.

21. Upon information and belief, Defendant's infringement of the '823 patent is willful. This action, therefore, is "exceptional" within the meaning of 35 U.S.C. § 285 entitling Weather Insights to its attorneys' fees and expenses.

22. As a result of Defendant's acts of infringement, Weather Insights has suffered and will continue to suffer damages in an amount to be proven at trial.

**INFRINGEMENT OF U.S. PATENT NO. 7,683,804**

23. Weather Insights incorporates by reference the allegations set forth in the preceding paragraphs.

24. On March 23, 2010, the '804 patent, entitled "Methods for Determining Need for Treating a Vehicle Travel Surface," was duly and lawfully issued based upon an application filed by the inventors, John A. Doherty and Charles A. Kalbfleisch. A true and correct copy of the '804 Patent is attached hereto as Exhibit 2.

25. Weather Insights is the assignee and the owner of all right, title and interest in and to the '804 patent, and has the right to sue and recover damages for infringement thereof.

26. Upon information and belief, Defendant has been and continues to be engaged in making, using, importing, selling and/or offering for sale infringing products, including, but not limited to, the 804 Accused Products in the United States generally, and in the Southern District of New York specifically. The 804 Accused Products are available for sale at [www.epoke.com](http://www.epoke.com).

27. Upon information and belief, Defendant has actively and knowingly induced infringement and is continuing to induce infringement of the '804 patent by, without limitation,

engaging in acts including the encouragement, instructing, directing and/or advising of third parties as to how to infringe the '804 patent via the unauthorized copying and/or making and/or using and/or selling and/or offering to sell within the United States, during the term of the patent, products and/or services that embody the patented invention/design described and claimed in the '804 patent and is thus liable to Weather Insights pursuant to 35 U.S.C. § 271.

28. Defendant has indirectly infringed and continues to infringe at least claim 6 of the '804 patent by inducement under 35 U.S.C. 271(b) and contributory infringement under 35 U.S.C. 271(c). Defendant has induced and continues to induce users and retailers of the 804 Accused Products to directly infringe at least claims 6 of the '804 patent.

29. Defendant has infringed, and continues to infringe, has contributed to and continues to contribute to acts of infringement, and/or has actively and knowingly induced and continues to actively and knowingly induce the infringement of one or more claims of the '804 patent, including at least claim 6, either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale within the United States and/or importing into the United States the EpoSat system.

30. Defendant has actual knowledge of the '804 patent at least as of the date of filing of this complaint. Defendant actively induces and contributes to the infringement of others, including purchasers who deploy the 804 Accused Products in their vehicles, to directly infringe one or more claims of the '804 patent. Specifically, in light of the above, Defendant knowingly induces infringement of the '804 patent with specific intent to do so including by providing at least manuals, white papers, training, and/or other support to purchasers to perform acts intended by Defendant to cause direct infringement of one or more claims of the '804 patent. Additionally, the 804 Accused Products were especially designed, made, and/or adapted for use

in an infringing manner. The Accused Products, including without limitation Defendant's EpoSat system, embody either the claimed inventions on its own or are material, non-staple components of end-use products that embody the claimed inventions, which components have no substantial non-infringing uses.

31. Defendant's infringement of the '804 patent is without consent of, authority of, or license from Weather Insights.

32. Upon information and belief, Defendant's infringement of the '804 patent is willful. This action, therefore, is "exceptional" within the meaning of 35 U.S.C. § 285 entitling Weather Insights to its attorneys' fees and expenses.

33. As a result of Defendant's acts of infringement, Weather Insights has suffered and will continue to suffer damages in an amount to be proven at trial.

**INFRINGEMENT OF U.S. PATENT NO. 6,938,829**

34. Weather Insights incorporates by reference the allegations set forth in the preceding paragraphs.

35. On September 6, 2005, the '829 patent, entitled "Apparatus and system for synchronized application of one or more materials to a surface from a vehicle and control of a vehicle mounted variable position snow removal device," was duly and lawfully issued based upon an application filed by the inventors, John A. Doherty and Charles A. Kalbfleisch. A true and correct copy of the '829 Patent is attached hereto as Exhibit 3.

36. Weather Insights is the assignee and the owner of all right, title and interest in and to the '829 patent, and has the right to sue and recover damages for infringement thereof.

37. Upon information and belief, Defendant has been and continues to be engaged in making, using, importing, selling and/or offering for sale infringing products, including, but not



limited to, the 829 Accused Products in the United States generally, and in the Southern District of New York specifically. The Accused Products are available [www.epoke.com](http://www.epoke.com).

38. Upon information and belief, Defendant has actively and knowingly induced infringement and is continuing to induce infringement of the '829 patent by, without limitation, engaging in acts including the encouragement, instructing, directing and/or advising of third parties as to how to infringe the '829 patent via the unauthorized copying and/or making and/or using and/or selling and/or offering to sell within the United States, during the term of the patent, products and/or services that embody the patented invention/design described and claimed in the '829 patent and is thus liable to Weather Insights pursuant to 35 U.S.C. § 271.

39. Defendant has indirectly infringed and continues to infringe at least claim 3 of the '829 patent by inducement under 35 U.S.C. 271(b) and contributory infringement under 35 U.S.C. 271(c). Defendant has induced and continues to induce users and retailers of the 829 Accused Products to directly infringe at least claims 3 of the '829 patent.

40. Defendant has infringed, and continues to infringe, has contributed to and continues to contribute to acts of infringement, and/or has actively and knowingly induced and continues to actively and knowingly induce the infringement of one or more claims of the '829 patent, including at least claim 3, either literally or under the doctrine of equivalents, by making, using, selling, and/or offering for sale within the United States and/or importing into the United States the EpoSat system.

41. Defendant has actual knowledge of the '829 patent at least as of the date of filing of this complaint. Defendant actively induces and contributes to the infringement of others, including purchasers who deploy the 829 Accused Products in their vehicles, to directly infringe one or more claims of the '829 patent. Specifically, in light of the above, Defendant knowingly

induces infringement of the '829 patent with specific intent to do so including by providing at least manuals, white papers, training, and/or other support to purchasers to perform acts intended by Defendant to cause direct infringement of one or more claims of the '829 patent. Additionally, the 829 Accused Products were especially designed, made, and/or adapted for use in an infringing manner. The 829 Accused Products, including without limitation Defendant's EpoSat system, embody either the claimed inventions on its own or are material, non-staple components of end-use products that embody the claimed inventions, which components have no substantial non-infringing uses.

42. Defendant's infringement of the '829 patent is without consent of, authority of, or license from Weather Insights.

43. Upon information and belief, Defendant's infringement of the '829 patent is willful. This action, therefore, is "exceptional" within the meaning of 35 U.S.C. § 285 entitling Weather Insights to its attorneys' fees and expenses.

44. As a result of Defendant's acts of infringement, Weather Insights has suffered and will continue to suffer damages in an amount to be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Weather Insights requests this Court enter judgment as follows:

- A. That the '823, '804 and '829 patents are valid and enforceable;
- B. That Defendant has directly and indirectly infringed at least claims 1 and 7 of the '823 patent; have indirectly and indirectly infringed at least claim 6 of the '804 patent; and have directly and indirectly infringed at least claim 3 of the '829 patent.
- C. That such infringement is willful;

D. That Defendant accounts for and pays to Weather Insights all damages pursuant to 35 U.S.C. § 284 to adequately compensate Weather Insights for Defendant's infringement of the '823, '804 and '829 patents, but in no event less than a reasonable royalty for the use made by Defendant of the invention set forth in the '823, '804 ad '829 patents;

E. That Weather Insights receives enhanced damages, in the form of treble damages, pursuant to 35 U.S.C. § 284;

F. That this is an exceptional case under 35 U.S.C. § 285;

G. That Defendant pays Weather Insights all of Weather Insights' reasonable attorneys' fees and expenses pursuant to 35 U.S.C. § 285;

H. That Weather Insights be granted pre-judgment and post-judgment interest in accordance with 35 U.S.C. § 284 on the damages caused to it by reason of Defendant's infringement of the '823, '804 and '829 patents, including pre-judgment and post-judgment interest on any enhanced damages or attorneys' fees award;

I. That costs be awarded in accordance with 35 U.S.C. § 284 to Weather Insights; and

J. That Weather Insights be granted such other and further relief as the Court may deem just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Weather Insights hereby demands a trial by jury on all issues so triable in this action.

Dated: January 19, 2016

KROUB, SILBERSHER & KOLMYKOV PLLC

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