

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SMART METER
TECHNOLOGIES, INC.,

Plaintiff

v.

DUKE ENERGY CORPORATION,

Defendant.

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C.A. NO.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Smart Meter Technologies, Inc. ("Plaintiff" or "SMT"), by and through its attorneys, files this Complaint for Patent Infringement against Defendant Duke Energy Corporation ("Duke" or "Defendant"), and alleges as follows:

PARTIES

1. Plaintiff SMT is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 600 Anton Blvd., Costa Mesa, California 92626. Plaintiff is the owner of seminal patents in the field of "smart" electricity and utility metering, including patents that address communication between a utility meter located at a business and / or a residence and a power control location. Plaintiff's portfolio includes patents that teach valuable innovations and improvements related to providing realistic and substantial energy conservation through monitoring real-time power consumption. Plaintiff is actively engaged in licensing efforts with respect to such technologies.

2. Defendant Duke is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 550 S. Tryon Street, Charlotte, North Carolina

28202. Defendant may be served with process by serving it registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. According to its own website, Duke Energy is the “largest power holding company in the United States, supplying and delivering energy to approximately 7.4 million U.S. Customers.”

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including §§ 271, 281, 282, 283, 284, and 285. This Court has subject matter jurisdiction over this patent infringement action pursuant to 28 U.S.C. §§ 1331, and 1338(a).

4. This Court has personal jurisdiction over Defendant because Defendant is incorporated under the laws of the State of Delaware. Defendant has thereby availed itself of the privileges of conducting business in the State of Delaware and has sought protection and benefit from the laws of the State of Delaware. This Court’s exercise of personal jurisdiction over Defendant would therefore comport with due process.

5. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

THE PATENT-IN-SUIT

6. On June 6, 2006, U.S. Patent No. 7,058,524 (“the ’524 Patent”) – entitled “Electrical Power Metering System” – was lawfully and properly issued by the United States Patent and Trademark Office (“USPTO”), after a full and fair examination. The named inventors on the ’524 Patent are Paul V. Hayes of Union City, NJ, and Daniel T. Morella of Highland Mills, NY. A true and correct copy of the ’524 Patent is attached hereto as Exhibit A and incorporated by reference.

7. Generally speaking, the '524 Patent teaches, among other things, a method of measuring power consumption at a business and / or residence, and communicating power consumption information from the point of use to the power provider.

8. By way of assignment, Plaintiff is the owner of all right, title, and interest in and to the Patent-in-Suit, including the rights to prosecute this action and to collect and receive damages for all past, present, and future infringements.

COUNT ONE: INFRINGEMENT OF THE '524 PATENT

9. Plaintiff incorporates the above allegations as if set forth here in full.

10. The '524 Patent is valid and enforceable. Defendant does not have a license to practice the patented inventions of the '524 Patent.

11. Defendant has infringed and is currently infringing, either literally or under the doctrine of equivalents, the '524 Patent by, among other things, making, using, offering for sale, selling, and/or importing in the United States – without license or authority – products, devices, or systems that fall within the scope of one or more claims of the '524 Patent. For example, Defendant has implemented automated power distribution equipment in the form of advanced power meters at residences that, when implemented, directly infringes at least Claim 17 of the '524 Patent, either literally or under the doctrine of equivalents.

12. More specifically, Dukes implementation of advanced meters infringes at least Claim 17 because it meets each and every limitation of Claim 17, either literally or under the doctrine of equivalents. For example, Duke's grid modernization project includes placing "smart meters" at power consumption points throughout the grid, such as residences and businesses, that communicate "metered information from a customer premise back to Duke Energy." On information and belief, Duke's "smart meters" are Itron's OpenWay smart

meters, which are IPv6 capable. These meters measure current fluctuations in the power line to the residence, calculate power consumption based on the current fluctuations, convert the power consumption information into IP-based power consumption information, and transmit the power consumption information back to Duke Energy over an external power line network.

13. Plaintiff has been damaged by Defendant's infringing conduct and will continue to be damaged unless, upon finding for Plaintiff, the Court awards to Plaintiff damages adequate to compensate for the infringement, in an amount to be determined at trial, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the Court.

14. Plaintiff expressly reserves the right to assert additional claims and to identify additional infringing products in accordance with the Court's scheduling order and local rules.

DEMAND FOR JURY TRIAL

15. Plaintiff hereby demands a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for entry of judgment as follows:

16. That Defendant has directly infringed, either literally or under the doctrine of equivalents, one or more claims of each of the Patents-In-Suit;

17. That Plaintiff is entitled to, and should recover, all damages to which Plaintiff is entitled under 35 U.S.C. § 284, but in no event less than a reasonable royalty;

18. That Defendant be ordered to provide an accounting;

19. That Plaintiff, as the prevailing party, shall recover from Defendant all taxable costs of court;

20. That Plaintiff shall recover from Defendant all pre- and post-judgment interest on the damages award, calculated at the highest interest rates allowed by law;

21. That Plaintiff is entitled to enhanced damages of up to three times the amount found by the jury or ordered by the Court, pursuant to 35 U.S.C. § 284;

22. That this case is exceptional and that Plaintiff therefore shall recover its attorney's fees and other recoverable expenses, under 35 U.S.C. § 285; and

23. That Plaintiff shall recover from Defendant such other and further relief as the Court may deem appropriate.

Dated: March 31, 2016

Respectfully submitted,

Of Counsel:

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