

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EMTEL INC.,

Plaintiff,

v.

MEDAIRE INC.,

Defendant.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:11-cv-03007

JURY DEMAND

SECOND AMENDED COMPLAINT

For its Complaint, Plaintiff Emtel, Inc. (“Emtel”) avers as follows:

1. Emtel is a corporation organized and existing under the laws of the state of Texas, and having its principal place of business in Houston, Texas.

2. Upon information and belief, Defendant MedAire, Inc. (“MedAire”) is a corporation organized and existing under the laws of the state of Nevada and having its principal place of business in Phoenix, Arizona. Defendant MedAire has appeared in the case and may be served through its counsel of record.

3. This action arises under the patent laws of the United States, United States Code Title 35. Jurisdiction and venue are predicated at least upon United States Code Title 28, Sections 1338, 1391, and 1400.

4. Emtel is an emergency medicine innovator. It has developed a superior telemedicine services method, which includes these features:

- a physician or medical practitioner at a central station (a hub);
- at least two remote stations (spokes) with a patient at each linked by video conferencing to the hub; and

- the physician or medical practitioner at the hub with the ability to generally contemporaneously evaluate a medical condition of or otherwise aid the patients at the spokes.

5. To protect its investment in the development of this method, Emtel applied for a United States patent on March 17, 2000, and filed a continuation application on March 25, 2003. These applications were filed in the name of the inventor and assigned to Emtel.

6. The United States Patent and Trademark Office (“PTO”) allowed the continuation application and issued it as U.S. Patent 7,129,970 on October 31, 2006. On April 12, 2011, the PTO reissued that patent as RE42,288 (‘288 Patent). See Exhibit A attached.

7. On August 2, 2012, MedAire’s attorney Sandra P. Thompson requested a Reexamination proceeding with the PTO asserting that all twenty claims of the ‘288 Patent were invalid over twelve references stating that these twelve references were “Not cited in the examination of or not properly reviewed in the examination of U.S. Patent No.: RE 42,288 to Degioanni”.

8. On January 30, 2014 the PTO issued a Notice of Intent to Issue a Reexamination Certificate confirming the patentability of Claims 1-20 over all of the prior art of record.

9. On February 12, 2014, the PTO issued the Reexamination Certificate.

10. Emtel is and at all relevant times has been the owner of all the right, title, and interest in and to the invention of and the patent rights of the RE42,288 patent.

11. Defendant without authority has made, used, offered to sell and sold methods, arrangements, and systems that infringe or induce infringement of one or more claims of the RE42,288 patent within this district and elsewhere and Defendant continues to do so. The infringement includes, for example, systems, arrangements, and/or services comprising and/or provided by, in and/or from Medaire’s MedLink Global Response Centers to remote subscribers on, for example, business aircraft, commercial airlines, yachts, and commercial

ships using Medaire's own equipment, arrangements, systems, networks, or other instrumentalities alone or in conjunction with equipment, arrangements, systems, networks, or other instrumentalities supplied by, and/or actions performed by, a third party such as Remote Diagnostic Technologies Ltd.

12. Upon information and belief since at least as early as the filing of this lawsuit on August 17, 2011, MedAire has known about the '288 Patent and known that its activities directly infringe and/or induce infringement of the '288 patent.

PATENT INFRINGEMENT

13. Emtel repeats and realleges paragraphs 1 through 12 of this Complaint as if fully set forth herein.

14. On information and belief, Defendant has infringed and continues to infringe the RE42,288 patent since it issued (and reissued) because it without authority has made, used, offered to sell and sold methods, systems, and arrangements that infringe or induce infringement of one or more claims of the RE42,288 patent within this district and elsewhere and Defendant continues to do so.

15. As a result of Defendant's acts, Emtel has been damaged.

16. A jury trial is demanded on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Therefore, Emtel prays for:

A finding by this Court that Defendant has infringed the RE42,288 patent;

An award against Defendant for the damages Emtel suffered as a result of Defendant's acts of infringement with pre-judgment interest thereon;

An award to Emtel of attorney's fees, costs, and expenses in this action;

An award against Defendant of treble damages if Defendant's acts are found to be willful; and

This Court to grant such other and further relief as this Court may deem just.

Respectfully submitted,

/s/ Gregory L. Porter

Gregory L. Porter
Attorney-in-Charge
Andrews Kurth LLP
TX State Bar No. 24002784
S. Dist. TX No. 34185
713) 220-4621
(713) 238-7169 [Fax]

Of Counsel:

J. Roger Williams, Jr.
TX State Bar No. 21555650
S. Dist. TX No. 618397
Richards Rodriguez & Skieth
816 Congress Avenue, Suite 1200
Austin, Texas 78701
rwilliams@rrsfirm.com
(512) 476-0005 Telephone
(512) 476-1513 Telecopier

James C. Willson
TX State Bar No. 24093380
S. Dist. TX No. 2536032
600 Travis, Suite 4200
Houston, Texas 77002

ATTORNEYS FOR PLAINTIFF
EMTEL INC.

CERTIFICATE OF SERVICE

This is to certify that on January 25, 2016, a true and correct copy of the foregoing document has been served on all counsel of record via the Court's ECF system.

<p>Robert C. Shaddox Jason R. Bernhardt 1100 JP Morgan Chase Tower 600 Travis Street Houston, Texas 77002</p> <p>ATTORNEYS FOR MEDAIRE INC.</p>	<p>Jonathan P. Hersey Scott B. Lieberman Slater Hersey & Lieberman LLP 18301 Von Karman Avenue, Suite 1060 Irvine, California 92612</p> <p>ATTORNEYS FOR MEDAIRE INC.</p>
---	---