

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

CLEAN ENERGY MANAGEMENT	)	
SOLUTIONS, LLC,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 2:16-cv-997
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
SIEMENS CORPORATION,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

For its Complaint, Plaintiff Clean Energy Management Solutions, LLC ("Clean Energy"), by and through the undersigned counsel, alleges as follows:

**THE PARTIES**

1. Clean Energy is a Texas limited liability company with a place of business located at 1400 Preston Road, Suite 475, Plano, Texas 75093.
2. Defendant Siemens Corporation is a Delaware corporation with, upon information and belief, a place of business located at 300 New Jersey Avenue, N.W., Suite 1000, Washington, District of Columbia 20001.
3. Upon information and belief, Defendant has registered with the Texas Secretary of State to conduct business in Texas.

**JURISDICTION AND VENUE**

4. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
5. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
6. Upon information and belief, Defendant conducts substantial business in this

forum, directly or through intermediaries, including: (i) at least a portion of the infringements 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.

7. Venue is proper in this district pursuant to §§ 1391(b), (c) and 1400(b).

### **THE PATENT-IN-SUIT**

8. On June 10, 2003, U.S. Patent No. 6,577,962 (the "'962 patent"), entitled "System and Method for Forecasting Energy Usage Load," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '962 patent is attached hereto as Exhibit A.

9. An inventive concept of the '962 patent greatly enhances the ability to forecast energy usage load for a facility. It improves energy load forecasting by, among other things, allowing for dynamic, real-time energy load forecasting for a site.

10. The claims of the '962 patent, moreover, describe a solution necessarily rooted in computer technology to solve a problem specifically arising in the realm of energy management. The patent specification, for example, explains how conventional methods were not capable of adapting the forecasting model to changing operational conditions, and instead, incremental improvement of the model required off-line reprocessing of the entire set of available data and then recalculating forecasting models; such off-line reprocessing required system downtime to update the forecasting models appropriately, and consequently, facilities generally could not receive up-to-date forecasting information as needed to adequately manage energy usage and control costs. Additionally, conventional load forecasting systems were primarily used by utilities for predicting aggregate energy load (i.e., the energy load of a region or a market sector),

and were generally incapable of predicting site-level load forecasts because they could not adapt to variable changing conditions in real-time so that the forecasts did not change based on changing conditions. The '962 patent overcame these difficulties, among others, by using a load forecasting application that includes a parameter identification module for determining periodic energy load usage and a load prediction module for generating energy usage load forecast profiles; and the load forecast profiles may be updated periodically to reflect changing conditions.

11. Clean Energy is the assignee and owner of the right, title and interest in and to the '962 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,577,962**

12. Clean Energy repeats and realleges the allegations of paragraphs 1 through 11 as if fully set forth herein.

13. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant is liable for infringement of at least claim 1 of the '962 patent by making, using, importing, offering for sale, and/or selling, systems and methods for forecasting energy usable load, including, but not limited to, SIMATIC B.Data.

14. More specifically and upon information and belief, Defendant's SIMATIC B.Data is a system for forecasting energy usage load for a facility. *See* b.data Energy Management ("Brochure") at p. 8 (available at [https://w5.siemens.com/italy/web/IndustryGreenProgram/greenindustria/risparmioenergia/automazindustriale/Documents/b.data\\_brochure\\_A4\\_eng\\_OK\\_low.pdf](https://w5.siemens.com/italy/web/IndustryGreenProgram/greenindustria/risparmioenergia/automazindustriale/Documents/b.data_brochure_A4_eng_OK_low.pdf) (last accessed Sept. 6, 2016)). It uses a server with a load forecasting application, *see* SIMATIC B.Data V6.0 - System

Description at p. 9 (available at [https://cache.industry.siemens.com/dl/files/737/109479737/att\\_857602/v1/bdata\\_v5\\_3\\_system\\_description\\_en-US\\_en-US.pdf](https://cache.industry.siemens.com/dl/files/737/109479737/att_857602/v1/bdata_v5_3_system_description_en-US_en-US.pdf) (last accessed Sept. 6, 2016); Brochure at p. 8, and determines periodic energy load usage of a facility. *See* Brochure at p. 6; SIMATIC B.Data V6.0 - System Description at pp. 5, 18. SIMATIC B.Data has a load prediction module for generating energy usage load forecasts in a real-time adaptive manner, *see* Brochure at p. 15, and it has a database associated with the server for storing load forecasting information. *See* SIMATIC B.Data V6.0 - System Description at p. 10.

15. Upon information and belief, Defendant has been on notice of the '962 patent at least as of the date the examiner at the U.S. Patent and Trademark Office cited in during prosecution of U.S. Patent Application Serial No. 10/142,626.

16. Defendant identified the '962 patent in an Information Disclosure Statement dated July 2, 2007 during prosecution of U.S. Application Serial No. 11/772,436. A true and correct copy of the Information Disclosure Statement is attached hereto as Exhibit B.

17. Thus, Defendant has an understanding of the subject matter disclosed and claimed in the '962 patent. Otherwise, upon information and belief, Defendant would not have identified the '962 patent on the July 2, 2007 Information Disclosure Statement in U.S. Application Serial No. 11/772,436.

18. Upon information and belief, Defendant was aware that its products infringed on the '962 patent no later than July 2, 2007, when Defendant identified the '962 patent as relevant prior art in the Information Disclosure Statement for U.S. Application Serial No. 11/772,436.

19. Defendant undertook and continues its infringing actions despite an objectively high likelihood that such activities infringed the '962 patent, which has been duly issued by the

USPTO, and is presumed valid. Upon information and belief, Defendant has known or should have known that its actions constituted and continue to constitute infringement of the '962 patent and that the '962 patent is valid at least as of July 2, 2007. Upon information and belief, Defendant could not reasonably, subjectively believe that its actions do not constitute infringement of the '962 patent, nor could it reasonably, subjectively believe that the patent is invalid. Despite that knowledge and subjective belief, and the objectively high likelihood that its actions constitute infringement, Defendant has continued its infringing activities. As such, Defendant willfully infringed and continues to infringe the '962 patent.

20. Defendant's customers' and end-users' use of Defendant's products that use systems and methods for forecasting energy usable load, including, but not limited to, SIMATIC B.Data, is facilitated by the use of technology patented under the '962 patent. Thus, Defendant's customers and end-users are able to use and benefit from a system for forecasting energy usage load for a facility.

21. Upon information and belief, in order to generate profits and revenues, Defendant markets and promotes, e.g., through its website and sales personnel, the use of its products that infringe the '962 patent when used as intended by Defendant's customers and end-users. Defendant's customers and end-users use such products (including, e.g., systems and methods for forecasting energy usable load, including, but not limited to, SIMATIC B.Data). Defendant further instructs its customers and end-users how to use such products in a manner that infringe the '962 patent (e.g., through on-line technical documentation, instructions, and technical support). Defendant further instructs its customers and end-users to infringe the '962 patent through the products themselves, e.g., through on-line instructions.

22. In particular, Defendant instructs its customers and end-users through at least

on-line support instructions and documentation over the Internet and training.

23. Defendant thus enables and encourages its customers and end-users to use such products to infringe the '962 patent.

24. As such, upon information and belief, despite the information Defendant obtained from '962 patent since at least July 2, 2007, Defendant continues to specifically intend for and encourage its customers and end-users to use its products in a manner that infringe the claims of the '962 patent. In addition, upon information and belief, since at least July 2, 2007, Defendant has deliberately avoided taking any actions (e.g., designing around, or providing notice to its customers) to avoid confirming that its actions continue to specifically encourage its customers and end-users to use its products and/or services in a manner that infringe the claims of the '962 patent.

25. Clean Energy is entitled to recover from Defendant the damages sustained by Clean Energy as a result of Defendant's infringement of the '962 patent 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.

#### **JURY DEMAND**

Clean Energy hereby demands a trial by jury on all issues so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Clean Energy requests that this Court enter judgment against Defendant as follows:

- A. An adjudication that Defendant has infringed the '962 patent;
- B. A judgment that Defendant has induced infringement of the '962 patent;

C. An award of damages to be paid by Defendant adequate to compensate Clean Energy for Defendant's past infringement of the '962 patent 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. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Clean Energy's reasonable attorneys' fees;

E. An award of enhanced damages pursuant to 35 U.S.C. § 284 for Defendant's willful infringement of the '9962 patent subsequent to the date of its notice of the '962 patent; and

F. An award to Clean Energy of such further relief at law or in equity as the Court deems just and proper.

Dated: September 6, 2016

/s/ Richard C. Weinblatt  
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