

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.:

**ELECTRONIC COMMUNICATION
TECHNOLOGIES, LLC,**

Plaintiff,

v.

LUMBER LIQUIDATORS, INC.,

Defendant.

**COMPLAINT FOR PATENT INFRINGEMENT AND
DEMAND FOR JURY TRIAL**

Plaintiff Electronic Communication Technologies, LLC (“Plaintiff” or “ECT”), by and through its undersigned counsel, brings this complaint for Patent Infringement against Defendant LUMBER LIQUIDATORS, INC. (“Defendant” or “LUMBERLIQUIDATORS.COM”), and in support alleges as follows:

NATURE OF THE LAWSUIT

1. This is an action for patent infringement by Defendant of: U.S. Pat. No. 9,373,261, invented by Scott A. Horstemeyer, entitled Secure Notification Messaging With User Option to Communicate with Delivery or Pickup Representative issued on June 21, 2016 (the “261 Patent” attached as **Exhibit A**) arising under the patent laws of the United States. *See*, 35 U.S.C. §§ 1 et seq.

JURISDICTION AND VENUE

2. This Court has original and exclusive subject matter jurisdiction pursuant to: 28 U.S.C. § 1331; 28 U.S.C. § 1338; and, 35 U.S.C. § 271.

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3. This Court has personal jurisdiction over Defendant pursuant to, *inter alia*, Fla. Stat. § 48.193 (the “Florida Long Arm Statute”), as Defendant: a) operates, conducts, engages in, and carries on business in Florida and/or has an office or agency in Florida; b) has committed one or more tortious acts within Florida; c) and is engaged in substantial and not isolated activity within Florida; and d) has purposely availed itself of the laws, services and/or other benefits of the State of Florida and therefore should reasonably anticipate being hailed into one or more of the courts within the State of Florida.

PLAINTIFF

4. Plaintiff ECT is a Florida Limited Liability Company with a principal place of business located in Boynton Beach, Palm Beach County, Florida.

5. Plaintiff has engaged the undersigned attorneys and agreed to pay them a reasonable fee.

DEFENDANT

6. On information and belief, Defendant LUMBER LIQUIDATORS, INC. is a Delaware corporation with a business address and/or registered agent at 3000 John Deere Rd. Toano, VA, 23168.

THE ‘261 PATENT

7. Over a decade ago, the escalation of online purchasers and the use of order confirmations and shipment notification messages presented unique problems for online retailers. Online retailers like Defendant were increasingly faced with customer account break-ins, loss of products that were ordered and shipped to hacker addresses and maybe the most important - the loss of customer’s trust.

8. Mr. Horstemeyer innovated many unique solutions to minimize hacker's impacts when mimicking order confirmations and shipment notification emails (the hacker's methods are known as "phishing").

9. More specifically, with respect to the '261 Patent, Mr. Horstemeyer invented methods and systems to enable online retailers to assist their customers in determining the difference between trusted and non-trusted shipment and order confirmation emails.

10. The '261 Patent has a priority date relating back to 2003 and addresses systems and methods for retailers and their associated customers to avoid "phishing" scams. The innovations allow confidential customer supplied information to be used within the retailer's communications to verify authenticity.

11. Providing customer verifiable information within shipment and order confirmations helps to stop or at least reduce fraud associated with the illegal mimicking of order and shipment confirmation emails.

12. Online retailers engaging in electronic communication via order confirmations and shipment notifications needed a means to help the customers "verify" and know the difference between an authentic communication or a fake "phishing" communication (impersonating the online retailer).

13. The U.S. Patent office determined that Mr. Horstemeyer's inventions are both novel and useful and granted Mr. Horstemeyer's assignees the right to exclude others from practicing the inventions, to recover at least a reasonable royalty for infringement of the patent, and where the infringement is willful to recover treble damages.

14. Plaintiff owns all right, title and interests in, and has standing to sue for infringement of the '261 Patent.

DEFENDANT’S INFRINGEMENT

15. The automated messaging features of Defendant’s Order Confirmation and also its Shipping Confirmation online systems infringe Claim 11 of the ‘261 Patent.

16. Defendant also contributes to and induces the infringement of methods and functions covered within the ‘261 Patent.

17. Defendant uses the patented systems and methods to authenticate information sent to customers when orders are processed for shipping or when shipped.

18. A top level diagram of one of the exemplary embodiments of the ‘261 Patent is below:

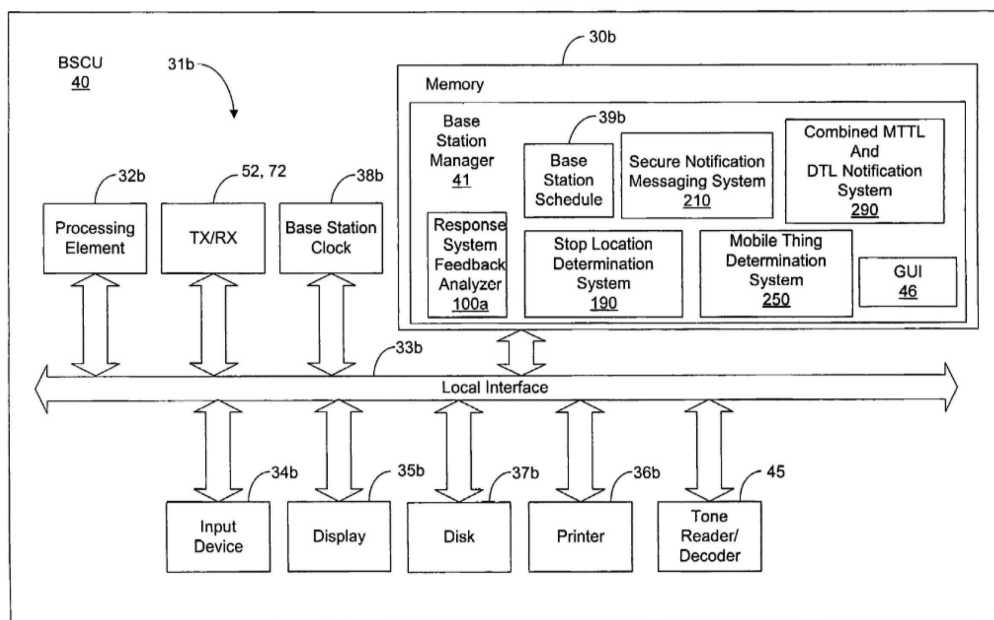


FIG. 3

19. Defendant includes customer information within notifications/messages to provide confidence to the notification-receiving party that the order confirmation and or shipment notification is from Defendant (the proper authorized source) and if more information about the shipment is needed, the links may be trusted and used within the confirmation or notification.

20. Defendant has and willfully continues its infringement of the '261 Patent in at least the following representative manner:

21. LUMBERLIQUIDATORS.COM uses an automated order confirmation and shipment (“automated notification”) to send customers updated shipment information when products are being prepared for picked up and when products are shipped.

22. Attached hereto as **Exhibit C** is a true and genuine Internet browser printout of one or more of LUMBERLIQUIDATORS.COM’s automated forms that enable customers to input their personal authentication information.

23. Attached hereto as **Exhibit B** is a true and genuine printout of one or more of LUMBERLIQUIDATORS.COM’s automated email notification to LUMBERLIQUIDATORS.COM’s customer of an order that is being prepared for pick up and/or when it has been shipped.

24. LUMBERLIQUIDATORS.COM’s automated notification system(s) comprises, one or more transceivers, one or more memories, one or more processors, and computer program code that is stored within one or more memories and executed by one or more processors.

25. LUMBERLIQUIDATORS.COM’s computer program code enables mobile customers to input personalized authentication information to be used at a future time when products are picked up and notifications emails are sent back to the customer. *See **Exhibits B & C***.

26. LUMBERLIQUIDATORS.COM stores authentication information including a combination of these items; payment method (credit card), last four digits of the credit card number, the billing person’s name, billing address are all collectively used to authenticate the LUMBERLIQUIDATORS.COM communications about their product being picked-up and

shipped is an authenticated email from LUMBERLIQUIDATORS.COM. When customers need to respond and enter account, login or different credit card(s) information they know the actual LUMBERLIQUIDATORS.COM website is authentic/safe/trusted by reviewing and responding to the message contents. See **Exhibits B & C**.

27. LUMBERLIQUIDATORS.COM uses code to capture and store customer authentication information when: (a) users set up accounts; (b) when users modify account information; and/or (c) when users purchase products from the LUMBERLIQUIDATORS.COM website. *Id.*

28. LUMBERLIQUIDATORS.COM uses computer program code to monitor products when moved from inventory, packaging, labeling, fulfillment, waiting to be picked up, picked up by a carrier, when the product leaves LUMBERLIQUIDATORS.COM and is in route to the customer's address. *Id.*

29. LUMBERLIQUIDATORS.COM uses computer program code to determine and initiate notifications to mobile users (personal communication devices) using transceivers such as email and electronic data communication systems, when the customer's product(s) are purchased and now designated for shipment; in advance of the courier vehicle arriving at fulfillment areas to pickup shipments/products. Each order is monitored through fulfillment processes including packaging and labeling and cut-off courier pickup times that vary based on fulfillment locations. Courier pickup times (cut off) and also the packages being scanning into vehicles are monitored by LUMBERLIQUIDATORS.COM. The customer's order and shipment confirmation are based in part, that their product is being fulfilled and in advance of being picked up by the courier.

30. In some cases, customers are also informed of subsequent “shipment notification” that will inform them – you’re the product is shipped and is in-route to their delivery address. *See Exhibit C.*

31. LUMBERLIQUIDATORS.COM’s computer program code retrieves the authentication information including, a combination of these items: payment method (credit card); last four digits of the credit card number; the billing person’s name; and, billing address are all used authenticate the shipment confirmation email was initiated by LUMBERLIQUIDATORS.COM (the authorized source). *Id.*

32. LUMBERLIQUIDATORS.COM’s computer program code sends shipment confirmation emails and embeds links within the notification to allow customers to get account information, get information about current orders such as when it will be shipped or if it has been shipped or to cancel order, the website and to customer service representatives – for additional information about the product(s). The link takes customers back directly to the item and account access for determining if the order was correct, shipped, backordered, etc. *Id.*

33. The foregoing actions by LUMBERLIQUIDATORS.COM read on at least Claim of 11 of the ‘261 Patent.

34. Representative Claim 11 of the ‘261 Patent is directed towards:

An automated notification system comprising:

one or more transceivers designed to communicate data; one or more memories; one or more processors; and computer program code stored in the one or more memories and executed by the one or more processors, the computer program code comprising:

code that enables a first party associated with a personal communication device (PCD) to input or select authentication information for use in connection with a subsequent notification communication session involving advance notice of a delivery or

pickup of a good or service at a stop location by a mobile thing (MT);

code that causes storage of the authentication information;

code that monitors location or travel information in connection with the MT;

code that causes initiation of the notification communication session to the PCD with the one or more transceivers, in advance of arrival of the MT at the stop location, based at least in part upon the location or travel information associated with the MT;

code that, during the notification communication session, enabling the first party to select whether or not to engage in a communication session with a second party having access to particulars of the pickup or delivery.

35. Defendant's automated notification system is not a staple article or commodity of commerce suitable for substantial non-infringing use.

36. Prior to bringing this action Plaintiff contacted Defendant about licensing and the above infringement, but Defendant has refused to license the patent and knowingly continues its infringement. Furthermore, this action constitutes further notice of infringement and any continued infringement after notice to Defendant without license is willful.

37. For licensing enquiries and options, Plaintiff's Licensing Agent, Edward Turnbull, may be contacted directly by Defendant or Defendant's counsel at: (778) 991-6208. Plaintiff encourages licensing of its patents and invites good faith discussions regarding the same. There are many options and terms available.

38. Defendant refuses to license the '261 Patent.

39. Defendant has failed and continues to fail to provide the Plaintiff with any substantial justification for its refusal.

40. Plaintiff's Official Verified Arrival™ Application is available for license through the Apple Store at: <https://itunes.apple.com/us/app/verified-arrival-app/id1174264522?mt=8>.

41. General information regarding patents and patent infringement is available from the U.S. Gov't at:

<https://www.uspto.gov/patents-getting-started/general-information-concerning-patents>.

42. Additionally, pursuant to 35 U.S.C. § 154, Defendant is notified the Plaintiff has provisional rights in U.S. Pat. Appl. Pub. No. 2016/0300281 A1 (published on June 10, 2016) attached as **Exhibit D**.

43. According to this law, a reasonable royalty may be due from any person who, during the period beginning on the date of publication of the application and ending on the date the patent is issued, makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or uses, offers for sale, or sells in the United States or imports into the United States products made by a process as claimed in the published patent application. Below is an exemplary claim analysis of how Defendant literally or equivalently practices at least one claim of the '281 Pub.

44. Defendant through its website or websites makes or uses an automated advance notification system that enables safer communications by assuring a first party that a notification communication session concerning an order for a good or service is authentic in that it has been authorized and initiated by a second party that will pick up or deliver the good or service, so that the first party is given assurance that the first party can initiate without risk a subsequent communication session to the second party by selecting a hyperlink that is provided during the notification communication session. See **Exhibits B & C**.

45. Defendant's system comprises one or more transceivers designed to communicate data. *Id.*

46. Defendant's system comprises one or more memories. *Id.*

47. Defendant's system comprises one or more processors. *Id.*

48. Defendant's system comprises computer program code stored in the one or more memories and executed by the one or more processors. *Id.*

49. The computer program code of Defendant's system comprises code that engages in an initial communication session between the one or more processors and a personal communication device (PCD) associated with the first party. *Id.*

50. The computer program code of Defendant's system comprises code that, during the initial communication session, enables the first party to input or select authentication information with the PCD for use in the notification communication session, the notification communication session giving advance notice of a delivery or pickup of the good or service at a stop location by a mobile thing (MT). *Id.*

51. The computer program code of Defendant's system comprises code storing the authentication information at the one or more computer systems. *Id.*

52. The computer program code of Defendant's system comprises code that monitors location or travel information in connection with the MT at the one or more computer systems. *Id.*

53. The computer program code of Defendant's system comprises code that initiates the notification communication session to the PCD or a different PCD associated with the first party, in advance of arrival of the MT at the stop location, based at least in part upon the location or travel information associated with the MT. *Id.*

54. The computer program code of Defendant's system comprises code that provides the authentication information during the notification communication session that is recognizable to the first party to indicate to the first party that the notification communication session is authentic and was initiated by the second party, the authentication information comprising at least a part of an account number that was provided by the first party during the initial communication session in connection with payment for the good or service. *Id.*

55. The computer program code of Defendant's system comprises code that provides the hyperlink in the notification communication session to enable the first party to select whether or not to initiate the subsequent communication session with the second party, the second party having access to particulars of the order. *See, Exhibit C.*

56. Based upon the facts above, should a patent issue on U.S. Pat. Appl. Pub. No. 2016/0300281 A1 Plaintiff shall be entitled to a reasonable royalty thereon. At such time Plaintiff may, in the discretion of the Court, supplement its Complaint.

57. All conditions precedent to bringing the action have occurred or have been waived.

COUNT I - INFRINGEMENT OF THE '261 PATENT

58. Plaintiff realleges paragraphs 1-57, as fully and completely as if set forth verbatim herein.

59. Defendant has infringed Claim 11 of the '261 Patent by the activities referred to in this Complaint in violation of 35 U.S.C. § 271(a).

60. Defendant's activities alleged in this Count have been without license permission or authorization from Plaintiff.

61. The activities of Defendant as set forth in this Count have been to the injury, detriment and irreparable harm of Plaintiff.

WHEREFORE, Plaintiff demands judgment, prays for relief against Defendant, and respectfully requests that the Court:

- A. enter a finding of infringement against Defendant under '261 Patent;
- B. award in favor of Plaintiff and against Defendant as Plaintiff may have suffered, but in to event less than a reasonably royalty pursuant to 35 U.S.C. § 284;
- C. award in favor of Plaintiff and against Defendant an enhancement of damages;
- D. find that this is an exceptional case;
- E. enter an injunction preliminarily and permanently enjoining infringement;
- F. award Plaintiff its attorneys' fees against Defendant under 35 U.S.C. § 285;
- G. award Plaintiff its costs against Defendant; and,
- H. award in favor of Plaintiff and against Defendant such other further relief as is just, fair or equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

[Signature page follows . . .]

DATED: April 24, 2017

Respectfully submitted,

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