

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

AKOLOUTHEO, LLC,

Plaintiff,

v.

**TEXAS-NEW MEXICO POWER
COMPANY**

Defendant.

CIVIL ACTION NO.: 4:18-cv-652

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

1. This is an action under the patent laws of the United States, Title 35 of the United States Code, for patent infringement, in which Akoloutheo makes the following allegations against Texas-New Mexico Power Company (“TNMP” or “Defendant”).

PARTIES

2. Akoloutheo is a Texas limited liability company having its primary office at 15139 Woodbluff Dr., Frisco, Texas 75035. Plaintiff’s owner and sole operator is Rochelle T. Burns.

3. TNMP is a Texas for-profit corporation having its main office at 577 N. Garden Ridge Blvd., Lewisville, Texas, 75067. The Registered Agent for service of process in Texas for TNMP appears to be Scott S. Seamster at the same address.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this district under 28 U.S.C. §§ 1391(c), generally, and under 1400(b), specifically. Defendant’s main office in Lewisville, Texas constitutes a regular and established place of business in this district, and Defendant has committed acts of patent infringement in this Judicial District by using, selling and/or offering for sale the infringing devices and instrumentalities to customers in Lewisville, Texas.

6. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its presence and substantial business in this forum, including: (i) its physical presence in this forum; (ii) at least a portion of the infringements alleged herein; and (iii) 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 Texas and in this Judicial District.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,088,239

7. Plaintiff is the owner by assignment of the valid and enforceable United States Patent No. 7,088,239 ("the '239 Patent") entitled "Method and Apparatus for All-purpose, Automatic Remote Utility Meter Reading, Utility Shut Off, and Hazard Warning and Correction" – including all rights to recover for past, present and future acts of infringement. The '239 Patent issued on August 8, 2006, and has a priority date of March 2, 2004. A true and correct copy of the '239 Patent is attached as Exhibit A.

8. TNMP is a major electricity transmission and distribution service provider in the State of Texas, serving nearly 250,000 residential and commercial customers across Texas, and specifically in Lewisville, Texas.

9. Defendant directly – or through intermediaries including distributors, partners, contractors, employees, divisions, branches, subsidiaries, or parents – has used, operated, imported, provided, supplied, distributed, offered for sale, sold, and/or provided access to certain "smart meter" and "smart grid" technology providing automatic remote meter reading and related features set forth and claimed in the '239 Patent ("TNMP Smart Grid").

10. On information and belief, TNMP has installed hundreds of thousands of smart meters, including SmartSynch / General Electric / Aclara I-210 smart meters ("TNMP Smart Meters,") at the premises of its residential and commercial customers in the State of Texas.

11. On information and belief, the TNMP Smart Meters are specifically designed for, and are used by TNMP for, metering utility usage within the TNMP Smart Grid.

12. On information and belief, the TNMP Smart Meters are specifically designed for, and are used by TNMP for, reporting utility usage within the TNMP Smart Grid.

13. On information and belief, the TNMP Smart Meters are used by TNMP for detecting and reporting hazards within the TNMP Smart Grid.

14. On information and belief, the TNMP Smart Grid incorporates data transmission capability for sending information from the TNMP Smart Meters to remote data collection computers.

15. On information and belief, the TNMP Smart Grid incorporates data reception capability for the reception of said information within the remote data collection computers.

16. On information and belief, the TNMP Smart Grid incorporates the capability to confirm successful transmission and receipt of utility data, to request retransmission of failed transmissions and to generate notice of repair needs.

17. The TNMP Smart Grid and TNMP Smart Meters infringe one or more claims of the '239 Patent.

18. Defendant's use, operation, import, provision, supply, distribution, offer for sale, sale and/or provision of access to the TNMP Smart Grid covered by the '239 Patent has been conducted without license, authority or permission of Akoloutheo.

19. Defendant's unauthorized and unlicensed use, operation, import, provision, supply, distribution, offer for sale, sale and/or provision of access to the TNMP Smart Meters and TNMP Smart Grid covered by the '239 Patent constitutes patent infringement under 35 U.S.C. § 271.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

- a. A judgment in favor of Plaintiff that Defendant has infringed the '239 Patent;
- b. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '239 Patent;
- c. A judgment and order requiring Defendant to pay Plaintiff its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendant's infringement of the '239

Patent as provided under 35 U.S.C. § 284;

d. An award to Plaintiff for enhanced damages resulting from the knowing and deliberate nature of Defendant's prohibited conduct with notice being made at least as early as the service date of this complaint, as provided under 35 U.S.C. § 284;

e. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and

f. Any and all other relief to which Plaintiff may show itself to be entitled.

Dated: September 14th, 2018

Respectfully Submitted,

By: /s/ Kenneth Thomas Emanuelson

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