UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UBIQUITOUS CONNECTIVITY, LP, Plaintiff, v. TXU ENERGY RETAIL COMPANY LLC, Defendant.	CIVIL ACTION NO. 3:18-cv-02084-K **JURY TRIAL DEMANDED**

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff UBIQUITOUS CONNECTIVITY, LP (hereinafter, "Plaintiff" or "Ubiquitous"), by and through its undersigned counsel, files this First Amended Complaint for Patent Infringement against Defendant TXU ENERGY RETAIL COMPANY, LLC (hereinafter, "Defendant" or "TXU") as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant's infringement of Plaintiff's United States Patent Nos. 8,064,935 (hereinafter, the "'935 Patent") and 9,602,655 (hereinafter, the "'655 Patent") (collectively, the "Patents-in-Suit"), copies of which are attached hereto as **Exhibit A** and **Exhibit B**, respectively. Plaintiff is the owner of the Patents-in-Suit. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. Ubiquitous is a limited liability partnership organized and existing under the laws of the State of Texas since February 14, 2012 and maintains its principal place of business at 2436 Tisbury Way, Little Elm, Texas, 75068 (Denton County).

3. Based upon public information, Defendant TXU is a corporation duly organized and existing under the laws of the state of Texas since June 29, 2007.

4. Based upon public information, Defendant TXU has its principal place of business located at 1601 Bryan Street, Dallas, Texas 75201-3430 (Dallas County).

5. Based upon public information, Defendant TXU may be served through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

6. Based upon public information, Defendant ships, distributes, makes, uses, offers for sale, sells, and/or advertises its products and/or services under the iThermostat branded system.

JURISDICTION AND VENUE

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

8. The Court has personal jurisdiction over Defendant because: Defendant has minimum contacts within the State of Texas and in the Northern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Northern District of Texas; TXU has sought protection and benefit from the laws of the State of Texas and is incorporated there; Defendant regularly conducts business within the State of Texas and within the Northern District of Texas, and Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and in the Northern District of Texas.

9. More specifically, TXU, directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its products and affiliated services in the United States, the State of Texas, and the Northern District of Texas. Based upon public information, Defendant has committed patent infringement in the State of Texas and in the

Northern District of Texas. Defendant solicits customers in the State of Texas and in the Northern District of Texas. Defendant has many paying customers who are residents of the State of Texas and the Northern District of Texas and who use Defendant's products in the State of Texas and in the Northern District of Texas.

10. Venue is proper pursuant to 28 U.S.C. §1400(b) because Defendant resides in the Northern District of Texas because of its formation under the laws of Texas.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant resides in the Northern District of Texas because of its formation under the laws of Texas, which subjects it to the personal jurisdiction of this Court.

BACKGROUND INFORMATION

12. The Patents-in-Suit were duly and legally issued by the United States Patent and Trademark Office (hereinafter, "USPTO") after full and fair examinations.

13. The Parents-in-Suit trace their priority date back to USPTO Application No. 11/163,372 (the "'372 Application") which was filed on October 17, 2005 and issued after full and fair examination as U.S. Patent No. 7,257,397. See Ex. A at A-1 and Ex. B at B-1.

14. The '372 Application is itself a divisional of USPTO Application No. 11/160,006 (the "'006 Application") which was filed on June 6, 2005 and issue as and issued after full and fair examination as U.S. Patent No. 6,990,335. See Ex. A at A-1 and Ex. B at B-1.

15. The '006 Application traces its priority to USPTO Provisional Application No. 60/522,887 (the "'887 Application") which was filed on November 18, 2004. See Ex. A at A-1 and Ex. B at B-1.

16. Plaintiff is the owner of the Patents-in-Suit, and possesses all right, title and interest in the Patents-in-Suit including the right to enforce the Patents-in-Suit, the right to license the

Patents-in-Suit, and the right to sue Defendant for infringement and recover past damages. See **Exhibit C** ('935 Patent) and **Exhibit D** ('655 Patent).

THE PATENTS ARE DIRECTED TO THE CREATION OF A SET OF "ON-DEMAND BIDIRECTIONAL COMMUNICATION" TECHNOLOGIES, NOT ANY ABSTRACT IDEA.

17. The Declaration of Declaration Of Ivan Zatkovich dated December 19, 2018, which explains the technical achievements of the claims of the Patents-in-Suit over the technology that existed in 2004, is attached to this First Amended Complaint as **Exhibit E** and incorporated herein by reference (hereinafter, "Zatkovich Decl.").

18. The '935 and '635 Patents are directed to the creation of "on-demand bidirectional communication" technologies that have various features (as identified individually by each claim). See Zatkovich Decl., §VIII.A.v. The "Field of Invention" section of the patents disclose that "the system relates to on demand bidirectional communication between a remote access unit and a multifunctional base control unit in a geographically remote location." '655 Patent at 1:22-26; see also Zatkovich Decl., §V.A. The claims here cover specific devices configured in specific ways, to create session based bidirectional communications between a multifunctional base unit and a cellphone, which were otherwise unable to communicate. See Zatkovich Decl., §VIII.A.i

The technical problems solved by the patents: then existing "OEM" base unit components were unable to facilitate bilateral communications with cellular telephones with then existing communication system technologies.

19. The state of communications technology in 2004 is summarized by Mr. Zatkovich. See Zatkovich Decl., §IV. This summary is important because in order to properly assess the claims at issue here, the Court must understand the state of that technology in 2004, including the state of control systems (polling versus event driven systems) and the applications of those systems at the time. See Zatkovich Decl., §IV.A.i-iii (explaining the same). That background, with reference to the "Background of The Technology" section in the patents, is detailed by Mr.

Zatkovich. Compare id. (explaining the technological state of the systems referenced in the patent as of 2004) with '655 Patent, 1:30-3:14 ("Background of The Technology"); see also Zatkovich Decl., §V.B. The Court must also understand the communication paradigms that then existed within control systems. Those include one-way versus two-way (or bidirectional) communications, transmission range considerations for various communication types, early interactive telephone-based systems, and the history of smartphone development, which are also detailed by Mr. Zatkovich. See Zatkovich Decl., §IV.B.i-iv (explaining the same). Finally, the Court must have the requisite background regarding the 2004 state of location detection and geofencing, which includes understanding location trilateration, GPS systems, cellular tower technology, and geofencing. See Zatkovich Decl., §IV.C.i-iv.

20. In 2004, it is clear that "OEM" base unit systems were unable to create session-based communications with cellular telephones prior to the inventions of the '935 and '655 Patents. See Zatkovich Decl., §IV. It was never done because then-existing technology did not allow it. See Zatkovich Decl., §VIII.A.ii.a (explaining the same). To situate the Court in time, the Patents-in-Suit "were filed in November 2004 but the first iPhone did not become available until January 2007. Although the iPhone was not the first 'smartphone,' it was the first example of what we now consider to be a modern smartphone." Id., §IV.B.iv. Cellular telephones did not have "apps" as we know them today. Additionally, as of 2004, "then-existing thermostats typically monitored ambient temperature and maintained that temperature within a predetermined range." Id., §V.B (citing '655 Patent, 1:37-42). And although "progress was being made toward more sophisticated forms of remote monitoring and control (e.g., land-line connectivity to a home monitoring and control system," id. (*citing* '655 Patent, 1:64-67), the "then-existing land-line based solutions had significant drawbacks," id., including the fact that they used "'tones or cryptic, hard-to-understand,

digitized voice prompts'" id. (citing '655 Patent, 2:46-55). Power-line based systems also were in development but were limited to intra-building communication, and although there was commercial interest in internet-based systems, there was serious drawbacks to that type of system. Id.

21. The Patents-in-Suit also disclose the then-existing use of cellular networks with monitoring and control systems but observe that these systems were crude and inconvenient to use because they either offered one-way communication or very unfriendly two-way communication. See '655 Patent, 2:46-51 (disclosing the existence of inferior telephone interfaces) and '655 Patent, 3:4-8 (disclosing use of a cellular phone but with the same shortcomings of other telephone interfaces). See also '655 Patent, 7:15-22 (then-existing systems utilizing a cell phone required a user to dial in to a base unit, press telephone keypad keys to create touch-tone (DTMF) sounds that would be received and interpreted by the base unit, and then manually disconnect from the base unit when communication is complete).

22. In another example, the Patents-in-Suit disclose the then-existing use of a "control architecture" including a one-way communication of commands to a device under control. See '655 Patent, 2:17-20. The Patents-in-Suit also disclose then-existing bi-directional communications in the limited context of Internet-based communications. See id., 2:65-3:3. By contrast, then-existing telephone or mobile device-based communications disclosed by the Patents-in-Suit involve one-way techniques (e.g., DTMF/keypad tones) or two-way techniques with significant shortcomings (e.g., "hard-to-understand digitized voice prompts"). See id., 2:46-52. Thus, each approach had identified shortcomings. See Zatkovich Decl., §VIII.A.ii.a. These problems were overcome by Ubiquitous.

The Technical Solutions: Integration Of Cellular, User-Friendly (Automated) Two-Way Communications Into A Base Unit At A Remote Location.

23. Only with this background, can the Court understand why the patents were written the way they were: which was to inform a Person Of Ordinary Skill In The Art ("POSITA") of technical solutions to overcome then-existing technical problems in bidirectional control systems. See Zatkovich Decl., §VI. A POSITA would understand that, "[a]lthough the context of the Ubiquitous Patents' invention is home or business appliance monitoring and environmental control, the [Patents-in-Suit] are focused on only one aspect of that industry, and that is the integration of an incompatible communication device (a cellular phone) into that space." See Zatkovich Decl., §V.C. (and related discussion).

24. "The [Patents-in-Suit] reflect improvements over the 2004-era state of the art regarding structures and features in a base unit including interfacing cellular communications with computing devices." See Zatkovich Decl., §VIII.A.ii.b.[1] The custom "base unit" is disclosed at Figure 4 of the patents. Id. The "subsystems" disclosed, and how a POSITA would implement them with hardware and software, are expressly disclosed in the specification. Id. "Thus, the innovations that went into creating the base unit reflected the key structural improvements within a base station for facilitating improved communication through on-demand, bi-directional command communications." Id. at p. 56 (discussing the teachings of the specification).

25. Although the inventions of the Patents-in-Suit "can be created from components available from original equipment manufacturers (OEMs)," those components could not "simply be combined like puzzle pieces to achieve a functioning result." See Zatkovich Decl., §VIII.A.ii.b

[1] See also '655 Patent, 7:41-48 (disclosing that technical solution avoids "voice mode" to achieve two-way communications); 7:52-54 and 7:61-67 (use of SMS, optionally involving port addresses, allows automated/on-demand communications between a mobile device and another device without requiring user intervention); and 8:59-65 (two-directional communications not requiring user intervention or crude user interfaces).

at p. 56 (citing '655 Patent, 4:62-65). The teachings of the Patents-in-Suit would have to be followed, *e.g.,* the implementation details for sending a message from a base unit to a remote unit, the configuration of the base unit to receive simple messages from a wireless interface, and other structural improvements within a base system. Id. at pp. 56-60. Each limitation of the alleged "representative claims" are written to overcome the shortcomings in the art. See id. (Table1 and Table 2, listing claim language and the technical problem it overcomes). In the end, the Patents-in-Suit "are directed to base unit improvements that facilitated improved communication techniques during environmental monitoring and control and are not directed to an abstract idea concerning environmental monitoring and control." See Zatkovich Decl., §VIII.A.ii.d.

26. The character of the claims as a whole confirms this. For Claims 19 and 1, the significance and number of limitations that directly concern communications technology is significant and plain to see. See Zatkovich Decl., §VIII.A.iii. The Patents-in-Suit and their claims are clearly directed to improved communications rather than any specific application of those technologies in an environment. See id., §VIII.A.v. Moreover, "[t]his bidirectional on-demand communication interface, implemented through the base unit, was unconventional in that a cellular device was not used in this manner before. It was also unique in that it enabled unsolicited messages and information to be sent from a remote monitored and controlled device to the user's cell phone such as sending notification of a fire alarm, a security break-in, or a child leaving a geographic (geo-fenced) area." See id., §V.C. Claims 1-18 and 20 of the '935 Patent (as compared to Claim 19) and Claims 2-24 of the '655 Patent (as compared to Claim 1) are similarly not "abstract." See id., §VIII.C (explaining why). In summary, the claims of the Patents-in-Suit "are directed to improved communications rather than environmental monitoring and control" and teaches specific structures for achieving "improve[d] communication." See id., §VIII.A.v.

THE CLAIMS OF THE PATENTS-IN-SUIT DISCLOSE "INVENTIVE CONCEPTS."

The Inventive Concepts: The Base Unit and Cellular Remote Unit Each Embody At Least Three "Inventive Concepts."

27. The description of the "base unit" in the specification discloses communications improvements applied to a base unit within the context of environmental monitoring and control, including the disclosure of application software to create on-demand triggers executed in response to events. See '665 Patent: 5:4-13:36, 7:41-48, 7:52-54, 7:61-67, 8:1-12, 8:59-65, 10:30-36, 10:50-66, 11:24-38 and Fig. 4; see also Zatkovich Decl., §VIII.A.ii.b. Such a "base unit" could not have been purchased off-the-shelf, and required assembly of OEM components and coding to connect the components together to assemble a base unit that could interact with a cellphone. See Zatkovich Decl., §VIII.A.i.b. and §VIII.B.i.b.1. In addition, the use of a cellular phone to remotely control environmental devices was not available generally. See id., §VIII.B.i.b.2.

28. At least three "inventive concepts" are embodied in the claims of the Patents-in-Suit at the "base unit," including (1) two-way digital communications with a cellular phone, (2) unsolicited event notification with a cellular telephone, and (3) geo-fence based communications within these constructs. See Zatkovich Decl., §VIII.B.i.A and §VIII.B.ii.1-3. As such, the "base unit" and the cellular control unit of the claims of the Patents-in-Suit were each not conventional in the pre-iPhone world of 2004, Claims 1-18 and 20 of the '935 Patent (as compared to Claim 19) and Claims 2-24 of the '655 Patent (as compared to Claim 1) similarly embody "inventive concepts." See id., §VIII.C.

Another Inventive Concept: The Combination of The Claim Elements.

29. Additionally, the combination of the base unit and cellular remote control into a system that allows for bidirectional communication between incompatible devices was indisputably not generic or conventional in 2004. See Zatkovich Decl., §VIII.B.iii. This

combination reflects significantly more than any abstract idea. In summary, the claims of the Patents-in-Suit do not recite a collection of conventional components performing their ordinary functions. See id., §IV.B. They embody improvements to acknowledged deficiencies in the art, thereby fully reflecting something substantially more than any abstract idea. Id.

THE INFRINGING PRODUCTS

30. Based upon public information, Defendant owns, operates, advertises, and/or controls the website www.txu.com, through which Defendant advertises, sells, offers to sell, provides and/or educates customers about its products and services, including but not limited to Defendant's TXU iThermostat branded system (collectively, the "Accused Products and Services"). Evidence obtained from TXU's website (and others) regarding these products is provided in **Exhibits F-I**.

31. TXU offers its customers the ability to download the TXU iThermostat app, which allows users to control their iThermostat device remotely from a mobile device such as but not limited to an iPhone, iPad, or Android device. See Ex. F, at p. 3 (indicating the app is available for download on the Apple App Store and for Android at Google Play).

32. According to the description of the TXU iThermostat app on TXU's webpage:

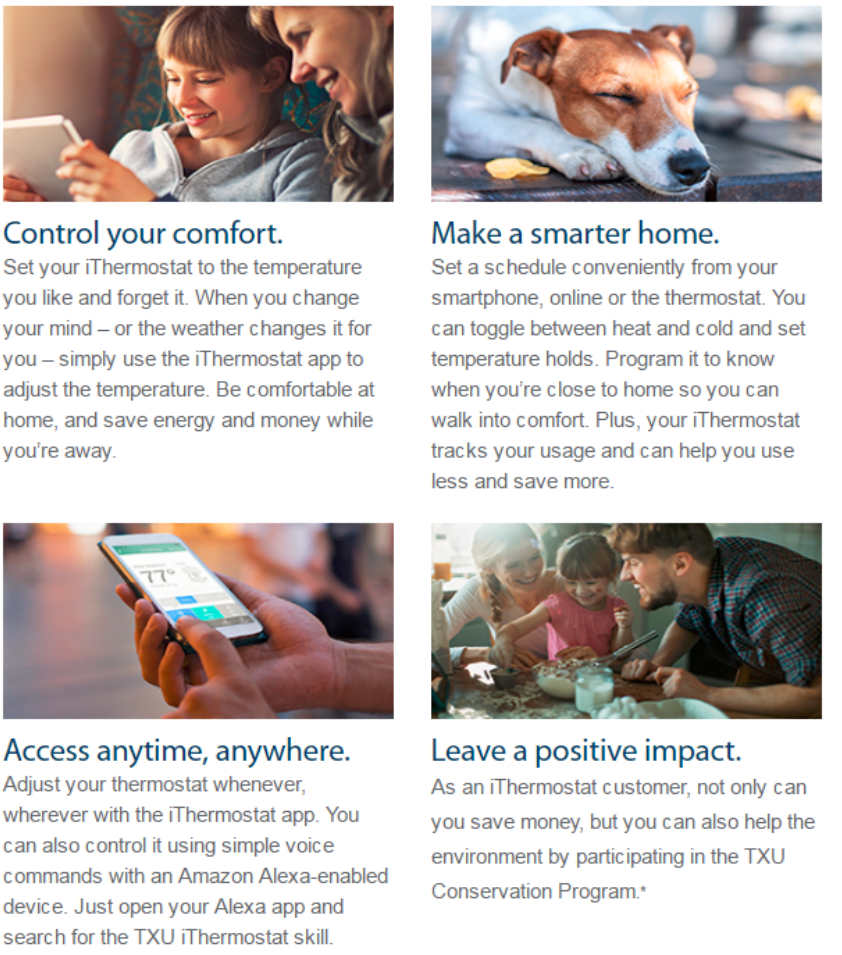
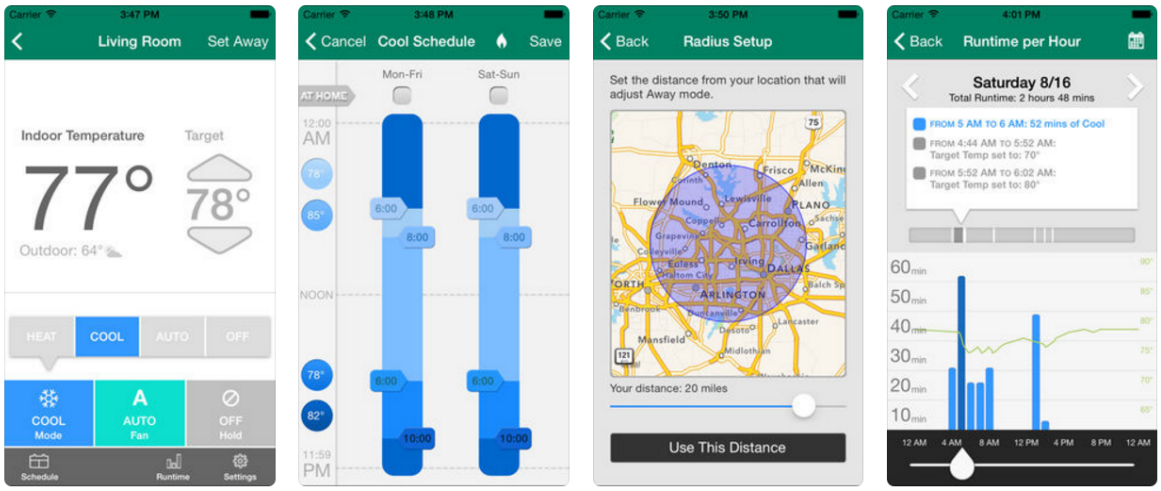


Figure 1

See Ex. F.

33. According to the description of the TXU iThermostat app on the Applications page for Apple iPhones, the provider for the TXU iThermostat app is TXU Energy Retail Company LLC. See Exhibit F.

34. According to the description of the TXU iThermostat app on the Applications page for Apple iPhones:



Description

The TXU iThermostat™ app allows you to control your thermostat from your iPhone® or iPad®. No need to have to go to your actual thermostat again to set your schedule or change the temperature.

Now with location-based controls, you can program settings to start and stop your heating and cooling when you are close to your home or business based on your smartphone's GPS location. The TXU iThermostat™ app allows you to remotely adjust your thermostat's settings, or quickly put your entire home or business into energy saving "Away" mode with the tap of a button.

Figure 2

See Ex. G.

35. Upon information and belief, the iThermostat app allows users (1) to change the settings of their iThermostat in near real-time (typically within one minute) from their mobile devices; (2) to set heating and cooling schedules for the iThermostat from their mobile devices; (3) provides users with usage data related to the iThermostat system; and (4) to set the distance from their iThermostat that will adjust the "Away mode" of the iThermostat system. See Ex. G.

36. Upon information and belief, at least certain TXU iThermostat systems provided to customers also include a feature known as Radius™. This Radius™ uses GPS location serves on a user's mobile device "to determine when you've left your location and turns on Away for your thermostat(s)." See Ex. G and Ex. H.

37. Upon information and belief, the Brighten® iThermostat device may also receive current room temperature readings from a thermostat and send control instructions, *i.e.* increasing or decreasing room temperature, to the user's HVAC system. See Ex. I, at p. 3 and 4.

38. TXU provides guidance to its prospective customers through documents that provide information to educate users about the benefits of iThermostat system and how to choose the right system for a customer's particular requirements. See Exs. F-I.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 8,064,935

39. Plaintiff re-alleges and incorporates by reference each of paragraphs 1-38 above.

40. The '935 Patent issued from USPTO Application No. 11/686,993 which was filed on March 16, 2007 and is a divisional application of the '372 Application. See Ex. A at A-1.

41. The '935 Patent was duly issued by the USPTO on November 22, 2011. See Ex. A at A-1.

42. Plaintiff is informed and believes that Defendant has infringed and continues to infringe claims of the '935 Patent, either literally or under the doctrine of equivalents, through the manufacture and sale of infringing system under the iThermostat brand, and other product lines. Based upon public information, Defendant has infringed and continues to infringe one or more claims of the '935 Patent, including Claim 19, because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises devices, including at least the Accused Products and Services, that form a wirelessly controllable smart thermostat system that incorporates a base unit (Brighten® iThermostat) interfaced with an environmental device (thermostat). See, supra, Paragraphs 30-38, and Figures 1 and 2.

43. Based upon public information, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '935 Patent in this district and elsewhere in

the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products and Services in an infringing manner. To the extent that Defendant is not the only direct infringer of the '935 Patent, customers that have purchased and/or used the Accused Products, including the iThermostat (see Exs. F-I), constitute direct infringers.

44. Despite knowledge of the '935 Patent as early as September 11, 2018 (the date the Original Complaint was served on Defendant; see Dkt. No. 10), based upon public information, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes the '935 Patent. See Exs. F-I. Based upon public information, the provision of and sale of the Accused Products and Services is a source of revenue and a business focus of Defendant. See id.

45. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes the '935 Patent by, at a minimum, providing and supporting the Accused Products and Services and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See e.g. Exs. F-I.

46. Specifically, Defendant offers design services to select, deploy and integrate its products to assist its customers in installing and utilizing the infringing remote-control system. See e.g., Exs. F-I. Based upon public information, Defendant knew that its actions, including but not limited to any of the aforementioned products and services, would induce, have induced, and will continue to induce infringement by its customers of the '935 Patent by continuing to sell,

support, and instruct its customers on using the Accused Products and Services. See e.g., Exs. F-I.

47. Upon information and belief, Defendant also contributes to the infringement of the '935 Patent by offering for sale and/or selling components that constitute a material part of the invention claims in the '935 Patent.

48. For example, Defendant has offered for sale and/or sold numerous thermostat systems and iThermostat devices that infringe the '935 Patent, as discussed above.

49. Upon information and belief, TXU's iThermostat system have no substantial, non-infringing uses. For example, the TXU website states:

*TXU iThermostat is available in eligible services areas for single-family homes with compatible central HVAC and high-speed Internet services. Requires 2-year agreement on TXU Conservation Program, which may include brief on/off cycling (10-15 minutes) of customer's air conditioner or modification to thermostat setpoints no more than four degrees higher than programmed settings (up to 1-4 hours) via remote signal from TXU Energy during periods of peak energy usage from May-September; customer may opt out of individual demand response events. Applicable monthly fee appears on your TXU Energy bill. See terms and conditions for details.

Figure 3a

See Ex. F, at p. 4. In essence, TXU requires customers have Internet access and participation in TXU Conservation Program.

50. As a result, these iThermostat systems can only be used in a manner that infringes the '935 Patent, and on information and belief, have been used by Defendant's customers in a manner that directly infringes one or more claims of the '935 Patent.

51. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

52. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts 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.

53. Defendant's infringement of Plaintiff's rights under the '935 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 9,602,655

54. Plaintiff re-alleges and incorporates by reference each of paragraphs 1-38 above.

55. The '655 Patent issued from USPTO Application No. 13/271,203 which was filed on October 11, 2011 and is a continuation of the application that resulted in the issuance of the '935 Patent. See Ex. B at B-1.

56. The '655 Patent was duly issued by the USPTO on March 21, 2017. See Ex. B at B-1.

57. Plaintiff is informed and believes that Defendant has infringed and continues to infringe claims of the '655 Patent, either literally or under the doctrine of equivalents, through the manufacture and sale of infringing products under the iThermostat brand, and other product lines. Based upon public information, Defendant has infringed and continues to infringe one or more claims of the '655 Patent, including at least Claim 1, because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises devices, including at least the Accused Products and Services, that form a remotely controllable smart thermostat system. See, supra, Paragraphs 30-38, and Figures 1 and 2.

58. Based upon public information, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '655 Patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged,

instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products and Services in an infringing manner. To the extent that Defendant is not the only direct infringer of the '655 Patent, customers that have purchased and/or used the Accused Products, iThermostat (see Exs. F-I), constitute direct infringers.

59. Despite knowledge of the '655 Patent as early as September 11, 2018 (the date the Original Complaint was served on Defendant; see Dkt. No. 10), based upon public information, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes the '655 Patent. See Exs. F-I. Based upon public information, the provision of and sale of the Accused Products and Services is a source of revenue and a business focus of Defendant. See id.

60. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes the '655 Patent by, at a minimum, providing and supporting the Accused Products and Services and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See e.g. Exs. F-I.

61. Specifically, Defendant offers design services to select, deploy and integrate its products to assist its customers in in installing and utilizing the infringing remote-control system. See e.g., Exs. F-I. Based upon public information, Defendant knew that its actions, including but not limited to any of the aforementioned products and services, would induce, have induced, and will continue to induce infringement by its customers of the '655 Patent by continuing to sell, support, and instruct its customers on using the Accused Products and Services. See e.g., Exs. F-I.

62. Upon information and belief, Defendant also contributes to the infringement of the '655 Patent by offering for sale and/or selling components that constitute a material part of the invention claims in the '655 Patent.

63. For example, Defendant has offered for sale and/or sold numerous thermostat systems and iThermostat devices that infringe the '655 Patent, as discussed above.

64. Upon information and belief, these thermostat systems and iThermostat devices have no substantial, non-infringing uses. For example, the TXU website states

> *TXU iThermostat is available in eligible services areas for single-family homes with compatible central HVAC and high-speed Internet services. Requires 2-year agreement on TXU Conservation Program, which may include brief on/off cycling (10-15 minutes) of customer's air conditioner or modification to thermostat setpoints no more than four degrees higher than programmed settings (up to 1-4 hours) via remote signal from TXU Energy during periods of peak energy usage from May-September; customer may opt out of individual demand response events. Applicable monthly fee appears on your TXU Energy bill. See terms and conditions for details.

Figure 3b

See Ex. F, at p. 4. In essence, TXU requires customers have Internet access and participation in TXU Conservation Program.

65. As a result, these iThermostats can only be used in a manner that infringes the '655 Patent, and on information and belief, have been used by Defendant's customers in a manner that directly infringes one or more claims of the '655 Patent.

66. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

67. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts 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.

68. Defendant's infringement of Plaintiff's rights under the ''655 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

69. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

70. Plaintiff respectfully requests the following relief:

A. An adjudication that one or more claims of the Patents-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant;

B. An adjudication that Defendant has induced infringement of one or more claims of the Patents-in-Suit based upon post-filing date knowledge of the Patents-in-Suit;

C. An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Plaintiff for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

D. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further

acts of infringement with respect to any one or more of the claims of the Patents-in-Suit;

E. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,

F. Any further relief that this Court deems just and proper.

Dated: December 28, 2018

Respectfully submitted,

/s/ James F. McDonough, III

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*admitted *Pro Hac Vice*
** admission *Pro Hac Vice to be applied for*

CERTIFICATE OF SERVICE

I hereby certify that I caused this day a true and correct copy of the foregoing document to be served on all counsel of record who are deemed to have consented to electronic service *via* the Court's CM/ECF system.

/s/ James F. McDonough, III
James F. McDonough, III