

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELEWARE**

ANUWAVE LLC,

Plaintiff,

v.

HONEYWELL INTERNATIONAL, INC.

and

RISIDEO TECHNOLOGIES, INC.

Defendants.

Civil Action No.: 1:19-cv-00191-RGA

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT FOR INFRINGEMENT OF PATENT

Now comes, Plaintiff, Anuwave, LLC (“Plaintiff” or “Anuwave”), by and through undersigned counsel, and hereby amends its original complaint and alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin Defendant Honeywell International, Inc. (hereinafter referred to as “Honeywell”) and Defendant Resideo Technologies, Inc. (hereinafter referred to as “Resideo” and both may collectively referred to as “Defendants”) from infringing and profiting, in an illegal and unauthorized manner, and without authorization and/or consent from Plaintiff from U.S. Patent No. 8,295,862 (“the ‘862 patent”), which is attached hereto as Exhibit A and incorporated herein by reference, and pursuant to 35 U.S.C. §271, and to recover damages, attorney’s fees, and costs.

THE PARTIES

2. Plaintiff is a Texas limited liability company with its principal place of business at 1333 McDermott Drive, Suite 150, Allen, TX 75013.

3. Honeywell is a corporation organized under the laws of Delaware, having a principal place of business at 115 Tabor Road, Morris Plains, NJ 07950. Upon information and belief, Defendant Honeywell may be served with process via at least one of the following: (i) Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808 and/or (ii) Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

4. Resideo is a corporation organized under the laws of Delaware. Upon information and belief, Defendant Resideo may be served with process at Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

5. Upon information and belief, Honeywell and Resideo are related entities or at one time were related entities as a result of a corporate spinoff.

6. Plaintiff is further informed and believes, and on that basis alleges, that Resideo, Honeywell, or collectively both Defendants operate the website www.honeywellhome.com, which is in the business of selling and providing communication services, amongst other services. Defendants derive a portion of their revenue from sales and distributions via electronic transactions conducted on and using at least, but not limited to, the Internet websites located at www.mytotalconnectcomfort.com, and its incorporated and/or related systems (collectively the "Honeywell Website"). Plaintiff is informed and believes, and on that basis alleges, that, at all times relevant hereto, Defendants have and will continue to do business in this judicial district,

including, but not limited to, providing products/services to customers located in this judicial district by way of the Honeywell Website.

JURISDICTION AND VENUE

7. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq.*

8. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

9. This Court has personal jurisdiction over Defendants by virtue of its systematic and continuous contacts with this jurisdiction as well as because of the injury to Plaintiff, and the cause of action Plaintiff has risen, as alleged herein.

10. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to its substantial business in this forum, 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 Delaware and in this judicial District.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because Defendants reside in this District under the Supreme Court's opinion in *TC Heartland v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017) through its regular and established place of business in this District.

FACTUAL ALLEGATIONS

12. On October 23, 2012, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '862 patent, entitled "Method and system to enable communication

through SMS communication channel” after a full and fair examination. A copy of the ‘862 patent is attached as Exhibit A and incorporated herein as if fully rewritten.

13. Plaintiff is presently the owner of the patent, having received all right, title and interest in and to the ‘862 patent from the previous assignee of record. Plaintiff possesses all rights of recovery under the ‘862 patent, including the exclusive right to recover for past infringement.

14. The ‘862 patent contains two independent claims and five dependent claims.

15. Claim 7 of the ‘862 patent states:

“A method of enabling communication through SMS communication channel, comprising:

listing all services at a terminal station that are available with an SMS gateway according to meta information available at the terminal station;

upon selecting a service, a network aware application configured to allow a user to type in a desired parameter;

upon user entering the desired parameter, submitting a request to the SMS gateway; and

the SMS gateway responding back with a response,

wherein the desired parameter is not listed at the terminal station.”

16. Defendants commercialize, inter alia, methods that perform all the steps recited in at least one claim of the ‘862 patent. More particularly, Defendants commercialize, inter alia, methods that perform all the steps recited in Claim 7 of the ‘862 patent.

17. The invention claimed in the ‘862 patent comprises a method for enabling communication through SMS that lists all services at a terminal station available with an SMS gateway according to meta information found at the terminal station.

18. The method allows a user to type in a desired parameter not listed at the terminal station using a network aware application. When the request is submitted to the SMS gateway, the gateway issues a response.

19. The technology embodied by the '862 patent improved mobile devices at the time of the invention by providing a network aware application on a mobile device that can communicate using SMS communication channels without resorting to other IP based communication channels in order to allow users to access to certain information over a telecommunication network.

DEFENDANTS' PRODUCTS

20. Defendants offer solutions, such as the "Total Connect" system (the "Accused Instrumentality"), that enables communication through an SMS channel as recited in the preamble of Claim 7 of the '862 patent, whereby any of Defendants' customers can use an SMS-enabled mobile device to send text commands. For example, as shown in Defendants' Honeywell's Total Connect Online Help Guide ("Defendant Honeywell's Help Guide"), which is attached as Exhibit B and incorporated herein as if fully rewritten, the Accused Instrumentality, enables users to send commands via SMS messages.

21. A non-limiting and exemplary claim chart comparing the Accused Instrumentality to Claim 7 of the '862 patent is attached hereto as Exhibit C and is incorporated herein as if fully rewritten.

22. As recited in one step of Claim 7, the Accused Instrumentality lists all services at a terminal station available with an SMS gateway according to meta information found at the terminal station. For example, as shown in Defendant Honeywell's Help Guide (Exhibit B), the Accused Instrumentality lists all services (e.g. the Accused Instrumentality will show all available SMS services and their corresponding SMS commands when a user sends "HELP" or "ALARM" command to short code 25276; available services include: Arm Away, Arm Stay, Bypass Zone, Disarm, Output Device, Status Requires etc.) at a terminal station (e.g. a mobile phone) that are

available with an SMS gateway (e.g. Honeywell's SMS gateway/server is accessed by sending a text to short code 25276) according to meta information available at the terminal station (e.g. the SMS gateway lists available services which are linked to their mobile number when they register for Text SMS security system control service at Honeywell's Total Connect website; the user's mobile number being meta information available at the terminal station, upon which a list of available services can be computed). See Exhibit C.

23. As recited in another step of Claim 7, the Accused Instrumentality includes, upon selecting a service, a network aware application configured to allow a user to type in a desired parameter. For example, as shown in Defendant Honeywell's Help Guide (Exhibit B), the Accused Instrumentality is configured to, upon a user's selection of a service (e.g. a user can select the option to arm away/arm stay/bypass zone by entering the corresponding "a/as/b" command) the Accused Instrumentality implements a network aware application (e.g. a mobile device's SMS client) configured to allow a user to type in a desired parameter (e.g. the user can select the "arm away/arm stay/bypass zone" service by entering the corresponding "a/as/b" command and can then enter any partition/zone number of their choosing (desired parameter) in order to request the corresponding control action). See Exhibit C.

24. As recited in another step of Claim 7, the Accused Instrumentality submits a request to the SMS gateway (e.g. Honeywell's SMS server) upon a user's entering of a desired parameter (e.g., the partition/zone number following the selected "arm away/arm stay/bypass zone" service). See Exhibit C.

25. Upon information and belief, the Accused Instrumentality utilizes Common Short Codes (e.g. a user must text 25276, the short code, in order to utilize Honeywell's SMS gateway/server). See Exhibit C.

26. As recited in another step of Claim 7, the Accused Instrumentality implements an SMS gateway that responds to a user's request with a response (e.g. upon the SMS gateway/servers' confirmation reply of a user's request, the gateway responds to the user by sending the information the user requested; the requested information being displayed on the user's mobile device). See Exhibit C.

27. As recited in another of Claim 7, the Accused Instrumentality provides that the desired parameter (e.g., the partition/zone number which the user enters following the selected "arm away/arm stay/bypass zone" service) is not listed at the terminal station (e.g. the mobile device). See Exhibit C.

28. The elements described in paragraphs 19-26 are covered by at least Claim 7 of the '862 patent. Thus, Defendants' use of the Accused Product is enabled by the method described in the '862 patent.

INFRINGEMENT OF THE '862 PATENT

29. Plaintiff realleges and incorporates by reference all of the allegations set forth in Paragraphs 1 to 27.

30. In violation of 35 U.S.C. § 271, Defendants are now, and have been directly infringing the '862 patent.

31. Defendants have had knowledge of infringement of the '862 patent at least as of the service of the present complaint.

32. Defendants have directly infringed and continue to directly infringe at least one claim of the '862 patent by using, at least through internal testing or otherwise, the Accused Instrumentality without authority in the United States, and will continue to do so unless enjoined

by this Court. As a direct and proximate result of Defendants' direct infringement of the '862 patent, Plaintiff has been and continues to be damaged.

33. By engaging in the conduct described herein, Defendants have injured Plaintiff and is thus liable for infringement of the '862 patent, pursuant to 35 U.S.C. § 271.

34. Defendants have committed these acts of infringement without license or authorization.

35. As a result of Defendants' infringement of the '862 patent, Plaintiff has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendants' past infringement, together with interests and costs.

36. Plaintiff will continue to suffer damages in the future unless this Court enjoins Defendants' infringing activities. As such, Plaintiff is entitled to compensation for any continuing and/or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement.

37. Plaintiff reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the claim charts that it provides with this Complaint. The claim chart depicted in Exhibit C is intended to satisfy the notice requirements of Rule 8(a)(2) of the Federal Rule of Civil Procedure and does not represent Plaintiff's preliminary or final infringement contentions or preliminary or final claim construction positions.

DEMAND FOR JURY TRIAL

38. Plaintiff demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

a. That Defendants be adjudged to have directly infringed the Patent-In-Suit either literally or under the doctrine of equivalents;

b. An accounting of all infringing sales including, but not limited to, those sales not presented at trial;

c. That Defendants, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the '862 patent;

d. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Plaintiff for the Defendants' past infringement and any continuing or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement, including compensatory damages;

e. An assessment of pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

f. That Defendants be directed to pay enhanced damages, including Plaintiff's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

g. That Plaintiff be granted such other and further relief as this Court may deem just and proper.

Dated: March 19, 2019

Respectfully submitted,

Devlin Law Firm LLC

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and will send notification of such filing to the following:

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