

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

|  |   |                              |
|--|---|------------------------------|
| FIRST-CLASS MONITORING, LLC            | ) |                              |
|  | ) |                              |
| Plaintiff,                             | ) |                              |
|  | ) | Civil Action No. 2:19-cv-106 |
| v.                                     | ) |                              |
|  | ) | <b>JURY TRIAL DEMANDED</b>   |
| UNITED PARCEL SERVICE OF AMERICA, INC. | ) |                              |
|  | ) |                              |
| Defendant.                             | ) |                              |
| _____                                  | ) |                              |

**COMPLAINT**

For its Complaint, Plaintiff First-Class Monitoring, LLC ("First-Class Monitoring"), by and through the undersigned counsel, alleges as follows:

**THE PARTIES**

1. First-Class Monitoring is a Texas limited liability company with a place of business located at 1400 Preston Road, Suite 400, Plano, Texas 75093.

2. Defendant United Parcel Service of America, Inc. is a Delaware company with, upon information and belief, a place of business located at 3000 Redbud Boulevard, McKinney, Texas 75069.

3. By having a place of business where it regularly conducts business in this District, Defendant has a permanent and continuous presence in Texas.

4. Defendant has a regular and established place of business in the Eastern District of Texas.

**JURISDICTION AND VENUE**

5. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*

6. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.

7. 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.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b).

**THE PATENT-IN-SUIT**

9. On January 11, 2000, U.S. Patent No. 6,014,089 (the "'089 patent"), entitled "Method for Transmitting Data Using a Digital Control Channel of a Wireless Network," was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '089 patent is attached hereto as Exhibit A.

10. The '089 patent solves problems of monitoring utility usage and other information on varying reading schedules and different levels of frequency of data interrogation (profiling). It ensures information from utility meters and other devices can be provided via digital transmission using the short message service portion of a personal communications system network using digital technology operating at any frequency.

11. First-Class Monitoring is the assignee and owner of the right, title and interest in and to the '089 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. 6,014,089**

12. First-Class Monitoring 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 8 of the '089 patent by making, using, importing, offering for sale, and/or selling a method for transmitting a data sequence via a personal communications system transmission protocol, because each and every element is met either literally or equivalently.

14. More specifically and upon information and belief, Defendant performs a method for transmitting a data sequence via a personal communications system transmission protocol. *See also* Jennifer Hord, "How SMS Works" ("How SMS Works") (available at <http://computer.howstuffworks.com/e-mail-messaging/sms.htm>).

15. Tracking information is collected by Defendant at a data collection unit (e.g., server) and is given a time stamp with a date and time.

United Parcel Service Inc. is deploying a new type of wearable scanner for employees designed to accelerate package loading and information visibility.

The new device, made by Motorola Solutions, consists of a hands-free imager that is worn on a finger and a small terminal worn on the employee's wrist or hip.

The imager is a major advancement because it automatically scans based on label-sensing technology, allowing UPS employees to more quickly image barcodes compared to the current "point and shoot" method available with existing equipment, according to a news release.

The scans are key to providing the tracking data that feeds the 32.1 million tracking requests viewed daily on [www.ups.com](http://www.ups.com), the release said.

The scanner sends each package's tracking information via Bluetooth to the terminal worn on the wrist or hip. The data is then transmitted via Wi-Fi to the UPS facility network and ultimately to UPS's global data centers to be stored and processed for access by customers.

<https://www.bizjournals.com/louisville/news/2012/08/02/united-parcel-service-to-roll-out.html>.

On Vehicle for Delivery Today ?
Delivered

**Scheduled For Early Delivery On:**  
Thursday, 09/24/2015, By End of Day

**Originally Scheduled For Delivery On:**  
Friday, 09/25/2015, By End of Day

**Last Location:**  
Ft. Smith, AR, United States, Thursday, 09/24/2015

What time will your package be delivered to your home?  
Get **FREE** approximate Delivery Windows on most UPS packages.

Change Delivery »

Request Status Updates »

Continue

I am already a UPS My Choice® Member

▼ Shipment Progress
[What's This? ?](#)

| Location                       | Date       | Local Time | Activity                       |
|--------------------------------|------------|------------|--------------------------------|
| Ft. Smith, AR, United States   | 09/24/2015 | 6:24 A.M.  | Out For Delivery               |
| Little Rock, AR, United States | 09/24/2015 | 3:52 A.M.  | Departure Scan                 |
| Little Rock, AR, United States | 09/23/2015 | 10:33 P.M. | Arrival Scan                   |
| Louisville, KY, United States  | 09/23/2015 | 3:13 P.M.  | Departure Scan                 |
|                                | 09/23/2015 | 11:25 A.M. | Origin Scan                    |
| United States                  | 09/23/2015 | 3:22 P.M.  | Order Processed: Ready for UPS |

<https://forums.imore.com/iphone-6s-plus/341975-sprint-pre-order-tracking-thread.html>.

#### SMS Tracking

Get information on the status of your shipments quickly and efficiently with UPS SMS Tracking. You must opt into the service to begin tracking with SMS.

1. From the Tracking Detail page, add SMS notifications by selecting Notify Me with Updates.
2. When selecting the type of notification, select SMS Text Message and enter your mobile number to opt in.
3. After confirming your request from your mobile phone, UPS will begin to send you SMS text messages with your tracking status for this shipment.
4. Once opted in, you will not be asked to verify your request from your phone again unless you choose to opt out of the service.
5. For logged in users, an option to Remember this Number is presented in the Notifications dialog box. By selecting that checkbox, your phone number is retained as an option to select the next time you track.

To track packages while on the go, send UPS an SMS to get the status of your shipment. Simply text your tracking keyword followed by your tracking number to your country SMS number and we'll reply with your shipment status details. If you are new to receiving text messages from UPS, this also opts you in to our SMS notifications program.

<https://www.ups.com/tracking.html>.

16. Defendant composes a data packet including the collected data (e.g., package tracking information) and in a form that conforms to conventional short message data.

## UPS SMS Program

### SMS Tracking

You can find out the status of your shipments by setting up UPS SMS Tracking when tracking online. Simply opt into the service to begin tracking with SMS. To do so:

1. Go to [ups.com](https://www.ups.com), enter your tracking or InfoNotice number into the tracking area located on the left side of the screen, and select **Track**. You will be redirected to the **Tracking Detail** page.
2. From the **Tracking Detail** page, add SMS notifications by selecting **Request Status Updates**.
3. When selecting the type of notification, select **SMS Text**, then select **Add New Number**, and enter your mobile number to opt in.
4. Select the checkbox to confirm that you agree to the UPS SMS Program Terms of Use and the UPS Privacy Policy.
5. Select **Submit**, then confirm your request from your mobile phone. Once confirmed, UPS will send you SMS text messages with your tracking status for this one shipment. You will not be asked to verify your request from your phone again unless you choose to opt-out\* of the service.

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To track packages while on the go, send UPS an SMS to get the status of your shipment. Simply text your tracking keyword followed by your tracking number to your country SMS number and we'll reply with your shipment status details. If you are new to receiving text messages from UPS, this also opts you in to our SMS notifications program.

<https://www.ups.com/us/en/help-center/tracking-support/sms-track.page?>

|                         |       |        |               |
|-------------------------|-------|--------|---------------|
| United States (English) | TRACK | LOCATE | 69877 (MYUPS) |
|-------------------------|-------|--------|---------------|

*Id.*

17. Defendant composes a data packet including the collected data and in a form that conforms to conventional short message data. *See* "What Is SMS and How Does It Work?" ("What Is SMS") (available at <http://www.androidauthority.com/what-is-sms-280988>; How SMS Works.

18. Defendant inserts collected data into a short message service portion of a GSM network as an SMS message. *See* How SMS Works.

19. Defendant transmits a data packet to an access point via a short message service portion of a personal communications system transmission protocol (e.g., cellular network) as an SMS message.

## UPS SMS Program

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2. From the **Tracking Detail** page, add SMS notifications by selecting **Request Status Updates**.
3. When selecting the type of notification, select **SMS Text**, then select **Add New Number**, and enter your mobile number to opt in.
4. Select the checkbox to confirm that you agree to the UPS SMS Program Terms of Use and the UPS Privacy Policy.
5. Select **Submit**, then confirm your request from your mobile phone. Once confirmed, UPS will send you SMS text messages with your tracking status for this one shipment. You will not be asked to verify your request from your phone again unless you choose to opt-out\* of the service.

To track packages while on the go, send UPS an SMS to get the status of your shipment. Simply text your tracking keyword followed by your tracking number to your country SMS number and we'll reply with your shipment status details. If you are new to receiving text messages from UPS, this also opts you in to our SMS notifications program.

<https://www.ups.com/us/en/help-center/tracking-support/sms-track.page?>

|                         |       |        |               |
|-------------------------|-------|--------|---------------|
| United States (English) | TRACK | LOCATE | 69877 (MYUPS) |
|-------------------------|-------|--------|---------------|

*Id.*; see also How SMS Works; What Is SMS; William Dudley, "SMS Only Reliable Communications Channel During Significant Events" (available at <http://www.mobilemarketer.com/cms/opinion/columns/5968.html>); Tiesha Whatley, "How Does Text Messaging Work?" (<https://www.techwalla.com/articles/how-does-text-messaging-work>).

20. First-Class Monitoring is entitled to recover from Defendant the damages sustained by First-Class Monitoring as a result of Defendant's infringement of the '089 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**

First-Class Monitoring hereby demands a trial by jury on all issues so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, First-Class Monitoring requests that this Court enter judgment against Defendant as follows:

- A. An adjudication that Defendant has infringed the '089 patent;
- B. An award of damages to be paid by Defendant adequate to compensate First-Class Monitoring for Defendant's past infringement of the '089 patent, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of First-Class Monitoring's reasonable attorneys' fees; and
- D. An award to First-Class Monitoring of such further relief at law or in equity as the Court deems just and proper.

Dated: March 28, 2019

*/s/ Richard C. Weinblatt*

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