

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

ANUWAVE, LLC,

Plaintiff,

v.

Civil Action No. 1:19-cv-777

CLECO POWER, LLC

Defendant.

COMPLAINT FOR INFRINGEMENT OF PATENT

COMES NOW, Plaintiff, Anuwave, LLC, by and through the undersigned attorneys, and respectfully 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, Cleco Power, LLC, from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or of the consent from Anuwave, LLC, from U.S. Patent No. 8,295,862 (the "862 patent", attached hereto as Exhibit "A") pursuant to 35 U.S.C. §271, and to recover damages, attorney's fees, and costs.

THE PARTIES

2. Plaintiff, Anuwave, LLC (hereinafter "Anuwave"), is a Texas entity with its principal place of business at 1333 McDermott Drive, Suite 150, Allen, Texas 75013.

3. Upon information and belief, Defendant, Cleco Power, LLC (hereinafter "Cleco"), is a corporation organized under the laws of the State of Louisiana, having a

principal place of business at 2030 Donahue Ferry Road, Pineville, Louisiana 71360. Defendant may be served with process by and through its Registered Agents, Mark D. Pearce or Michael W. Joseph, at the same address.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

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

6. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Louisiana Long Arm Statute, La. R.S. 13:3201, due at least 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 Louisiana and in this judicial district.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because Defendant resides in this District.

FACTUAL ALLEGATIONS

8. 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. See '862 patent attached hereto as Exhibit "A."

9. Anuwave 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. Anuwave possesses all rights of recovery under the '862 patent, including the exclusive right to recover for past infringement.

10. The '862 patent contains two independent claims and five dependent claims. Defendant commercializes, inter alia, methods that perform all the steps recited in at least one claim of the '862 patent.

11. 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.

12. 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.

13. 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.

DEFENDANT'S PRODUCTS

14. Defendant offers solutions, such as the "Cleco Text Notification" solution (the "Accused Instrumentality"), that enable communication through an SMS channel as recited in the preamble of claim 7 of the '862 patent, whereby any of Defendant's customers can use an SMS-enabled mobile device to perform certain actions using text commands. For example, as shown in Defendant's website, the Accused Instrumentality enables users to send commands via SMS messages.

15. As recited in the first 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's website, the accused instrumentality lists all services (e.g. the system will show all available SMS services and their corresponding SMS commands when a user sends "HELP" after activating the text message notification service; available services include: STAT, BAL, RESUME, etc.) at a terminal station (e.g. a mobile phone) that are available with an SMS gateway (e.g. the accused instrumentality's SMS gateway/server) according to meta information available at the terminal station (e.g. the SMS gateway lists available services based upon the user's accounts and preferences which are linked to their mobile device when they register for Cleco text notification service).

16. As recited in the second 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's website, the Accused

Instrumentality is configured to, upon a user's selection of a service (e.g. a user can select the option to check the status of power outage/check an account balance by entering the corresponding "STAT/BAL" command) implement 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 "STAT/BAL" service by entering the corresponding "STAT/BAL" command and can then enter the 'account number/nickname' of their choosing (desired parameter) in order to request the desired information).

17. As recited in the third step of claim 7, the Accused Instrumentality includes, upon user entering a desired parameter, submitting a request to the SMS gateway. For example, as shown in Defendant's website, the accused instrumentality submits a request to the SMS gateway (e.g. the accused instrumentality's SMS server) upon a user's entering of a desired parameter (the 'account number/nickname' following the selected "STAT/BAL" service).

18. As recited in the fourth step of claim 7, the Accused Instrumentality includes the SMS gateway responding back with a response. For example, accused instrumentality implements an SMS gateway that responds to a user's request with a response (e.g. upon the SMS gateway/servers' receipt 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).

19. As recited in the fifth step of claim 7, the Accused Instrumentality includes a desired parameter that is not listed at the terminal station. For example, within the

accused instrumentality, the desired parameter (e.g., the 'account number/nickname' the user enters in combination with the "STAT/BAL" service command) is not listed at the terminal station (e.g. the mobile device).

20. The elements described in paragraphs 14-19 are covered by at least claim 7 of the '862 patent. Thus, Defendant's use of the Accused Product is enabled by the method described in the '862 patent.

INFRINGEMENT OF THE '862 PATENT

21. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 20.

22. In violation of 35 U.S.C. § 271, Defendant is now, and has been directly infringing the '862 patent.

23. Defendant has had knowledge of infringement of the '862 patent at least as of the service of the present complaint.

24. Defendant has directly infringed and continues to directly infringe at least claim 7 of the '862 patent by using, at least through internal testing, 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 Defendant's direct infringement of the '862 patent, Plaintiff has been and continues to be damaged.

25. By engaging in the conduct described herein, Defendant has injured Anuwave and is thus liable for infringement of the '862 patent, pursuant to 35 U.S.C. § 271.

26. Defendant has committed these acts of infringement without license or authorization.

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

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

DEMAND FOR JURY TRIAL

29. Anuwave demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Anuwave prays for the following relief:

a. That Defendant be adjudged to have directly infringed the Patents-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 Defendant, 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 Patents-In-Suit;

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

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

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

g. That Anuwave have such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED, this the 19th day of June, 2019.

s/Joel J. Henderson

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