

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KAMATANI CLOUD LLC,

Plaintiff,

-against-

NEC CORPORATION OF
AMERICA

Defendant.

Civil Action No.:

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Plaintiff Kamatani Cloud LLC, as and for its complaint for patent infringement in this matter, hereby alleges through its attorneys as follows:

NATURE OF THE ACTION

1. This is an action under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*, for infringement by Defendant NEC Corporation of America, of one or more claims of U.S. Patent No. 6,873,940 (the “’940 patent” or “Patent-in-Suit”), seeking damages and other relief under 35 U.S.C. § 281, *et seq.*

PARTIES

2. Plaintiff Kamatani Cloud LLC (“Kamatani Cloud”) is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 75 Montebello Road, Suffern, NY 10901.

3. Upon information and belief, Defendant NEC Corporation of America. (“NECAM”) is a corporation organized and existing under the laws of the State of Nevada, having a place of business at 1155 6th Ave, New York, NY 10036.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under 35 U.S.C. §100, et seq., §§ 271-81, and §§ 284-85, among others. This Court has subject matter over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
5. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b). Upon information and belief, NECAM maintains a regular and established place of business within this district and has committed acts of infringement within this judicial district.
6. NECAM is subject to this Court's general and specific personal jurisdiction pursuant to due process and the New York Long-Arm Statute, due at least to its substantial presence and business in this forum, including: a place of business at 1155 6th Ave, New York, NY 10036; its commission of at least a portion of the infringing activities described here within the State of New York and in particular within this judicial district; its regular and systematic conduct of business within this district; and its derivation of substantial revenue from goods and services provided from and to this district and, more broadly, New York as a whole.
7. This Court has personal jurisdiction over NECAM in this action pursuant to N.Y. C.P.L.R. §§ 301 and 302(a)(1)-(3). Upon information and belief, this Court has general jurisdiction over NECAM based on its continuous and systematic conduct within New York, including, inter alia, NECAM's continuous contacts with and sales to customers in New York.

PATENT-IN-SUIT

8. On March 29, 2005, the United States Patent and Trademark Office duly and lawfully issued the '940 patent, entitled "Measuring method and measuring service system using communication means," based upon an application filed by the inventor, Yasuo Kamatani. A true and correct copy of the '940 patent is attached as Exhibit A to this Complaint.

9. The '940 patent relates to inventive systems and methods for connecting a client apparatus and server apparatus through an interactive communication line, wherein measurement data are sent from the client apparatus to the server apparatus, and the server apparatus executes measurement processing to obtain measurement processing results, which are then sent to the client apparatus.

10. The claims of the Patent-in-Suit generally relate to a measurement service system and method, and particularly to a novel measurement service system for carrying out remote measurements involving network communication, and a measurement method using the same.

11. The Patent-in-Suit includes claims directed to, *inter alia*, a data measurement method for connecting a server computer and a client computer via a website or the Internet, whereby the client computer sends measurement data, input thereto from a measured medium, to the server computer. The server computer executes measurement processing on at least one measurement instrument connected to the server computer, on the basis of the measurement data, and sends processing results to the client computer over the Internet. Applications for measurement services are accepted, *inter alia*, via the website and the server computer detects whether the measurement data are capable of being measured by any measuring instrument in the server computer, notifying whether the measurement service is available. The Patent-in-Suit also includes claims directed to a client apparatus and to server apparatus that perform data measurement services.

12. Kamatani Cloud is the owner by assignment of the Patent-in-Suit, and has the right to sue and recover damages for infringement thereof. Kamatani Cloud is a wholly-owned subsidiary of Kamatani Technologies LLC. The named inventor, Yasuo Kamatani, is a principal of Kamatani Technologies LLC and the Chief Technologist of Kamatani Cloud.

13. Upon information and belief, NECAM makes, uses, sells, and/or offers for sale network-based, remote face recognition solutions to customers in the United States, including customers

in New York. Upon information and belief, NECAM's network-based, remote face recognition solutions, including, but not limited to, NEOFACE FaceR™ SmartID that infringe at least claim 32 of the '940 patent.

NOTICE

14. By FEDEX delivery, a Notice letter dated October 31, 2015, was sent by non-party General Patent Corporation, as a licensing agent and representative of Kamatani Cloud, notifying NECAM of the existence of the Patent-in-Suit and offered to discuss licensing opportunities.

15. On November 18, 2016, a reply was received from NECAM confirming receipt of the Notice letter by NECAM and that the matter was being considered. No further response was provided.

16. By further letters dated March 3, and May 18, 2017, respectively, a reply to the October 31st Notice letter was twice requested. No substantive response was ever received.

NOTICE OF CONFIRMATION OF VALIDITY BY PTAB

17. By letter dated September 29, 2018, NECAM was informed that the '940 Patent was challenged and confirmed valid at the Patent Trial and Appeal Board (PTAB) in *Unified Patents Inc. v. Kamatani Cloud, LLC* (Case No. IPR2017 - 01370). The PTAB rejected Unified's petition in its entirety and affirmed the validity of all 41 patent claims in its Final Written Decision dated September 19, 2018. This letter asked for a NECAM response to all previous communications and included an offer of a non-exclusive license given confirmation of validity by the Patent Office. No response was ever received.

18. Upon information and belief, including based on numerous communications from Kamatani Cloud to NECAM, and of NECAM's admissions relating to its receipt of the Patent-in-Suit in the Notice letter, NECAM has received notice of the Patent-in-Suit, it's confirmed

validity, and of NECAM's infringement thereof.

COUNT I: INFRINGEMENT OF THE PATENT-IN-SUIT BY NECAM

19. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

20. NECAM is not licensed under the Patent-in-Suit, yet NECAM willfully, actively, and lucratively practices the claimed inventions of the patent.

21. Upon information and belief, NECAM has been and is now directly infringing literally and/or under the doctrine of equivalents at least claim, 32 of the '940 patent by at least making, using, importing, selling, and offering to sell, without license or authority, infringing products including, but not limited to, at least NEOFACE FaceR™ SmartID (the "NECAM" infringing products").

22. By way of example, NECAM's NEOFACE FaceR™ SmartID is a measurement service that may be installed and operated on a user client's smartphone with an Apple iPhone or Android operating system to connecting the client to NECAM's facial-recognition platform (NeoFace Server), allowing measurement data, such as facial images, to be sent from the client's device to NECAM's platform via the Internet.



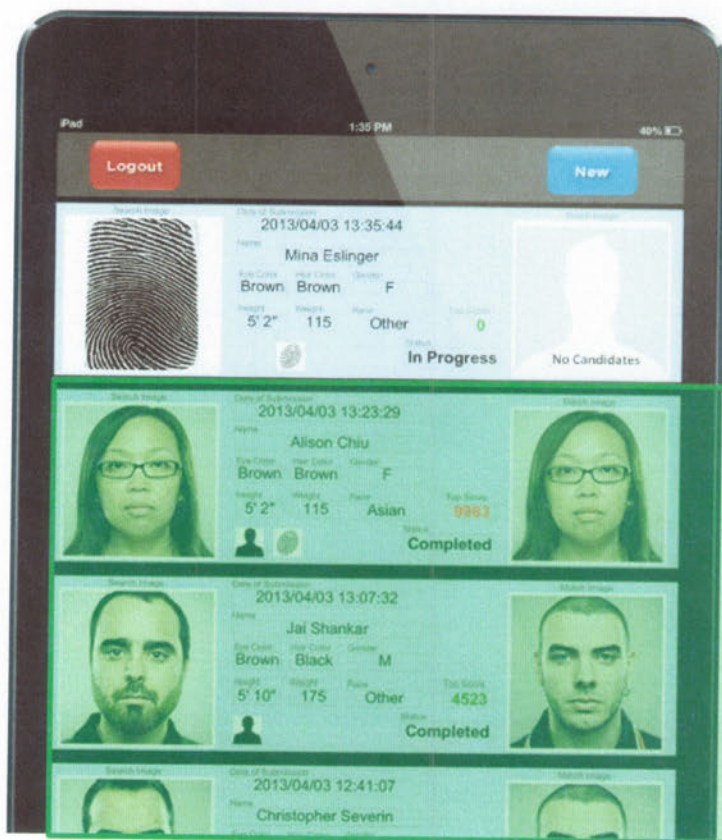
NEC Biometric and Managed Services Solutions



10,474 views

Measurement instruments in NECAM's platform execute measurement processing, including,

inter alia, advanced recognition services on the basis of the measurement data sent by the client, and, if the platform is able to detect faces from the data sent by the client, it returns the measurement processing results to the client via the Internet. NECAM is therefore liable for direct infringement of the Patent-in-Suit pursuant to 35 U.S.C. § 271(a). See https://se.nec.com/en_SE/en/global/solutions/safety/face_recognition/PDF/NeoFace_SmartID_Brochure.pdf.



23. The NeoFace Server computer has the functions of detecting whether the measurement data are capable of being measured by any measuring instrument in the said server computer, and notifying whether the measurement service is available.

24. More particularly, on information and belief, NEC NeoFace issues an error code in situations when submitted data could not be processed (*e.g.*, wrong format, no face features, *etc.*)

or when the back end “measurement services” services are “not available” (*e.g.*, server too busy, back end database is not accessible, etc.) through REST API. If REST data cannot not be parsed or not “capable of being measured,” an exception is raised , and appropriate HTTP status code is sent.

25. NECAM also indirectly infringes the '940 patent by knowingly and specifically inducing others, such as end-users of NECAM's infringing products, to infringe one or more claims of the '940 patent in violation of 35 U.S.C. § 271(b). NECAM's affirmative acts of selling NECAM's infringing products and providing datasheets, Service Architecture documentation, website descriptions, workflow documentation, function reference manuals, and/or instruction manuals, including documents available at www.NEC.com, for NECAM's infringing products have induced and continue to induce NECAM's end-users to use NECAM's infringing products in their normal and customary way to infringe the '940 patent. NECAM has performed the acts intending to induce infringement that constitute induced infringement with knowledge of the '940 patent, and with the knowledge, or willful blindness to the likelihood, that the induced acts would constitute infringement.

26. Upon information and belief, NECAM has committed the foregoing infringing activities without license from Kamatani Cloud and with notice of the Patents-in-Suit.

27. Upon information and belief, NECAM knew the Patent-in-Suit existed while committing the foregoing infringing acts, thereby willfully, wantonly and deliberately infringing the Patents-in-Suit.

28. The acts of direct and indirect infringement by NECAM have caused and will continue to cause irreparable harm and damage to Kamatani Cloud. Kamatani Cloud is entitled to recover

damages from NECAM, adequate to compensate for such infringement, in an amount not less than a reasonable royalty trebled pursuant to 35 U.S.C. § 284. The full measure of damages sustained as a result of NECAM's wrongful acts will be proven at trial.

29. Upon information and belief, the Patent-in-Suit was licensed to several third parties. Upon information and belief, the U.S. Patent Laws, including 35 U.S.C. § 287, do not limit the damages recoverable by Kamatani Cloud from NECAM by time period or otherwise, and Kamatani Cloud is entitled to the full measure of damages beginning six years prior to commencement of this action.

PRAYER FOR RELIEF

WHEREFORE, Kamatani Cloud prays for judgment in its favor against NECAM, granting Kamatani Cloud the following relief:

- A. Entry of judgment in favor of Kamatani Cloud against NECAM on all counts;
- B. Entry of judgment that NECAM has infringed the Patent-in-Suit, literally and/or under the doctrine of equivalents;
- C. Entry of judgment that such infringement has been willful;
- D. Entry of judgment that the Patent-in-Suit is not invalid and not unenforceable;
- E. Award of compensatory damages adequate to compensate Kamatani Cloud for NECAM's infringement of the Patent-in-Suit, in no event less than a reasonable royalty trebled as provided by 35 U.S.C. § 284;
- F. Kamatani Cloud's costs of this action and its reasonable attorneys' fees pursuant to 35 U.S.C. §285;
- G. Pre-judgment and post-judgment interest on Kamatani Cloud's award; and
- H. All such other and further relief as the Court deems just or equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Kamatani Cloud hereby demands trial by jury in this action of all claims so triable.

Dated: New York, New York
August 24, 2020

Respectfully submitted,

BAILEY DUQUETTE P.C.

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