IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

M2M SOLUTIONS LLC,
a Delaware limited liability company,

Plaintiff,

v.

AMAZON.COM, INC.,
a Delaware corporation,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff M2M Solutions LLC ("M2M Solutions") brings this action for patent infringement under the laws of the United States relating to patents, 35 U.S.C. §§ 1 *et seq.*, against Defendant Amazon.com, Inc. ("Amazon.com"), hereby alleging as follows:

THE PARTIES

1. Plaintiff M2M Solutions is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 4878 Kearneysville Pike, Shepherdstown, West Virginia 25443-4861.

2. Upon information and belief, Defendant Amazon.com is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210. Upon information and belief, Amazon.com has appointed Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808 as its registered agent for service of process.

JURISDICTION AND VENUE

3. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States.

4. Amazon.com has elected, upon information and belief, to incorporate under Delaware law and it has thereby acquiesced to personal jurisdiction in the courts of the State of Delaware. Upon further information and belief, Amazon.com has also submitted to the personal jurisdiction of this Court by committing the acts described below that establish its legal presence within the State of Delaware, including by purposefully directing the supply of services to Delaware residents, and/or contracting to do the same, wherein the provision of such services has involved and necessitated Amazon.com's unauthorized and infringing practicing and use of the claimed inventions of the Patents-in-Suit. Moreover, upon information and belief, in conjunction with it selling or otherwise causing digital e-reader devices and e-reader software applications to be made available to Delaware residents, Amazon.com has actively and knowingly induced Delaware residents to make unauthorized and infringing use of the claimed inventive systems of the Patent-in-Suit, and/or it has knowingly contributed to the same, by disseminating or making available within this judicial district promotional and marketing materials, instructional materials, product user's guides, and technical materials and assistance that illustrate and advocate such infringing use. By virtue of its above-described actions, while engaging in the unauthorized and infringing practicing and use of the claimed inventions of the Patent-in-Suit, Amazon.com has transacted business, performed services, contracted to supply services, caused tortious injury, regularly done or solicited business, and/or engaged in a persistent course of conduct within the State of Delaware, and it has additionally derived substantial revenues from or as the result of products, digital content, and infringing services used or consumed in Delaware. In light of Amazon.com's aforementioned contacts with the State of Delaware and its

purposeful availment of the rights and benefits of Delaware law, maintenance of this suit would not offend traditional notions of fair play and substantial justice.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b) because, *inter alia*, a substantial part of the events or omissions giving rise to the claim occurred in this judicial district, Amazon.com is subject to personal jurisdiction in and therefore resides in this judicial district, and Amazon.com has committed acts of patent infringement and has a regular presence in this judicial district.

THE PATENT-IN-SUIT

6. On September 29, 2020, United States Patent No. 10,791,442 (the "'442 Patent" or "Patent-in-Suit"), entitled "System And Method For Remote Asset Management," was duly and legally issued by the United States Patent and Trademark Office to inventor Philip Bernard Wesby. M2M Solutions is the sole owner by assignment of the entire rights, title, and interest in and to the '442 Patent, including the rights to sue on and recover damages for any past, current, or future infringements thereof. A true and correct copy of the '442 Patent is attached hereto as Exhibit 1.

7. The Patent-in-Suit is a continuation patent within M2M Solutions' Remote Asset Management patent family, the members of which share a common specification and a common priority date of May 21, 2002. By way of background, this Remote Asset Management patent family is comprised of a series of seminal patents covering wireless machine-to-machine communications systems (hereinafter, "wireless M2M systems" or "remote asset management systems") that collectively have been forwardly cited more than 500 times in other patents and published applications prosecuted in related fields of art before the United States Patent and Trademark Office. In general, wireless M2M systems have historically involved systems in which various types of electronic technical equipment wirelessly connected to communications

networks have been monitored, and to varying degrees managed, by remote computer server platforms. More recently, such wireless M2M systems have come to be known in common parlance as "Internet of Things" applications.

8. As taught in the specification of the Patent-in-Suit, prior art wireless M2M systems were directed to remotely monitoring and managing "industrial assets," such as the types of electronic technical equipment used in factory automation applications, or the kinds of security and alarm sensors used in remote facilities management applications. By contrast, the Patent-in-Suit claims innovative methods for operating improved wireless M2M systems in such a manner that they can serve in a new and useful capacity as *consumer services platforms* for autonomously delivering valuable technology-based services to users of "consumer device assets" (*e.g.*, consumer electronics products). The preambles of the asserted independent claims expressly indicate that the objective and desired result of the innovative claimed methods is to "operate a remote computer server platform…[so as to] provide a range of consumer services by autonomously managing monitoring and managing…consumer device assets" in the particular prescribed manner. In turn, the bodies of the asserted independent claims recite specific active steps to be performed by the server platform for accomplishing this objective in one particular unconventional way, and which result in providing one particular type of consumer service wherein the server platform causes certain specified "display data content files" stored in non-volatile memory on the consumer device assets to be "automatically modified" in a fashion that would be desirable and beneficial to their consumer users.

9. The innovative method claims of the Patent-in-Suit recite and are directed to several features that constitute specific and concrete technological improvements for advancing the computer functionality and computer capabilities of the various computer-related

components that had historically been present in prior art wireless M2M systems (hereinafter, "technological improvements"). Alone and in combination, these claimed technological improvements serve to improve and beneficially modify the functioning and capabilities of prior art wireless M2M systems as a whole, allowing them to be employed in a new and novel capacity as consumer services platforms to achieve the new and useful purposes and ends of beneficially providing certain technology-based consumer services in a particular specified manner.

10. As one example of claimed technological improvements over prior art systems, independent Claims 1 and 20 of the Patent-in-Suit recite and are directed to several limitations pertaining to "consumer usage information," which those claims self-define as being a specific kind of information that identifies the particular manner in which a consumer user has used a particular feature of a "consumer device asset." The claims require a plurality of "consumer device assets" that each has the capability to automatically send "consumer usage information" about itself to a remote computer server platform in wireless packet switched data message communications. In turn, the claims further require the receiving server platform to have the capability of then automatically communicating wireless management instructions back to one or more of the "consumer device assets" that are based upon the results of the server platform having processed the received "consumer usage information." Finally, the claims require that the one or more "consumer device assets" have the capability to accept and execute these wireless management instructions, which results in causing specified "display data content files" stored in their non-volatile memory to be "automatically modified so as to provide a consumer service" to their consumer users. In this way, the claimed system is able to act on a fully autonomous basis -- in the absence of contemporaneous human direction -- to make optimizing

modifications to the "consumer device assets" in a manner that comports with and supports a consumer user's previously monitored actual usage. The specification of the Patent-in-Suit expressly describes these recited "consumer usage information" related capabilities as being attributes of an "improved remote asset management system." (*See, e.g.*, Ex. 1 at 12:14-25).

11. In the relevant prior art at the time of the claimed inventions, monitored assets and remote computer server platforms having the above-described improved functionality and capabilities pertaining to "consumer usage information" as recited by independent method Claims 1 and 20 of the Patent-in-Suit were unknown and undisclosed. Likewise unknown and undisclosed in the relevant prior art were: (i) wireless M2M systems that incorporated such monitored assets or remote computer server platforms; and (ii) each of the activities pertaining to "consumer usage information" that comprise the specific claimed method steps, whether standing alone or whether combined in the particular ordered combinations of limitations that are claimed. Accordingly, the claim elements directed to "consumer usage information" and their claimed combinations were neither well-understood, routine, nor conventional to a skilled artisan in the relevant field at the time of the Patent-in-Suit.

12. As another example of claimed technological improvements over prior art systems, dependent Claims 3-5 and 21-23 of the Patent-in-Suit recite and are directed to several limitations pertaining to "consumer preference information," which those claims self-define as being a specific kind of information that indicates preferences that individual consumer users of "consumer device assets" have for particular display data content files. The claims require a remote computer server platform having the capabilities to store such "consumer preference information," and to automatically communicate wireless management instructions to one or more "consumer device assets" by way of wireless packet switched data messages, said

instructions being based upon the results of the server platform having processed the stored "consumer preference information." In turn, the claims require that the one or more "consumer device assets" have the capability to accept and execute these wireless management instructions, which results in causing their specified "display data content files" stored in non-volatile memory to be "automatically modified so as to provide a consumer service" to their consumer users. In this way, the claimed system is able to make optimizing modifications to "consumer device assets" in a manner that comports with and supports a consumer user's previously known preferences for particular display data content. The specification of the Patent-in-Suit expressly describes these recited "consumer preference information" related capabilities as being attributes of an "improved remote asset management system." (*See, e.g.*, Ex. 1 at 11:35-44; 24:15-28).

13. In the relevant prior art at the time of the claimed inventions, monitored assets and remote computer server platforms having the above-described improved functionality and capabilities pertaining to "consumer preference information" as recited by dependent method Claims 3-5 and 21-23 of the Patent-in-Suit were unknown and undisclosed. Likewise unknown and undisclosed in the relevant prior art were: (i) wireless M2M systems that incorporated such monitored assets or remote computer server platforms; and (ii) each of the activities pertaining to "consumer preference information" that comprise the specific claimed method steps, whether standing alone or whether combined in the particular ordered combinations of limitations that are claimed. Accordingly, the claim elements directed to "consumer preference information" and their claimed combinations were neither well-understood, routine, nor conventional to a skilled artisan in the relevant field at the time of the Patent-in-Suit.

14. As an additional example of claimed technological improvements over prior art systems, independent Claim 20, and dependent Claims 7, 10, 14, 17, and 25, of the Patent-in-Suit

recite and are directed to several limitations pertaining to the use of special purpose SMS messages as part of innovative methods suitable for operating improved wireless M2M systems that comprise battery-operated "consumer device assets." The specification of the Patent-in-Suit teaches that "it would be beneficial if…[such] devices could be programmed remotely to power down for certain periods of time" because a "programmable power duty cycle would greatly extend the time between charges of the associated battery supply." (Ex. 1 at 4:47-61). However, this approach would give rise to a technological problem in that the remote computer server platform would be unable to sufficiently communicate with these devices once they had entered their powered down state. One technological solution to this problem disclosed in the specification is to enable these devices to be remotely programmable by way of special purpose SMS messages that could trigger their reawakening when desired. (*See, e.g.*, Ex. 1 at 10:63-11:34). In this regard, Claims 7 and 20 require a remote computer server platform having the capability to send, and "consumer device assets" having the capability to receive and act upon, an SMS message that "causes one or more components of said asset to power up from a powered down state for facilitating the exchange of further [specified types of] communications" between the server and the asset. In turn, Claims 10, 14, 17, and 25 additionally require that these "further communications" comprise management instructions originating from the server that the server has determined to send based upon the results of its having processed the aforementioned "consumer preference information." The specification expressly describes these recited capabilities relating to the use of special purpose SMS messages as being attributes of an "improved system and method for remote asset management." (*Id.*)

15. In the relevant prior art at the time of the claimed inventions, monitored assets and remote computer server platforms having the above-described improved functionality and

capabilities pertaining to the use of special purpose SMS messages as recited by method Claims 7, 10, 14, 17, 20, and 25 of the Patent-in-Suit were unknown and undisclosed. Likewise, unknown and undisclosed in the relevant prior art were: (i) wireless M2M systems that incorporated such monitored assets or remote computer server platforms; and (ii) each of the activities pertaining to the use of special purpose SMS messages that comprise the specific claimed method steps, whether standing alone or whether combined in the particular ordered combinations of limitations that are claimed. Accordingly, the claim elements directed to the use of special purpose SMS messages and their claimed combinations were neither well-understood, routine, nor conventional to a skilled artisan in the relevant field at the time of the Patent-in-Suit.

16. The specific and concrete technological improvements recited and captured by the independent claims of the Patent-in-Suit, as exemplified above, prevent those claims from preempting or otherwise disproportionately tying up the use of all methods for operating wireless M2M systems in a novel capacity as consumer services platforms, much less all methods for operating wireless M2M systems in general. Indeed, these independent claims are narrowly drawn and circumscribed so as to be directed to only certain discrete ways of operating wireless M2M systems for providing one particular type of technology-based consumer service on an autonomous basis -- *viz.*, a service whereby specified "display data content files" stored in non-volatile memory on "consumer device assets" are "automatically modified" in a fashion that would be desirable and beneficial to their consumer users. By contrast, the specification of the Patent-in-Suit also discloses many unclaimed alternative ways of operating wireless M2M systems as consumer services platforms to deliver other different types of consumer services. (*See, e.g.*, Ex. 1 at 13:26-34 (asset tracking location information provided as a consumer service)); (*id.* at 20:47-21:3 (asset receives real-time map and traffic congestion updates

triggered by external events as a consumer service)). Moreover, the dependent claims of the Patent-in-Suit recite many additional limitations of distinctive significance that even further prevent those particular claims from preempting or otherwise disproportionately tying up the use of all methods for operating wireless M2M systems in the capacity of consumer services platforms or in general.

17. Upon information and belief, Amazon.com has had actual and/or constructive knowledge of the existence of the Patent-in-Suit since a date as yet unknown that predates the filing of this Complaint. This date on which such knowledge is first attributable to Amazon.com is likely to be the date of issuance of the Patent-in-Suit, given that Amazon.com has presumably been closely monitoring developments pertaining to M2M Solutions' "Remote Asset Management" patent family due to other related patent infringement litigations that already exists between the parties. In addition, contemporaneous with this filing, Amazon.com will receive further confirmatory notice as to the existence the Patent-in-Suit upon the service of this Complaint by M2M Solutions at one or more of the addresses referenced herein.

AMAZON.COM'S INFRINGING OPERATION OF ITS KINDLE E-READER ECOSYSTEM

18. Amazon.com operates in an infringing manner a wireless M2M system that serves as a consumer services platform (called "Whispernet") for providing technology-based services to users of consumer device assets consisting of Kindle e-reader devices, Fire tablets running preloaded Kindle reading applications software, and/or other non-Amazon smart phones, tablets, and computers running Kindle reading applications software (collectively, "Kindle e-reader devices"). Hereinafter, this infringing system shall be referred to as Amazon.com's "Kindle e-reader ecosystem." The Kindle e-reader ecosystem comprises a remote computer server platform that Amazon.com operates so as to remotely monitor and manage the Kindle e-

reader devices, which are wirelessly connected to a cellular-mobile telecommunications network and/or to the Internet. For all relevant purposes, the Kindle e-reader ecosystem operates in an autonomous fashion and relies upon wireless packet switched data message as its principal form of communications between the remote computer server platform and the Kindle e-reader devices.

19. Within the Kindle e-reader ecosystem, Amazon.com's remote computer server platform receives and monitors consumer usage information that identifies the manner in which consumers have used particular features of partiular Kindle e-reader devices. Such information includes data relating to the "Annotations" (*e.g.*, notes, highlights, bookmarks); "Last [Most Recent] Page Read;" "Last Page Heard;" "Furthest Page Read;" "Current Video Location;" "Cloud Collections;" "Popular Highlights;" and/or "Game Related Metadata" features of the Kindle e-reader devices. On the basis of processing some or all of this information in accordance with its so-called "Whispersync" functionality (including Whispersync for Voice, Video, and Games), the computer server platform generates wireless management instructions that cause automatic modifications deemed desirable and beneficial to consumer users to be made to the display data content files stored in non-volatile memory on one or more of the Kindle e-reader devices. The computer server platform also stores consumer preference information that includes data reflecting consumer subscriptions to periodicals and blogs; follower designations relative to other Kindle users; digital content purchase, review and reading histories; and/or favorite genres and ratings histories. On the further basis of processing some or all of such information, the computer server platform generates additional wireless management instructions that cause other automatic modifications deemed desirable and beneficial to consumers to be made to the display data content files stored in non-volatile memory on one or

more of the Kindle e-reader devices, including modifications relevant to the "Subscription Downloads;" "Public Notes;" "Special Offers;" "Sponsored Screensavers;" "Recommended [for You] Content;" "Before You Go;" and/or "About This Book" features of those devices.

20. When operating as part of the Kindle e-reader ecosystem, Amazon.com's remote computer server platform is capable of sending special purpose wireless SMS data messages to those Kindle e-reader devices having cellular wireless connectivity for causing them to awaken and power up from a suspended sleep state, thereby facilitating a further exchange of wireless packet switched data message communications that will allow for the computer server platform to cause the types of automatic modifications recited in the Patent-in-Suit to be made to the display data content files stored in nonvolatile memory on one or more of the Kindles. Such modifications are made by way of wireless management instructions that the server platform determines to send based upon the results of its having processed consumer preference information or otherwise.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 10,791,442

21. M2M Solutions realleges and incorporates by reference each and every allegation of Paragraphs 1-20 above as if fully set forth herein.

22. Amazon.com has directly infringed, and continues to directly infringe, one or more claims of the '442 Patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine equivalents, by without authority using its Kindle e-reader ecosystem, and/or using the remote computer server platform component of that ecosystem, in an infringing manner that practices the inventions of one or more claims of the '442 Patent. In the alternative and upon information and belief, Amazon.com is vicariously liable for such direct infringement by exercising control or direction over the practicing, in whole or in part, of the inventions of one or

more claims of the ’442 Patent through the infringing use of its Kindle e-reader ecosystem, and/or the infringing use of the remote computer server platform component of that ecosystem, by an as yet unknown third party pursuant to a principal-agent relationship, a contractual relationship, a joint enterprise, or other like arrangement.

23. Amazon.com has had actual and/or constructive knowledge of the existence of the ’442 Patent since not later than the date upon which it received service of this Complaint or, upon information and belief, since an even earlier date as yet unknown. With knowledge of the ’442 Patent, Amazon.com has indirectly infringed, and continues to indirectly infringe, one or more claims thereof under 35 U.S.C. § 271(b) through the active inducement of direct infringement by intending to encourage, and in fact encouraging, an as yet unknown third party to without authority use its Kindle e-reader ecosystem, and/or use the remote computer server platform component of that ecosystem, within the United States in an infringing manner that practices the inventions of one or more claims of the ’442 Patent. Amazon.com has actively induced direct infringement by, *inter alia*, (i) selling or otherwise causing to be made available Kindle e-reader devices, Fire tablets, and/or Kindle e-reader software applications; (ii) making available the use of its Kindle e-reader ecosystem and/or the remote computer server platform of that ecosystem; and (iii) disseminating or making available promotional and marketing materials, instructional materials, product user’s guides, and technical materials and assistance that illustrate and advocate infringing uses of the Kindle e-reader ecosystem and/or the remote computer server platform component of that ecosystem. Upon information and belief, Amazon.com has performed the acts that constitute inducement of infringement with the knowledge or willful blindness that the acts induced thereby would constitute direct infringement by an as yet unknown third party.

24. Amazon.com has also indirectly infringed, and continues to indirectly infringe, one or more claims of the ’442 Patent under 35 U.S.C. § 271(c) by making, selling, offering for sale, using, making available for use, and/or importing its Kindle e-reader ecosystem, and/or the ecosystem’s component remote computer server platform, and/or the ecosystem’s component Kindle e-reader devices, Fire tablets, and/or Kindle e-reader software applications, within or into the United States knowing that those products, apparatuses, or systems are especially made or especially adapted for use in direct infringements of the ’442 Patent by as yet unknown third parties, and knowing that those items are not a staple article or commodity of commerce suitable for substantial non-infringing use.

25. Upon information and belief, Amazon.com’ acts of infringing the ’442 Patent have been willful and undertaken in knowing and deliberate disregard of M2M Solutions’ patent rights.

26. M2M Solutions has been and continues to be damaged by Amazon.com’s infringements of the ’442 Patent in an amount to be determined at trial.

27. M2M Solutions has suffered irreparable injury for which there is no adequate remedy at law, and will continue to suffer such irreparable injury, unless Amazon.com’s infringements of the ’442 Patent are enjoined by this Court.

28. Upon information and belief, Amazon.com’s willful infringements, together with its other potential conduct in this action, have or will render this case exceptional under 35 U.S.C. § 285, and thereby entitle M2M Solutions to recovery of its attorneys’ fees and costs incurred in prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, M2M Solutions respectfully requests that this Court enter a judgment in its favor and against Amazon.com as follows:

(a) Declaring that Amazon.com has directly infringed, induced others to infringe, and/or committed acts of contributory infringement with regard to one or more claims of the Patent-in-Suit;

(b) Awarding damages adequate to fully compensate M2M Solutions within the meaning of 35 U.S.C. § 284 for the past acts of infringement committed by Amazon.com, as well as any applicable prejudgment and post-judgment interest thereon at the maximum rates allowed by law;

(c) Awarding an accounting and supplemental damages adequate to fully compensate M2M Solutions within the meaning of 35 U.S.C. § 284 for any continuing or future acts of infringement committed by Amazon.com subsequent to the discovery cut-off date in this action, as well as any applicable prejudgment and post-judgment interest thereon at the maximum rates allowed by law;

(d) Awarding treble or otherwise enhanced damages to M2M Solutions pursuant to 35 U.S.C. § 284 for the acts of willful infringement committed by Amazon.com, as well as any applicable prejudgment and post-judgment interest thereon at the maximum rates allowed by law;

(e) Declaring that this action is exceptional within the meaning of 35 U.S.C. § 285, and concomitantly awarding M2M Solutions its attorneys' fees as the prevailing party in this action, as well as any applicable prejudgment and post-judgment interest thereon at the maximum rates allowed by law;

(f) Awarding M2M Solutions its costs and expenses incurred in this action;

(g) Ordering that Amazon.com and its parents, subsidiaries, affiliates, successors, predecessors, assigns, and the officers, directors, agents, servants and employees of each of the

foregoing, customers and/or licensees, and those persons acting in concert or participation with any of them, be preliminarily and permanently enjoined and restrained from continued infringement, including but not limited to using, making, offering for sale, and/or selling within the United States, and/or importing into the United States, any system or apparatus intended to, or reasonably capable of being used in a manner that would, practice the inventions of one or more claims of the Patent-in-Suit, and from contributing to and/or inducing the infringement by others of the Patent-in-Suit, at all times prior to their respective expirations, including any extensions thereof; and

(h) Awarding any further relief to M2M Solutions that this Court deems just and proper.

DEMAND FOR JURY TRIAL

M2M Solutions demands a jury trial as to all issues arising in this action that are so triable.

December 29, 2020

BAYARD, P.A.

/s/ Stephen B. Brauerman
Stephen B. Brauerman (#4952)
Ronald P. Golden III (#6254)
600 North King Street, Suite 400
Wilmington, Delaware 19801
(302) 655-5000
sbrauerman@bayardlaw.com
rgolden@bayardlaw.com

Attorneys for Plaintiff
M2M SOLUTIONS LLC

OF COUNSEL:

CANTOR COLBURN LLP

Marc N. Henschke
20 Church Street, 22nd Floor
Hartford, Connecticut 06103-3027
(860) 286-2929
mhenschke@cantorcolburn.com