

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

Selex ES Inc.,

Plaintiff,

v.

NDI Technologies, Inc. d/b/a
NDA Recognition Systems,

Defendant.

Case No. 3:20-cv-00637-RJC-DCK

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Selex ES Inc. (“Selex” or “Plaintiff”) files this First Amended Complaint against Defendant NDI Technologies, Inc. (“NDI” or “Defendant”) for patent infringement, and alleges as follows:

PARTIES

1. Plaintiff is a corporation organized under the laws of the State of Delaware, having a principal place of business at 11300 W 89th Street, Overland Park, Kansas 66214.
2. On information and belief, Defendant is a corporation organized under the laws of the State of Florida, having a principal place of business at 105 E. State Road 434, Winter Springs, Florida 32708.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).
4. This Court has personal jurisdiction over Defendant consistent with the principles underlying the U.S. Constitution and N.C. Gen. Stat. Ann. 1-75.4. On information and belief,

Defendant has an office and operations in this State and District located at 9700 Research Drive, #148, Charlotte, NC 28262 (see <https://www.ndi-rs.com/ndi-worldwide/>), and has conducted business in this State and District, including manufacture, use, sales and offers for sale, and pre- and post-sales support of the accused products described herein.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1400.

FACTUAL BACKGROUND

6. Plaintiff is a leader in air traffic management, critical communications technologies, and law enforcement systems for military and civil markets. Plaintiff designs, develops, and provides advanced technology products, systems, and solutions for government agencies, armed forces, and commercial and industrial operators.

7. Among Plaintiff's offerings are license plate reader products and systems, such as the ELSAG Plate Hunter ALPR System.

8. Plaintiff is the owner of all right, title, and interest in and to U.S. Patent No. 7,504,965 ("the '965 Patent") entitled "Portable Covert License Plate Reader." A true and correct copy of the '965 Patent is attached hereto as **Exhibit A**.

9. The '965 Patent was duly and lawfully issued by the United States Patent and Trademark Office ("USPTO") on March 17, 2009. The '965 Patent and all of its claims are presumed valid pursuant to 35 U.S.C. § 282.

10. On information and belief, Defendant is engaged in the business of manufacturing, using, offering for sale and selling, throughout the United States and in this judicial district, highway safety and traffic control products, and surveillance systems, including portable covert license plate reader products and systems such as Defendant's "Road Warrior™ Radar" and Road Warrior™ VMS" systems, that infringe the '965 Patent (the "Accused

Products”). As an example, upon information and belief, Defendant has sold and offered for sale the Accused Products to the Charlotte-Mecklenburg Police Department.

11. Defendant’s customers use the Accused Products in the United States including, for example, use by the Charlotte-Mecklenburg Police Department.

12. The Accused Products and use of the Accused Products by Defendant and Defendant’s customers embody and practice the inventions claimed in the ‘965 Patent.

13. Defendant has had actual knowledge of the ‘965 Patent since at least November 18, 2020, when it received a cease-and-desist letter from Plaintiff’s counsel with an attached courtesy copy of the Complaint filed in this action.

COUNT I
Infringement of the ‘965 Patent

14. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

15. On information and belief, Defendant has made, used, offered for sale, and sold in the United States the Accused Products that infringe at least Claim 1 of the ‘965 Patent.

16. On information and belief, Defendant’s Accused Products infringe at least Claim 1 of the ‘965 Patent because they are designed to monitor a plurality of vehicle license plates, and comprise the following: (a) a portable license plate reader including a camera for automatically imaging a license plate and extracting a character string from the image for each of a plurality of moving vehicles that pass through a field of view of the camera without detection by the moving vehicles; (b) a mobile surveillance unit positioned in proximity to the license plate reader for receiving the extracted character string from the reader, comparing each extracted character string with a list of target plate numbers, and generating an audible alarm and a visual display when a match is found; and (c) an operations center for communicating with the mobile

surveillance unit to receive each extracted character string from the mobile surveillance unit and to update the list of target plate numbers stored at the mobile surveillance unit.

17. Defendant has committed the acts of infringement complained of herein without the consent or authorization of Plaintiff and in derogation of 35 U.S.C. § 271. On information and belief, Defendant's acts of infringement will continue unabated unless and until preliminarily and permanently enjoined by this Court.

18. Defendant has harmed Plaintiff by virtue of Defendant's acts of infringement of the '965 Patent.

19. Plaintiff is entitled to damages from Defendant pursuant to 35 U.S.C. § 284, enhanced damages and attorneys' fees pursuant to 35 U.S.C. § 285, and injunctive relief from this Court pursuant to 35 U.S.C. § 283.

COUNT II
Induced Infringement of the '965 Patent

20. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

21. Defendant has had actual knowledge of the '965 Patent since at least November 18, 2020.

22. Defendant sells and continues to sell the Accused Products to its customers with the intent that its customers will use and operate the Accused Products in the United States in a manner that directly infringes the '965 Patent.

23. On information and belief, Defendant provides its customers with instructions regarding the infringing use and operation of the Accused Products in the United States.

24. On information and belief, Defendant trains, facilitates, and/or provides support to its customers in the infringing use and operation of the Accused Products in the United States.

25. On information and belief, Defendant has observed its customers using and operating the Accused Products in the United States in an infringing manner.

26. On information and belief, Defendant is aware or should have known that use and operation of the Accused Products in the United States by Defendant or its customers would directly infringe the '965 Patent.

27. Defendant's actions to aid and abet its customers to directly infringe the '965 Patent with knowledge that use of the Accused Products in the United States would directly infringe the '965 Patent constitutes inducement of infringement.

28. On information and belief, Defendant's acts of inducement of infringement will continue unabated unless and until preliminarily and permanently enjoined by this Court.

29. Defendant's induced infringement of the '965 Patent has harmed Plaintiff.

30. Defendant's induced infringement of the '965 Patent is willful because Defendant continues to engage in such conduct despite an objectively high likelihood that its conduct infringes valid claims of the '965 Patent, and this likelihood is either known to Defendant or so obvious that Defendant should have known that its conduct infringes valid claims of the '965 Patent.

31. Plaintiff is entitled to damages from Defendant pursuant to 35 U.S.C. § 284, enhanced damages and attorneys' fees pursuant to 35 U.S.C. § 285, and injunctive relief from this Court pursuant to 35 U.S.C. § 283.

COUNT III
Contributory Infringement of the '965 Patent

32. Plaintiff realleges and incorporates by reference the foregoing paragraphs.

33. Defendant has had actual knowledge of the '965 Patent since at least November 18, 2020.

34. The Accused Products are configured only for infringing use as portable covert license plate reader systems.

35. The Accused Products are not staple articles of commerce.

36. The Accused Products are not suitable for substantial non-infringing use.

37. The Accused Products are especially made or especially adapted for use in infringement of the '965 Patent.

38. The use of the Accused Products by Defendant's customers constitutes direct infringement of the '965 Patent.

39. On information and belief, Defendant knows that the Accused Products are not staple articles of commerce, are not suitable for substantial non-infringing use, and are especially made or adapted for use in a manner that infringes Plaintiff's patent rights in the '965 Patent

40. Defendant's actions constitute contributory infringement of the '965 Patent.

41. On information and belief, Defendant's acts of contributory infringement will continue unabated unless and until preliminarily and permanently enjoined by this Court.

42. Defendant's contributory infringement of the '965 Patent has harmed Plaintiff.

43. Defendant's contributory infringement of the '965 Patent is willful because Defendant continues to engage in such conduct despite an objectively high likelihood that its conduct infringes valid claims of the '965 Patent, and this likelihood is either known to Defendant or so obvious that Defendant should have known that its conduct infringes valid claims of the '965 Patent.

44. Plaintiff is entitled to damages from Defendant pursuant to 35 U.S.C. § 284, enhanced damages and attorneys' fees pursuant to 35 U.S.C. § 285, and injunctive relief from this Court pursuant to 35 U.S.C. § 283.

WHEREFORE, Plaintiff respectfully prays for entry of a judgment:

A. Holding that Defendant has directly infringed, has induced infringement, and/or has committed contributory infringement of the '965 Patent;

B. Awarding Plaintiff damages adequate to compensate for all such unauthorized acts of infringement pursuant to 35 U.S.C. § 284;

C. Declaring this case exceptional pursuant to 35 U.S.C. § 285;

D. Awarding Plaintiff treble damages, attorneys' fees, and other costs and expenses to the extent permitted under the patent laws of the United States;

E. Awarding Plaintiff pre- and post-judgment interest to the extent permitted by law;

F. Preliminarily and permanently enjoining Defendant from any further acts of infringement of Plaintiff's patent rights; and

G. Awarding such other and further legal and equitable relief as this Court may deem just and proper.

Plaintiff demands a trial by jury on all issues so triable.

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Dated: March 30, 2021

Respectfully submitted,

s/ John F. Morrow, Jr.
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Attorneys for Plaintiff Selex ES Inc.

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing document using the electronic case filing system of the Court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented to accept service by electronic means.

Date: March 30, 2021

s/ John F. Morrow, Jr.
John F. Morrow, Jr.