

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UBIQUITOUS CONNECTIVITY, LP

Plaintiff,

v.

CITY OF SAN ANTONIO by and through its  
agent, CITY PUBLIC SERVICE BOARD OF  
SAN ANTONIO d/b/a CPS ENERGY

Defendant.

CIVIL ACTION NO.: 5:18-cv-00718-XR

JURY TRIAL DEMANDED

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs Charles G. Shamon (“Shamon”) and Ubiquitous Connectivity, LC (“Ubiquitous Connectivity”)(collectively “Plaintiffs”) file their Second Amended Complaint for Patent Infringement against Defendant City of San Antonio by and through its agent, City Public Service Board of San Antonio d/b/a CPS Energy (“CPS Energy”) for infringing United States Patent No. 9,602,655 (“the ‘655 Patent”), and demand a trial by jury and alleges as follows:

**PARTIES**

1. Shamon is the lead inventor of the ‘655 Patent. He resides in Fayetteville, Arkansas.
2. Ubiquitous Connectivity is a Texas Limited Partnership organized and existing under the laws of the State of Texas since February 14, 2012, and maintains its principal place of business at 4734 Homespun Drive, Fayetteville, AR 72704.
3. Based upon public information, Defendant CPS Energy is a home rule municipal corporation. According to its website, “CPS Energy is the largest municipally-owned, vertically integrated electric and natural gas company in the United States, providing competitively-priced

power through a diverse generation portfolio to the Greater San Antonio area.”

4. Based upon public information, CPS Energy has its principal place of business located at 145 Navarro Street, San Antonio, Texas 78205-2934 (Bexar County).

5. Based upon public information, CPS Energy may be served through its registered agent, City Clerk Leticia M. Vacek at 719 S. Santa Rosa, San Antonio, Texas 78204.

6. Based upon public information, CPS Energy has shipped, distributed, made, used, offered for sale, sold, and/or advertised its products and/or services under the “Total Connect Comfort,” “Home Manager,” and other branded systems.

### **JURISDICTION AND VENUE**

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

8. The Court has personal jurisdiction over CPS Energy because: CPS Energy has minimum contacts within the State of Texas and in the Western District of Texas; CPS Energy has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Western District of Texas; CPS Energy has sought protection and benefit from the laws of the State of Texas and is incorporated there; CPS Energy regularly conducts business within the State of Texas and within the Western District of Texas, and Ubiquitous Connectivity’s causes of action arise directly from CPS Energy’s business contacts and other activities in the State of Texas and in the Western District of Texas.

9. More specifically, CPS Energy, directly and through its intermediaries, has shipped, distributed, made, used, imported, offered for sale, sold, and/or advertised its products and affiliated services in the United States, the State of Texas, and the Western District of Texas.

Based on public information, CPS Energy has committed patent infringement in the State of Texas and in the Western District of Texas. CPS Energy has solicited customers in the State of Texas and in the Western District of Texas. CPS Energy has many paying customers who are residents of the State of Texas and the Western District of Texas and who use CPS Energy's products in the State of Texas and in the Western District of Texas.

10. Venue is proper pursuant to 28 U.S.C. §1400(b) because CPS Energy resides in the Western District of Texas because of its formation under the laws of Texas and because CPS Energy has its principal place of business in the Western District of Texas.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because CPS Energy resides in the Western District of Texas because of its formation under the laws of Texas, which subjects it to the personal jurisdiction of this Court.

## **BACKGROUND**

### **A. Charles G. Shamoons Development of the Patented Technology**

12. Shamoons graduated from high school in 1975. Except for a brief time when he attended some college classes, Shamoons worked in the retail industry. Despite his lack of formal training, he is a prolific inventor, having been issued more than seven U.S. patents.

13. In the fall of 1999, after Shamoons came home from a long day at work and his wife was tending their newborn baby, Shamoons's wife, Deborah, commented that she wished she could operate their home's thermostat with a remote control so that she would not have to wake the baby in order to change the thermostat. This triggered the idea in Shamoons's mind to begin working on a way to control a thermostat remotely. Charles and Deborah Shamoons conceived the idea of developing a system for controlling a thermostat through the use of a remote unit. Shamoons referred to the initial invention as "Infinity by One," and he and Deborah filed their first patent application

(09/931,985) on August 20, 2001. On November 13, 2001, they filed a CIP application (09/987,035). Their initial invention was based on using an RF signal to control a thermostat remotely. This led to further innovations, including those in which cellular communications were used to control thermostats and other environmental devices (*e.g.*, locks, lights, doors), and which resulted in the filing of the patent applications that were issued as the Asserted Patents. By 2004, Shamoan had conceived of using a cellular device to control thermostats and other environmental devices (*e.g.*, locks, lights, doors, etc.) remotely. In June of 2004, Shamoan contacted Michael D. Fehnel, who had extensive experience and background in the field of cellular communications. Shamoan explained his conception for a thermostat or similar type device to be controlled remotely using a cellular device to Fehnel, who then used his engineering knowledge to reduce Shamoan's ideas to practice, resulting in the filing of a provisional application (60/522,887) on November 18, 2004, and the filing of application number 11/160,006 on June 6, 2005 (along with subsequent divisional and continuation patent applications, resulting in the Asserted Patents). Franklin Eugene Neal consulted and worked with Fehnel to assist him in reducing Shamoan's concepts to practice.

14. In 2002, after filing the first patent application, Shamoan wrote to Honeywell regarding his inventions. Later in 2006 and 2007, Shamoan had additional correspondence with Honeywell.<sup>1</sup> Also, beginning in April of 2006, Shamoan met with and had subsequent conversations with GE Security regarding his inventions, including a live demonstration of his prototype. None of these meetings or communications resulted in any offer to license any of Shamoan's inventions.

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<sup>1</sup> Honeywell manufactured and sold its thermostat products through its then-subsiidiary, Resideo Technologies, Inc. In April 2018, Honeywell spun out Resideo as a separate, independent company.

**C. Asserted Patent**

**1. U.S. Patent No. 9,602,655**

15. On March 21, 2017, the USPTO issued the ‘655 Patent entitled “Ubiquitous Connectivity and Control System for Remote Locations” after a full and exhaustive examination. A copy of the ‘655 Patent is attached as Exhibit A.

16. The ‘655 Patent claims priority back to application No. 60/522,887, which was filed on November 18, 2004, and is generally directed to a system for monitoring and controlling the environmental characteristics of a building.

17. Ubiquitous Connectivity is the sole and exclusive owner of all right, title, and interest to and in the ‘655 Patent, and holds the exclusive right to take all actions necessary to enforce its rights to the ‘655 Patent, including the filing of this patent infringement lawsuit. Ubiquitous Connectivity also has the right to recover all damages for past, present, and future infringement of the ‘655 Patent and to seek injunctive relief as appropriate under the law.

18. Ubiquitous Connectivity is the owner of all rights, title, and interest to the ‘655 Patent. On May 25, 2005, Franklin Neal assigned to Charles G. Shamoan and Deborah H. Shamoan his entire right, title, and interest in the invention contained in U.S. Application Serial No. 11/160,006, together with any Letters Patent and any application thereafter filed in the United States or elsewhere based in whole or in part on the inventions and discoveries set out in that application. Likewise, on June 2, 2005, Michael Fehnel assigned to Charles G. Shamoan and Deborah H. Shamoan his entire right, title, and interest in the invention contained in U.S. Application Serial No. 11/160,006, together with any Letters Patent and any application thereafter filed in the United States or elsewhere based in whole or in part on the inventions and discoveries set out in that application. These assignments are recorded with the USPTO at Reel 016096, Frame

0409.

19. On May 30, 2006, while Charles and Deborah Shamoan were attempting to develop and bring to market a product embodying at least some of the inventions contained in their various patent applications, Charles and Deborah Shamoan granted to Allen and Lucy Turkow one-half percent in the “Ubiquitous Connectivity & Control System for Remote Locations.” On March 13, 2012, Allen and Lucy Turkow assigned to Ubiquitous Connectivity, L.P. their entire right, title, and interest (if any) in U.S. Patent Nos. 7,257,397; 6,990,335; 7,643,823; 7,668,532; 8,064,935; and U.S. Pending Application Serial No. 13,271,203 filed October 11, 2011. These assignments are recorded with the USPTO at Reel 028125, Frame 0242.

20. On March 9, 2012, Charles and Deborah Shamoan assigned to Ubiquitous Connectivity their entire right, title, and interest in U.S. Patent Nos. 7,257,397; 6,990,335; 7,643,823; 7,668,532; 8,064,935; and U.S. Pending Application Serial No. 13,271,203 filed October 11, 2011. These assignments are recorded with the USPTO at Reel 028125, Frame 0418. On July 19, 2022, Ubiquitous Connectivity assigned to Shamoan its entire right, title, and interest in U.S. Patent Nos. 8,064,935; 9,602,655; and 10,344,999 and U.S. Patent Application No. 17/183,782. This assignment is recorded with the USPTO at Reel 060548, Frame 0584. On February 8, 2024, Shamoan assigned back to Ubiquitous Connectivity his entire right, title, and interest in U.S. Patent Nos. 8,064,935; 9,602,655; and 10,344,999 and U.S. Patent Application No. 17/183,782. This assignment is recorded with the USPTO at Reel 066443; Frame 0651.

21. The ‘655 Patent contains dependent claims 2, 9, and 11, which Ubiquitous Connectivity asserts against CPS Energy.

22. Independent Claim 1 states:

A base unit configured to communicate with an environmental device and to communicate with a cellular remote unit having wireless connectivity capable

of communicating from a geographically remote location, the base unit comprising:

a first communication interface configured to receive environmental information from the environmental device and to send a control instruction to the environmental device;

a wireless communication interface configured to send a first message to the cellular remote unit via a cellular communications network and to receive a second message from the cellular remote unit via the cellular communications network, wherein the first message is a first digital communications message including a representation of the environmental information, and wherein the second message is a second digital communications message including a command regarding the environmental device;

and a microcontroller configured to process the second message, to provide the control instruction based on the command, and to send the control instruction to the environmental device via the first communication interface, and wherein the command is for the base unit initiated by a user from the cellular remote unit, and wherein the control instruction to the environmental device is associated with the command for the base unit, wherein the cellular remote unit is configured to determine position data of the cellular remote unit, and determine when the cellular remote unit is outside a geo-fence, wherein the cellular remote unit is configured to transmit a notification via a simple message service responsive to determining that the cellular remote unit is outside of the geo-fence.

23. Dependent Claim 2 states:

The base unit of claim 1, wherein the command regards entering an energy conservation mode, and wherein the energy conservation mode is associated with multiple environmental devices.

24. Dependent Claim 9 states:

The base unit of claim 1, wherein the command is an energy conservation command associated with multiple environmental devices.

25. Dependent Claim 10 states:

The base unit of claim 1, wherein the cellular communications network includes a data bearer service;

wherein the remote unit is a mobile remote unit;

wherein the control instruction includes an environmental control instruction; and wherein the command includes an environmental command.

26. Dependent Claim 11 states:

The base unit of claim 10, wherein the second message includes an energy conservation command associated with multiple environmental devices.

27. The '655 Patent was duly issued in full compliance with Title 35 of the United States Code and CPS Energy has had notice of the '655 Patent at least as early as the filing of the original Complaint.

#### **D. *Inter Partes* Review of the '655 Patent**

28. After the filing of the Original Complaint in this litigation, CPS Energy, together with Resideo, challenged the '655 Patent through *inter partes* reviews at the Patent Trial and Appeal Board (the "PTAB").

29. At the conclusion of the *inter partes* reviews, the PTAB issued Final Written Decisions in which it found that CPS Energy had failed to demonstrate that claims 2, 9, and 11 of the '655 Patent are unpatentable. CSG is now estopped from arguing that these claims are not valid.

#### **E. CSP Energy's Infringement**

30. CPS Energy infringes the '655 Patent by having made, used, offered to sell, sold, and/or imported into the United States products that satisfy each and every limitation of one or more claims of the '655 Patent. Specifically, CPS Energy has offered to sell, provide, and educate customers about its products and services, including but not limited to Defendant's "Total Connect Comfort" and "Home Manager" branded systems (collectively, the "Accused Products and Services"). CPS Energy has offered its customers the ability to download the Total Connect Comfort app, which allows users to control their Honeywell devices remotely from a mobile device



such as but not limited to an iPhone, iPad, or Android device.

31. According to the description of the CPS Energy's Total Connect Comfort app on its webpage:

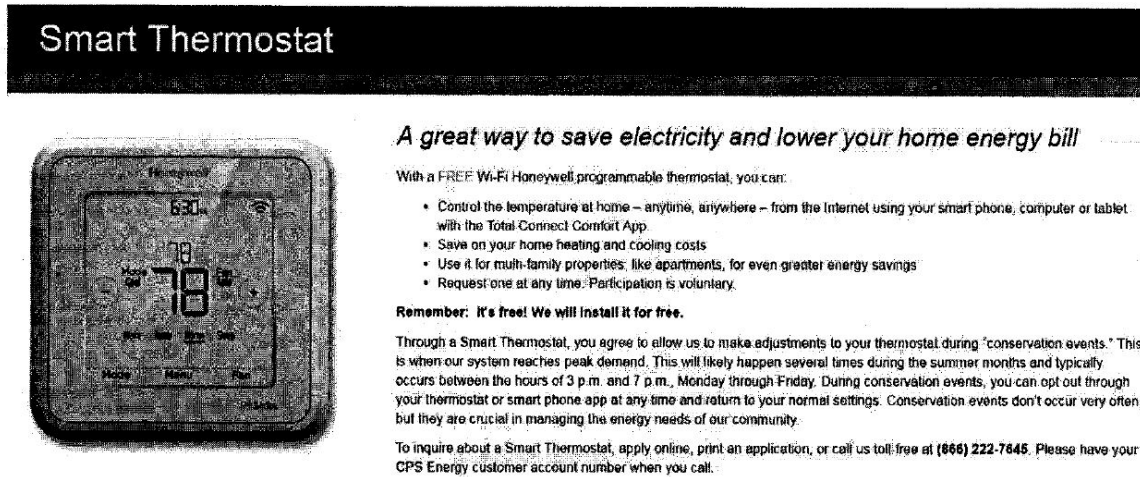
The image is a promotional graphic for a Smart Thermostat. At the top, a black banner contains the text "Smart Thermostat" in white. Below this, on the left, is a photograph of a square, silver-colored smart thermostat with a digital display showing "78". To the right of the thermostat, the text reads "A great way to save electricity and lower your home energy bill". Below this headline, it states "With a FREE Wi-Fi Honeywell programmable thermostat, you can:" followed by a bulleted list of benefits: "Control the temperature at home – anytime, anywhere – from the Internet using your smart phone, computer or tablet with the Total Connect Comfort App", "Save on your home heating and cooling costs", "Use it for multi-family properties, like apartments, for even greater energy savings", and "Request one at any time. Participation is voluntary." A bolded note says "Remember: It's free! We will install it for free." Below that, a paragraph explains that users agree to allow adjustments during "conservation events" when demand is high, typically between 3 p.m. and 7 p.m. on weekdays, and that users can opt out. The final line of text provides contact information: "To inquire about a Smart Thermostat, apply online, print an application, or call us toll-free at (866) 222-7645. Please have your CPS Energy customer account number when you call."

Figure 1

32. According to the description of CPS Energy's Total Connect Comfort app on the Applications page for Apple iPhones, the provider for CPS Energy's Total Connect Comfort app is Honeywell International, Inc.

33. According to the description of CPS Energy's Total Connect Comfort app on the Applications page for Apple iPhones:

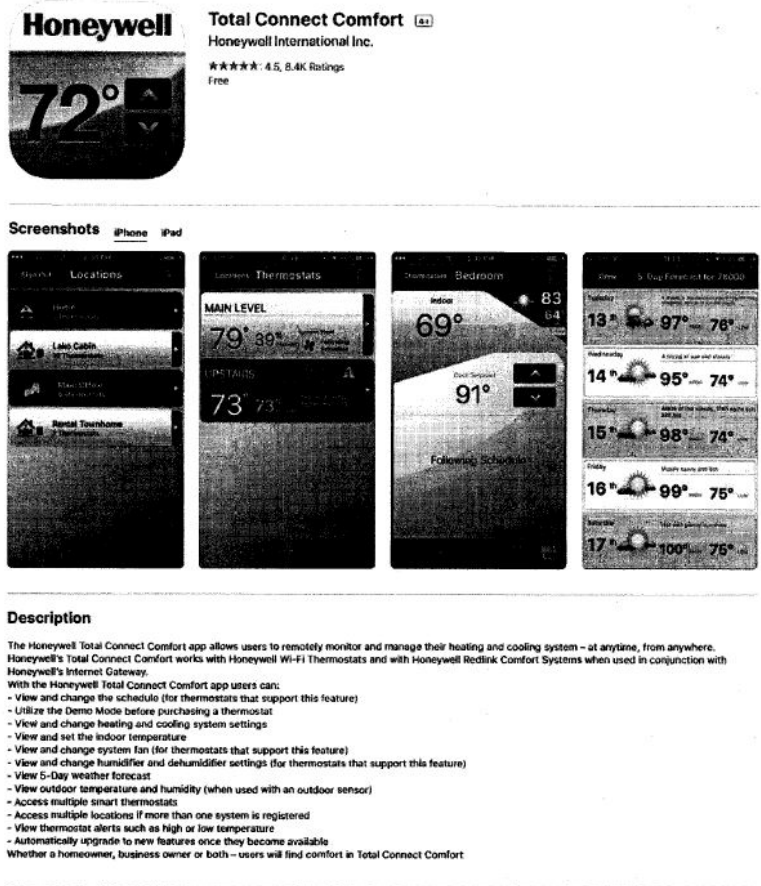


Figure 2

34. CPS Energy has offered its customers the ability to download CPS Energy’s Home Manager app, which would allow users to control their Radio thermostat devices (Model CT32 and Model CT80) remotely from a mobile device such as but not limited to an iPhone, iPad, or Android device.

35. According to the description of CPS Energy’s Home Manager app on the Applications page for Apple iPhones, the provider for CPS Energy’s Home Manager app is Consert.

36. According to the description of CPS Energy’s Home Manager app on the Applications page for Apple iPhones:

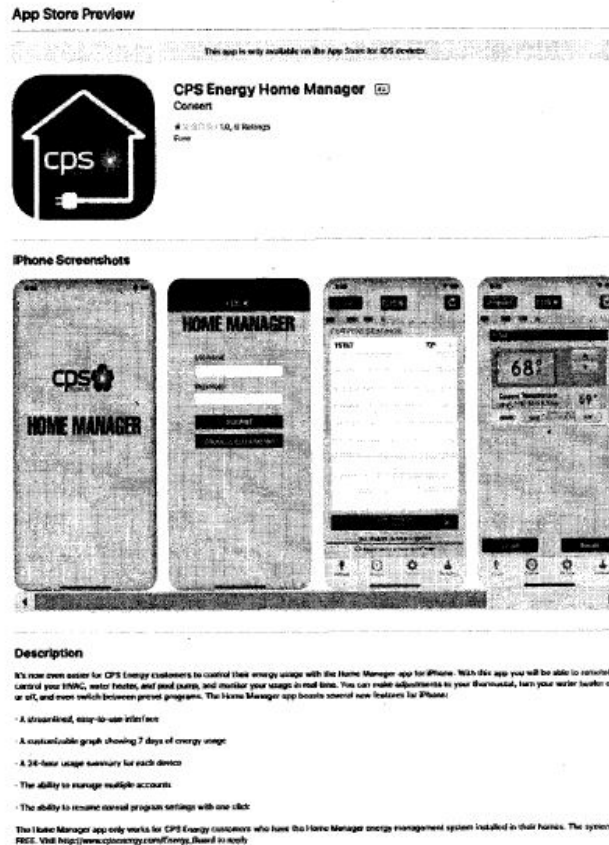


Figure 3

37. Upon information and belief, the Home Manager and Total Connect Comfort app allows users (1) to change the settings of their smart thermostats from their mobile devices; (2) to set heating and cooling schedules for the smart thermostats from their mobile devices; (3) provides users with usage data related to the smart thermostats system; and (4) to utilize geoservices to operate the system based on location.

38. Upon information and belief, the Home Manager and Total Connect Comfort systems provided to customers also include a feature known as geo-fencing, which uses the GPS location on a user's mobile to set location-based triggered events.

39. Upon information and belief, the Honeywell Lyric T5 and Radio thermostat devices may also receive current room temperature readings from a thermostat and send control

instructions, i.e. increasing or decreasing room temperature, to the user's HVAC system.

40. CPS Energy has provided guidance to its prospective customers through documents that provide information to educate users about the benefits of Home Manager and Total Connect Comfort systems and how to choose the right system for a customer's particular requirements.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 9,602,655**

41. Ubiquitous Connectivity re-alleges and incorporates by reference the foregoing paragraphs, as if fully set forth herein.

42. CPS Energy has had notice of the '655 Patent at least as early as the filing of the original Complaint.

43. CPS Energy has been and now is infringing at least Claims 2, 9, and 11 of the '655 Patent in the State of Texas and in this judicial district by having made, used, imported, sold or offered to sell the Accused Products, either singularly or in combination with each other, that incorporate and/or practice the systems according to the '655 Patent. Based upon public information, CPS Energy has infringed and continues to infringe one or more claims of the '655 Patent, including at least Claim 1, because it has shipped distributed, made, used, imported, offered for sale, sold, and/or advertised devices, including at least the Accused Products and Services, that form a remotely controllable smart thermostat system.

44. The Accused Products satisfy all limitations of at least Claims 2, 9, and 11 of the '655 Patent. CPS Energy is thus liable for infringement of the '655 Patent pursuant to 35 U.S.C. § 271.

45. In addition to infringing the '655 Patent directly, CPS Energy also induces infringement of the '655 Patent by knowingly taking affirmative acts through promotion of the Accused Products, including but not limited to inducing others to make, use, sell, and/or offer for

sale the Accused Products, which embody one or more of the inventions of Claims 2, 9, and 11 of the '655 Patent, and/or by instructing others to combine the Accused Products with other devices in order to create and use one or more of the systems described in Claims 2, 9, and 11 of the '655 Patent.

46. CPS Energy has stated that “[t]hrough a Smart Thermostat, you agree to allow CPS Energy to make adjustments to your thermostat during “conservation events.” This is when our system reaches peak demand. This will likely happen several times during the summer months and typically occurs between the hours of 3 p.m. and 7 p.m., Monday through Friday. During conservation events, you can opt-out through your thermostat or smart phone app at any time and return to your normal settings. Conservation events don’t occur very often, but they are crucial in managing the energy needs of our community.” As such, to the extent CPS Energy is not the only direct infringer of the '655 Patent, customers that have purchased and/or used the Accused Products, Total Connect Comfort and Home Manager systems, constitute direct infringers.

47. Despite knowledge of the '655 Patent as early as the filing of this Complaint, based upon public information, CPS Energy continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner that infringes the '655 Patent. Based on public information, the provision of and sale of the Accused Products and Services is a source of revenue and a business focus of CPS Energy.

48. Based upon public information, CPS Energy specifically intends its customers to use its products and services in such a way that infringes the '655 Patent by, at a minimum, providing and supporting the Accused Products and Services and instructing its customers on how to use them in an infringing manner, at least through information available on CPS Energy’s website including information brochures, promotional material, and contact information.

49. Specifically, CPS Energy has offered design services to select, deploy, and integrate its products to assist its customers in installing and utilizing the infringing remote control system. Based on public information, CPS Energy knew that its actions, including but not limited to any of the aforementioned products and services, would induce, have induced, and will continue to induce infringement by its customers of the '655 Patent by continuing to sell, support, and instruct its customers on using the Accused Products and Services.

50. Further, CPS Energy contributorily infringes the '655 Patent by offering to sell and selling the Accused Products, knowing such to be especially made or especially adapted for practicing one or more of the inventions claimed in the '655 Patent. The Accused Products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

51. CPS Energy also contributes to the infringement of the '655 Patent by offering for sale and/or selling components that constitute a material part of the invention claims in the '655 Patent.

52. For example, CPS Energy has offered for sale or sold numerous Total Connect Comfort and Home Manager systems and Honeywell and Radio devices that infringe the '655 Patent, as discussed above.

53. Upon information and belief, these systems and devices have no substantial, non-infringing uses.

54. As a result, these Total Connect Comfort and Home Manager systems can only be used in a manner that infringes the '655 Patent and have been used by CPS Energy's customers in a manner that directly infringes one or more claims of the '655 Patent.

55. CPS Energy's aforesaid activities have been without authority or license from Ubiquitous Connectivity.

56. Ubiquitous Connectivity is entitled to recover from CPS Energy the damages sustained by Ubiquitous Connectivity as a result of CPS Energy's wrongful acts 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**

57. Ubiquitous Connectivity demands a trial by jury on all issues.

58. As a result of CPS Energy's infringement of the '655 Patent, both direct and indirect, literally and/or through the doctrine of equivalents, Ubiquitous Connectivity has suffered, and will continue to suffer, monetary damages in an amount not yet determined.

### **PRAYER FOR RELIEF**

WHEREFORE, Ubiquitous Connectivity respectfully requests that this Court enter:

A. A judgment in favor of Ubiquitous Connectivity that CPS Energy has infringed the '655 Patent;

B. A judgment and order requiring CPS Energy to pay Ubiquitous Connectivity its damages adequate to compensate for the infringement of the '655 Patent, but in no event less than a reasonable royalty for the use made of the inventions by CPS Energy, together with interest and costs as fixed by the court as provided under 35 U.S.C. § 284;

C. Any and all other relief to which Ubiquitous Connectivity may show itself to be entitled.

### **DEMAND FOR JURY TRIAL**

Ubiquitous Connectivity, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: September 5, 2024

Respectfully submitted,

/s/ Steven N. Williams

Steven N. Williams

Texas State Bar No. 21577625

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**ATTORNEYS FOR PLAINTIFF  
UBIQUITOUS CONNECTIVITY, LP.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a true and correct copy of the foregoing document via electronic mail on September 5, 2024.

/s/ Steven N. Williams

Steven N. Williams