

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
A123SYSTEMS, INC.,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
HYDRO-QUÉBEC,	)	
	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT AND JURY DEMAND**

**INTRODUCTION**

1. This is an action for a declaratory judgment that United States Patent Nos. 5,910,382 ("the '382 patent") and 6,514,640 ("the '640 patent") are not infringed by plaintiff A123Systems, Inc. ("A123") and are invalid.

**PARTIES**

2. Plaintiff A123 is a Delaware corporation with a principal place of business at The Arsenal on the Charles, One Kingsbury Avenue, Watertown, Massachusetts.

3. Upon information and belief, Defendant Hydro-Québec ("HQ") is a Canadian corporation with a principal place of business at 75 René-Lévesque Boulevard, West, 20th Floor, Montréal, Quebec, Canada.

4. On information and belief, HQ regularly conducts business in the state of Massachusetts. HQ has also sent letters to A123 in Massachusetts falsely accusing A123 of infringement of the '382 and '640 patents.

#### JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1338, and 2201.

6. This Court has personal jurisdiction over HQ as a corporation conducting business in the state of Massachusetts.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

#### FACTS

8. A123 is in the business of, *inter alia*, inventing, developing, manufacturing, using, and selling lithium metal phosphate technologies, including for rechargeable batteries. A123 has received significant acclaim in the trade for the performance of its technology, some of which is licensed from the Massachusetts Institute of Technology (MIT). A123's technology has great promise for commercial rechargeable battery applications, such as hybrid automobiles.

9. Upon information and belief, HQ, a utility company in Canada, is the licensee of both the '382 and '640 patents. Upon information and belief, HQ did not invent and does not own the '382 or '640 patents, which are owned by the University of Texas and name employees of the University of Texas as inventors. The technology of the '382 and '640 patents is not practical for commercial applications and has not been commercially successful.

10. HQ has accused A123 of infringement of both the '382 patent and the '640 patent through the manufacture, use, and sale of A123's lithium metal phosphate technology in the United States, and has threatened litigation. As a result, A123 has a reasonable apprehension that HQ will initiate suit if A123 continues to make, use, or sell its lithium metal phosphate technology or other products.

11. HQ's accusations give rise to a case of actual controversy within the jurisdiction of this Court pursuant to 28 U.S.C. §§ 2201 and 2202.

**Count I – The '382 Patent**

12. A123 repeats each allegation of paragraphs 1-11 as if set forth here in full.

13. Neither the lithium metal phosphate technology nor any other product made, used, or sold by A123 infringes the '382 patent.

14. The '382 patent is invalid, including under sections 102, 103, and/or 112 of title 35 of the United States Code.

15. To resolve the legal and factual questions raised by HQ and to afford relief from the uncertainty and controversy which HQ's accusations have precipitated, A123 is entitled to a declaratory judgment that it does not infringe the '382 patent and that the '382 patent is invalid.

**Count II – The '640 Patent**

16. A123 repeats each allegation of paragraphs 1-15 as if set forth here in full.

17. Neither the lithium metal phosphate technology nor any other product made, used, or sold by A123 infringes the '640 patent.

18. The '640 patent is invalid including under sections 102, 103, and/or 112 of title 35 of the United States Code.

19. To resolve the legal and factual questions raised by HQ and to afford relief from the uncertainty and controversy which HQ's accusations have precipitated, A123 is entitled to a declaratory judgment that it does not infringe the '640 patent and that the '640 patent is invalid.

WHEREFORE, A123 requests that the Court enter judgment declaring and adjudging that:

1. A123 does not infringe United States Patent No. 5,910,382;
2. United States Patent No. 5,910,382 is invalid;
3. A123 does not infringe United States Patent No. 6,514,640;
4. United States Patent No. 6,514,640 is invalid;
5. A123 recover its costs and attorney's fees incurred in this action;  
and
6. A123 such further relief as the Court may deem just and proper.

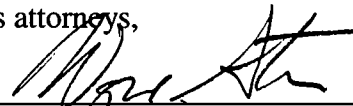
**JURY DEMAND**

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

Respectfully submitted,

A123SYSTEMS, INC.

By its attorneys,



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