

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SAMY GHARB,)
)
 Plaintiff) Case No.: 1:10-cv-07204
) Hon. Edmond E. Chang
v.)
)
 MITSUBISHI ELECTRIC)
 AUTOMATION, INC., a)
 Delaware corporation)
)
 Defendant.)

FIRST AMENDED COMPLAINT

For his Complaint of Patent Infringement against Defendant MITSUBISHI ELECTRIC AUTOMATION, INC., Plaintiff SAMY GHARB alleges as follows:

THE PARTIES

1. Plaintiff Samy Gharb is an individual and a citizen of Switzerland, and resides at Kalchbuhlstrasse 161, 8038 Zurich, Switzerland (“Gharb”).

2. Defendant, Mitsubishi Electric Automation, Inc. is a corporation organized under the laws of Delaware and has an established place of business at 500 Corporate Woods Parkway, Vernon Hills, Illinois 60061 in the Northern District of Illinois (“Mitsubishi Automation”). Mitsubishi Automation is registered to do business as a foreign corporation under the Illinois Business Corporations Act. Upon information and belief, Mitsubishi Automation is an affiliated company of Mitsubishi Electric Corporation of Japan.

JURISDICTION AND VENUE

3. This action is for infringement of U.S. Patent No. 6,552,654 (the “654 Patent”) (Ex. 1), under the patent laws of the United States, 35 U.S.C. §1 *et. seq.*, including at least 35 U.S.C. §§271, 281, 283, 284 and 286.

4. This Court has subject matter jurisdiction over this matter based on the patent laws of the United States, Title 35 United States Code, and by Title 28 United States Code §§1331 and 1338(a).

5. Venue is proper in this District under 28 U.S.C. §§1391 and 1400(b).

6. Mitsubishi Automation has, upon information and belief, manufactured, imported, offered for sale, distributed and/or sold security systems with mobile telephones using programmable logic controllers (PLC’s) falling within at least one claim of the ‘654 Patent, in the United States including the Northern District of Illinois, under the name or model designation ALPHA Family, including but not limited to, Model AL2-14MR-A controller (Ex. 2) during the time period November 8, 2004 to May 23, 2007.

THE PATENT IN SUIT

7. Plaintiff Gharb is the owner of the entire right, title, and interest in U.S. Patent No. 6,552,654 (Ex. 1), which duly issued to Gharb on April 22, 2003 by the United States Patent and Trademark Office, and bears the title “Security System with a Mobile Telephone.” Gharb has the right to bring this action and to collect damages for infringement of the ‘654 patent. The period of enforcement of the ‘654 patent lapsed on May 23, 2007, therefore the infringing activities of Defendant Mitsubishi Automation referred to in this First Amended Complaint took place between November 8, 2004 to May 23, 2007 (the “relevant time period”).

INFRINGEMENT OF THE '654 PATENT

8. Plaintiff Gharb met with several representatives of Mitsubishi Electric Corporation of Japan in Zurich, Switzerland on or about June 2, 2005. During this meeting, the representatives of Mitsubishi Electric were shown Mr. Gharb's security system technology and patents and patent applications embedding that technology, and the Mitsubishi Electric representatives expressed interest in obtaining a license under Mr. Gharb's patent rights. However, a license agreement was not executed between Mr. Gharb and Mitsubishi.

9. Upon information and belief, during the relevant time period, Mitsubishi Automation began importing (?) and selling without Mr. Gharb's permission ALPHA Family security systems in the United States, including this judicial district. Certain of the ALPHA Family security systems devices fall within the scope of protection of at least claim 1 of the '654 patent, literally and/or under the Doctrine of Equivalents.

10. Defendant Mitsubishi Automation, during the relevant time period also infringed the '654 patent under at least 35 U.S.C. §271(b) and/or §271(c) by one or more of: aiding and causing end users of ALPHA Family security systems devices to use such devices with a mobile communications apparatus within the United States, and aiding and causing the distributors and/or dealers of Mitsubishi Automation to sell and offer to sell ALPHA Family security systems in combination with, or with instructions for a user to purchase, a mobile communications device within the United States.

11. During the relevant time period, Mitsubishi Automation, either directly or through the knowledge of its affiliated company, Mitsubishi Electric, was aware of Plaintiff Gharb's patent rights. As early as 2004, Plaintiff Gharb communicated with Mitsubishi electric, advising

Mitsubishi electric of Plaintiff's patent rights. These communications resulted in Mitsubishi Electric sending two representatives, the Manager of the IP Engineering Section, Intellectual Property Administration Center, and the General Manager, Intellectual Property Center, Automobile Equipment Division of the Himeji Works in Himeji Hyogo, Japan, to meet with Plaintiff Gharb on June 2, 2005 in Zurich, Switzerland. At this meeting, the two Mitsubishi representatives and Plaintiff Gharb discussed Mr. Gharb's patents and pending patent applications, including patents and/or patent applications disclosing and claiming the subject matter of Plaintiff's '654 patent.

Despite this knowledge, Mitsubishi Automation proceeded to make, import, offer to sell and sell infringing products. As a result, Mitsubishi Automation's infringement during the relevant time period was willful, knowing, deliberate, and without a good faith belief that the '654 patent was for some reason invalid or not infringed.

12. The infringing activities of Mitsubishi Automation described above had the effect of damaging Plaintiff Gharb.

RELIEF SOUGHT

Wherefore, Plaintiff Samy Gharb respectfully prays for a judgment that:

- A. The '654 patent was valid and enforceable during the relevant time period;
- B. Defendant Mitsubishi Automation willfully infringed the '654 patent in violation of 35 U.S.C. §271 during the relevant time period;
- C. Plaintiff is entitled to an award of damages under 35 U.S.C. §284 adequate to fully compensate Plaintiff for Defendant's acts of infringement during the relevant time period,

in any event no lower than a reasonable royalty, together with prejudgment interest, costs and disbursements as are to be determined by the Court;

D. The acts and conduct of infringement of the '654 patent by Mitsubishi Automation, during the relevant time period, were willful, deliberate, and intentional without adequate basis in any good faith belief that the '654 patent was either invalid or not infringed by such acts and conduct, and that the Court shall determine to increase the damage award by up to three (3) times the amount found or assessed for infringement of the '654 patent by Mitsubishi Automation due to the willful nature of the infringement, pursuant to 35 U.S.C. §284;

E. Defendants pay the costs of this action including disbursements if this case is exceptional pursuant to 35 U.S.C. §285;

F. Any monetary relief awarded to Plaintiff be awarded with prejudgment and post-judgment interest; and

G. Plaintiff be awarded such further relief as the Court may deem just and proper under its jurisdiction.

Respectfully submitted,

SAMY GHARB

Date: June 2, 2011

By: /s/ Howard B. Rockman
His Attorney

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