

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

Commtest Instruments Ltd.,

Plaintiff,
v.

Computational Systems Inc.,

&
CSI Technology, Inc.,

Defendants.

Case No. _____

COMPLAINT

The Plaintiff, Commtest Instruments Ltd., alleges as follows:

Parties

1. Plaintiff Commtest Instruments Ltd. (“Commtest”) is a New Zealand company having a principal place of business at 28B Moorhouse Avenue, Christchurch, New Zealand.

2. Plaintiff Commest has a principal place of business in the United States at 6700 Baum Drive, Suite 12, Knoxville, Tennessee 37919.

3. Upon information and belief, Defendant Computational Systems Inc. (“Computational Systems”) is a corporation organized under the laws of the State of Tennessee and has a principal place of business of 835 Innovation Drive, Knoxville, Tennessee 37932.

4. Upon information and belief, Defendant CSI Technology, Inc. (“CSI”) is a corporation organized under the laws of the State of Delaware and has a principal place of business at 300 Delaware Avenue, Suite 1704, Wilmington, Delaware 19801. Upon further

information and belief, CSI is engaged in managing and licensing intellectual property rights, including patent rights.

5. Upon information and belief, Defendant CSI is a wholly owned subsidiary of Defendant Computational Systems.

6. Upon information and belief, Defendant Computational Systems is the exclusive licensee of the CSI intellectual property United States Patent No. 5,870,699, United States Patent No. 5,633,811 and United States Patent No. 6,192,325.

Jurisdiction and Venue

7. This is an action for a Declaratory Judgment that United States Patent No. 5,870,699, United States Patent No. 5,633,811 and United States Patent No. 6,192,325 are invalid and/or unenforceable and/or not infringed by Commtest. This action arises under the Patent Laws of the United States. Jurisdiction is based upon 28 U.S.C. §§ 1338(a), 2201 and 2202.

8. Venue is proper under 28 U.S.C. § 1391.

Count I – Declaratory Judgment of Invalidity, Unenforceability and/or Noninfringement of

United States Patent No. 5,870,699

9. Paragraphs 1 through 8 are incorporated into this count by reference.

10. Upon information and belief, CSI is the owner of United States Patent No. 5,870,699 (“the ’699 patent”), which issued on February 9, 1999. A copy of the ’699 patent is attached hereto as **Exhibit A**. The ’699 patent is a utility patent which issued from Application Serial No. 08/810,132, which claimed priority from Application Serial No. 08/355,208 filed on

Dec. 9, 1994. The '699 patent claims a data collector and analyzer system for analyzing vibrations.

11. The Plaintiff, Commtest, designs, manufactures, offers for sale and sells among other things vibration data collecting and analyzing equipment.

12. By verbal, written and electronic communications, and other actions, the Defendant CSI, through its agents, accused Commtest of infringing the '699 patent, and threatened legal action.

13. As a result of the infringement accusation, Commtest has a reasonable fear and apprehension that patent infringement litigation will be brought against it.

14. An actual justiciable controversy therefore exists between the parties.

15. Venue for this controversy properly lies in the Eastern District of Tennessee for a number of reasons.

16. The '699 patent on its face identifies Knoxville, Tennessee as the address of the inventors of the '699 patent.

17. When the claims are properly construed, the '699 patent is invalid, unenforceable, and/or not infringed by Commtest.

18. Commtest reserves the right to raise a claim of inequitable conduct if the discovery and proof support such a claim.

19. The allegations of CSI that Commtest has infringed the '699 patent are frivolous, and this is an exceptional case within the meaning of 35 U.S.C. § 285 entitling Commtest to an award of its reasonable attorney fees and costs of this litigation.

Count II – Declaratory Judgment of Invalidity, Unenforceability and/or Noninfringement
of United States Patent No. 5,633,811

20. Paragraphs 1 through 19 are incorporated into this count by reference.

21. Upon information and belief, CSI is the owner of United States Patent No. 5,633,811 (“the ’811 patent”), which issued on May 27, 1997. A copy of the ’811 patent is attached hereto as **Exhibit B**. The ’811 patent is a utility patent which issued from Application Serial No. 08/355,208 filed on Dec. 9, 1994. The Defendant Computational Systems was the original assignee of the ’811 patent. The ’811 patent claims a data collector and analyzer system for analyzing vibrations.

22. The Plaintiff, Commtest, designs, manufactures, offers for sale and sells among other things vibration data collecting and analyzing equipment.

23. By verbal, written and electronic communications, and other actions, the Defendant CSI, through its agents, accused Commtest of infringing the ’811 patent, and threatened legal action.

24. As a result of the infringement accusation, Commtest has a reasonable fear and apprehension that patent infringement litigation will be brought against it.

25. Indeed, on February 21, 2008, the Defendant CSI filed a Complaint against Commtest in the United States District Court for the District of Minnesota, case 0:08-cv-00450, alleging, inter alia, infringement of the ’811 patent.

26. An actual justiciable controversy therefore exists between the parties.

27. Venue for this controversy properly lies in the Eastern District of Tennessee for a number of reasons.

28. The '811 patent on its face identifies Knoxville, Tennessee as the address of the inventors of the '811 patent.

29. When the claims are properly construed, the '811 patent is invalid, unenforceable, and/or not infringed by Commtest.

30. Commtest reserves the right to raise a claim of inequitable conduct if the discovery and proof support such a claim.

31. The allegations of CSI that Commtest has infringed the '811 patent are frivolous, and this is an exceptional case within the meaning of 35 U.S.C. § 285 entitling Commtest to an award of its reasonable attorney fees and costs of this litigation.

**Count III – Declaratory Judgment of Invalidity, Unenforceability and/or Noninfringement
of United States Patent No. 6,192,325**

32. Paragraphs 1 through 31 are incorporated into this count by reference.

33. Upon information and belief, CSI is the owner of United States Patent No. 6,192,325 (“the '325 patent”), which issued on February 20, 2001. A copy of the '325 patent is attached hereto as **Exhibit C**. The '325 patent is a utility patent which claims a method and apparatus for establishing a predictive maintenance database.

34. The Plaintiff, Commtest, designs, manufactures, offers for sale and sells among other things software for predictive maintenance databases.

35. By verbal, written and electronic communications, and other actions, the Defendant CSI, through its agents, accused Commtest of infringing the '325 patent, and threatened legal action.

36. As a result of the infringement accusation, Commtest has a reasonable fear and apprehension that patent infringement litigation will be brought against it.

37. Indeed, on February 21, 2008, the Defendant CSI filed a Complaint against Commtest in the United States District Court for the District of Minnesota, case 0:08-cv-00450, alleging, inter alia, infringement of the '325 patent.

38. An actual justiciable controversy therefore exists between the parties.

39. Venue for this controversy properly lies in the Eastern District of Tennessee for a number of reasons.

40. The '325 patent on its face identifies Knoxville, Tennessee or Powell, Tennessee as the address of all of the inventors of the '325 patent.

41. When the claims are properly construed, the '325 patent is invalid, unenforceable, and/or not infringed by Commtest.

42. Commtest reserves the right to raise a claim of inequitable conduct if the discovery and proof support such a claim.

43. The allegations of CSI that Commtest has infringed the '325 patent are frivolous, and this is an exceptional case within the meaning of 35 U.S.C. § 285 entitling Commtest to an award of its reasonable attorney fees and costs of this litigation.

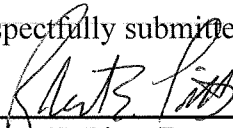
Prayer for Relief

WHEREFORE, the Plaintiff requests that the Court enter an order and judgment:

- a. Issuing a declaration that United States Patent No. 5,870,699 is invalid and unenforceable;
- b. Issuing a declaration that the Plaintiff Commtest has not infringed United States Patent No. 5,870,699;
- c. Issuing a declaration that United States Patent No. 5,633,811 is invalid and unenforceable;
- d. Issuing a declaration that the Plaintiff Commtest has not infringed United States Patent No. 5,633,811;
- e. Issuing a declaration that United States Patent No. 6,192,325 is invalid and unenforceable;
- f. Issuing a declaration that the Plaintiff Commtest has not infringed United States Patent No. 6,192,325;
- g. Permanently enjoining CSI, and its officers, agents, servants, subcontractors, and employees, and others controlled by CSI, from making further allegations or claims that Commtest has infringed the '699 patent;
- h. Permanently enjoining CSI, and its officers, agents, servants, subcontractors, and employees, and others controlled by CSI, from making further allegations or claims that Commtest has infringed the '811 patent;

- i. Permanently enjoining CSI, and its officers, agents, servants, subcontractors, and employees, and others controlled by CSI, from making further allegations or claims that Commtest has infringed the '325 patent;
- j. Awarding Plaintiff its reasonable attorney fees, expert fees, and costs; and
- k. Awarding Plaintiff such other and further relief as the Court may deem justified.

Respectfully submitted,



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