

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SIPCO, LLC,)
) Civil Action File
Plaintiff,)
)
vs.)
) No. 6:10cv533
ENERGATE INC., ECOBEE INC.,)
RAINFOREST AUTOMATION, INC.,)
SMARTSYNCH, INC., AMX)
CORPORATION, SIMPLEHOMENET,)
INC., AND CENTRALITE SYSTEMS,)
INC.,)
) **JURY TRIAL DEMANDED**
Defendants.)
_____)

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff SIPCO, LLC (“SIPCO”) hereby makes this Complaint for patent infringement against Defendants ENERGATE, INC. (“Energate”); ECOBEE, INC. (“Ecobee”); RAINFOREST AUTOMATION, INC. (“Rainforest”); SMARTSYNCH, INC. (“SmartSynch”); AMX CORPORATION (“AMX”); SIMPLEHOMENET, INC. (“Simplehomenet”); CENTRALITE SYSTEMS, INC. (“Centralite”) respectfully showing the Court as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement, brought under the Patent Act, 35 U.S.C. §§ 101 *et seq.* Plaintiff SIPCO is the leading company in the design

and development of wireless mesh networks. As set forth more fully below, Defendants are willfully infringing a number of SIPCO's patents.

2. U.S. Patent No. 7,103,511 (the "511 Patent"), entitled "Wireless Communications Networks for Providing Remote Monitoring of Devices," was duly and legally issued on September 5, 2006 by the U.S. Patent and Trademark Office to StatSignal IPC, LLC, the assignee of the named inventor Thomas D. Petite. A true and correct copy of the '511 Patent is attached hereto as Exhibit A.

3. U.S. Patent No. 6,914,893 (the "893 Patent"), entitled, "System and Method for Monitoring and Controlling Remote Devices" was duly and legally issued on July 5, 2005 by the U.S. Patent and Trademark Office to StatSignal IPC, LLC, the assignee of the named inventor Thomas D. Petite. A true and correct copy of the '893 Patent is attached hereto as Exhibit B.

4. U.S. Patent No. 7,697,492 (the "492 Patent"), entitled "Systems and Methods for Monitoring and Controlling Remote Devices," was duly and legally issued on April 13, 2010 by the U.S. Patent and Trademark Office to SIPCO, LLC, the assignee of the named inventor Thomas D. Petite. A true and correct copy of the '492 Patent is attached hereto as Exhibit C.

5. Plaintiff SIPCO is the sole owner of the entire right, title, and interest in the '511 Patent, the '893 Patent, and the '492 Patent (collectively, the "Patents-in-Suit") by virtue of assignment.

6. T. David Petite, the President of Plaintiff SIPCO, is the lead inventor of the technologies embodied in the Patents-in-Suit. Mr. Petite is a pioneer in the field of wireless technology, and his inventions are widely deployed in a variety of products and networks throughout the United States.

7. Mr. Petite has been widely recognized as an entrepreneur. He was recently recognized by the Georgia State Senate for “his innovations in wireless technology and his incredible career in engineering and invention.” He is the founder of the Native American Inventors Association and is a member of the Professional Awards Selection Committee of the American Indian Science Engineering Society.

8. Mr. Petite’s contributions have been widely recognized as many companies throughout the Smart Energy industries are either using his patented technology directly or have taken licenses to this technology, including, but not limited to, GE Appliances, Silver Spring Networks, Inc., Landis + Gyr, Itron, Inc., Eka Systems, Inc., Tendril Networks, Inc., ESCO Technologies Holding, Inc., Comverge Inc., Intermatic, Inc., Cooper US, Inc., Advanced Sensor Technology, Elster Electricity, LLC, Hawking Technologies, Inc., Cypress Venture Group, Tantalus Systems Corp., Mesh City Inc., L.S. Research, LLC, and HomeSeer Technologies LLC.

9. Each Defendant, as provided in more detail below, has made, used, imported, and/or sold and/or continues to make, use, import, and/or sell the technology claimed by the '511 Patent, the '893 Patent, and/or the '492 Patent in systems and methods without SIPCO's permission.

10. Plaintiff SIPCO seeks damages for each Defendant's infringement of the '511 Patent, the '893 Patent, and/or the '492 Patent.

PARTIES

11. Plaintiff SIPCO is a Georgia limited liability corporation. SIPCO's places of business are in Atlanta, Georgia and McKinney, Texas.

12. Upon information and belief, Defendant Energate is a Canadian corporation, having its principal place of business at 2415 Holly Lane, Suite 210 Ottawa, Ontario, Canada K1V 7P1.

13. Upon information and belief, Defendant Ecobee is a Canadian corporation, having its principal place of business at 333 Adelaide St. W. 6th Floor, Toronto, Ontario, Canada, M5V 1R5.

14. Upon information and belief, Defendant Rainforest is a Canadian corporation, having its principal place of business at 34 West 7th Avenue, 2nd Floor, Vancouver, BC, Canada V5Y 1L6.

15. Upon information and belief, Defendant SmartSynch is a Mississippi corporation, having its principal place of business at 4400 Old Canton Road, Suite 300, Jackson, Mississippi, 39211.

16. Upon information and belief, Defendant AMX is a Texas corporation, having its principal place of business at 3000 Research Drive, Richardson, Texas 75082.

17. Upon information and belief, Defendant Simplehomenet is a Delaware corporation, having its principal place of business at 29222 Rancho Viejo Road, Suite 108, San Juan Capistrano, CA 92675.

18. Upon information and belief, Defendant Centralite is an Alabama corporation, having its principal place of business at 6420 Wall Street, Mobile, Alabama 36695.

JURISDICTION AND VENUE

19. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*

20. This Court has personal jurisdiction over Energate. Energate purports to have a sales office in Texas, regularly conducts business in the State of Texas and is subject to the jurisdiction of this Court. Energate has been doing business in this judicial district by manufacturing, distributing, marketing, using, selling and/or offering for sale its products including, but not limited to, products that practice the

subject matter claimed in the Patents-in-Suit, in this judicial district and elsewhere in the United States. Energate can be served with process through its registered agent, the Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, Delaware 19801.

21. This Court has personal jurisdiction over Ecobee. Ecobee has contractors located throughout Texas, makes its products available for sale over the Internet throughout the United States, regularly conducts business in the State of Texas and is subject to the jurisdiction of this Court. Ecobee has been doing business in this judicial district by manufacturing, distributing, marketing, using, selling and/or offering for sale its products including, but not limited to, products that practice the subject matter claimed in the Patents-in-Suit, in this judicial district and elsewhere in the United States. Ecobee can be served with process through its Chief Executive Officer, Stuart Lombard, at 333 Adelaide Street W. 6th Floor, Toronto, Ontario, M5V 1R5, Canada..

22. This Court has personal jurisdiction over Rainforest. Rainforest promoted its products in Austin, Texas at the Autovation conference in September 2010, is registered in Texas, regularly conducts business in the State of Texas and is subject to the jurisdiction of this Court. Rainforest has been doing business in this judicial district by manufacturing, distributing, marketing, using, selling and/or offering for sale its products including, but not limited to, products that practice the

subject matter claimed in the Patents-in-Suit, in this judicial district and elsewhere in the United States. Rainforest can be served with process through its registered agent, CT Corporation System 350 N. St. Paul Street, Ste. 2900, Dallas, Texas 75201.

23. This Court has personal jurisdiction over SmartSynch. SmartSynch has deployed its smart meters in Texas, promoted its products in Austin, Texas at the Autovation conference in September 2010, regularly conducts business in the State of Texas and is subject to the jurisdiction of this Court. SmartSynch has been doing business in this judicial district by manufacturing, distributing, marketing, using, selling and/or offering for sale its products including, but not limited to, products that practice the subject matter claimed in the Patents-in-Suit, in this judicial district and elsewhere in the United States. SmartSynch can be served with process through its registered agent, Donna Grewe, 4400 Old Canton Road, Suite 300, P.O. Box 12250, Jackson, MS 39236.

24. This Court has personal jurisdiction over AMX. AMX has its principle place of business in Richardson, Texas, regularly conducts business in the State of Texas and is subject to the jurisdiction of this Court. AMX has been doing business in this judicial district by manufacturing, distributing, marketing, using, selling and/or offering for sale its products including, but not limited to, products that practice the subject matter claimed in the Patents-in-Suit, in this judicial

district and elsewhere in the United States. AMX can be served with process through its registered agent, C T Corporation, 350 North St. Paul Street, Dallas, Texas 75201.

25. This Court has personal jurisdiction over Simplehomenet. Simplehomenet promoted its products in Austin, Texas at the Autovation conference in September 2010, makes its products available for sale over the Internet throughout the United States, regularly conducts business in the State of Texas and is subject to the jurisdiction of this Court. Simplehomenet has been doing business in this judicial district by manufacturing, distributing, marketing, using, selling and/or offering for sale its products including, but not limited to, products that practice the subject matter claimed in the Patents-in-Suit, in this judicial district and elsewhere in the United States. Simplehomenet can be served with process through its registered agent, Robert Tuttle, 7 Point Avenue, Newark, Delaware, 19711.

26. This Court has personal jurisdiction over Centralite. Centralite has installers, dealers, and distributors throughout Texas, regularly conducts business in the State of Texas and is subject to the jurisdiction of this Court. Centralite has been doing business in this judicial district by manufacturing, distributing, marketing, using, selling and/or offering for sale its products including, but not limited to, products that practice the subject matter claimed in the Patents-in-Suit,

in this judicial district and elsewhere in the United States. Centralite can be served with process through its registered agent, James B. Busby, 6417-E Hillcrest Park Ct, Mobile, Alabama 36695.

27. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b). Defendants have done business in this judicial district, committed acts of infringement in this judicial district, and continue to commit acts of infringement in this judicial district, all of which entitle SIPCO to relief.

COUNT I – INFRINGEMENT OF THE ‘511 PATENT

28. SIPCO restates and realleges the allegations set forth in paragraphs 1 through 27 of this Complaint and incorporates them by reference

29. SIPCO is the sole owner of the entire right, title, and interest in the ‘511 Patent by virtue of assignment, including all rights necessary to prosecute this case and collect all damages, past, present and future, resulting from Defendants’ infringement.

30. Defendant Energate has infringed and continues to infringe one or more claims of the ‘511 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network

technology similar to that found in its home energy management suite and components thereof, in violation of 35 U.S.C. § 271.

31. Defendant SmartSynch has infringed and continues to infringe one or more claims of the '511 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its smart meters, gridrouters, and components thereof, in violation of 35 U.S.C. § 271.

32. Defendant Simplehomenet has infringed and continues to infringe one or more claims of the '511 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its home and building automation solutions and components thereof, in violation of 35 U.S.C. § 271.

33. Defendants' directly contribute and induce infringement through supplying infringing systems and components to customers. Defendants' customers who purchase systems and components thereof and operate such systems and components thereof in accordance with Defendants' instructions

directly infringe one or more claims of the '511 Patent in violation of 35 U.S.C. § 271.

34. The acts of infringement of the '511 Patent by the Defendants, and each of them, have caused damage to SIPCO, and SIPCO is entitled to recover from the Defendants, and each of them, the damages sustained by SIPCO as a result of their wrongful acts in an amount subject to proof at trial. The infringement of SIPCO's exclusive rights under the '511 Patent by the Defendants, and each of them, will continue to damage SIPCO, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court

35. The Defendants, and each of them, have had actual or constructive knowledge of the '511 Patent, yet each of them continues to infringe said patent. The infringement of the '511 Patent by the Defendants, and each of them, is willful and deliberate, entitling SIPCO to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT II – INFRINGEMENT OF THE '893 PATENT

36. SIPCO restates and realleges the allegations set forth in paragraphs 1 through 35 of this Complaint and incorporates them by reference

37. SIPCO is the sole owner of the entire right, title, and interest in the '893 Patent by virtue of assignment, including all rights necessary to prosecute this

case and collect all damages, past, present and future, resulting from Defendants' infringement.

38. Defendant Energate has infringed and continues to infringe one or more claims of the '893 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its home energy management suite and components thereof, in violation of 35 U.S.C. § 271.

39. Defendant SmartSynch has infringed and continues to infringe one or more claims of the '893 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its smart meters, gridrouters, and components thereof, in violation of 35 U.S.C. § 271.

40. Defendant AMX has infringed and continues to infringe one or more claims of the '893 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing

wireless network products, including, without limitation, wireless network technology similar to that found in its AMXHome system and components thereof, in violation of 35 U.S.C. § 271.

41. Defendant Simplehomenet has infringed and continues to infringe one or more claims of the '893 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its home and building automation solutions and components thereof, in violation of 35 U.S.C. § 271.

42. Defendant Centralite has infringed and continues to infringe one or more claims of the '893 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its Jetstream lighting solution and components thereof, in violation of 35 U.S.C. § 271.

43. Defendants' directly contribute and induce infringement through supplying infringing systems and components to customers. Defendants' customers who purchase systems and components thereof and operate such

systems and components thereof in accordance with Defendants' instructions directly infringe one or more claims of the '893 Patent in violation of 35 U.S.C. § 271.

44. The acts of infringement of the '893 Patent by the Defendants, and each of them, have caused damage to SIPCO, and SIPCO is entitled to recover from the Defendants, and each of them, the damages sustained by SIPCO as a result of their wrongful acts in an amount subject to proof at trial. The infringement of SIPCO's exclusive rights under the '893 Patent by the Defendants, and each of them, will continue to damage SIPCO, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court

45. The Defendants, and each of them, have had actual or constructive knowledge of the '893 Patent, yet each of them continues to infringe said patent. The infringement of the '893 Patent by the Defendants, and each of them, is willful and deliberate, entitling SIPCO to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT III – INFRINGEMENT OF THE '492 PATENT

46. SIPCO restates and realleges the allegations set forth in paragraphs 1 through 45 of this Complaint and incorporates them by reference

47. SIPCO is the sole owner of the entire right, title, and interest in the '492 Patent by virtue of assignment, including all rights necessary to prosecute this

case and collect all damages, past, present and future, resulting from Defendants' infringement.

48. Defendant Energate has infringed and continues to infringe one or more claims of the '492 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its home energy management suite and components thereof, in violation of 35 U.S.C. § 271.

49. Defendant Ecobee has infringed and continues to infringe one or more claims of the '492 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its home energy management system and components thereof, in violation of 35 U.S.C. § 271.

50. Defendant Rainforest has infringed and continues to infringe one or more claims of the '492 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing

wireless network products, including, without limitation, wireless network technology similar to that found in its energy management products and components thereof, in violation of 35 U.S.C. § 271.

51. Defendant SmartSynch has infringed and continues to infringe one or more claims of the '492 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its smart meters, gridrouters, and components thereof, in violation of 35 U.S.C. § 271.

52. Defendant AMX has infringed and continues to infringe one or more claims of the '492 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its AMXHome system and components thereof, in violation of 35 U.S.C. § 271.

53. Defendant Simplehomenet has infringed and continues to infringe one or more claims of the '492 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or

selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its home and building automation solutions and components thereof, in violation of 35 U.S.C. § 271.

54. Defendant Centralite has infringed and continues to infringe one or more claims of the '492 Patent, directly, contributorily, and/or by inducement, by making, using, inducing others to use, importing, offering for sale, and/or selling, without license, certain products that consist of and/or incorporate infringing wireless network products, including, without limitation, wireless network technology similar to that found in its Jetstream lighting solution and components thereof, in violation of 35 U.S.C. § 271.

55. Defendants' directly contribute and induce infringement through supplying infringing systems and components to customers. Defendants' customers who purchase systems and components thereof and operate such systems and components thereof in accordance with Defendants' instructions directly infringe one or more claims of the '492 Patent in violation of 35 U.S.C. § 271.

56. The acts of infringement of the '492 Patent by the Defendants, and each of them, have caused damage to SIPCO, and SIPCO is entitled to recover from the Defendants, and each of them, the damages sustained by SIPCO as a

result of their wrongful acts in an amount subject to proof at trial. The infringement of SIPCO's exclusive rights under the '492 Patent by the Defendants, and each of them, will continue to damage SIPCO, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court

57. The Defendants, and each of them, have had actual or constructive knowledge of the '492 Patent, yet each of them continues to infringe said patent. The infringement of the '492 Patent by the Defendants, and each of them, is willful and deliberate, entitling SIPCO to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, SIPCO prays for the following relief against Defendants:

A. A judgment that Defendants, as forth above, have directly infringed the '511 Patent, contributorily infringed the '511 Patent, and/or induced infringement of the '511 Patent;

B. A judgment that Defendants, as forth above, have directly infringed the '893 Patent, contributorily infringed the '893 Patent, and/or induced infringement of the '893 Patent;

C. A judgment that Defendants, as forth above, have directly infringed the '492 Patent, contributorily infringed the '492 Patent, and/or induced infringement of the '492 Patent;

D. An award of all damages recoverable under the laws of the United States and the laws of the State of Texas in an amount to be proven at trial;

E. An award of treble damages pursuant to 35 U.S.C. § 284 against Defendants, and each of them, as a result of Defendant's willful infringement;

F. A preliminary, and thereafter permanent, injunction enjoining and restraining Defendants, and each of them, and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, from directly infringing, contributorily infringing, and inducing the infringement of the '511 Patent, as set forth herein;

G. A preliminary, and thereafter permanent, injunction enjoining and restraining Defendants, and each of them, and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, from directly infringing, contributorily infringing, and inducing the infringement of the '893 Patent, as set forth herein;

H. A preliminary, and thereafter permanent, injunction enjoining and restraining Defendants, and each of them, and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, from directly infringing, contributorily infringing, and inducing the infringement of the '492 Patent, as set forth herein;

I. A judgment and order requiring Defendants, and each of them, to pay SIPCO pre-judgment and post-judgment interest on the full amounts of the damages awarded;

J. A judgment requiring Defendants, and each of them, to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285, with prejudgment interest; and

K. Such other and further relief as this Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands that all issues so triable be determined by a jury.

Respectfully submitted, this 7th day of October, 2010.

/s/ John Herman (w/permission Wesley Hill)
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