

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

AUTOMATED TRACKING
SOLUTIONS, LLC,

Plaintiff,

vs.

SIMPLYRFID INC.,

Defendant.

Case No.: 1:12CV52

LMB/TRJ

Jury Trial Demanded

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Automated Tracking Solutions, LLC ("ATS"), by counsel and pursuant to Federal Rule of Civil Procedure 8(a), alleges the following in support of its Complaint against Defendant SimplyRFiD Inc. ("SimplyRFiD") for patent infringement:

PARTIES

1. Plaintiff Automated Tracking Solutions, LLC is a Delaware limited liability company with its principal place of business located at 8500 Fort Hunt Rd., Alexandria, VA 22308.

2. Upon information and belief, SimplyRFiD Inc. is a Virginia corporation with its principal place of business located at 6599 Commerce Ct., Suite 100, Warrenton, VA 20187.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. Upon information and belief, this Court has personal jurisdiction over SimplyRFiD because SimplyRFiD regularly and purposefully avails itself of the privilege of conducting business activities in the Commonwealth of Virginia and this judicial district by, among other things, offering its products and services to customers, business affiliates and/or partners located in this judicial district. In addition, upon information and belief, personal jurisdiction is proper because SimplyRFiD has committed acts of direct infringement and/or indirect infringement in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because SimplyRFiD is subject to personal jurisdiction in this judicial district and has committed acts of direct infringement and/or indirect infringement in this judicial district.

FACTUAL BACKGROUND

6. Inventory control was conventionally performed primarily by hand or not at all. As a result, businesses often faced significant shrinkage of inventory and increased labor costs as employees searched for missing items.

7. Dr. Fred H. Sawyer initially founded F.H.S. Systems Engineering & Technical Services, Ltd. to develop and integrate new RFID technology into these manual processes. In 2005, Dr. Sawyer founded Automated Tracking Solutions Incorporated, which became ATS when Adam S. Malamut, Scott D. Liebling and Ronald L. Dubrow joined on August 14, 2007, to continue the development and integration of RFID technology.

8. Dr. Sawyer has been a resident of Alexandria, Virginia, since 1984. He was born and grew up in Norfolk, Virginia and attended college at Virginia State University, obtaining a

degree in Physics in 1962. Dr. Sawyer also obtained a doctorate in Operations Research in 1977 from the George Washington University with a concentration in queuing theory, and a master's degree in Electrical Engineering in 1987 from Penn State University. He is the majority owner of ATS.

9. Dr. Sawyer invented processes and systems that permit identification, tracking, location, and/or surveillance of tagged objects at the item level anywhere in a facility or area. As part of his work at ATS, Dr. Sawyer designed and built an operable system for performing these functions.

10. Dr. Sawyer filed for multiple patents to protect these inventions at the United States Patent and Trademark Office ("USPTO").

11. Dr. Sawyer is the sole named inventor in United States Patent Nos. 7,551,089, 7,834,765, 7,834,766, and 6,933,849 (collectively the "Patents-in-Suit") and has assigned the Patents-in-Suit to ATS.

FIRST CAUSE OF ACTION

INFRINGEMENT OF U.S. PATENT NO. 7,551,089

12. The allegations of Paragraphs 1-11 are incorporated herein by reference.

13. ATS is the assignee and sole owner of all right, title, and interest in United States Patent No. 7,551,089 ("the '089 patent"), entitled "Method and Apparatus for Tracking Objects and People," which issued on June 23, 2009. A true and correct copy of the '089 patent is attached hereto as Exhibit 1.

20. There was an objectively high likelihood that Defendant was and continues to infringe the '089 patent.

21. The risk of infringement was so clear that Defendant knew or should have known of the high likelihood that Defendant was and continues to infringe the '089 patent.

22. Upon information and belief, Defendant has not taken any action to end its infringement of the '089 patent.

23. Upon information and belief, Defendant's continued infringement of the '089 patent is willful and deliberate.

24. Upon information and belief, at least one of Defendant's customers, business affiliates and/or partners is directly infringing the '089 patent.

25. Upon information and belief, Defendant has taken actions that caused, encouraged, or aided one or more of Defendant's customers, business affiliates and/or partners to directly infringe the '089 patent.

26. Upon information and belief, Defendant has had knowledge that its actions induced the conduct of its customers, business affiliates and/or partners, or has willfully remained blind to such knowledge.

27. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendant has had actual knowledge of the '089 patent and, with such knowledge, has continued to cause, encourage, or aid one or more of Defendant's customers, business affiliates and/or partners to directly infringe the '089 patent.

28. Upon information and belief, Defendant has acted with the specific intent to induce one or more of its customers, business affiliates and/or partners to infringe the '089 patent.

29. Upon information and belief, Defendant is inducing infringement of the '089 patent by its customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(b).

30. Upon information and belief, Defendant offers to sell within the United States, sells within the United States, or imports into the United States a component of an infringing apparatus to one or more of its customers, business affiliates and/or partners. The component is one or a combination of the Avery AD-223 RFID tags, C1G2 RFID tags, SimplyRFiD Blank Travelers tags, SimplyRFiD Blank XTravelers tags, Nox tags (including, without limitation, Nox-TM4 tags, Nox-2 tags, Nox-TM9LR On/Off Metal High-Temperature Rugged RFID tags, Nox-TM7G tags), Handheld RFID Reader, NoxInterrogators, NoxZone, NoxWMS, RFID antennas, Nox Asset Tracking Appliances, and NoxCORE Software (the "Component").

31. Upon information and belief, the Component is being used during direct infringement by one or more of Defendant's customers, business affiliates and/or partners.

32. Upon information and belief, the Component constitutes a material part of the infringing apparatus.

33. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendant knows or should know that the Component is made or especially adapted for use in the infringing apparatus, at least because Defendant had specific notice and knowledge of the '089 patent and the infringement alleged in the Awarepoint Action.

34. Upon information and belief, the Component is not a staple article or commodity of commerce suitable for substantial non-infringing use.

35. Upon information and belief, Defendant is contributing to the infringement of the '089 patent by one or more of Defendant's customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(c).

SECOND CAUSE OF ACTION

INFRINGEMENT OF U.S. PATENT NO. 7,834,765

36. The allegations of Paragraphs 1-35 are incorporated herein by reference.

37. ATS is the assignee and sole owner of all right, title, and interest in United States Patent No. 7,834,765 ("the '765 patent"), entitled "Method and Apparatus for Tracking Objects and People," which issued on Nov. 16, 2010. A true and correct copy of the '765 patent is attached hereto as Exhibit 2.

38. Defendant SimplyRFiD has been infringing, continues to infringe, induces others to infringe, and/or contributes to the infringement by others of, claims 1-59 of the '765 patent through at least the acts of making, using, selling, offering for sale, and/or importing infringing products and services, either literally or under the doctrine of equivalents. SimplyRFiD's infringing products and services include, without limitation, the SimplyRFiD Asset Tracking System including Avery AD-223 RFID tags, C1G2 RFID tags, SimplyRFiD Blank Travelers tags, SimplyRFiD Blank XTravelers tags, Nox tags (including, without limitation, Nox-TM4 tags, Nox-2 tags, Nox-TM9LR On/Off Metal High-Temperature Rugged RFID tags, Nox-TM7G

tags), Handheld RFID Reader, NoxInterrogators, NoxZone, NoxWMS, RFID antennas, Nox Asset Tracking Appliances, and NoxCORE Software.

39. Defendant's acts of infringement have injured and damaged ATS.

40. Defendant's infringement has caused irreparable injury to ATS and will continue to cause irreparable injury until Defendant is enjoined by this Court from further infringement.

41. On July 28, 2011, ATS filed a Complaint for Patent Infringement against Defendant in this Court (the "Awarepoint Action"). That Complaint included as an exhibit a true and correct copy of the '765 patent.

42. On or about August 8, 2011, Defendant was served with a copy of the Complaint in the Awarepoint Action, which included ATS's allegations of patent infringement of the '765 patent and a copy of the '765 patent.

43. On January 13, 2012, Defendant was dismissed without prejudice under Rule 21 of the Federal Rules of Civil Procedure from the Awarepoint Action.

44. There was an objectively high likelihood that Defendant was and continues to infringe the '765 patent.

45. The risk of infringement was so clear that Defendant knew or should have known of the high likelihood that Defendant was and continues to infringe the '765 patent.

46. Upon information and belief, Defendant has not taken any action to end its infringement of the '765 patent.

47. Upon information and belief, Defendant's continued infringement of the '765 patent is willful and deliberate.

48. Upon information and belief, at least one of Defendant's customers, business affiliates and/or partners is directly infringing the '765 patent.

49. Upon information and belief, Defendant has taken actions that caused, encouraged, or aided one or more of Defendant's customers, business affiliates and/or partners to directly infringe the '765 patent.

50. Upon information and belief, Defendant has had knowledge that its actions induced the conduct of its customers, business affiliates and/or partners, or has willfully remained blind to such knowledge.

51. Upon information and belief, at least as early as July 28, 2011 and since that time, Defendant has had actual knowledge of the '765 patent and, with such knowledge, has continued to cause, encourage, or aid one or more of Defendant's customers, business affiliates and/or partners to directly infringe the '765 patent.

52. Upon information and belief, Defendant has acted with the specific intent to induce one or more of its customers, business affiliates and/or partners to infringe the '765 patent.

53. Upon information and belief, Defendant is inducing infringement of the '765 patent by its customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(b).

54. Upon information and belief, Defendant offers to sell within the United States, sells within the United States, or imports into the United States a component of an infringing apparatus to one or more of its customers, business affiliates and/or partners. The component is one or a combination of the Avery AD-223 RFID tags, C1G2 RFID tags, SimplyRFiD Blank Travelers tags, SimplyRFiD Blank XTravelers tags, Nox tags (including, without limitation, Nox-TM4 tags, Nox-2 tags, Nox-TM9LR On/Off Metal High-Temperature Rugged RFID tags, Nox-TM7G tags), Handheld RFID Reader, NoxInterrogators, NoxZone, NoxWMS, RFID antennas, Nox Asset Tracking Appliances, and NoxCORE Software (the "Component").

55. Upon information and belief, the Component is being used during direct infringement by one or more of Defendant's customers, business affiliates and/or partners.

56. Upon information and belief, the Component constitutes a material part of the infringing apparatus.

57. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendant knows or should know that the Component is made or especially adapted for use in the infringing apparatus, at least because Defendant had specific notice and knowledge of the '765 patent and the infringement alleged in the Awarepoint Action.

58. Upon information and belief, the Component is not a staple article or commodity of commerce suitable for substantial non-infringing use.

59. Upon information and belief, Defendant is contributing to the infringement of the '765 patent by one or more of Defendant's customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(c).

THIRD CAUSE OF ACTION

INFRINGEMENT OF U.S. PATENT NO. 7,834,766

60. The allegations of Paragraphs 1-59 are incorporated herein by reference.

61. ATS is the assignee and sole owner of all right, title, and interest in United States Patent No. 7,834,766 ("the '766 patent"), entitled "Method and Apparatus for Tracking Objects and People," which issued on Nov. 16, 2010. A true and correct copy of the '766 patent is attached hereto as Exhibit 3.

62. Defendant SimplyRFiD has been infringing, continues to infringe, induces others to infringe, and/or contributes to the infringement by others of, claims 1-67 of the '766 patent through at least the acts of making, using, selling, offering for sale, and/or importing infringing products and services, either literally or under the doctrine of equivalents. SimplyRFiD's infringing products and services include, without limitation, the SimplyRFiD Asset Tracking System including Avery AD-223 RFID tags, C1G2 RFID tags, SimplyRFiD Blank Travelers tags, SimplyRFiD Blank XTravelers tags, Nox tags (including, without limitation, Nox-TM4 tags, Nox-2 tags, Nox-TM9LR On/Off Metal High-Temperature Rugged RFID tags, Nox-TM7G tags), Handheld RFID Reader, NoxInterrogators, NoxZone, NoxWMS, RFID antennas, Nox Asset Tracking Appliances, and NoxCORE Software.

63. Defendant's acts of infringement have injured and damaged ATS.

64. Defendant's infringement has caused irreparable injury to ATS and will continue to cause irreparable injury until Defendant is enjoined by this Court from further infringement.

65. On July 28, 2011, ATS filed a Complaint for Patent Infringement against Defendant in this Court (the "Awarepoint Action"). That Complaint included as an exhibit a true and correct copy of the '766 patent.

66. On or about August 8, 2011, Defendant was served with a copy of the Complaint in the Awarepoint Action, which included ATS's allegations of patent infringement of the '766 patent and a copy of the '766 patent.

67. On January 13, 2012, Defendant was dismissed without prejudice under Rule 21 of the Federal Rules of Civil Procedure from the Awarepoint Action.

68. There was an objectively high likelihood that Defendant was and continues to infringe the '766 patent.

69. The risk of infringement was so clear that Defendant knew or should have known of the high likelihood that Defendant was and continues to infringe the '766 patent.

70. Upon information and belief, Defendant has not taken any action to end its infringement of the '766 patent.

71. Upon information and belief, Defendant's continued infringement of the '766 patent is willful and deliberate.

72. Upon information and belief, at least one of Defendant's customers, business affiliates and/or partners is directly infringing the '766 patent.

73. Upon information and belief, Defendant has taken actions that caused, encouraged, or aided one or more of Defendant's customers, business affiliates and/or partners to directly infringe the '766 patent.

74. Upon information and belief, Defendant has had knowledge that its actions induced the conduct of its customers, business affiliates and/or partners, or has willfully remained blind to such knowledge.

75. Upon information and belief, at least as early as July 28, 2011 and since that time, Defendant has had actual knowledge of the '766 patent and, with such knowledge, has continued to cause, encourage, or aid one or more of Defendant's customers, business affiliates and/or partners to directly infringe the '766 patent.

76. Upon information and belief, Defendant has acted with the specific intent to induce one or more of its customers, business affiliates and/or partners to infringe the '766 patent.

77. Upon information and belief, Defendant is inducing infringement of the '766 patent by its customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(b).

78. Upon information and belief, Defendant offers to sell within the United States, sells within the United States, or imports into the United States a component of an infringing apparatus to one or more of its customers, business affiliates and/or partners. The component is one or a combination of the Avery AD-223 RFID tags, C1G2 RFID tags, SimplyRFiD Blank Travelers tags, SimplyRFiD Blank XTravelers tags, Nox tags (including, without limitation, Nox-TM4 tags, Nox-2 tags, Nox-TM9LR On/Off Metal High-Temperature Rugged RFID tags,

Nox-TM7G tags), Handheld RFID Reader, NoxInterrogators, NoxZone, NoxWMS, RFID antennas, Nox Asset Tracking Appliances, and NoxCORE Software (the "Component").

79. Upon information and belief, the Component is being used during direct infringement by one or more of Defendant's customers, business affiliates and/or partners.

80. Upon information and belief, the Component constitutes a material part of the infringing apparatus.

81. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendant knows or should know that the Component is made or especially adapted for use in the infringing apparatus, at least because Defendant had specific notice and knowledge of the '766 patent and the infringement alleged in the Awarepoint Action.

82. Upon information and belief, the Component is not a staple article or commodity of commerce suitable for substantial non-infringing use.

83. Upon information and belief, Defendant is contributing to the infringement of the '766 patent by one or more of Defendant's customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(c).

FOURTH CAUSE OF ACTION

INFRINGEMENT OF U.S. PATENT NO. 6,933,849

84. The allegations of Paragraphs 1-83 are incorporated herein by reference.

85. ATS is the assignee and sole owner of all right, title, and interest in United States Patent No. 6,933,849 ("the '849 patent"), entitled "Method and Apparatus for Tracking Objects

and People," which issued on Aug. 23, 2005. A true and correct copy of the '849 patent is attached hereto as Exhibit 4.

86. Defendant SimplyRFiD has been infringing, continues to infringe, induces others to infringe, and/or contributes to the infringement by others of, claims 1-2, 22-26, 29-30, 39-40, 42-43, and 53 of the '849 patent through at least the acts of making, using, selling, offering for sale, and/or importing infringing products and services, either literally or under the doctrine of equivalents. SimplyRFiD's infringing products and services include, without limitation, the SimplyRFiD Asset Tracking System including Avery AD-223 RFID tags, C1G2 RFID tags, SimplyRFiD Blank Travelers tags, SimplyRFiD Blank XTravelers tags, Nox tags (including, without limitation, Nox-TM4 tags, Nox-2 tags, Nox-TM9LR On/Off Metal High-Temperature Rugged RFID tags, Nox-TM7G tags), Handheld RFID Reader, NoxInterrogators, NoxZone, NoxWMS, RFID antennas, Nox Asset Tracking Appliances, and NoxCORE Software.

87. Defendant's acts of infringement have injured and damaged ATS.

88. Defendant's infringement has caused irreparable injury to ATS and will continue to cause irreparable injury until Defendant is enjoined by this Court from further infringement.

89. On July 28, 2011, ATS filed a Complaint for Patent Infringement against Defendant in this Court (the "Awarepoint Action"). That Complaint included as an exhibit a true and correct copy of the '849 patent.

90. On or about August 8, 2011, Defendant was served with a copy of the Complaint in the Awarepoint Action, which included ATS's allegations of patent infringement of the '849 patent and a copy of the '849 patent.

91. On January 13, 2012, Defendant was dismissed without prejudice under Rule 21 of the Federal Rules of Civil Procedure from the Awarepoint Action.

92. There was an objectively high likelihood that Defendant was and continues to infringe the '849 patent.

93. The risk of infringement was so clear that Defendant knew or should have known of the high likelihood that Defendant was and continues to infringe the '849 patent.

94. Upon information and belief, Defendant has not taken any action to end its infringement of the '849 patent.

95. Upon information and belief, Defendant's continued infringement of the '849 patent is willful and deliberate.

96. Upon information and belief, at least one of Defendant's customers, business affiliates and/or partners is directly infringing the '849 patent.

97. Upon information and belief, Defendant has taken actions that caused, encouraged, or aided one or more of Defendant's customers, business affiliates and/or partners to directly infringe the '849 patent.

98. Upon information and belief, Defendant has had knowledge that its actions induced the conduct of its customers, business affiliates and/or partners, or has willfully remained blind to such knowledge.

99. Upon information and belief, at least as early as July 28, 2011 and since that time, Defendant has had actual knowledge of the '849 patent and, with such knowledge, has continued

to cause, encourage, or aid one or more of Defendant's customers, business affiliates and/or partners to directly infringe the '849 patent.

100. Upon information and belief, Defendant has acted with the specific intent to induce one or more of its customers, business affiliates and/or partners to infringe the '849 patent.

101. Upon information and belief, Defendant is inducing infringement of the '849 patent by its customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(b).

102. Upon information and belief, Defendant offers to sell within the United States, sells within the United States, or imports into the United States a component of an infringing apparatus to one or more of its customers, business affiliates and/or partners. The component is one or a combination of the Avery AD-223 RFID tags, C1G2 RFID tags, SimplyRFiD Blank Travelers tags, SimplyRFiD Blank XTravelers tags, Nox tags (including, without limitation, Nox-TM4 tags, Nox-2 tags, Nox-TM9LR On/Off Metal High-Temperature Rugged RFID tags, Nox-TM7G tags), Handheld RFID Reader, NoxInterrogators, NoxZone, NoxWMS, RFID antennas, Nox Asset Tracking Appliances, and NoxCORE Software (the "Component").

103. Upon information and belief, the Component is being used during direct infringement by one or more of Defendant's customers, business affiliates and/or partners.

104. Upon information and belief, the Component constitutes a material part of the infringing apparatus.

105. Upon information and belief, at least as early as July 28, 2011, and since that time, Defendant knows or should know that the Component is made or especially adapted for use

in the infringing apparatus, at least because Defendant had specific notice and knowledge of the '849 patent and the infringement alleged in the Awarepoint Action.

106. Upon information and belief, the Component is not a staple article or commodity of commerce suitable for substantial non-infringing use.

107. Upon information and belief, Defendant is contributing to the infringement of the '849 patent by one or more of Defendant's customers, business affiliates and/or partners in violation of 35 U.S.C. § 271(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. A judgment against Defendant as to infringement of the Patents-in-Suit as alleged above;
2. A permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, subsidiaries, parents, licensees, assigns, and customers, and all others acting in concert or participating with them, from further acts of infringement, inducing infringement, and/or contributing to the infringement of the Patents-in-Suit as alleged above;
3. A judgment against Defendant for money damages sustained as a result of Defendant's infringement of the Patents-in-Suit, as alleged above, in an amount as provided under 35 U.S.C. § 284, to be no less than a reasonable royalty with interest and costs;

4. An accounting for infringing sales not presented at trial and an award by this Court of additional damages for any such infringing sales;

5. An award of pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;

6. A judgment ordering Defendant to pay enhanced damages pursuant to 35 U.S.C. § 284.

7. A finding that this case is an exceptional case pursuant to 35 U.S.C. § 285 and award ATS its costs and reasonable attorneys' fees incurred in connection with this action; and

8. Such other and further relief as this Court finds just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully requests a trial by jury pursuant to FED. R. CIV. P. 38 of all issues in this action so triable.

Date: January 17, 2012

Respectfully submitted,

By:  _____

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