

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PHOENIX IP, LLC
A Texas Limited Liability Corporation,

Plaintiff,

v.

**GOOD STEWARD SOFTWARE, LLC,
UTILIVISION, INC.,
SAVE MORE RESOURCES, INC.,
ELECTROTEK CONCEPTS, INC. ,
NOVAR CONTROLS, HONEYWELL
INTERNATIONAL, INC., CADENCE
NETWORK, INC., OFFICE DEPOT,
INC., CONSERVATION BILLING
SERVICES, INC., UTILITY
MANAGEMENT CORPORATION, LPB
ACQUISITION COMPANY, LLC,
MRDB HOLDINGS, LP D/B/A LPB
ENERGY CONSULTING,**

Defendants.

Civil Action No. 2:07-cv-110-TJW

JURY TRIAL DEMANDED

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

This is an action for patent infringement in which Phoenix IP, LLC (“Phoenix”) alleges that Good Steward Software, LLC (“Good Steward”), Utilivision, Inc. (“Utilivision”), Save More Resources, Inc. (“SMR”), Electrotek Concepts, Inc. (“Electrotek”), Novar Controls Corporation (“Novar”), Honeywell International, Inc. (“Honeywell”), Cadence Network, Inc. (“Cadence”), Office Depot Inc. (“Office Depot”), Conservation Billing Services, Inc. (“CBS”), Utility Management Corporation (“UMC”), LPB Acquisition Company, LLC (“LPB Acquisition”), and MRDB Holdings, LP d/b/a LPB Energy Consulting (“LPB Energy”) (collectively “Defendants”) infringe one or more patents owned by Phoenix. In support thereof, Phoenix hereby files this complaint and respectfully alleges as follows:

PARTIES

1. Plaintiff Phoenix is a Texas Limited Liability Company with its principal place of business at 207 C North Washington Avenue Marshall, Texas 75670.

2. On information and belief, Defendant Good Steward is a Colorado corporation with its principal place of business located at 111 Sowers Street, Suite 400, State College, Pennsylvania 16801. Good Steward has been served with process but not yet entered an appearance in this suit. It may be served by serving its President, Steven D. Heinz, 111 Sowers Street, Suite 400, State College, Pennsylvania.

3. On information and belief, Defendant Utilivision is a Pennsylvania corporation with its principal place of business located at 2790 West College, Suite 600, State College, Pennsylvania 16801. Utilivision has been served with process and entered an appearance and agreed to answer this suit or otherwise respond on or before May 24, 2007.

4. On information and belief, Defendant SMR is a Colorado corporation with its principal place of business located at 634 Main Street, Suite 100, Grand Junction, Colorado 81501. SMR is qualified to do business in the State of Texas. SMR has been served and has agreed to answer this suit on or before June 5, 2007.

5. On information and belief, Defendant Electrotek is a California corporation with its principal place of business located at 9040 Executive Park Drive, Suite 222, Knoxville, Tennessee 37923. Electrotek has been served with process and entered an appearance in this case and agreed to answer or otherwise respond on or before May 23, 2007.

6. On information and belief, Defendant Novar is a Delaware corporation with its principal place of business located at 6060 Rockside Woods Blvd., Suite 400, Cleveland Ohio

44131. Novar is registered and qualified to conduct business in Texas and has appointed Corporation Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701, as its agent for service of process. Upon information and belief, Novar is a division of Honeywell and its operations are conducted as a part of Honeywell's Automation and Control Solutions operating segment. Novar has been served with process and entered an appearance in this case and agreed to answer or otherwise respond on or before May 23, 2007.

7. On information and belief, Defendant Honeywell is a Delaware corporation with its principal place of business located at 101 Columbia Road, Morristown, New Jersey 07962. Honeywell has been served with process and entered an appearance in this case and agreed to answer or otherwise respond on or before May 23, 2007.

8. On information and belief, Defendant Cadence is a Delaware corporation with its principal place of business located at 105 East Fourth Street, Suite 250, Cincinnati, Ohio 45202. Cadence has appointed CT Corporation System, 36 East 7th Street, Cincinnati, Ohio 45202, as its agent for service of process. Cadence has been served with process and entered an appearance in this case and agreed to answer or otherwise respond on or before May 30, 2007.

9. On information and belief, Defendant Office Depot is a Delaware corporation with its principal place of business located at 2200 Old Germantown Road, Delray Beach, Florida 33445. Office Depot is registered and qualified to conduct business in Texas and has appointed Corporate Creations Network, Inc., 4265 San Felipe, Suite 1100, Houston, Texas 77027 as its agent for service of process. Office Depot has been served with process and entered an appearance in this case and agreed to answer or otherwise respond on or before May 24, 2007.

10. On information and belief, Defendant CBS is a Florida corporation with its principle place of business located at 17655 Waterview Parkway, Dallas, Texas 75252. CBS has

appointed CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201, as its agent for service of process.

11. On information and belief, Defendant UMC is a Mississippi corporation with its principle place of business located at 111 E. Capital Street, Suite 280, Jackson, Mississippi 39201. UMC has appointed Jeff Young as its agent for service of process in Texas located at 11757 Katy Freeway, Suite 1300, Houston, Texas 77079.

12. On information and belief, Defendant LPB Acquisition is a Texas Limited Liability Company with its principle place of business located at 12700 Park Central Drive, Suite 200, Dallas, Texas 75251. LPB Acquisition has appointed Matthew Berke as its agent for service of process in Texas located at Park Central Drive, Suite 200, Dallas, Texas 75251. On information and belief, LPB Acquisition is a successor in interest to SMR.

13. On information and belief, Defendant LPB Energy is a Texas Limited Partnership with its principle place of business located at 12700 Park Central Drive, Suite 200, Dallas, Texas 75251. LPB Energy has appointed Matthew Berke as its agent for service of process in Texas located at Park Central Drive, Suite 200, Dallas, Texas 75251. On information and belief, LPB Energy is a successor in interest to SMR.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), as this action arises under the patent laws of the United States, Title 35 of the United States Code.

15. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant has transacted business in this district and has committed and/or induced acts of patent infringement in this district.

16. On information and belief, Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in this State and in this District.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,178,362

17. Phoenix is the owner by assignment of United States Patent No. 6,178,362, (the "362 Patent") entitled "Energy Management System and Method," a true and correct copy of which is attached as Exhibit A. The '362 Patent issued on January 23, 2001.

18. John W. Woolard, Dale M. Fong, Patrick L. Dell'Era, and Keith E. Gipson are listed as the inventors of the '362 Patent.

19. Defendants have been and now are directly, literally and/or, upon information and belief, jointly, equivalently and/or indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the '362 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling enterprise energy management systems, meter data management systems, distribution asset management systems, energy forecasting systems, managed systems, demand design systems, and customer care systems that are covered by one or more claims of the '362 Patent to the injury of Phoenix. Defendants are thus liable for infringement of the '362 Patent pursuant to 35 U.S.C. § 271.

20. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '362 Patent complied with such requirements.

21. On information and belief, at least after the filing of the present Complaint, the Defendants have infringed and continue to willfully infringe the '362 Patent.

22. As a result of Defendants' infringement of the '362 Patent, Phoenix has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined, and will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.

23. Unless a permanent injunction is issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, affiliates, and all others acting on their behalf from infringing the '362 Patent, Phoenix will be greatly and irreparably harmed.

24. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Phoenix is thus entitled to an award of its reasonable attorneys' fees.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 6,636,893

25. Phoenix is the owner of United States Patent No. 6,636,893 (the "893 Patent") entitled "Web Bridged Energy Management System and Method," a true and correct copy of which is attached as Exhibit B. The '893 Patent issued on October 21, 2003.

26. Dale M. Fong is listed as the inventor of the '893 Patent.

27. Defendants have been and now are directly, literally and/or, upon information and belief, jointly, equivalently and/or indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the '893 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using,

operating, offering to sell, and/or selling enterprise energy management systems, meter data management systems, distribution asset management systems, energy forecasting systems, managed systems, demand design systems, and customer care systems that are covered by one or more claims of the '893 Patent to the injury of Phoenix. Defendants are thus liable for infringement of the '893 Patent pursuant to 35 U.S.C. § 271.

28. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '893 Patent complied with such requirements.

29. On information and belief, at least after the filing of the present Complaint, the Defendants have infringed and continue to willfully infringe the '893 Patent.

30. As a result of Defendants' infringement of the '893 Patent, Phoenix has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined, and will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.

31. Unless a permanent injunction is issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, affiliates, and all others acting on their behalf from infringing the '893 Patent, Phoenix will be greatly and irreparably harmed.

32. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Phoenix is thus entitled to an award of its reasonable attorneys' fees.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 6,169,979

33. Phoenix is the owner of United States Patent No. 6,169,979 (the “979 Patent”) entitled “Computer-Assisted Sales System for Utilities,” a true and correct copy of which is attached as Exhibit C. The ‘979 Patent issued on January 2, 2001.

34. Jerome Johnson is listed as the inventor of the ‘979 Patent.

35. Defendants have been and now are directly, literally and/or, upon information and belief, jointly, equivalently and/or indirectly infringing by way of inducing infringement by others and/or contributing to the infringement by others of the ‘979 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, operating, offering to sell, and/or selling enterprise energy management systems, meter data management systems, distribution asset management systems, energy forecasting systems, managed systems, demand design systems, and customer care systems that are covered by one or more claims of the ‘979 Patent to the injury of Phoenix. Defendants are thus liable for infringement of the ‘979 Patent pursuant to 35 U.S.C. § 271.

36. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the ‘979 Patent complied with such requirements.

37. On information and belief, at least after the filing of the present Complaint, the Defendants have infringed and continue to willfully infringe the ‘979 Patent.

38. As a result of Defendants’ infringement of the ‘979 Patent, Phoenix has suffered monetary damages that are compensable under 35 U.S.C. § 284 in an amount not yet determined,

and will continue to suffer such monetary damages in the future unless Defendants' infringing activities are permanently enjoined by this Court.

39. Unless a permanent injunction is issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, affiliates, and all others acting on their behalf from infringing the '979 Patent, Phoenix will be greatly and irreparably harmed.

40. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285 and Phoenix is thus entitled to an award of its reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Phoenix respectfully requests that this Court enter:

1. A judgment in favor of Phoenix that each Defendant has directly, literally, jointly, equivalently and/or indirectly infringed by way of inducing infringement by others and/or contributing to the infringement by others the '362 Patent, and that such infringement was willful;

2. A permanent injunction, enjoining each Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from such infringement of the '362 Patent;

3. A judgment and order requiring Defendants to pay Phoenix its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '362 Patent as provided under 35 U.S.C. § 284;

4. A judgment in favor of Phoenix that each Defendant has directly, literally, jointly, equivalently and/or indirectly infringed by way of inducing infringement by others and/or contributing to the infringement by others the '893 Patent, and that such infringement was willful;

5. A permanent injunction, enjoining each Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from such infringement of the '893 Patent;

6. A judgment and order requiring Defendants to pay Phoenix its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '893 Patent as provided under 35 U.S.C. § 284;

7. A judgment in favor of Phoenix that each Defendant has directly, literally, jointly, equivalently and/or indirectly infringed by way of inducing infringement by others and/or contributing to the infringement by others the '979 Patent, and that such infringement was willful;

8. A permanent injunction, enjoining each Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from such infringement of the '979 Patent;

9. A judgment and order requiring each Defendant to pay Phoenix its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '979 Patent as provided under 35 U.S.C. §284;

10. An award to Phoenix of restitution of the benefits Defendants' have gained through their unfair, deceptive, or illegal acts;

11. An award to Phoenix for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendants' prohibited conduct with notice being made at least as early as the date of the filing of this Complaint, as provided under 35 U.S.C. § 284;

12. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Phoenix reasonable attorneys' fees and costs; and

13. A judgment and order for any and all other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues triable of right by a jury.

Dated: April 27, 2007

Respectfully submitted,

PHOENIX IP, LLC

By: /s/ Davd M. Pridham

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CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served today with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

Dated: April 27, 2007

/s/ David M. Pridham
David M. Pridham