

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

Visto Corporation d/b/a Good Technology,

Plaintiff,

v.

Civil Action No. 3:11-cv-02373-M

Excitor A/S, Little Red Wagon  
Technologies, Inc., (f/k/a LRW Digital,  
Inc. and LRW Digital Inc.) d/b/a LRW  
Technologies, Inc. and LRW Digital, Inc.,  
and Fixmo U.S., Inc.,

Defendants.

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT**

Plaintiff Visto Corporation, doing business as Good Technology (“Good”), files this First Amended Complaint against Defendants Excitor A/S (“Excitor”), Little Red Wagon Technologies, Inc., (f/k/a LRW Digital, Inc. and LRW Digital Inc.) d/b/a LRW Technologies, Inc. and LRW Digital, Inc. (“LRW”), and Fixmo U.S., Inc. (“Fixmo”).<sup>1</sup>

**PARTIES**

1. Plaintiff Good is a Delaware corporation with its principal place of business at 430 N. Mary Ave., Suite 200, Sunnyvale, CA 94085. Good has other offices, including one at 1505 LBJ Freeway, Suite 350, Farmers Branch, Texas 75234.

2. Defendant Excitor is a Danish corporation, with its principal place of business at Spotorno Allé 12, 2630 Taastrup, Denmark. Excitor is doing business and infringing Good’s

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<sup>1</sup> Excitor and LRW have consented to the filing of this First Amended Complaint for purposes of adding Fixmo as a defendant (*see* ECF No. 36 at 13) and Good therefore files this First Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(2), which allows a party to amend its pleading with the opposing parties’ written consent.

patents in Texas and elsewhere in the United States. Excitor's United States office is located at 5 Penn Plaza, 23rd Floor, New York, New York 10001.

3. Defendant LRW is a Maryland corporation, with its principal place of business at 1501 South Clinton Street, Baltimore, Maryland 21224. LRW is doing business and infringing Good's patents in Texas and elsewhere in the United States.

4. Defendant Fixmo is a Delaware corporation, with its principal place of business at 22375 Broderick Dr. Suite 227, Sterling, Virginia 20166. Fixmo is doing business and infringing Good's patents in Texas and elsewhere in the United States.

5. Excitor, LRW, and Fixmo are collectively referred to as "Defendants."

#### **JURISDICTION AND VENUE**

6. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 *et seq.* and 281-285, and for violations of the Lanham Act, United States Code, Title 15, 15 U.S.C. § 1125(a)(1). Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a). Jurisdiction for Good's state law claims for unfair competition and business disparagement against Excitor is conferred on this Court pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367(a).

7. Defendants are transacting and/or have transacted business within the State of Texas. Defendants, directly or through intermediaries, are committing and/or have committed acts of infringement in the State of Texas, including at the very least, developing, distributing, selling, offering for sale, advertising, using and/or supporting products or services that fall within one or more claims of Good's patents. Defendants are therefore subject to the personal jurisdiction of this Court.

8. Defendants, directly or through intermediaries, have committed acts of

infringement in this District, including at the very least, developing, distributing, selling, offering for sale, advertising, using and/or supporting products or services that fall within one or more claims of Good's patents. Accordingly, venue to adjudicate whether Good's patents are infringed is appropriate in the Northern District of Texas pursuant to 28 U.S.C. §§ 1391, 1400(b), and 1404(a).

9. For example, Excitor currently is marketing and selling its products, including its Dynamic Mobile Exchange ("DME") products, in Texas (including the Northern District) and elsewhere in the United States. As part of its United States marketing and sales efforts, Excitor maintains a sales office in New York, New York and has partnered with two sales agents in Austin, Texas, and Katy, Texas. Through these agents, Excitor develops, distributes, sells, offers for sale, advertises, uses and/or supports accused products and services in this State and in this District. Defendant Excitor also has commercial relationships with various national and international technology partners to promote, sell, offer for sale, and/or advertise Excitor accused products and services in this State and this District. Specifically, Excitor's DME product is available for purchase by customers in the State of Texas and the Northern District through the iPhone App Store.

10. Also for example, Defendant LRW has worked through or with a software development company headquartered in Dallas, Texas and through or with software developers located in Dallas, Texas to develop, use, and/or support accused products and services in this State and this District. Defendant LRW also has reached out to Dallas-based AT&T Corporation and/or one or more of its employees in Dallas, Texas, to promote, sell, offer for sale, use, market and/or advertise its accused products and services.

11. Also for example, Defendant Fixmo currently is marketing and selling its

products, including those products that infringe on Good's patents, in Texas (including the Northern District) and elsewhere in the United States. Fixmo develops, distributes, sells, offers for sale, advertises, uses and/or supports accused products and services in this State and in this District. Defendant Fixmo has commercial relationships with various entities in this State. Fixmo also markets and sells its products directly to customers in the State of Texas and the Northern District through its website [www.fixmo.com](http://www.fixmo.com).

12. Defendants also use websites to market accused products in Texas (including the Northern District), and enable users of their respective sites to inquire about (and receive) additional information and product support. LRW's website also allows residents of this State and this District to search for and apply for employment positions with LRW.

### **GENERAL ALLEGATIONS**

13. Good holds all right, title, and interest in and to United States Patent No. 6,023,708, entitled "System And Method For Using A Global Translator To Synchronize Workspace Elements Across A Network" ("708 Patent"), which was duly and legally issued by the United States Patent & Trademark Office ("USPTO") on February 8, 2000 in the name of Daniel J. Mendez, *et al.* A copy of the '708 Patent is attached as Exhibit A to this Complaint. A Reexamination Certificate for the '708 Patent was duly and legally issued by the USPTO on June 2, 2009. A copy of the Reexamination Certificate of the '708 Patent is attached as Exhibit B to this Complaint.

14. Good holds all right, title, and interest in and to United States Patent No. 6,085,192, entitled "System And Method For Securely Synchronizing Multiple Copies Of A Workspace Element In A Network" ("192 Patent"), which was duly and legally issued by the USPTO on July 4, 2000 in the name of Daniel J. Mendez et al. A copy of the '192 Patent is

attached as Exhibit C. A Reexamination Certificate for the '192 Patent was duly and legally issued by the USPTO on November 22, 2005. A copy of the Reexamination Certificate of the '192 Patent is attached as Exhibit D. A second Reexamination Certification for the '192 Patent was duly and legally issued by the USPTO on April 28, 2009. A copy of the second Reexamination Certificate of the '192 Patent is attached as Exhibit E.

15. Good holds all right, title, and interest in and to United States Patent No. 6,151,606, entitled "System And Method For Using A Workspace Data Manager to Access, Manipulate and Synchronize Network Data" ("606 Patent"), which was duly and legally issued by the USPTO on November 21, 2000 in the name of Daniel J. Mendez. A copy of the '606 Patent is attached as Exhibit F. A Reexamination Certificate for the '606 Patent was duly and legally issued by the USPTO on March 24, 2009. A copy of the Reexamination Certificate of the '606 Patent is attached as Exhibit G.

16. Good holds all right, title, and interest in and to United States Patent No. 6,708,221, entitled "System And Method For Globally And Securely Accessing Unified Information In A Computer Network" ("221 Patent"), which was duly and legally issued by the USPTO on March 16, 2004 in the name of Daniel J. Mendez et al. A copy of the '221 Patent is attached as Exhibit H. A Reexamination Certificate for the '221 Patent was duly and legally issued by the USPTO on June 30, 2009. A copy of the Reexamination Certificate of the '221 Patent is attached as Exhibit I.

17. Good holds all right, title, and interest in and to United States Patent No. 7,039,679, entitled "System And Method For Globally And Securely Accessing Unified Information In A Computer Network" ("679 Patent"), which was duly and legally issued by the USPTO on May 2, 2006 in the name of Daniel J. Mendez et al. A copy of the '679 Patent is

attached as Exhibit J. A Reexamination Certificate for the '679 Patent was duly and legally issued by the USPTO on March 24, 2009. A copy of the Reexamination Certificate of the '679 Patent is attached as Exhibit K.

**COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 6,023,708**

18. Good refers to and incorporates herein the allegations of Paragraphs 1-17 above.

19. Excitor makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for over-the-air synchronization of data with smartphones and/or other devices, including at least one or more versions of its DME software and/or similar products and/or services. In addition, Excitor provides these products and/or services to distributors, resellers, developers and/or users.

20. LRW makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for over-the-air synchronization of data with smartphone and/or other devices, including at least one or more versions of its Pinecone, Extensia, and/or similar products and/or services. In addition, LRW provides these products and/or services to distributors, resellers, developers and/or users.

21. Fixmo makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States products and/or services that allow for over-the-air synchronization of data with smartphone and/or other devices. Among such products is Fixmo's SafeZone product, which, upon information and belief, is a rebranding of LRW's Pinecone product and which Fixmo sells or offers to sell with its Sentinel and other products. In addition, Fixmo provides these products and/or services to distributors, resellers, developers and/or users. With respect to the SafeZone/Pinecone product, Good's right to relief is asserted against Fixmo

and LRW jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences.

22. Collectively, the products and/or services identified in paragraphs 19-21 above are referred to in this First Amended Complaint as the “’708 Accused Products.”

23. Defendants have been and are now directly infringing the ’708 Patent in this District and elsewhere by making, using, offering for sale, selling, importing, exporting, supplying and/or distributing within, to, and/or from the United States the ’708 Accused Products, in violation of 35 U.S.C § 271(a). Alternatively, Defendants have indirectly infringed one or more claims of the ’708 Patent by inducing such use of the claimed methods and systems by its end user customers using the ’708 Accused Products in violation of 35 U.S.C. § 271(b). Alternatively, Defendants have contributorily infringed one or more claims of the ’708 Patent by providing the ’708 Accused Products directly or by way of distributors and/or resellers to end users, who in turn combine the ’708 Accused Products, which have no substantial non-infringing uses, with available hardware and/or software to infringe one or more claims of the ’708 Patent in violation of 35 U.S.C. § 271(c). Alternatively, Defendants have supplied in or from the United States the ’708 Accused Products, which comprise all or a substantial portion of the components of the claims of the ’708 Patent, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, in violation of 35 U.S.C. § 271(f)(1). Alternatively, Defendants have supplied in or from the United States the ’708 Accused Products, uncombined in whole or in part, which products are especially made or especially adapted for use in practicing the claims of the ’708 Patent and are not staple articles or commodities of commerce suitable for substantial

noninfringing use, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, in violation of 35 U.S.C. § 271(f)(2).

24. Good has provided notice of the '708 Patent to Defendants.

25. Upon information and belief, Defendants had and have knowledge of the '708 Patent, Defendants have been and are aware of their infringement, and Defendants' infringement has been and continues to be willful.

26. Good has been irreparably harmed by Defendants' acts of infringement of the '708 Patent, and will continue to be harmed unless and until Defendants' acts of infringement are enjoined and restrained by order of this Court. Good has no adequate remedy at law to redress Defendants' continuing acts of infringement. The hardships that would be imposed upon Defendants by an injunction are less than those faced by Good should an injunction not issue. Furthermore, the public interest would be served by issuance of an injunction.

27. As a result of Defendants' acts of infringement, Good has suffered and will continue to suffer damages in an amount to be proved at trial.

**COUNT 2: INFRINGEMENT OF U.S. PATENT NO. 6,085,192**

28. Good refers to and incorporates herein the allegations of Paragraphs 1-27 above.

29. Excitor makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for over-the-air synchronization of data with smartphones and/or other devices, including at least one or more versions of its DME software and/or similar products and/or services. In addition, Excitor provides these products and/or services to distributors, resellers, developers and/or users.



30. LRW makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for over-the-air synchronization of data with smartphone and/or other devices, including at least one or more versions of its Pinecone, Extensia, and/or similar products and/or services. In addition, LRW provides these products and/or services to distributors, resellers, developers and/or users.

31. Fixmo makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States products and/or services that allow for over-the-air synchronization of data with smartphone and/or other devices. Among such products is Fixmo's SafeZone product, which, upon information and belief, is a rebranding of LRW's Pinecone product and which Fixmo sells or offers to sell with its Sentinel and other products. In addition, Fixmo provides these products and/or services to distributors, resellers, developers and/or users. With respect to the SafeZone/Pinecone product, Good's right to relief is asserted against Fixmo and LRW jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences.

32. Collectively, the products and/or services identified in paragraphs 29-31 above are referred to in this Complaint as the "'192 Accused Products."

33. Defendants have been and are now directly infringing the '192 Patent in this District and elsewhere by making, using, offering for sale, selling, importing, exporting, supplying and/or distributing within, to, and/or from the United States the '192 Accused Products, in violation of 35 U.S.C. § 271(a). Alternatively, Defendants have indirectly infringed one or more claims of the '192 Patent by inducing such use of the claimed methods and systems by its end user customers using the '192 Accused Products in violation of 35 U.S.C. § 271(b). Alternatively, Defendants have contributorily infringed one or more claims of the '192 Patent by

providing the '192 Accused Products directly or by way of distributors and/or resellers to end users, who in turn combine the '192 Accused Products, which have no substantial non-infringing uses, with available hardware and/or software to infringe one or more claims of the '192 Patent in violation of 35 U.S.C. § 271(c). Alternatively, Defendants have supplied in or from the United States the '192 Accused Products, which comprise all or a substantial portion of the components of the claims of the '192 Patent, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, in violation of 35 U.S.C. § 271(f)(1). Alternatively, Defendants have supplied in or from the United States the '192 Accused Products, uncombined in whole or in part, which products are especially made or especially adapted for use in practicing the claims of the '192 Patent and are not staple articles or commodities of commerce suitable for substantial noninfringing use, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, in violation of 35 U.S.C. § 271(f)(2).

34. Good has provided notice of the '192 Patent to Defendants.

35. Upon information and belief, Defendants had and have knowledge of the '192 Patent, Defendants have been and are aware of their infringement, and Defendants' infringement has been and continues to be willful.

36. Good has been irreparably harmed by Defendants' acts of infringement of the '192 Patent, and will continue to be harmed unless and until Defendants' acts of infringement are enjoined and restrained by order of this Court. Good has no adequate remedy at law to redress

Defendants' continuing acts of infringement. The hardships that would be imposed upon Defendants by an injunction are less than those faced by Good should an injunction not issue. Furthermore, the public interest would be served by issuance of an injunction.

37. As a result of Defendants' acts of infringement, Good has suffered and will continue to suffer damages in an amount to be proved at trial.

**COUNT 3: INFRINGEMENT OF U.S. PATENT NO. 6,151,606**

38. Good refers to and incorporates herein the allegations of Paragraphs 1-37 above.

39. Excitor makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for the remote disabling and/or wiping of information from smartphones and/or other devices, including at least one or more versions of DME software, and/or similar products and/or services. In addition, Excitor provides these products and/or services to distributors, resellers, developers and/or users.

40. LRW makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for the remote disabling and/or wiping of information from smartphone and/or other devices, including at least one or more versions of its Pinecone, Extensia, RemoteKill, RemoteLock, and/or similar products and/or services. In addition, LRW provides these products and/or services to distributors, resellers, developers and/or users.

41. Fixmo makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States products and/or services that allow for over-the-air synchronization of data with smartphone and/or other devices. Among such products is Fixmo's SafeZone product, which, upon information and belief, is a rebranding of LRW's Pinecone product and which Fixmo sells or offers to sell with its Sentinel and other products. In addition,

Fixmo provides these products and/or services to distributors, resellers, developers and/or users. With respect to the SafeZone/Pinecone product, Good's right to relief is asserted against Fixmo and LRW jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences.

42. Collectively, the products and/or services identified in paragraphs 39-41 above are referred to in this Complaint as the "'606 Accused Products."

43. Defendants have been and are now directly infringing the '606 Patent in this District and elsewhere by making, using, offering for sale, selling, importing, exporting, supplying and/or distributing within, to, and/or from the United States the '606 Accused Products, in violation of 35 U.S.C. § 271(a). Alternatively, Defendants have indirectly infringed one or more claims of the '606 Patent by inducing such use of the claimed methods and systems by its end user customers using the '606 Accused Products in violation of 35 U.S.C. § 271(b). Alternatively, Defendants have contributorily infringed one or more claims of the '606 Patent by providing the '606 Accused Products directly or by way of distributors and/or resellers to end users, who in turn combine the '606 Accused Products, which have no substantial non-infringing uses, with available hardware and/or software to infringe one or more claims of the '606 Patent in violation of 35 U.S.C. § 271(c). Alternatively, Defendants have supplied in or from the United States the '606 Accused Products, which comprise all or a substantial portion of the components of the claims of the '606 Patent, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, in violation of 35 U.S.C. § 271(f)(1). Alternatively, Defendants have supplied in or from the United States the '606 Accused Products, uncombined in whole or in part, which

products are especially made or especially adapted for use in practicing the claims of the '606 Patent and are not staple articles or commodities of commerce suitable for substantial noninfringing use, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, in violation of 35 U.S.C. § 271(f)(2).

44. Good has provided notice of the '606 Patent to Defendants.

45. Upon information and belief, Defendants had and have knowledge of the '606 Patent, Defendants have been and are aware of their infringement, and Defendants' infringement has been and continues to be willful.

46. Good has been irreparably harmed by Defendants' acts of infringement of the '606 Patent, and will continue to be harmed unless and until Defendants' acts of infringement are enjoined and restrained by order of this Court. Good has no adequate remedy at law to redress Defendants' continuing acts of infringement. The hardships that would be imposed upon Defendants by an injunction are less than those faced by Good should an injunction not issue. Furthermore, the public interest would be served by issuance of an injunction.

47. As a result of Defendants' acts of infringement, Good has suffered and will continue to suffer damages in an amount to be proved at trial.

**COUNT 4: INFRINGEMENT OF U.S. PATENT NO. 6,708,221**

48. Good refers to and incorporates herein the allegations of Paragraphs 1-47 above.

49. Excitor makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for over-the-air synchronization of data with smartphones and/or other devices, including at least one or more

versions of its DME software and/or similar products and/or services. In addition, Excitor provides these products and/or services to distributors, resellers, developers and/or users.

50. LRW makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for over-the-air synchronization of data with smartphone and/or other devices, including at least one or more versions of its Pinecone, Extensia, and/or similar products and/or services. In addition, LRW provides these products and/or services to distributors, resellers, developers and/or users.

51. Fixmo makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States products and/or services that allow for over-the-air synchronization of data with smartphone and/or other devices. Among such products is Fixmo's SafeZone product, which, upon information and belief, is a rebranding of LRW's Pinecone product and which Fixmo sells or offers to sell with its Sentinel and other products. In addition, Fixmo provides these products and/or services to distributors, resellers, developers and/or users. With respect to the SafeZone/Pinecone product, Good's right to relief is asserted against Fixmo and LRW jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences.

52. Collectively, the products and/or services identified in paragraphs 49-51 above are referred to in this Complaint as the "'221 Accused Products."

53. Defendants have been and are now directly infringing the '221 Patent in this District and elsewhere by making, using, offering for sale, selling, importing, exporting, supplying and/or distributing within, to, and/or from the United States the '221 Accused Products, in violation of 35 U.S.C. § 271(a). Alternatively, Defendants have indirectly infringed one or more claims of the '221 Patent by inducing such use of the claimed methods and systems

by its end user customers using the '221 Accused Products in violation of 35 U.S.C. § 271(b). Alternatively, Defendants have contributorily infringed one or more claims of the '221 Patent by providing the '221 Accused Products directly or by way of distributors and/or resellers to end users, who in turn combine the '221 Accused Products, which have no substantial non-infringing uses, with available hardware and/or software to infringe one or more claims of the '221 Patent in violation of 35 U.S.C. § 271(c). Alternatively, Defendants have supplied in or from the United States the '221 Accused Products, which comprise all or a substantial portion of the components of the claims of the '221 Patent, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, in violation of 35 U.S.C. § 271(f)(1). Alternatively, Defendants have supplied in or from the United States the '221 Accused Products, uncombined in whole or in part, which products are especially made or especially adapted for use in practicing the claims of the '221 Patent and are not staple articles or commodities of commerce suitable for substantial noninfringing use, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, in violation of 35 U.S.C. § 271(f)(2).

54. Good has provided notice of the '221 Patent to Defendants.

55. Upon information and belief, Defendants had and have knowledge of the '221 Patent, Defendants have been and are aware of their infringement, and Defendants' infringement has been and continues to be willful.

56. Good has been irreparably harmed by Defendants' acts of infringement of the '221 Patent, and will continue to be harmed unless and until Defendants' acts of infringement are enjoined and restrained by order of this Court. Good has no adequate remedy at law to redress Defendants' continuing acts of infringement. The hardships that would be imposed upon Defendants by an injunction are less than those faced by Good should an injunction not issue. Furthermore, the public interest would be served by issuance of an injunction.

57. As a result of Defendants' acts of infringement, Good has suffered and will continue to suffer damages in an amount to be proved at trial.

**COUNT 5: INFRINGEMENT OF U.S. PATENT NO. 7,039,679**

58. Good refers to and incorporates herein the allegations of Paragraphs 1-57 above.

59. Excitor makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for over-the-air synchronization of e-mail with smartphones and/or other devices, including at least one or more versions of its DME software and/or similar products and/or services. In addition, Excitor provides these products and/or services to distributors, resellers, developers and/or users.

60. LRW makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States, products and/or services that allow for over-the-air synchronization of e-mail with smartphone and/or other devices, including at least one or more versions of its Pinecone, Extensia, and/or similar products and/or services. In addition, LRW provides these products and/or services to distributors, resellers, developers and/or users.

61. Fixmo makes, uses, sells, offers for sale, exports, supplies, and/or distributes within and from the United States products and/or services that allow for over-the-air synchronization of data with smartphone and/or other devices. Among such products is Fixmo's



SafeZone product, which, upon information and belief, is a rebranding of LRW's Pinecone product and which Fixmo sells or offers to sell with its Sentinel and other products. In addition, Fixmo provides these products and/or services to distributors, resellers, developers and/or users. With respect to the SafeZone/Pinecone product, Good's right to relief is asserted against Fixmo and LRW jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences.

62. Collectively, the products and/or services identified in paragraphs 59-61 above are referred to in this Complaint as the "'679 Accused Products."

63. Defendants have been and are now directly infringing the '679 Patent in this District and elsewhere by making, using, offering for sale, selling, importing, exporting, supplying and/or distributing within, to, and/or from the United States the '679 Accused Products, in violation of 35 U.S.C. § 271(a). Alternatively, Defendants have indirectly infringed one or more claims of the '679 Patent by inducing such use of the claimed methods and systems by its end user customers using the '679 Accused Products in violation of 35 U.S.C. § 271(b). Alternatively, Defendants have contributorily infringed one or more claims of the '679 Patent by providing the '679 Accused Products directly or by way of distributors and/or resellers to end users, who in turn combine the '679 Accused Products, which have no substantial non-infringing uses, with available hardware and/or software to infringe one or more claims of the '679 Patent in violation of 35 U.S.C. § 271(c). Alternatively, Defendants have supplied in or from the United States the '679 Accused Products, which comprise all or a substantial portion of the components of the claims of the '679 Patent, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within

the United States, in violation of 35 U.S.C. § 271(f)(1). Alternatively, Defendants have supplied in or from the United States the '679 Accused Products, uncombined in whole or in part, which products are especially made or especially adapted for use in practicing the claims of the '679 Patent and are not staple articles or commodities of commerce suitable for substantial noninfringing use, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, in violation of 35 U.S.C. § 271(f)(2).

64. Good has provided notice of the '679 Patent to Defendants.

65. Upon information and belief, Defendants had and have knowledge of the '679 Patent, Defendants have been and are aware of their infringement, and Defendants' infringement has been and continues to be willful.

66. Good has been irreparably harmed by Defendants' acts of infringement of the '679 Patent, and will continue to be harmed unless and until Defendants' acts of infringement are enjoined and restrained by order of this Court. Good has no adequate remedy at law to redress Defendants' continuing acts of infringement. The hardships that would be imposed upon Defendants by an injunction are less than those faced by Good should an injunction not issue. Furthermore, the public interest would be served by issuance of an injunction.

67. As a result of Defendants' acts of infringement, Good has suffered and will continue to suffer damages in an amount to be proved at trial.

**COUNT 6: VIOLATION OF THE LANHAM ACT § 43(a)(1) BY EXCITOR**

68. Good refers to and incorporates herein the allegations of Paragraphs 1-67 above.

69. In addition to the above-described patent infringement, Excitor is publishing and distributing marketing materials (the “Marketing Materials”) that purport to be a side-by-side comparison of Excitor’s DME products and Good’s “Mobile Device Management” products (the “Good Products”).

70. Excitor’s Marketing Materials contain false and misleading descriptions and representations of fact concerning the Good Products. By way of example only, Excitor’s Marketing Materials falsely contend that:

- a. The Good Products do not support iOS and Android for HTML email, when in fact the Good Products do support these operating systems;
- b. The Good Products do not support Windows Mobile, Symbian 9, and Android, when in fact the Good Products do support these platforms;
- c. The Good Products do not support secure access to network documents, when in fact the Good Products do support such access on various platforms;
- d. The Good Products do not support secure browser access to corporate intranet, when in fact the Good Products do support such access on various platforms; and
- e. The Good Products do not support SMIME/ Domino Encrypted Email, when in fact the Good Products do support such feature on various platforms.

71. In a July 31, 2011 letter, Good demanded that Excitor immediately discontinue publishing the misleading Marketing Materials.

72. Excitor never responded to Good's letter. Instead, on August 9, 2011, Excitor filed a lawsuit in the United States District Court for the Southern District of New York seeking a declaration that it does not infringe Good's patents (the "New York Action"). Excitor's Complaint filed in the New York Action does not mention the misleading statements in its Marketing Materials.

73. Excitor's Marketing Materials misrepresent the nature, characteristics, and/or qualities of the Good Products and disparage Good's business.

74. Good is informed and believes, and on that basis alleges, that Excitor is using the Marketing Materials as part of its global marketing effort, including, without limitation, its marketing effort focused on sales throughout the United States.

75. Excitor's Marketing Materials are intended, and have a tendency, to deceive the purchasing public. The false and misleading information contained in the Marketing Materials is likely to create confusion and influence the buying decisions of the purchasing public.

76. As a direct and proximate result of Excitor's use of the Marketing Materials, Good has suffered, and continues to suffer, damages in an amount to be determined at trial.

77. Good has suffered, and continues to suffer, irreparable injury from Excitor's conduct, and due to the continuing threat of such injury, has no adequate remedy at law. Good is entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a).

**COUNT 7: UNFAIR COMPETITION UNDER TEXAS LAW BY EXCITOR**

78. Good refers to and incorporates herein the allegations of Paragraphs 1-77 above.

79. Excitor's use of the Marketing Materials constitutes unfair competition, namely, the Marketing Materials contain false and misleading information about the Good Products.

80. Excitor's conduct exceeds the bounds of fairness and commercial morality. Excitor is using false and misleading descriptions and representations of fact concerning the Good Products to induce the purchasing public to favor its DME products over the Good Products.

81. As a direct and proximate result of Excitor's use of the Marketing Materials, Good has suffered, and continues to suffer, damages in an amount to be determined at trial.

82. Good has suffered, and continues to suffer, irreparable injury from Excitor's conduct, and due to the continuing threat of such injury, has no adequate remedy at law. Accordingly, Good is entitled to injunctive relief.

**COUNT 8: BUSINESS DISPARAGEMENT UNDER TEXAS LAW BY EXCITOR**

83. Good refers to and incorporates herein the allegations of Paragraphs 1-82 above.

84. Excitor is publishing and distributing the Marketing Materials, which contain false and misleading descriptions and representations of fact about Good and the Good Products.

85. The false statements contained in Excitor's Marketing Materials misrepresent and disparage the Good Products and Good's business.

86. Good is informed and believes, and on that basis alleges, that Excitor knew that the information about the Good Products contained in the Marketing Materials was false when made, or acted with a reckless disregard for the truth. Good is informed and believes, and on that basis alleges, that Excitor continues to publish and distribute the Marketing Materials despite the fact that Good informed Excitor of the falsity of the information about the Good Products.

87. Excitor's Marketing Materials are intended, and have a tendency, to deceive the purchasing public in an effort to induce the purchasing public to favor Excitor's DME products over the Good Products.

88. As a direct and proximate result of Excitor's use of the Marketing Materials, Good has suffered, and continues to suffer, damages, including but not limited to lost sales, in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Good requests the following relief:

A. That Defendants and their parents, affiliates, subsidiaries, officers, agents, servants, employees, attorneys, successors, and assigns, and all those persons in active concert or participation with them, or any of them, be enjoined from making, using, importing, exporting, distributing, supplying, offering for sale, selling, or causing to be sold any product or service falling within the scope of any claim of the '708, '192, '606, '221 and '679 Patents, or otherwise infringing or contributing to or inducing infringement of any claim thereof;

B. A finding that Defendants have infringed the '708, '192, '606, '221 and '679 Patents;

C. That Good be awarded its actual damages;

D. That Good be awarded pre-judgment interest and post-judgment interest at the maximum rate allowed by law, including an award of prejudgment interest, pursuant to 35 U.S.C. § 284, from the date of each act of infringement of the '708, '192, '606, '221 and '679 Patents by Defendants to the day a damages judgment is entered, and a further award of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid, at the maximum rate allowed by law;

E. That the Court order an accounting for damages through judgment and post-judgment until Defendants are permanently enjoined from further infringing activities;

F. That the Court declare this to be an exceptional case pursuant to 35 U.S.C. § 285 and requiring Defendants to pay the costs of this action (including all disbursements) and attorney's fees as provided by 35 U.S.C. § 285;

G. That the Court award enhanced damages pursuant to 35 U.S.C. § 284;

H. That the Court award supplemental damages for any continuing post-verdict infringement up until Defendants are permanently enjoined from further infringing activities;

I. That the Court award a compulsory future royalty in the event an injunction is not awarded;

J. That the Court direct Excitor to destroy all copies of the Marketing Materials in its possession, custody, or control;

K. That the Court issue a preliminary and permanent injunction restraining Excitor from publishing, selling, distributing, marketing, or using the Marketing Materials;

L. That the Court require disgorgement of Excitor's profits;

M. That the Court require Excitor to pay treble damages in a sum to be proven at trial based on its violation of the Lanham Act;

N. That the Court require Excitor to pay interest on such damages at the legal rate;

O. That Excitor pay Good's reasonable attorney's fees and costs; and

P. That Good be awarded such other and further relief as the Court deems just and proper.

**DEMAND FOR A JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Good demands a trial by jury on all issues triable of right by a jury.



DATED: January 18, 2012

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically pursuant to LR 5.1(d) on January 18, 2012. As such, this document was served on each party who is a registered user of ECF.

/s/ Steven Callahan  
Steven Callahan