

ORIGINAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FILED
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U.S. COURT OF
FEDERAL CLAIMS

CELLCAST TECHNOLOGIES, LLC and
ENVISIONIT, LLC,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 15-1307 C

COMPLAINT

Plaintiffs CellCast Technologies, LLC (“CellCast”) and EnvisionIT, LLC (“EnvisionIT”) (collectively, CellCast and EnvisionIT referred to as “Plaintiffs”) by their undersigned attorney, bring this action against Defendant United States of America, and for their complaint allege as follows:

NATURE OF ACTION

1. This is an action to recover reasonable and entire compensation for the unlicensed use and manufacture by and for the United States of inventions described in and covered by U.S. patents 7,693,938; 8,103,719; 8,438,221; 8,438,212; and 9,136,954.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1491(a) and 1498(a).

PARTIES

3. Plaintiff CellCast is a limited liability company organized and existing pursuant to the laws of Delaware.

4. Plaintiff EnvisionIT limited liability company organized and existing pursuant to the laws of Delaware.

5. Defendant is the United States of America (“United States”), based upon the actions of its departments and agencies including but not limited to the Federal Emergency

Management Agency (“FEMA”); the United States Department of Homeland Security (“DHS”); and the National Oceanic and Atmospheric Administration (“NOAA”).

ASSERTED PATENTS

6. From time to time, governmental agencies need to notify members of the public of emergencies and other events. The goal is to provide trusted alerts to the members of the public in the affected geographic area quickly and efficiently. Governmental agencies have used various channels for alerts, such as television and radio. But dramatic increases in the availability and functionality of cellular telephones, including for telephone calls, access to the internet, access to online television and radio, and text messaging, have changed how these alerts can best be communicated. Indeed, the average member of the public is more likely to have his or her cellular phone nearby and in operation than to be watching television or listening to a radio.

7. In addition, in an emergency, it is desirable to deliver textual messages to members of the public in the geographic area that may be affected by the emergency. One benefit of textual messages is that they can be read more than once. However, traditional Short Message Service (“SMS”) text messaging has a significant limitation. SMS text messaging involves a two-way communication between a cellular network and each message recipient. Each communication utilizes critical bandwidth and other resources. The more recipients, the greater the burden on the cellular network’s resources. If the SMS demand on a network is too great, the cellular network can become overloaded, and it can even crash as a result. A network overload in the case of an emergency further impedes communications and exacerbates the situation.

8. Often, emergencies are localized (for example, a tornado headed for a specific zip code). Other times they are broader in scope—such as national emergencies concerning acts of terror. Regardless of scope, the inventors at EnvisionIT recognized two things. First, messages concerning emergencies should be delivered to those who may be impacted by those emergencies and should not be over-distributed or under-distributed—that is, that the messages

should be “geo-targeted.” Second, recognizing that traditional SMS messaging faced the limitations described above, the inventors knew that a much more efficient manner of emergency messaging could be accomplished through one-way “broadcast” messaging to the proper recipients. As a result, the inventors developed a novel solution to provide authorized, geo-targeted emergency alerts to users, whether over traditional media, cell phones, or other emerging media such as IP broadcast. In the United States, tens of thousands of emergency message originators in town, city, county, state and Federal agencies may be authorized to create and send emergency messages to their respective geo-political jurisdictions. In most cases, these messages are time sensitive. They must be delivered to the relevant public as quickly as possible to minimize the loss of life and property.

9. At the heart of the system is the processing technology necessary to both validate senders and their authority to geo-target messages to specific areas as well as to package and route those messages to the proper networks for ultimate delivery to the geo-targeted recipients. The inventors also developed the technology necessary to enable multiple alert originators (such as emergency management organizations from different governmental entities) to request the delivery of particular alerts, and they invented technology to verify, centralize, aggregate, and deliver geo-targeted broadcast messages.

10. After applying for the initial patent on their geo-targeted messaging system, the inventors assigned their full rights and interests in the patented invention to EnvisionIT.

11. EnvisionIT disclosed and claimed these and other inventions in a series of patent applications resulting in the issuance of nine United States patents and various other patents worldwide already. EnvisionIT also has additional patent applications pending. The United States has, without license, used or manufactured products and services covered by at least the following five U.S. patents: 7,693,938; 8,103,719; 8,438,221; 8,438,212; and 9,136,954 (collectively, the “Asserted Patents”).

12. On April 6, 2010, the U.S. Patent and Trademark Office duly and lawfully issued U.S. Patent number 7,693,938 (“the ’938 patent”) entitled “Message broadcasting admission

control system and method.” A true and correct copy of the ’938 patent is attached as Exhibit A.

13. On January 24, 2012, the U.S. Patent and Trademark Office duly and lawfully issued U.S. Patent number 8,103,719 (“the ’719 patent”) entitled “Message broadcasting control system and method.” A true and correct copy of the ’719 patent is attached as Exhibit B.

14. On May 7, 2013, the U.S. Patent and Trademark Office duly and lawfully issued U.S. Patent number 8,438,221 (“the ’221 patent”) entitled “Broadcast alerting message aggregator/gateway system and method.” A true and correct copy of the ’221 patent is attached as Exhibit C.

15. On May 7, 2013, the U.S. Patent and Trademark Office duly and lawfully issued U.S. Patent number 8,438,212 (“the ’212 patent”) entitled “Message broadcasting control system and method.” A true and correct copy of the ’212 patent is attached as Exhibit D.

16. On September 15, 2015, the U.S. Patent and Trademark Office duly and lawfully issued U.S. Patent number 9,136,954 (“the ’954 patent”) entitled “Broadcast alerting message aggregator/gateway system and method.” A true and correct copy of the ’954 patent is attached as Exhibit E.

17. Each of the Asserted Patents is a valid and enforceable United States Patent, issued after a full and fair examination.

18. EnvisionIT is the assignee of the entire right, title, and interest in and to each of the Asserted Patents.

19. CellCast holds an exclusive license to each of the Asserted Patents, with the right to sublicense them.

SUMMARY OF GROUNDS FOR RELIEF

20. After years of working with and giving presentations to FEMA and DHS regarding their geo-targeted messaging system, the CellCast Aggregator/Gateway (“CAG”), the Plaintiffs began to suffer substantial financial harm when FEMA and DHS launched the Integrated Public Alert Warning System (“IPAWS”) to deliver emergency messages throughout the United States. IPAWS utilizes the inventions claimed in the Asserted Patents. Because the

United States has not compensated Plaintiffs for a license to the Asserted Patents, such as a lump sum license, for example, Plaintiffs have suffered and will continue to suffer substantial financial harm.

21. Moreover, after working side by side with CellCast and soliciting numerous presentations and other information from CellCast, the United States took Plaintiffs' technology when it built IPAWS, despite CellCast's significant investment of time and money to innovate the technology and to create an innovative, patented system for delivering emergency alerts. FEMA knew of both CellCast's investments and its patents, but FEMA acted without regard for that knowledge. Two examples demonstrate FEMA's knowledge and taking: (a) numerous meetings between FEMA and CellCast predated FEMA's purported development of IPAWS, and (b) DHS issued requests for information related to its broadcast alert system in 2008 and 2009, to which CellCast responded and gave notice of its intellectual property rights in the system described by the RFIs.

22. The United States' unlicensed manufacture or use of inventions disclosed and claimed in CellCast's patents entitles CellCast to reasonable and entire compensation for the unlicensed use and manufacture by and for the United States.

KNOWLEDGE OF THE PATENTS-IN-SUIT BY THE UNITED STATES

CellCast gave the United States notice of the Asserted Patents.

23. From at least 2006 through 2014, CellCast representatives consistently and unambiguously informed FEMA officials of the Asserted Patents during their numerous presentations to and meetings with FEMA representatives.

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