

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

_____	)	
CELLCAST TECHNOLOGIES, LLC	)	
	)	
and	)	
	)	
ENVISIONIT, LLC	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 15-1307
	)	
THE UNITED STATES,	)	Judge Victor J. Wolski
	)	
Defendant,	)	
	)	
and	)	
	)	
INTERNATIONAL BUSINESS MACHINES	)	
CORP.,	)	
	)	
Third-Party Defendant	)	
_____	)	

**ANSWER OF INTERNATIONAL BUSINESS MACHINES CORPORATION**

Pursuant to Rule 14(c) of the Rules of the United States Court of Federal Claims, and the Court’s Notice to Interested Third Party dated April 5, 2016, International Business Machines Corporation (“IBM”), by and through its attorneys, hereby answers Plaintiffs CellCast Technologies, LLC’s (“CellCast’s”) and EnvisionIT, LLC’s (“EnvisionIT’s”) (collectively “Plaintiffs”) Complaint. IBM has an interest in this case for at least the reasons specified in the United States’ Unopposed Motion to Notice Third Parties, filed March 4, 2016 [D.I. 10]. Except as expressly admitted herein, IBM denies each allegation in the Complaint.

**NATURE OF ACTION**

1. IBM admits that the Complaint alleges an action to recover reasonable and entire compensation for the allegedly unlicensed use and manufacture by and for the United States of alleged inventions described in and covered by U.S. Patent Nos. 7,693,938 (“the ’938 patent”),

8,103,719 (“the ’719 patent”), 8,438,221 (“the ’221 patent”), 8,438,212 (“the ’212 patent”) and 9,136,954 (“the ’954 patent”) (collectively, “the patents-in-suit”), but otherwise denies the allegations of Paragraph 1.

### **JURISDICTION**

2. IBM admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1498(a). IBM denies that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1491(a).

### **PARTIES**

3. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3 of the Complaint and therefore denies them.

4. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 4 of the Complaint and therefore denies them.

5. IBM admits that the Complaint identifies the United States as the Defendant. IBM lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 5 of the Complaint and therefore denies them.

### **ASSERTED PATENTS**

6. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6 of the Complaint and therefore denies them.

7. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 7 of the Complaint and therefore denies them.

8. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8 of the Complaint and therefore denies them.

9. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 9 of the Complaint and therefore denies them.

10. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10 of the Complaint and therefore denies them.

11. IBM admits that EnvisionIT is listed on the face of the patents-in-suit as the named assignee. Based on information and belief, IBM further admits that EnvisionIT is the named assignee for additional pending U.S. patent applications related to the patents-in-suit. IBM lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 11 of the Complaint and therefore denies them.

12. IBM admits that the United States Patent and Trademark Office issued the '938 patent on April 6, 2010, and that the '938 patent is entitled "Message Broadcasting Admission Control System and Method." IBM admits that a copy of the '938 patent is attached to the Complaint as Exhibit A. To the extent that there are any remaining allegations, IBM denies the same.

13. IBM admits that the United States Patent and Trademark Office issued the '719 patent on January 24, 2012, and that the '719 patent is entitled "Message Broadcasting Control System and Method." IBM admits that a copy of the '719 patent is attached to the Complaint as Exhibit B. To the extent that there are any remaining allegations, IBM denies the same.

14. IBM admits that the United States Patent and Trademark Office issued the '221 patent on May 7, 2013, and that the '221 patent is entitled "Broadcast Alerting Message Aggregator/Gateway System and Method." IBM admits that a copy of the '221 patent is attached to the Complaint as Exhibit C. To the extent that there are any remaining allegations, IBM denies the same.

15. IBM admits that the United States Patent and Trademark Office issued the '212 patent on May 7, 2013, and that the '212 patent is entitled "Message Broadcasting Control System and Method." IBM admits that a copy of the '212 patent is attached to the Complaint as Exhibit D. To the extent that there are any remaining allegations, IBM denies the same.

16. IBM admits that the United States Patent and Trademark Office issued the '954 patent on September 15, 2015, and that the '954 patent is entitled "Broadcast Alerting Message Aggregator/Gateway System and Method." IBM admits that a copy of the '954 patent is attached to the Complaint as Exhibit E. To the extent that there are any remaining allegations, IBM denies the same.

17. Denied.

18. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 18 of the Complaint and therefore denies them.

19. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 19 of the Complaint and therefore denies them.

**SUMMARY OF GROUNDS FOR RELIEF**

20. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 of the Complaint and therefore denies them.

21. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21 of the Complaint and therefore denies them.

22. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 22 of the Complaint and therefore denies them.

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

23. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 23 of the Complaint and therefore denies them.

**FACTUAL ALLEGATIONS**

24. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 24 of the Complaint and therefore denies them.

25. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 25 of the Complaint and therefore denies them.

26. IBM lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 26 of the Complaint and therefore denies them.

27. IBM admits that it worked with FEMA to develop aspects of the Integrated Public Alert Warning System (“IPAWS”). To the extent that there are any remaining allegations, IBM denies the same.

28. IBM admits that the Warning, Alert, and Response Network Act (“WARN Act”) was enacted in 2006. IBM otherwise lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 28 of the Complaint and therefore denies them.

29. IBM admits that President George W. Bush signed Executive Order 13407, which states that “[i]t is the policy of the United States to have an effective, reliable, integrated, flexible, and comprehensive system to alert and warn the American people in situations of war, terrorist attack, natural disaster, or other hazards to public safety and well-being (public alert and warning system) . . . .” IBM further admits that the Order States that the Secretary of Homeland Security shall, *inter alia*:

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