

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**STEVEN L. ZIMMERS AND
DANIEL W. DAVIS,**

PLAINTIFFS

V.

**EATON CORPORATION AND
COOPER NOTIFICATION, INC.,**

DEFENDANTS.

[illegible]

CASE NO. 2:15-CV-2398

JUDGE _____

COMPLAINT FOR PATENT INFRINGEMENT

JURY DEMAND REQUESTED

Plaintiffs Steven L. Zimmers (“Zimmers”) and Daniel W. Davis (“Davis”) (collectively “Plaintiffs”), by their attorneys and for their complaint against Defendants Eaton Corporation (“Eaton”) and Cooper Notification, Inc. (“Cooper”) (collectively “Defendants”), allege as follows:

1. Plaintiff Steven L. Zimmers is an individual residing at 710 Clinton Springs Avenue, Cincinnati, OH 45229.
2. Plaintiff Daniel W. Davis is an individual residing at 114 Alafia Estates, Plant City, FL 33567.
3. Upon information and belief, Defendant Eaton Corporation is a corporation organized under the laws of the State of Ohio, having a principal place of business located at 1000 Eaton Boulevard, Cleveland, Ohio 44122.

4. Upon information and belief, Defendant Cooper Notification, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having a principal place of business located at 7565 Commerce Court, Sarasota, Florida 34243. Upon information and belief, Cooper is a wholly-owned subsidiary of Eaton and Eaton controls the activities of Cooper.

5. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 100 *et seq.* This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

7. Plaintiffs are the named inventors and the sole owners of U.S. Patent No. 9,015,256 entitled "ALERT NOTIFICATION SYSTEM" (the "'256 Patent") and U.S. Patent No. RE44535 also entitled "ALERT NOTIFICATION SYSTEM" (the "'535 Patent"). Copies of the '256 and '535 Patents are attached as Exhibits A and B, respectively.

8. The '256 and '535 Patents contain the identical disclosure and priority filing date as U.S. Patent No. 6,816,878 entitled "ALERT NOTIFICATION SYSTEM" (the "'878 Patent"), filed on February 11, 2000. Plaintiffs are the named inventors of the '878 Patent, but they do not assert that Defendants are infringing the '878 Patent. These patented systems relate to providing emergency notification to multiple persons and/or geographic regions needing to be notified of pending emergencies or disasters such as a terrorist attack or severe weather incident.

9. Upon information and belief, Defendants provide alert notification system hardware components and alert notification turn-key services through the use of devices which include Defendants system components and related services.

10. The Defendants' systems and components are offered commercially under various names including the Eaton Alert communication system, Eaton ALERiTY, Roam Secure Alert Network (RSAN), Roam Secure Information eXchange (RSIX), Cooper Alert notification system, and Eaton's Cooper Mass Notification Systems (MNS) for RSAN and RSIX (collectively referred to as the "Accused Products and Services"). According to their websites, Defendants claim that the Accused Products and Services are compatible with other Eaton/Cooper systems such as the WAVES Wide-Area MNS, and the SAFEPATH in-building Voice Evacuation System, as well as Computer-Aided Dispatch (CAD) systems, Incident Management Systems (IMS), National Weather Service alerts and other notification systems.

11. Upon information and belief, the Accused Products and Services are available for sale on Defendants' websites and through various retailers located in this district and throughout the United States. Defendants have customers who are residents of the State of Ohio and the Southern District of Ohio and who use the Accused Products and Services in the State of Ohio and in the Southern District of Ohio.

12. On information and belief, Cooper is the owner of U.S. Patent No. 7,409,428 (the "'428 patent") entitled "SYSTEMS AND METHODS FOR MESSAGING TO MULTIPLE GATEWAYS". The application for the '428 patent was filed on April 22, 2004 – more than four years after the February 11, 2000 priority filing date for the '878, '535 and '256 Patents.

13. In 2009, Cooper's '428 patent became the subject of litigation, namely *Cooper Notification, Inc. v. Twitter, Inc.*, No. 1:09-cv-00865 (D. Del.)(the "Twitter litigation"). In the Twitter litigation, Cooper alleged the defendants offered alert notification messaging products and services that infringed the '428 patent.

14. In August 2010, the defendants in the Twitter litigation requested that the United States Patent and Trademark Office (USPTO) conduct an *inter partes reexamination* (Reexamination) of all of the claims of Cooper's '428 patent pursuant to 35 U.S.C. §§ 311-318. The defendants asserted that all of the claims (claims 1-18) of Cooper's '428 patent were invalid over prior art references, including the '878 Patent invented by Plaintiffs, that were not previously before the Patent Office during prosecution. Cooper's '428 patent contained two independent claims – claims 1 and 12. The USPTO accepted the request for Reexamination and proceedings commenced as reexamination control number 95/001,425.

15. Upon information and belief, Cooper entered into a license with Rave Wireless Inc., a defendant in the Twitter litigation, for the '428 patent, and Cooper dismissed Rave Wireless Inc. from the Twitter litigation in June 2011. According to their website, Rave Wireless Inc. offers RaveAlert and CampusMessenger emergency notification systems which they mark on their website with the '428 patent. This occurred before the USPTO Patent Trial and Appeal Board (PTAB) affirmed rejection of claims 1-3, 5, and 8-11 in Cooper's '428 patent.

16. As a result of the Reexamination of Cooper's '428 patent, Cooper notified the district court in the Twitter litigation in November 2011 that it was no longer asserting claims 1-11 of the '428 patent against the defendants but was proceeding on the claims remaining in Cooper's '428 patent. In or about May 2012, the defendants

prevailed against Cooper on summary judgment on the claims of infringement remaining under Cooper's '428 patent.

17. The USPTO examiner ultimately rejected claims 1-3, 5, and 8-11 in Cooper's '428 patent, finding that those claims were anticipated or would have been obvious in view of the prior art, specifically the '878 Patent invented by Plaintiffs. The PTAB affirmed the rejection on January 13, 2014.

18. On or about January 14, 2014, Plaintiffs forwarded a copy of the PTAB final decision regarding Cooper's '428 patent Reexamination to Eaton's Intellectual Property Counsel and suggested a meeting to discuss Plaintiffs' '535 Patent and then-pending patent application that later issued as the '256 Patent. Eaton did not respond.

19. Also as a result of the action taken by the USPTO in the Reexamination of Cooper's '428 patent, Plaintiffs amended their then-pending patent application (which later issued as the '256 Patent). Plaintiffs noted: "The new claims 74, 75 and 76 of this application are respectively copied from claims 1, 5 and 9 of U.S. Patent 7,409,428." Plaintiffs further explained to the examiner: "The '428 patent is subject to reexamination control number 95/001,425. In that proceeding, claims 1, 5 and 9 of the '428 patent were held unpatentable as anticipated by the disclosure of a parent Zimmers et al. patent 6,816,878. This finding has been upheld on appeal, in a decision dated January 13, 2014." The new claims were allowed by the USPTO, and became claims 1, 2 and 4 in the '256 Patent, which patent issued on April 21, 2015.

20. In March 2015, Plaintiffs discovered that Eaton/Cooper had filed U.S. patent application number 14/458,100 in 2014 with a claim 1 similar to the cancelled claim 1 of Cooper's '428 patent, as noted by the examiner in the office action issued on March 10, 2015. While Eaton/Cooper's attorney disclosed the '878 Patent and '428

patent to the USPTO examiner, noticeably absent from the disclosure to the examiner was the fact that the '428 patent had gone through the Reexamination proceeding and that the PTAB affirmed rejection of claims 1-3, 5, and 8-11 more than a year earlier. As of the date of this filing, Defendants still have not notified the examiner of the 14/458,100 application about the Reexamination of the '428 patent.

21. Plaintiffs promptly contacted Eaton's Intellectual Property Counsel and discussed Eaton/Cooper's pending 14/458,100 patent application, including that it appeared to be an attempt to reclaim rights lost in the Reexamination of the '428 patent yet Eaton/Cooper failed to disclose the Reexamination proceeding and PTAB's final decision to the patent examiner. Plaintiffs also reminded Eaton about Plaintiffs' pending application. Plaintiffs noted that Plaintiffs' pending application was pursuing claims similar to what Cooper lost in the Reexamination, and Plaintiffs also noted that Plaintiffs' application had an earlier priority date than Eaton/Cooper's application, and furthermore, that Plaintiffs' application was within a month of issuing. (Plaintiffs' application became the '256 Patent.)

22. In or about April 2015, Plaintiffs contacted Eaton's Intellectual Property Counsel again to notify Eaton/Cooper that the '256 Patent had issued and it contained an independent claim 1 which was nearly identical to the claim lost by Cooper in the '428 patent Reexamination. As of the date of this filing, Defendants have not notified the USPTO regarding the '256 Patent as prior art to their pending 14/458,100 patent application.

23. Upon information and belief, Defendants and their licensee, Rave Wireless Inc., marked the Accused Products and Services with Cooper's '428 patent before the

Reexamination proceeding concluded, and today they continue to mark the Accused Products and Services with Cooper's '428 patent.

24. Upon information and belief, Defendants shipped, distributed, made, used, imported, offered for sale, sold, and/or advertised alert notification systems or alert notification system services, including the Accused Products and Services and Defendants' architecture components, which infringe one or more claims of Plaintiffs' '256 and '535 Patents.

25. Upon information and belief, Defendants intentionally contributed to the infringement of Plaintiffs' '256 and '535 Patents and/or induced (and continues to induce) others to infringe one or more claims of the '256 and '535 Patents in this district and elsewhere in the United States, by its intentional acts which successfully, among other things, encouraged, instructed, enabled, and otherwise caused their customers to use the Defendants' Accused Products and Services in an infringing manner.

26. Defendants infringed, contributed to the infringement and/or induced others to infringe Plaintiffs' '256 and '535 Patents and unless enjoined, will continue to do so by making, using, selling, or offering for sale the Accused Products and Services that are claimed in the '256 and '535 Patents and contributing to or inducing others to make, use, sell or offer for sale the Accused Products and Services claimed by the '256 and '535 Patents without license or permission from Plaintiffs.

27. Despite possessing knowledge of the claims in Plaintiffs' '256 and '535 Patents, Defendants have not abated any of the relevant activity to Plaintiffs' knowledge. Accordingly, Defendants' acts of infringement of Plaintiffs' rights under the '256 and '535 Patents will continue causing irreparable harm to Plaintiffs for which there is no adequate remedy at law, unless enjoined by this Court.

28. On information and belief, the acts of infringement were committed in willful and deliberate disregard for Plaintiffs' patent rights and without reasonable justification therefor, thereby making this an exceptional case within meaning of 35 U.S.C. § 285.

29. Plaintiffs are entitled to recover from Defendants the damages sustained as a result of Defendants infringement in an amount to be determined at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

WHEREFORE, Plaintiffs respectfully request entry of judgment as follows:

A. Holding that Eaton Corporation and Cooper Notification, Inc. infringed one or more of the claims of the '256 and '535 Patents;

B. Permanently enjoining Defendants and all parties in privity with them from any further acts of infringement;

C. Awarding Plaintiffs damages sufficient to compensate them for such unauthorized acts of infringement according to 35 U.S.C. § 284, together with prejudgment interest;

D. Increasing the damages up to three times by virtue of the willful and deliberate acts of infringement by Defendants, pursuant to 35 U.S.C. § 284;

E. Awarding Plaintiffs their reasonable attorney fees and costs incurred in connection with this action because this is an exceptional case pursuant to 35 U.S.C. § 285;

F. Ordering Defendants to file with the Court within 30 days after entry of final judgment a written statement under oath setting forth in detail the manner in which Defendants have complied with the judgment; and

G. Awarding Plaintiffs such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues raised that are triable by jury.

Date: June 11, 2015

/s/ Charles H. Brown, III

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