

Guillermo Cabrera, (SBN 190303)
The Cabrera Firm, APC
501 West Broadway, Suite 800
San Diego, CA 92101
v. 619.500.4880
f. 619.785.3380
E-mail: gil@cabrerafirm.com

Manuel de la Cerra (SBN 189313)
The Law Office of Manuel de la Cerra
6885 Catamaran Drive
Carlsbad, CA 92011
v. 760.809.5520
f. 760.269.3542
E-mail: manny@delacerrallaw.com

Attorneys for Plaintiff
GOLDEN HOUR DATA SYSTEMS, INC.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

GOLDEN HOUR DATA SYSTEMS, INC., a
California Corporation,

Plaintiff,

v.

EMSCHARTS, INC, a Pennsylvania Corporation,

Defendant.

**AMENDED COMPLAINT FOR
INFRINGEMENT OF U.S. PAT. 7,668,736
DEMAND FOR JURY TRIAL**

Plaintiff Golden Hour Data Systems, Inc. hereby complains of Defendant emsCharts, Inc. for infringement of United States Patent No. 7,668,736 ('736 Patent), and alleges as follows:

PARTIES

1. Plaintiff Golden Hour Data Systems, Inc. is a California corporation with a principal place of business at 6260 Sequence Drive, Suite 140, San Diego, California, 92121.

2. Plaintiff is informed and believes, and on that basis alleges, that Defendant emsCharts, Inc. is a Pennsylvania corporation with a principal place of business at 600 Mifflin Road, Suite 102, Pittsburgh, PA 15207. Defendant's designated agent for service of process is also located at this address.

3. Plaintiff is informed and believes, and on that basis alleges, that Defendant does business in this judicial district and has committed acts of infringement in this judicial district.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Defendant under Fed. R. Civ. P. 4(k)(1)(A) and California's long-arm statute, Cal. Civ. Proc. Code § 410.10, as Defendant has continuous business contacts with the State of California, has a business presence in the State of California and has committed the complained-of acts in the State of California, thereby causing damage to Plaintiff in this judicial district.

5. This Court has subject matter jurisdiction pursuant to the patent laws of the United States, 35 U.S.C. §§ 1 et seq., and pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

6. Venue is proper in this district under 28 U.S.C. § 1400(b) because Defendant resides in this judicial district as defined by 28 U.S.C. § 1391.

7. Plaintiff is informed and believes, and on that basis alleges, that Defendant has entered into long-term contracts with Mercy Air, an Air Methods wholly owned subsidiary based in San Diego, to operate and use systems that infringe the '736 Patent as described below. These contacts are systematic and continuous and support a finding of personal jurisdiction and venue in this district.

BACKGROUND FACTS

8. Defendant and Plaintiff are direct competitors.

9. Defendant markets to customers of Plaintiff through "billing partners."

10. Defendant markets directly to Plaintiff's customers and attempts to get them to switch their purchases from Plaintiff to Defendant.

11. Defendant derides Plaintiff's patented products as "expensive" and "proprietary."

12. In one example, Defendant succeeded in getting one or more of Plaintiff's customers to switch from using Plaintiff's patented products and services to those of Defendant's billing partner QuickMed Claims, which utilizes Defendant's emsCharts Software.

13. As a direct competitor of Plaintiff, Defendant has a strong motive to obtain and examine the offerings of Plaintiff, including the software itself and related marketing materials.

1 14. On information and belief, Defendant obtained Plaintiff's marketing material and
2 web site publication marked with the '736 Patent shortly after the patent was granted.

3 15. Defendant has been aware of the '736 Patent prior to the initiation of this lawsuit.
4 Defendant was aware of the application that became the '736 Patent by at least 2008 when
5 Plaintiff and Defendant attempted resolution of another patent action. For example, the '736
6 Patent application was included in discussions with the Defendant about this litigation.

7 16. The '736 Patent is based on an application filed November 6, 2001.

8 17. In December of 2001 Dr. Hutton disclosed the existence of the '736 Patent
9 application to Dr. Paul Paris, then Director of the Center for Emergency Medicine (the initial and
10 then owner of the emsCharts Software), as part of a discussion regarding possible intellectual
11 property issues. Dr. Paris directed Dr. Hutton to speak with Jim Bothwell, President of STAT
12 Medevac, the medical transportation division of the Center for Emergency Medicine. Dr. Hutton
13 attempted to call Mr. Bothwell a number of times throughout 2002 and 2003, but Dr. Hutton's
14 phone calls were never returned.

15 18. Dr. Kevin Hutton, an executive of Plaintiff, sent a copy of the letter attached
16 hereto as Exhibit B to Mr. Jim Bothwell, an executive of Defendant, on or about October 23,
17 2003.

18 19. The October 2003 letter attached hereto as Exhibit B ("the October 2003 letter")
19 raised concerns that Plaintiff's demonstration software disk and sales information may have been
20 "improperly used" in the creation of Defendant's emsCharts Software. Like the unreturned
21 phone calls, Dr. Hutton received no response to that letter.

22 20. The October 2003 letter made specific reference to Plaintiff's patent U.S. Pat. No.
23 6,117,073 ("the '073 Patent").

24 21. In or about 2005 the Center for Emergency Medicine sold the emsCharts Software
25 to Peter Goutmann, the creator of the software, and to John Massie, an emsCharts business
26 consultant, and transferred all liabilities to them, while retaining 20% ownership as well as an
27 agreement to receive perpetual free use of emsCharts Software as well as dividends and a Board
28 of Directors position in exchange for housing the server computers at the University of Pittsburgh

1 that operate and deploy the emsCharts Software. Plaintiff sued Defendant for infringing the '073
2 Patent in 2006. In 2008 a jury found that Defendant had willfully infringed the '073 Patent, and
3 that case is pending final judgment in the Eastern District of Texas.

4 22. In the 2008 jury trial one of the issues was the validity of the '073 patent. A true
5 and correct copy of the verdict form is attached hereto as Exhibit C.

6 23. Between the date of the October 2003 letter and the 2008 trial, Defendant did not
7 obtain an opinion-of-counsel regarding the validity of the '073 patent.

8 24. In the 2008 trial, Defendant asserted that Plaintiff was using the '073 patent to
9 stifle competition and extract monopoly prices.

10 25. In the 2008 trial, the jury found against Defendant on validity, *i.e.*, the jury found
11 that the '073 was not invalid.

12 26. In the 2008 trial, one of the issues was Defendant's direct infringement of the '073
13 patent.

14 27. In the 2008 trial, Defendant asserted that it could not infringe the '073 patent
15 because its software did not and could not bill.

16 28. The jury rejected Defendant's assertions and found Defendant to be a direct
17 infringer of the '073 patent.

18 29. In the 2008 trial, one of the issues was Defendant's inducement of infringement of
19 the '073 patent.

20 30. In the 2008 trial, Defendant asserted that it could not be an inducing infringer of
21 the '073 patent because the companies offering billing services did so independently of
22 Defendant.

23 31. The jury rejected Defendant's assertions and found Defendant to be an inducing
24 infringer of the '073 patent.

25 32. In the 2008 trial, one of the issues was the willfulness of Defendant's
26 infringement.

27 33. In the 2008 trial, Defendant asserted that it could not be a willful infringer because
28 it had a good faith belief that the '073 patent was invalid.

1 34. In the 2008 trial, Defendant asserted that it could not be a willful infringer because
2 it allegedly did not copy Plaintiff's technology.

3 35. In the 2008 trial, Defendant asserted that it could not be a willful infringer
4 because, based on an in-house analysis performed by Mr. Peter Goutmann (whether alone or in
5 consultation with others) (hereafter the "In-House Analysis"), Defendant allegedly did not
6 infringe the '073 patent.

7 36. In the 2008 trial, Defendant asserted that this In-House Analysis was performed
8 after receipt of the October 2003 letter.

9 37. Defendant never produced any written record of the In-House Analysis.

10 38. On information and belief, there never was any written record of such an In-House
11 Analysis.

12 39. In the 2008 trial, the jury heard testimony from a business partner of Defendant
13 that Mr. Peter Goutman, an executive of Defendant, admitted that he "blew off" Plaintiff's '073
14 Patent.

15 40. The business partner of the preceding paragraph is a company known as Softtech
16 LLC that sued emsCharts, Inc. in 2008 based on claim of failure to disclose the multiple '073
17 Patent notifications by Plaintiff.

18 41. Defendant emsCharts, Inc. indemnified Softtech LLC against patent infringement
19 claim(s) by Plaintiff to assure Softtech LLC's cooperation in the '073 patent suit.

20 42. The jury in the 2008 trial rejected Defendant's assertions and found Defendant to
21 be a willful infringer of the '073 Patent.

22 43. The October 2003 letter, in addition to referencing the '073 Patent, also made
23 reference to "several additional patents pending."

24 44. The application which led to the present patent-in-suit, the '736 Patent, was on file
25 as of the date of the October 2003 letter.

26 45. The '736 Patent is included in "current and future [Plaintiff] intellectual property"
27 as that term is used in the October 2003 letter.
28

1 46. The In-House Analysis did not analyze or consider the application which resulted
2 in the '736 Patent.

3 47. The October 2003 letter specifically addressed emsCharts' "co-marketing and
4 other business relationships."

5 48. The October 2003 letter warned Defendant that emsCharts' "co-marketing and
6 other business relationships" "are leading [Defendant] down a path that will be affected by
7 [Plaintiff's] current and future intellectual property."

8 49. Defendant did not respond to the October 2003 letter.

9 50. Plaintiff sued Defendant for infringement of the '073 patent in 2006.

10 51. On several occasions, Plaintiff notified Defendant of the '736 Patent application
11 and its application to Defendant's technology. During the litigation regarding the '073 Patent, it
12 was clear that Defendant understood and was constantly monitoring Plaintiff's patent portfolio
13 since at least 2006. In fact during the '073 Patent litigation, Defendant raised several of
14 Plaintiff's pending patent applications in their unsuccessful defense to that patent infringement
15 suit. And during the deposition of Dr. Hutton, an executive of Plaintiff, Defendant sought and
16 obtained discovery regarding Plaintiff's complete intellectual property portfolio.

17 52. As the evidence indicated during the 2008 trial, Defendant has the capability to
18 transmit protected health information data securely using a virtual private network as claimed in
19 the '736 patent between both 3rd party dispatch software products and 3rd party billing software
20 products.

21 53. Defendant manufactures, uses, sells and offers for sale Integrated Emergency
22 Medical Transportation Databases and Virtual Private Network Systems. These products are
23 advertised for sale on Defendant's website at << [https://www.emscharts.com/pub/product-](https://www.emscharts.com/pub/product-emscharts.cfm)
24 [emscharts.cfm](https://www.emscharts.com/pub/product-emscharts.cfm) >> and are called "emsCharts" and "emsCharts Mobile" ("emsCharts Software").

25 54. Defendant advertises on its website that the emsCharts Software is compliant with
26 electronic Protected Health Information (PHI) transmission standards of the Health Information
27 Portability and Accountability Act (HIPAA). Electronic PHI is required to perform billing
28

services and is necessarily contained in the “Billing Exports” that are sent to Defendant’s “billing partners” over a public network such as the Internet.

emsCharts HIPAA Statment

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was created to safeguard the integrity, confidentiality, and availability of the patient's Protected Health Information (PHI). Although software vendors are not considered to be Covered Entities, health care providers need to make sure that software used in the storage and maintenance of PHI allows the Covered Entity to be compliant. emsCharts, as an Application Service Provider (ASP), takes a more involved role than the typical software vendor. Since PHI is stored on remote servers, and information is transmitted over public networks such as the Internet, we take on part of the responsibility of maintaining PHI on behalf of the customer, and as such become their Business Associate.

FIG. 1: Defendant Website at <https://www.emscharts.com/pub/technology-hipaa.cfm>.

55. This information meets the limitations of the ‘736 Patent and its transmission over public networks such as the Internet supports both direct and indirect infringement under 35 U.S.C. § 271 (a),(b) and (c).

56. Defendant advertises and states on its website that the emsCharts Software is compliant with the electronic PHI transmission standards of Title 45, CFR 160 and 164. Compliance with these titles is required to perform billing services and is necessarily required to manage the “Billing Exports” that are sent to Defendants “billing partners” over public networks such as the Internet.

45 CFR Parts 160 and 164: Standards for Privacy of Individually Identifiable Health Information

The majority of Parts 160 and 164 apply to the creation of administrative policies and procedures for the Covered Entity. To assist in this process, the emsCharts suite of products contains features such as those listed below:

- Access Audit Trail
- Tracking of Notice of Privacy Practices (including revisions)
- Role-based security access
- Data maintenance and disaster recovery
- Policy and Procedures online
- Online seminars - services can provide HIPAA seminars for recurrent and initial training.

FIG. 2: Defendant Website at <https://www.emscharts.com/pub/technology-hipaa.cfm>.

57. This information meets the limitations of '736 Patent and its transmission over public networks such as the Internet supports both direct and indirect infringement under 35 U.S.C. § 271 (a),(b) and (c).

58. Defendant advertises and states on its website that the emsCharts Software is compliant with National EMS Information Systems (NEMSIS) Version 2.2 and will be compliant with Version 3.0. Both standards contain PHI defined under HIPAA. Electronic PHI and other information contained in NEMSIS is required to perform billing services and is necessarily contained in the "Billing Exports" that are sent to Defendant's "billing partners" over public networks such as the Internet including the NEMSIS Billing export advertised on the Defendant's website.



FIG. 3: Defendant Website at <https://www.emscharts.com/pub/product-nemsis.cfm>. T

59. This information meets the limitations of '736 Patent and its transmission over public networks such as the Internet supports both direct and indirect infringement under 35 U.S.C. § 271 (a), (b) and (c).

60. Defendant advertises and states on its website that the emsCharts Software is compliant with NEMSIS Version 2.2 and will be compliant with Version 3.0. Both standards require vehicle tracking information including transport mileage and GPS locations. Vehicle tracking information is required to perform billing services and is necessarily contained in the "Billing Exports" that are sent to Defendant's "billing partners." *See id.* This information meets the limitations of '736 Patent and its transmission over public networks such as the Internet supports both direct and indirect infringement under 35 U.S.C. § 271 (a), (b) and (c).

61. Defendant advertises and states on its website that the emsCharts Software transmits, shares, and manages Electronic PHI from a scene location in a HIPAA compliant method. Electronic PHI is required to perform billing services and is necessarily contained in the “Billing Exports” that are sent to Defendant’s “billing partners” in a HIPAA compliant fashion over public networks such as the Internet. *See e.g.* <https://www.emscharts.com/pub/product-mobile.cfm>. This information meets the limitations of ‘736 Patent and its transmission over public networks such as the Internet supports both direct and indirect infringement under 35 U.S.C. § 271 (a),(b) and (c).

62. Defendant advertises on its website that the emsCharts Software captures a patient signature and transmits that signature in compliance with HIPAA and NEMESIS. A valid signature is required to perform billing services and to assign patient insurance benefits to the provider. A signature of the patient is considered Electronic PHI and is necessarily contained in the “Billing Exports” that are sent to Defendant’s “billing partners” over public networks such as the Internet.

The screenshot displays the 'Custom Signature Pages' interface, which includes a header with the title 'Custom Signature Pages' and a subtitle 'Ability to create custom signature pages with check boxes and text fields'. Below this, there is a 'Signatures' section with a 'Blank Forms' button and a 'Refusal' button. A 'Save' button is also visible. The main area shows a sample signature page with a text field containing the text: 'I hereby refuse all treatment and transport to the hospital. I have been advised by EMS that I should see my physician or go to a hospital if I have or continue to have any problems.' Below this text is a signature field with a handwritten signature. At the bottom, there is a tabbed interface with tabs for 'Care', 'Guardian', 'Patient', 'Witness', and 'Referring Doctor'. The 'Patient' tab is selected, showing a handwritten signature and a date field.

Below the screenshot is a sample signature form with two sections:

SECTION I - PATIENT SIGNATURE
 The patient must sign here unless the patient is physically or mentally incapable of signing.
 X David R. Patient 4/1/12
 Patient Signature or Mark Date
 If the patient signs with an "X" or other mark, someone should sign below as a witness. This can be an ambulance crew member.
 X Witness Signature 4/1/12
 Witness Printed Name
 NOTE: if the patient is a minor, the parent or legal guardian should sign in this section.

SECTION II - AUTHORIZED REPRESENTATIVE SIGNATURE
 Complete this section only if the patient is physically or mentally incapable of signing.
 Reason the patient is physically or mentally incapable of signing:
 Authorized representatives include only the following individuals (check one):
☐ Patient's Legal Guardian ☐ Patient's Health Care Power of Attorney
☐ Relative or other person who receives government benefits on behalf of patient
☐ Relative or other person who arranges treatment or handles the patient's affairs
☐ Representative of an agency or institution that furnished care, services or assistance to the patient.
 I am signing on behalf of the patient. I recognize that signing on behalf of the patient is not an acceptance of financial responsibility for the services rendered.
 X Representative Signature Date Printed Name of Representative
 Representative's Address

FIG. 4: Defendant Website at <https://www.emscharts.com/pub/product-mobile.cfm>.

63. This information meets the limitations of '736 Patent and its transmission supports both direct and indirect infringement under 35 U.S.C. § 271 (a), (b) and (c).

COUNT I: DIRECT INFRINGEMENT

64. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

65. On February 23, 2010, the '736 Patent was issued to Scott J. Jones, Rany Polany and Kevin C. Hutton for an invention in an Integrated Emergency Medical Transportation Database and Virtual Private Network System. The inventors, Scott J. Jones, Rany Polany and Kevin C. Hutton, assigned their rights in the '736 Patent to Plaintiff. The assignment has been recorded with the USPTO and can be found at reel/frame 014524/0244. Plaintiff owned the '736 Patent throughout the period of Defendant's infringing acts and still owns the '736 Patent.

66. Defendant has infringed and is still infringing the '736 Patent by making, selling, using, offering for sale, and selling emsCharts Software Services.

67. Plaintiff has complied with the statutory requirement of placing a notice of the '736 Patent on all Integrated Emergency Medical Transportation Databases and Virtual Private Network Systems it manufactures and sells and has given Defendant written notice of the '736 Patent by the original filing of this complaint on August 3, 2012 with service on Defendant on August 10, 2012.

68. Plaintiff has also notified Defendant of the '736 Patent on several other occasions. For example, in January 2008 during a business meeting between Plaintiff and Defendant held in San Diego, Plaintiff presented the '736 Patent application to Defendant and detailed its application to Defendant's technology. That meeting was attended by John Massie and Pete Goutmann, who are executives, Board Members, and 80% owners of Defendant.

69. In August 2008 during a business meeting between Plaintiff and Defendant held in Dallas, Plaintiff presented the '736 Patent application to Defendant and detailed its application to Defendant's technology. That meeting was attended by Mr. Massie and Mr. Goutmann, who are executives, Board Members, and 80% owners of Defendant.

1 70. Defendant has committed direct patent infringement of the ‘736 Patent in violation
2 of 35 U.S.C. § 271.

3 **COUNT II: INDUCING INFRINGEMENT**

4 71. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

5 72. Third parties have infringed and are still infringing the ‘736 Patent by making,
6 selling, using, offering for sale, and selling Integrated Emergency Medical Transportation
7 Databases and Virtual Private Network Systems that embody the patented invention of the ‘736
8 Patent, including practicing methods claimed therein.

9 73. Defendant has and continues to actively induce these third parties to infringe the
10 ‘736 Patent by actively marketing and selling special software sometimes referred to in certain
11 versions as the “Billing Export” features of the emsCharts Software that is designed to plug into
12 multiple third-party billing software products and thereby cause those third-party billing software
13 products, and end users of that third-party software, to infringe the ‘736 Patent.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

74. As an example of the inducing actions Defendant has taken, Defendant has and continues to intentionally advertise its “Billing Export” feature of Defendant’s emsCharts Software online at <<<https://www.emscharts.com/pub/product-billing.cfm>>> as shown below in FIG. 5:

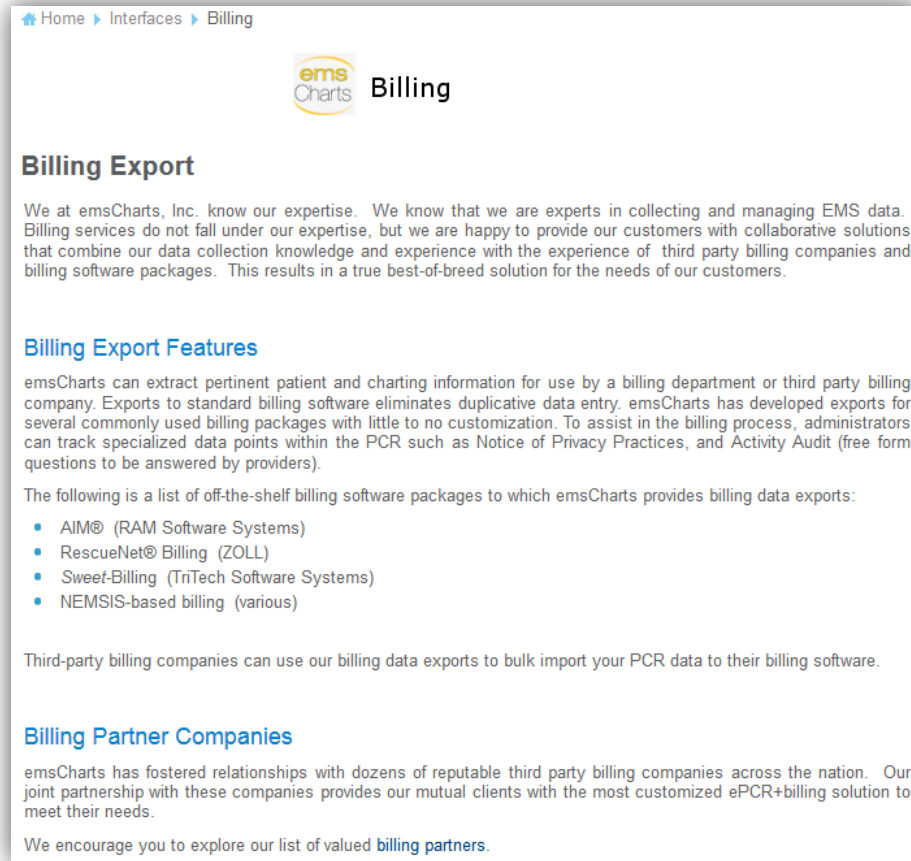


FIG. 5

75. When Defendant’s “Billing Export” feature of the emsCharts Software is used by Defendant’s “billing partners” in the manner described, promoted, and urged by Defendant, for instance as described above in FIG. 5, the ‘736 Patent is infringed. This includes transmission of secure data such as NEMSIS required billing exports to comply with NEMSIS required billing data and electronic PHI (as defined under HIPAA), as well as vehicle tracking data required to calculate loaded (billable) mileage. Such infringement has occurred, has been induced, and continues to occur.

76. emsCharts Software has been offered for “free” by one or more of Defendant’s “billing partner(s)” as part of a “total solution” for end customers, and this has been advertised

online for instance at <<<http://www.ambulancebill.us/emscharts.htm>>> as shown below in FIGS. 6 and 7.

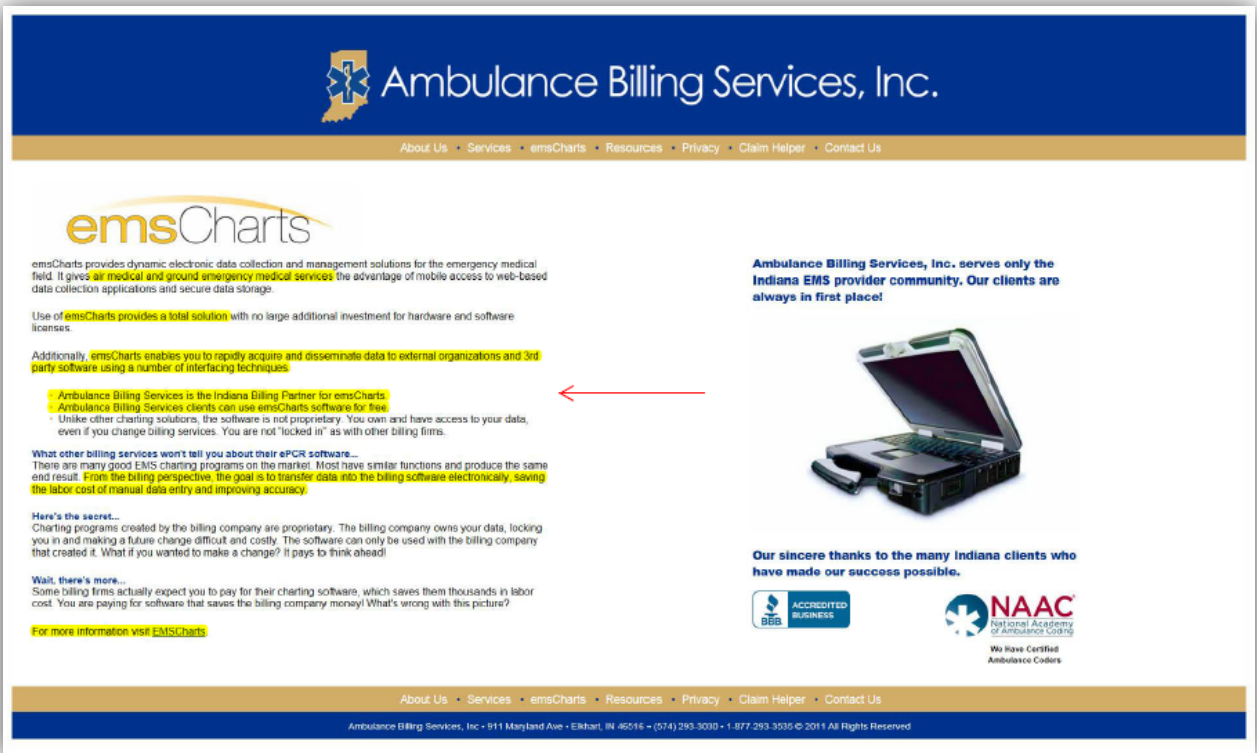


FIG. 6 [emphasis added]

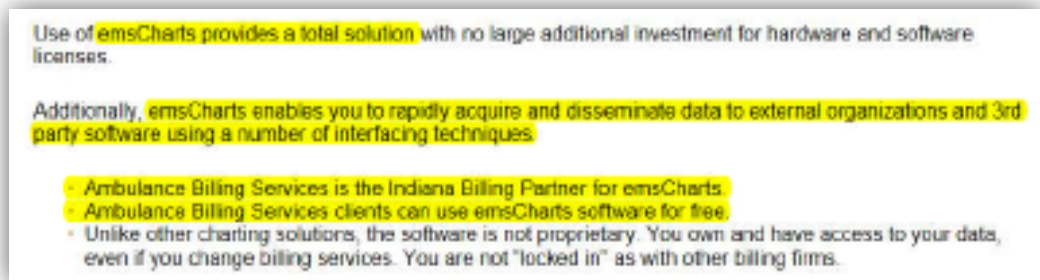


FIG. 7 [emphasis added, enlargement of portion of FIG. 6]

77. Defendant receives financial compensation directly from "billing partners" for the software that Defendant's "billing partners" give away free to end users as advertised online and shown above in FIGS. 6 and 7.

78. When end users use Defendant's "Billing Export" feature of the emsCharts Software in conjunction with the software provided by Defendant's "billing partners" in the manner described, promoted, and urged by Defendant, for instance as described above in FIG. 5,

1 as well as in FIGS. 6 and 7, the '736 Patent is infringed. Such infringement has occurred and
2 continues to occur on a large scale with over 40 billing partners.

3 79. On information and belief, Defendant's "billing partners" include but are not
4 limited to: 911 Billing; AmbuBill; Ambulance Billing Consultants, LLC; Ambulance Billing
5 Experts; Ambulance Billing Services, Inc.; Ambulance Billing Systems, Inc.; Ambulance
6 Reimbursement Systems, Inc.; AR Management & Solutions; ASAP Medical Management, Inc.;
7 Cape Medical Billing; Carolina Ambulance Billing; Certified Ambulance Group; Coast 2 Coast
8 Medical Billing; Complete Billing Solutions; Comstar Ambulance Billing Service; Cornerstone
9 Adminisystems; Digitech; DM Medical Billings; Emergicon, LLC; EMS Management &
10 Consultants, Inc.; EMS Source; Enhanced Management Services, Inc.; Health Claims Plus;
11 Holdsworth Pelton; HSI (Health Services Integration); LifeForce Management, Inc.; MAXimize
12 Billing; MedEx Billing, Inc.; Medical Billing Resources; Medicount Management; MultiMed;
13 National Reimbursement Services; Priority Medical Claims; Professional Ambulance Billing
14 LLC; Quick Med Claims; Revenue Guard; Shared Response Health Systems; Speclin Billing and
15 Management Service; Statewide EMS Services, LLC; Strategic Billing Enterprise; and Wittman
16 Enterprises, LLC.

17 80. On information and belief, Defendant has known prior to the initiation of this
18 lawsuit that the acts it was causing, as described, promoted, and urged by Defendant, for instance
19 as described above in FIG. 5, 6, and 7, were infringing the '736 Patent.

20 81. Alternatively to the immediately foregoing paragraph, Defendant has had a belief
21 that there is a high probability that the acts it was causing, as described, promoted, and urged by
22 Defendant, for instance as described above in FIG. 5, 6 and 7, were infringing the '736 Patent,
23 and Defendant took deliberate actions to avoid learning of that fact.

24 82. Defendant has intentionally taken action that actually induced direct infringement
25 of '736 Patent by another.

26 83. Defendant has committed inducing patent infringement in violation of 35 U.S.C. §
27 271(b).
28

COUNT III: CONTRIBUTORY INFRINGEMENT

84. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

85. When Defendant provides its emsCharts Software with the “Billing Export” feature to its “billing partners,” for instance as described above in FIG. 5, Defendant supplies an important component of the infringing part of the patented Integrated Emergency Medical Transportation Database and Virtual Private Network System that is required for “billing partners” to complete their services.

86. Defendant’s emsCharts Software is **not** a “common component suitable for non-infringing use.” For purposes of this paragraph, a “common component suitable for non-infringing use” is a component that has uses other than as a component of the patented Integrated Emergency Medical Transportation Database and Virtual Private Network System, where those other uses are not occasional, farfetched, impractical, experimental, or hypothetical.

87. Defendant supplies its emsCharts Software to its “billing partners” with knowledge of the ‘736 Patent and knowledge that the component was especially made, adapted, and maintained for use in an infringing manner.

88. Defendant has committed contributory patent infringement in violation of 35 U.S.C. § 271(c).

COUNT IV: WILLFUL INFRINGEMENT

89. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

90. Defendant has infringed a valid claim of the ‘736 Patent and all other intellectual property of the Plaintiff.

91. Prior to the filing date of this action, Defendant acted with reckless disregard of the claims of the ‘736 Patent and all other intellectual property of the Plaintiff.

92. Defendant acted despite an objectively high likelihood that its actions constituted infringement of a valid and enforceable patent.

93. Defendant actually knew, or it was so obvious that Defendant should have known, that its actions constituted infringement of a valid and enforceable patent.

1 94. On information and belief, Defendant did not, and has not, relied on a legal
2 opinion that was well-supported and believable and that advised Defendant that its actions did not
3 infringe the '736 Patent.

4 95. On information and belief, Defendant did not, and has not, relied on a legal
5 opinion that was well-supported and believable and that advised Defendant that the '736 Patent
6 was invalid or unenforceable.

7 96. Defendant intentionally copied Plaintiff's products in the past and has, on
8 information and belief, copied a version of Plaintiff's software that is covered by the '736 Patent.

9 97. Defendant willfully infringed the '736 Patent and is thus subject to enhanced
10 penalties under 35 U.S.C. §§ 284 and 285.

11
12 Therefore, Plaintiff demands:

- 13 • That Defendant be adjudged to have infringed the '736 Patent under 35 U.S.C.
14 §§ 271(a), (b), and/or (c);
- 15 • a preliminary and permanent injunction against Defendant, its officers, agents,
16 servants, employees, attorneys, all parent and subsidiary corporations, all
17 assignees and successors in interest, and those persons in active concert or
18 participation with Defendant, enjoining it from continuing acts of infringement
19 of the '736 Patent ;
- 20 • an award of damages under 35 U.S.C. § 284 for Defendant emsCharts, Inc.'s
21 infringement of the '736 Patent, together with costs and pre-judgment and
22 post-judgment interest;
- 23 • That Defendant be adjudged to have willfully infringed the '736 Patent under
24 35 U.S.C. §§ 271(a), (b), and/or (c), and that the Court treble the amount of
25 actual damages pursuant to 35 U.S.C. § 284;

26 ///

27 ///

28 ///

- That this action be adjudged an exceptional case, and that the Court award Plaintiff its attorneys' fees incurred in connection with this action, pursuant to 35 U.S.C. § 285; and
- any such other relief that this Court deems just and proper.

DATED: October 16, 2012

Respectfully submitted,

THE CABRERA FIRM, APC

By: /s/Guillermo Cabrera
Guillermo Cabrera
Attorney for Plaintiff
Golden Hour Data Systems, Inc., a
California Corporation.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury on all issues so triable.

DATED: October 16, 2012

Respectfully submitted,

THE CABRERA FIRM, APC

By: /s/Guillermo Cabrera
Guillermo Cabrera
Attorney for Plaintiff
Golden Hour Data Systems, Inc., a
California Corporation.