

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UBIQUITOUS CONNECTIVITY, LP,

Plaintiff,

v.

CITY OF SAN ANTONIO by and through its
agent, CITY PUBLIC SERVICE BOARD OF
SAN ANTONIO d/b/a CPS ENERGY
Defendant.

CIVIL ACTION NO.: 5:18-cv-00718

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff UBIQUITOUS CONNECTIVITY, LP (hereinafter, “Plaintiff” or “Ubiquitous”), by and through its undersigned counsel, files this Original Complaint for Patent Infringement against Defendant CITY OF SAN ANTONIO by and through its agent, CITY PUBLIC SERVICE BOARD OF SAN ANTONIO d/b/a CPS ENERGY (hereinafter, “Defendant” or “CPS Energy”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of Plaintiff’s United States Patent Nos. 8,064,935 (hereinafter, the “’935 Patent”) and 9,602,655 (hereinafter, the “’655 Patent”) (collectively, the “Patents-in-Suit”), copies of which are attached hereto as Exhibit A and Exhibit B, respectively. Plaintiff is the owner of the Patents-in-Suit. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

2. Ubiquitous is a limited liability partnership organized and existing under the laws of the State of Texas since February 14, 2012 and maintains its principal place of business at 2436 Tisbury Way, Little Elm, Texas, 75068 (Denton County).

3. Based upon public information, Defendant City of San Antonio by and through its agent, City Public Service Board of San Antonio d/b/a CPS Energy, is a home rule municipal corporation. City Public Service is a public utility owned and operated by the City of San Antonio.

4. Based upon public information, Defendant CPS Energy has its principal place of business located at 145 Navarro Street, San Antonio, Texas 78205-2934 (Bexar County).

5. Based upon public information, Defendant CPS Energy may be served through its registered agent, City Clerk Leticia M. Vacek at 719 S. Santa Rosa, San Antonio, Texas 78204.

6. Based upon public information, Defendant ships, distributes, makes, uses, offers for sale, sells, and/or advertises its products and/or services under the “Total Connect Comfort” and “Home Manager” branded systems.

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

8. The Court has personal jurisdiction over Defendant because: Defendant has minimum contacts within the State of Texas and in the Western District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in

the Western District of Texas; CPS Energy has sought protection and benefit from the laws of the State of Texas and is incorporated there; Defendant regularly conducts business within the State of Texas and within the Western District of Texas, and Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and in the Western District of Texas.

9. More specifically, CPS Energy, directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its products and affiliated services in the United States, the State of Texas, and the Western District of Texas. Based upon public information, Defendant has committed patent infringement in the State of Texas and in the Western District of Texas. Defendant solicits customers in the State of Texas and in the Western District of Texas. Defendant has many paying customers who are residents of the State of Texas and the Western District of Texas and who use Defendant's products in the State of Texas and in the Western District of Texas.

10. Venue is proper pursuant to 28 U.S.C. §1400(b) because Defendant resides in the Western District of Texas because of its formation under the laws of Texas.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant resides in the Western District of Texas because of its formation under the laws of Texas, which subjects it to the personal jurisdiction of this Court.

BACKGROUND INFORMATION

12. The Patents-in-Suit were duly and legally issued by the United States Patent and Trademark Office (hereinafter, "USPTO") after full and fair examinations.

13. The Parents-in-Suit trace their priority date back to USPTO Application No. 11/163,372 (the “’372 Application”) which was filed on October 17, 2005 and issued after full and fair examination as U.S. Patent No. 7,257,397. See Ex. A at A-1 and Ex. B at B-1.

14. The ’372 Application is itself a divisional of USPTO Application No. 11/160,006 (the “’006 Application”) which was filed on June 6, 2005 and issued after full and fair examination as U.S. Patent No. 6,990,335. See Ex. A at A-1 and Ex. B at B-1.

15. The ’006 Application traces its priority to USPTO Provisional Application No. 60/522,887 (the “’887 Application”) which was filed on November 18, 2004. See Ex. A at A-1 and Ex. B at B-1.

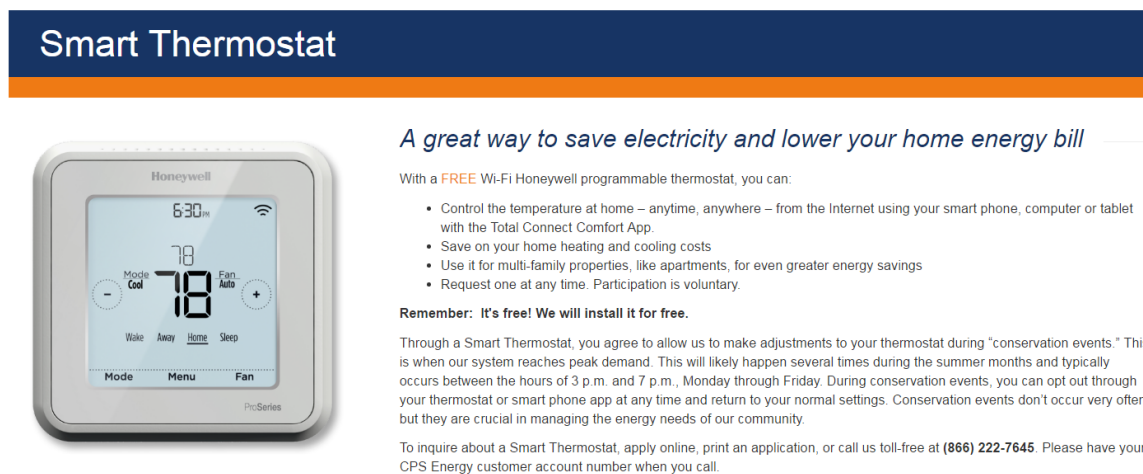
16. Plaintiff is the owner of the Patents-in-Suit, and possesses all right, title and interest in the Patents-in-Suit including the right to enforce the Patents-in-Suit, the right to license the Patents-in-Suit, and the right to sue Defendant for infringement and recover past damages. See Exhibit C and D.

17. Based upon public information, Defendant owns, operates, advertises, and/or controls the website <https://cpsenergy.com/en.html>, through which Defendant advertises, sells, offers to sell, provides and/or educates customers about its products and services, including but not limited to Defendant’s “Total Connect Comfort” and “Home Manager” branded systems (collectively, the “Accused Products and Services”). Evidence obtained from CPS Energy’s website (and others) regarding these products is provided in Exhibits E through J.

18. CPS Energy offers its customers the ability to download the Total Connect Comfort app, which allows users to control their Honeywell devices remotely from a mobile device such as but not limited to an iPhone, iPad, or Android device. See Ex. E, at p. 3

(indicating the app is available for download on the Apple App Store and for Android at Google Play).

19. According to the description of the CPS Energy's Total Connect Comfort app on its webpage:



Smart Thermostat

A great way to save electricity and lower your home energy bill

With a **FREE** Wi-Fi Honeywell programmable thermostat, you can:

- Control the temperature at home – anytime, anywhere – from the Internet using your smart phone, computer or tablet with the Total Connect Comfort App.
- Save on your home heating and cooling costs
- Use it for multi-family properties, like apartments, for even greater energy savings
- Request one at any time. Participation is voluntary.

Remember: It's free! We will install it for free.

Through a Smart Thermostat, you agree to allow us to make adjustments to your thermostat during "conservation events." This is when our system reaches peak demand. This will likely happen several times during the summer months and typically occurs between the hours of 3 p.m. and 7 p.m., Monday through Friday. During conservation events, you can opt out through your thermostat or smart phone app at any time and return to your normal settings. Conservation events don't occur very often, but they are crucial in managing the energy needs of our community.

To inquire about a Smart Thermostat, apply online, print an application, or call us toll-free at (866) 222-7645. Please have your CPS Energy customer account number when you call.

Figure 1

See Exhibit E.

20. According to the description of the CPS Energy's Total Connect Comfort app on the Applications page for Apple iPhones, the provider for the CPS Energy's Total Connect Comfort app is Honeywell International, Inc. See Exhibit F.

21. According to the description of the CPS Energy's Total Connect Comfort app on the Applications page for Apple iPhones:

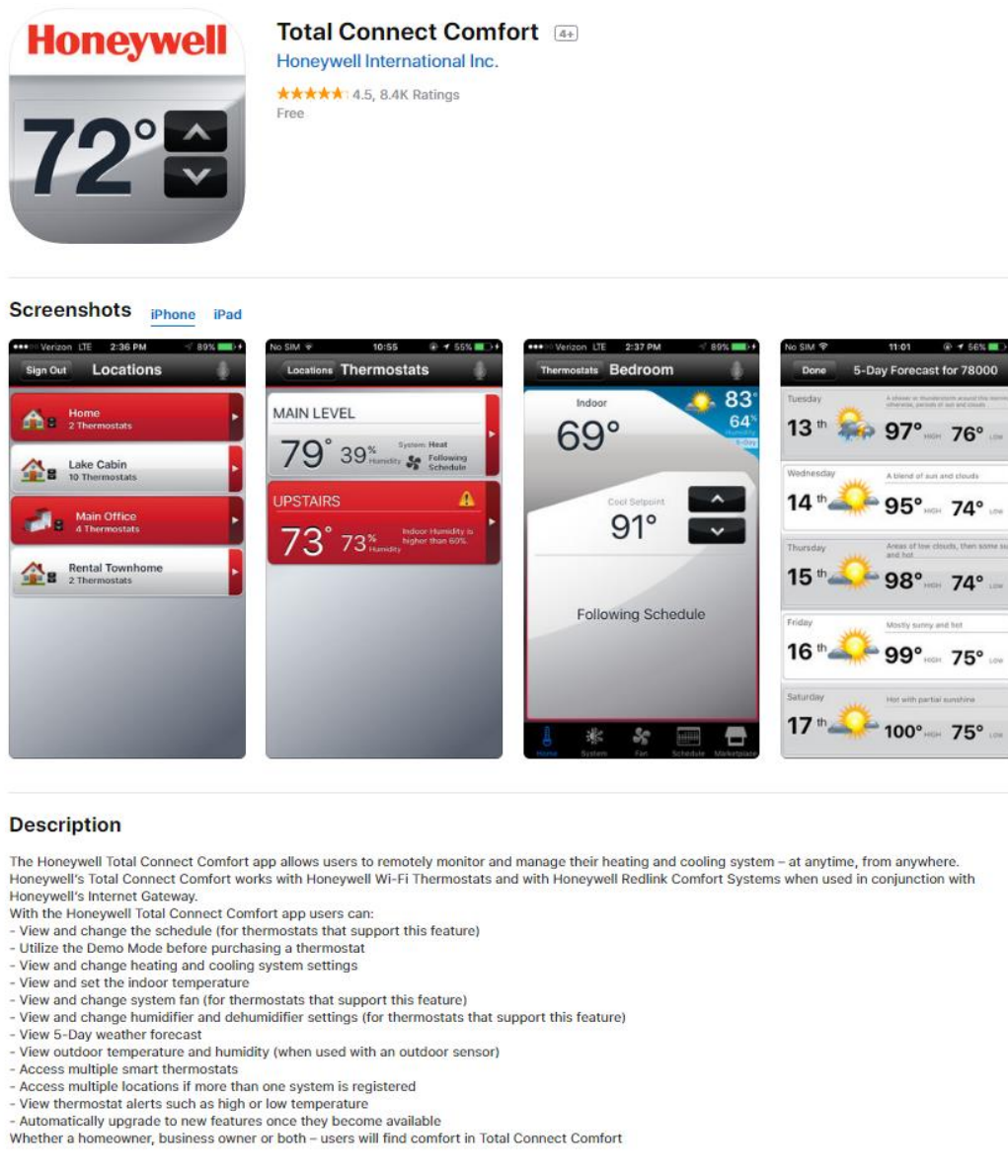


Figure 2

See Exhibit F.

22. CPS Energy offers its customers the ability to download the CPS Energy's Home Manager app, which allows users to control their Radio thermostat devices (Model CT32 and Model CT80) remotely from a mobile device such as but not limited to an iPhone, iPad, or

Android device. See Ex. G, at p. 3 (indicating the app is available for download on the iPhone/iPad or Android).

23. According to the description of the CPS Energy's Home Manager app on the Applications page for Apple iPhones, the provider for the CPS Energy's Home Manager app is Consort. See Exhibit H.

24. According to the description of the CPS Energy's Home Manager app on the Applications page for Apple iPhones:



Figure 3

See Exhibit H.

25. Upon information and belief, the Home Manager and Total Connect Comfort app allows users (1) to change the settings of their smart thermostats from their mobile devices; (2) to set heating and cooling schedules for the smart thermostats from their mobile devices; (3) provides users with usage data related to the smart thermostats system; and (4) to utilize geoservices to operate the system based on location. See Exhibit E-I.

26. Upon information and belief, the Home Manager and Total Connect Comfort systems provided to customers also include a feature known as geo-fencing, which uses the GPS location on a user's mobile to set location based triggered events. See Ex. I ("The Lyric app supports a geo-fencing feature that switches the thermostat to an Away mode when you leave the house.").

27. Upon information and belief, the Honeywell Lyric T5 and Radio thermostat devices may also receive current room temperature readings from a thermostat and send control instructions, *i.e.* increasing or decreasing room temperature, to the user's HVAC system. See Exs. G and J.

28. CPS Energy provides guidance to its prospective customers through documents that provide information to educate users about the benefits of Home Manager and Total Connect Comfort systems and how to choose the right system for a customer's particular requirements. See Exhibits E-J.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 8,064,935

29. Plaintiff re-alleges and incorporates by reference each of paragraphs above.

30. The '935 Patent issued from USPTO Application No. 11/686,993 which was filed on March 16, 2007 and is a divisional application of the '372 Application. See Ex. A at A-1.

31. The '935 Patent was duly issued by the USPTO on November 22, 2011. See Ex. A at A-1.

32. Plaintiff is informed and believes that Defendant has infringed and continues to infringe claims of the '935 Patent, either literally or under the doctrine of equivalents, through the manufacture and sale of infringing system under the "Total Connect Comfort" and "Home Manager" brand, and other product lines. Based upon public information, Defendant has infringed and continues to infringe one or more claims of the '935 Patent, including Claim 19, because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises devices, including at least the Accused Products and Services, that form a wirelessly controllable smart thermostat system that incorporates a base unit (Honeywell and Radio smart thermostats) interfaced with an environmental device (thermostat). See, supra, Paragraphs 17-28, and Figures 1-3.

33. Based upon public information, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '935 Patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products and Services in an infringing manner. To the extent that Defendant is not the only direct infringer of the '935 Patent, customers that have purchased and/or used the Accused Products, including the Total Connect Comfort and Home Manager systems (see Exs. E-J), constitute direct infringers.

34. Despite knowledge of the '935 Patent as early as the filing of this complaint, based upon public information, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes the '935 Patent. See Exs. E-J. Based upon public information, the provision of and sale of the Accused Products and Services is a source of revenue and a business focus of Defendant. See Exs. E-J.

35. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes the '935 Patent by, at a minimum, providing and supporting the Accused Products and Services and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See e.g. Exs. E-J.

36. Specifically, Defendant offers design services to select, deploy and integrate its products to assist its customers in installing and utilizing the infringing remote control system. See e.g. Exs. E-J. Based upon public information, Defendant knew that its actions, including but not limited to any of the aforementioned products and services, would induce, have induced, and will continue to induce infringement by its customers of the '935 Patent by continuing to sell, support, and instruct its customers on using the Accused Products and Services. See e.g. Exs. E-J.

37. Upon information and belief, Defendant also contributes to the infringement of the '935 Patent by offering for sale and/or selling components that constitute a material part of the invention claims in the '935 Patent.

38. For example, Defendant has offered for sale and/or sold numerous Total Connect Comfort and Home Manager systems and Honeywell and Radio devices that infringe the '935 Patent, as discussed above.

39. Upon information and belief, CPS Energy's Total Connect Comfort and Home Manager systems system have no substantial, non-infringing uses. See Exs. E-J.

40. As a result, these Total Connect Comfort and Home Manager systems can only be used in a manner that infringes the '935 Patent, and on information and belief, have been used by Defendant's customers in a manner that directly infringes one or more claims of the '935 Patent.

41. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

42. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof 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.

43. Defendant's infringement of Plaintiff's rights under the '935 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 9,602,655

44. Plaintiff re-alleges and incorporates by reference each of paragraphs above.

45. The '655 Patent issued from USPTO Application No. 13/271,203 which was filed on October 11, 2011 and is a continuation of the application that resulted in the issuance of the '935 Patent. See Ex. B at B-1.

46. The '655 Patent was duly issued by the USPTO on March 21, 2017. See Ex. B at B-1.

47. Plaintiff is informed and believes that Defendant has infringed and continues to infringe claims of the '655 Patent, either literally or under the doctrine of equivalents, through the manufacture and sale of infringing products under the Total Connect Comfort and Home Manager brands, and other product lines. Based upon public information, Defendant has infringed and continues to infringe one or more claims of the '655 Patent, including at least Claim 1, because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises devices, including at least the Accused Products and Services, that form a remotely controllable smart thermostat system. See, supra, Paragraphs 17-28, and Figures 1-3.

48. Based upon public information, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '655 Patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products and Services in an infringing manner. To the extent that Defendant is not the only direct infringer of the '655 Patent, customers that have purchased and/or used the Accused Products, Total Connect Comfort and Home Manager systems (see Exs. E-J), constitute direct infringers.

49. Despite knowledge of the '655 Patent as early as the filing of this Complaint, based upon public information, Defendant continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes the '655 Patent. See Exs. E-J. Based upon public information, the provision of and sale of the

Accused Products and Services is a source of revenue and a business focus of Defendant. See Exs. E-J.

50. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes the '655 Patent by, at a minimum, providing and supporting the Accused Products and Services and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See e.g. Exs. E-J.

51. Specifically, Defendant offers design services to select, deploy and integrate its products to assist its customers in installing and utilizing the infringing remote control system. See e.g. Exs. E-J. Based upon public information, Defendant knew that its actions, including but not limited to any of the aforementioned products and services, would induce, have induced, and will continue to induce infringement by its customers of the '655 Patent by continuing to sell, support, and instruct its customers on using the Accused Products and Services. See e.g. Exs. E-J.

52. Upon information and belief, Defendant also contributes to the infringement of the '655 Patent by offering for sale and/or selling components that constitute a material part of the invention claims in the '655 Patent.

53. For example, Defendant has offered for sale and/or sold numerous Total Connect Comfort and Home Manager systems and Honeywell and Radio devices that infringe the '655 Patent, as discussed above.

54. Upon information and belief, these systems and devices have no substantial, non-infringing uses.

55. As a result, these Total Connect Comfort and Home Manager systems can only be used in a manner that infringes the '655 Patent, and on information and belief, have been used by Defendant's customers in a manner that directly infringes one or more claims of the '655 Patent.

56. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

57. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof 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.

58. Defendant's infringement of Plaintiff's rights under the "'655 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

59. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

60. Plaintiff respectfully requests the following relief:

- A. An adjudication that one or more claims of the Patents-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant;

- B. An adjudication that Defendant has induced infringement of one or more claims of the Patents-in-Suit based upon post-filing date knowledge of the Patents-in-Suit;
- C. An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Plaintiff for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;
- D. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further acts of infringement with respect to any one or more of the claims of the Patents-in-Suit;
- E. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,
- F. Any further relief that this Court deems just and proper.

Dated: June 12, 2018

Respectfully submitted,

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* admission *Pro Hac Vice* to be applied for