

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

AKOLOUTHEO, LLC,

Plaintiff,

v.

ACLARA TECHNOLOGIES, LLC

and

CITY OF MELISSA, TEXAS,

Defendants.

CIVIL ACTION NO.: 4:19-cv-534

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

1. This is an action under the patent laws of the United States, Title 35 of the United States Code, for patent infringement, in which Akoloutheo, LLC (“Akoloutheo” or “Plaintiff”) makes the following allegations against Aclara Technologies, LLC (“Aclara”) and the City of Melissa, Texas (“Melissa,” and collectively, “Defendants”).

PARTIES

2. Plaintiff Akoloutheo is a Texas limited liability company having its primary office at 15139 Woodbluff Dr., Frisco, Texas 75035. Plaintiff’s owner and sole operator is Rochelle T. Burns.

3. On information and belief, Defendant Aclara is an Ohio limited liability company having a principal place of business at 77 West Port Plaza Drive, Suite 500, St. Louis, Missouri, 63146. The registered agent for service of process in Texas for Aclara appears to be Corporation Service Company d/b/a CSC-Lawyers Incorporating Service, 211 East 7th Street, Suite 620, Austin, Texas 78701.

4. Defendant Melissa is a municipality incorporated under the laws of the State of Texas. On information and belief, Melissa can be served through its Mayor, Reed Greer, at Melissa City Hall, 3411 Barker Avenue, Melissa, Texas 75454.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c), generally, and under 1400(b), specifically. On information and belief, Defendants maintain regular and established places of business in this Judicial District and have committed acts of patent infringement in this Judicial District by using, selling and/or offering for sale infringing devices and instrumentalities to customers in this Judicial District.

7. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their presence and substantial business in this forum, including: (i) maintaining a physical presence in this forum; (ii) committing at least a portion of the infringements in this forum; and (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

COUNT I **INFRINGEMENT OF U.S. PATENT NO. 7,088,239**

8. Plaintiff is the owner by assignment of the valid and enforceable United States Patent No. 7,088,239 ("the '239 Patent") entitled "Method and Apparatus for All-purpose, Automatic Remote Utility Meter Reading, Utility Shut Off, and Hazard Warning and Correction" – including all rights to recover for past, present and future acts of infringement. The '239 Patent issued on August 8, 2006, and has a priority date of March 2, 2004. A true and correct copy of the '239 Patent is attached as Exhibit A.

9. Aclara imports, provides, supplies, distributes, offers for sale, sells, and/or provides access to methods and apparatuses for automatic remote utility meter reading and reporting ("Aclara Devices") and "advanced metering infrastructure" methods and apparatuses (the "Aclara STAR Network").

10. Melissa is a utility service provider in the State of Texas and in this Judicial District, serving approximately 4,700 customers. At least a portion of Melissa's services are provided to its customers using Aclara Devices and Aclara STAR Network methods and apparatuses.

11. Defendants directly – or through intermediaries including distributors, partners, contractors, employees, divisions, branches, subsidiaries, or parents – have used, operated, imported, provided, supplied, distributed, offered for sale, sold, and/or provided access to Aclara Devices and Aclara STAR Network methods and apparatuses.

12. An Aclara STAR Network incorporates a series of networked Aclara Devices comprising an array of Aclara Meter Transmission Units (“Aclara MTUs,”) each connected to at least one Aclara Data Collection Unit (“Aclara DCU,”) each of which is in turn connected to at least one Aclara STAR Network Control Computer (“Aclara STAR NCC”).

13. Aclara MTUs and Aclara DCUs deliver two-way communication and time synchronization within an Aclara STAR Network. Aclara MTUs and Aclara DCUs provide regular, time-stamped reports with detailed information on water usage, which can be used to identify hazards and anomalies such as potential leaks and meter tampering.

14. Aclara DCUs receive data and alarms from Aclara MTUs, transmit meter reads and alarms data to Aclara STAR NCCs and send commands back to Aclara MTUs. Aclara DCUs maintain diagnostic data for calls, alarms, system redundancy, priority reporting of error conditions, data-collector door access, and tamper notifications.

15. Data collected and transmitted by Aclara MTUs and Aclara DCUs is collected by one or more Aclara STAR NCCs. Software running on Aclara STAR NCCs can monitor information on meter types, transmission unit IDs, meter serial numbers, and alarm parameters for all utility meters. Components and services of Aclara STAR NCCs include generating alarms and alerts, managing communications, message parsing and routing, reporting, analytics, diagnostics, logging and security.

16. Defendants have installed and have been operating an Aclara STAR Network, and have installed and operated Aclara Devices at the premises of their residential and commercial customers in the State of Texas and in this Judicial District.

17. The Aclara STAR Network provided by Defendants is specifically designed for, and is used by Defendants for, metering utility usage.

18. The Aclara STAR Network is specifically designed for, and is used by Defendants for, reporting utility usage.

19. The Aclara STAR Network is used by Defendants for detecting, reporting and correcting errors and faults within the Aclara STAR Network.

20. The Aclara STAR Network incorporates data transmission capability for sending information from Aclara Devices to remote data collection computers.

21. The Aclara STAR Network incorporates data reception capability for the reception of said information within the remote data collection computers.

22. On information and belief, the Aclara STAR Network incorporates the capability to confirm successful transmission and receipt of utility data, to request retransmission of failed transmissions and to generate notice of repair needs.

23. Aclara Devices provided by Defendants are operable to monitor utility usage and establish utility usage data.

24. Aclara Devices provided by Defendants are operable to process utility usage data.

25. Aclara Devices provided by Defendants are operable to transmit utility usage data to remote data receiving devices.

26. Aclara Devices provided by Defendants are operable to transmit confirmation of the reception of said utility usage data.

27. On information and belief, Aclara Devices provided by Defendants are operable to repeat transmission of utility usage data to data receiving apparatus in the event confirmation is not successfully received.

28. On information and belief, Aclara Devices provided by Defendants are operable to initiate the identification and repair of a malfunction in the event transmission of utility usage data to a data receiving apparatus is not successful.

29. The Aclara STAR Network and Aclara Devices infringe one or more claims of the '239 Patent.

30. Defendants' use, operation, import, provision, supply, distribution, offer for sale, sale and/or provision of access to Aclara Devices and an Aclara STAR Network covered by the '239 Patent has been conducted without license, authority or permission of Akoloutheo.

31. Defendants' unauthorized and unlicensed use, operation, import, provision, supply, distribution, offer for sale, sale and/or provision of access to Aclara Devices and an Aclara STAR Network methods and apparatuses covered by the '239 Patent constitutes patent infringement under 35 U.S.C. § 271.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

- a. A judgment in favor of Plaintiff that Defendants have infringed the '239 Patent;
- b. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '239 Patent;
- c. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the '239 Patent as provided under 35 U.S.C. § 284;
- d. An award to Plaintiff for enhanced damages resulting from the knowing and deliberate nature of Defendants' prohibited conduct with notice being made at least as early as the service date of this complaint, as provided under 35 U.S.C. § 284;
- e. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and
- f. Any and all other relief to which Plaintiff may show itself to be entitled.

Dated: July 19th, 2019

Respectfully Submitted,

By: /s/ Kenneth Thomas Emanuelson
Kenneth Thomas Emanuelson
Texas State Bar No. 24012591
THE EMANUELSON FIRM
17304 Preston Road, Suite 800
Dallas, Texas 75252
469-363-5808
Ken@Emanuelson.us

**ATTORNEY FOR PLAINTIFF
AKOLOURTHEO, LLC**