**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MARYLAND**

| | |
|---|---|
| DESKTOP ALERT INC.,<br><br>Plaintiff,<br>v.<br><br>ALERTUS TECHNOLOGIES, LLC,<br><br>Defendants. | **C.A. NO. _____**<br><br>**COMPLAINT FOR PATENT INFRINGEMENT** |

Plaintiff Desktop Alert LLC ("Plaintiff"), by and through undersigned counsel, files this Complaint against Alertus Technologies LLC ("ATL") for infringement of U.S. Patent No. 9,172,765 ("the '765 Patent") alleging, based on personal knowledge as to itself and its actions, and based on information and belief as to all other matters, as follows.

## PARTIES

1. Plaintiff is a New York corporation with a place of business at 346 Main Street, Chatham, New Jersey 07928.

2. ATL is a limited liability company organized and existing under the laws of the State of Maryland with its principal place of business at 10 N Charles St., Baltimore, MD 21201.

## JURISDICTION AND VENUE

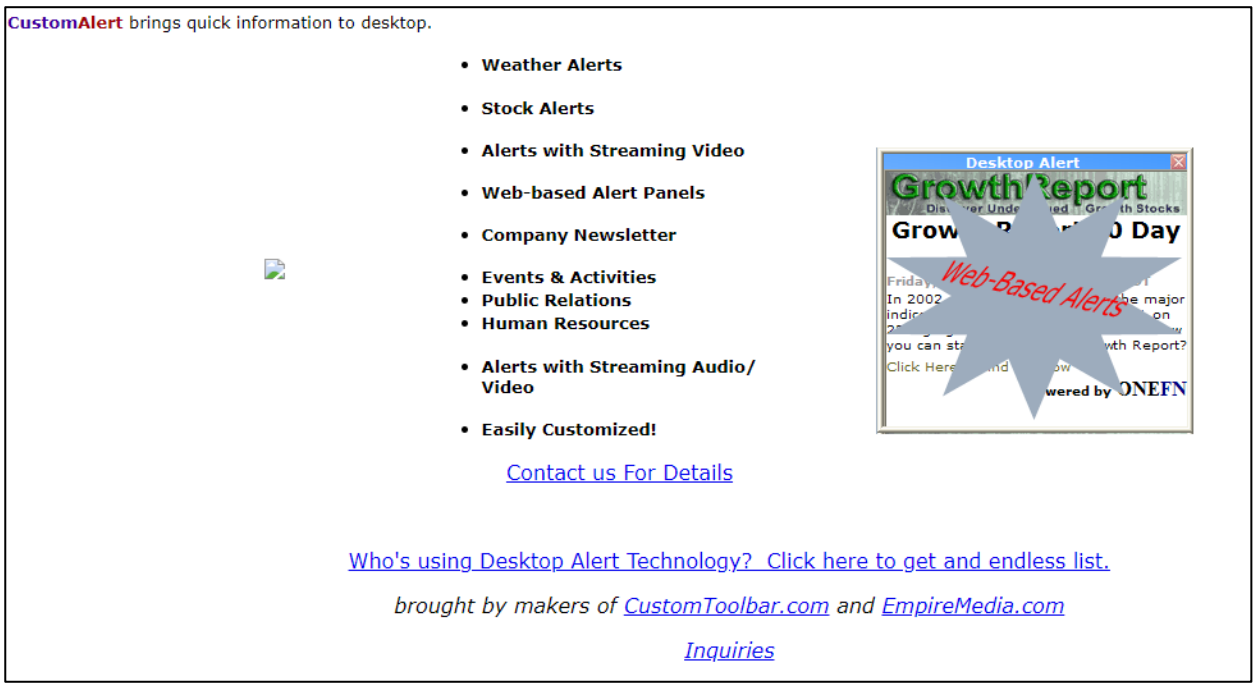
3. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, *et seq*., and this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a).

4. This Court has personal jurisdiction over ATL and venue is proper pursuant to 28 U.S.C. § 1400(b) because ATL is a Maryland limited liability company with its principal office located in this District.

## FACTS

5. Plaintiff is the maker of the Desktop Alert, a network-based mass notification platform for sending messages to individual computers over a virtual, public, or private network.

6. Plaintiff's first iteration of its innovative Desktop Alert platform was released to the public in August of 2003 via the website customalert.com, which can be found at the following web archive link: https://web.archive.org/web/20030929184006/http://www.webgramming.org/alert/ (last visited Dec. 20, 2022).




7. Shortly thereafter, Plaintiff continued its Desktop Alert platform under the website, desktopalert.net, at all times referring to its solution as the "Desktop Alert."


8. In and around the year 2009, Plaintiff had designed a solution using its Desktop Alert product that enabled it to receive time sensitive and critical "pull" or "polling" requests from one or more of the clients seeking the status of alert messages being sent to and received by the central server connected to the client via a network. *See* Exhibit D, page 1.

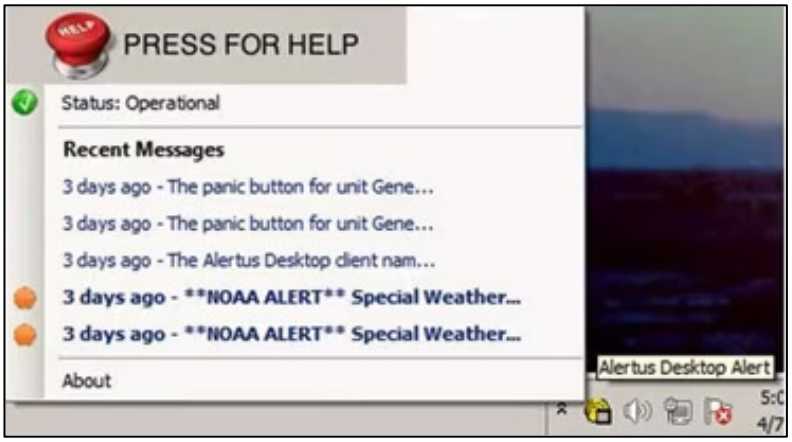
9. Plaintiff's solution overcame a critical shortcoming in the art of mass notifications that has been the staple of military users of the Desktop Alert platform. Plaintiff filed for a patent application for this technology with the United States Patent and Trademark Office ("USPTO").

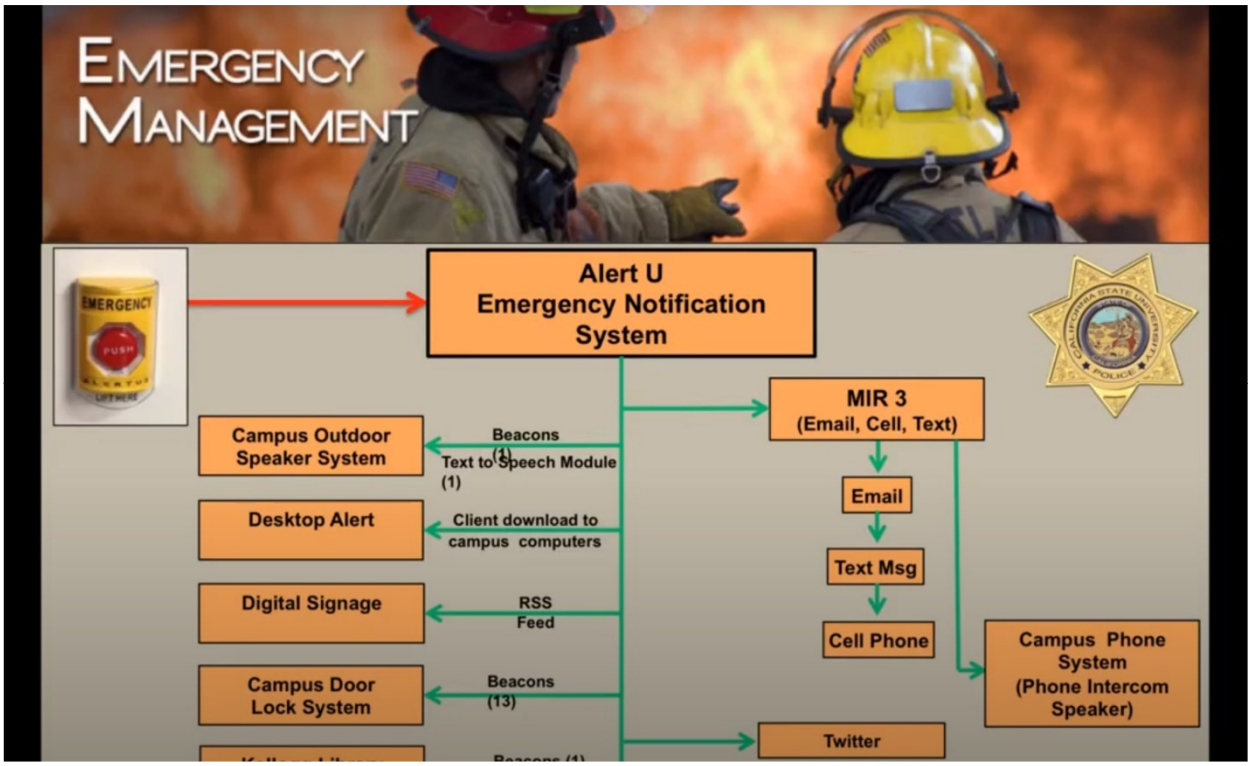
10. The USPTO duly and legally issued the '765 Patent to Plaintiff on October 27, 2015, and it is valid and enforceable. A true and correct copy of the '765 Patent is attached as Exhibit A.

11. Plaintiff is the assignee of the '765 Patent with ownership of all substantial rights thereto.

12. After Plaintiff's first use of its Desktop Alert platform, ATL began making, using, selling, and offering for sale its own platform, which it called the Alertus Desktop™ Notification service (the "Alertus Desktop"). A data sheet for the Alertus Desktop is attached as Exhibit B.

13. As part of its campaign for customers, ATL began publicly referring to its solution as the "Alertus Desktop Alert," a title that relies on Plaintiff's name to market the product. *See* https://www.youtube.com/watch?v=ly1liYaJWa0, at 13:55 (last visited Dec. 19, 2022).






14. ATL's co-founder and former CTO, Blake Robertson, who also was the individual who wrote the original code for the Alertus Desktop product, testified that while he was at ATL until December 2014, ATL's then-existing Alertus Desktop product could not maintain reduced polling intervals without straining the server and that the "pull" messages had large (i.e., in the multiple hundreds of bytes) packet sizes. *See* Exhibit C, page 34, lines 9-15, page 268, line 4 – page 270, line 14 (filed under seal). As Mr. Robertson explained, a smaller packet size, such as the one that was part of Plaintiff's invention, would allow for quicker alert notifications while reducing strain on the notification delivery server.

15. In and around May 2010, Plaintiff's CEO, Howard Ryan, and personnel at ATL, who included Mr. Robertson, collaborated with one another on potential business ventures. *See* Exhibit C, page 103, line 9 to page 104, line 17 (filed under seal).

16. As part of Plaintiff's and ATL's collaboration, Plaintiff gave ATL access to its code and know-how for methods like the ones disclosed and claimed in the '765 Patent and disclosed in the July 1, 2010 U.S. Provisional Patent Application to which it claims priority.

17. For example, independent Claim 1 of the '765 Patent recites:

> [1] An improved method for the dissemination of an alert message to a plurality of personal computers using a network communications protocol, said computers comprising clients, each said clients subscribing to a central server, said server comprising an alert message cache, said server adapted to receive and store alert messages, and said server adapted to generate and store alert ID numbers, said method comprising,
>
> [2] a first triggering step comprises the use of a HTTP packet comprising a request for a Boolean value relating to whether there are new alert messages and said packet comprises approximately 20 bytes,
>
> [3] a second step wherein said client contacts the central server and requests the value of said alert ID number in said memory, said value reflecting the number of alert messages received by said central server,
>
> [4] a third step wherein said server transmits said value to said client,
>
> [5] a fourth step wherein said client compares a stored value at the client with the value of the transmitted alert ID number, and
>
> [6] if said transmitted value exceeds said stored value, a fifth step wherein said client transmits a second message to said server and requests for the server to transmit all unread alert messages in a GetUnreadAlerts request from said server that are specific to said client, and

[7] if there are unread alert messages specific to said client in said server, a sixth step wherein said server sends to client all unread alert messages specific to the client, and,

[8] a further step wherein said client updates the stored value in its memory to reflect the number of additional unread alert messaged transmitted from said server to said client in response to said second message, and

[9] wherein, upon the reception of said unread alert messages in said sixth step, said alert messages are in instant message format and said client opens a window on a display panel to display said alert messages,

[10] wherein said communications protocol comprises protocols for the transmission of messages over the internet.

18. ATL describes its Alertus Desktop as follows:

> [Alertus Desktop] is an enterprise software solution for overriding computer displays with critical alert messages. The software consists of two elements: server application and client. When an alert is initiated, targeted client computers are overridden with a full-screen alert (or optional partial-screen) containing custom text notification and your organization's logo for source validation. Recipients can click an acknowledgment button at the bottom of their screen to close the alert and simultaneously provide acknowledgment to safety officials who originated the notification. Unacknowledged alert messages will display until expiration or cancellation.

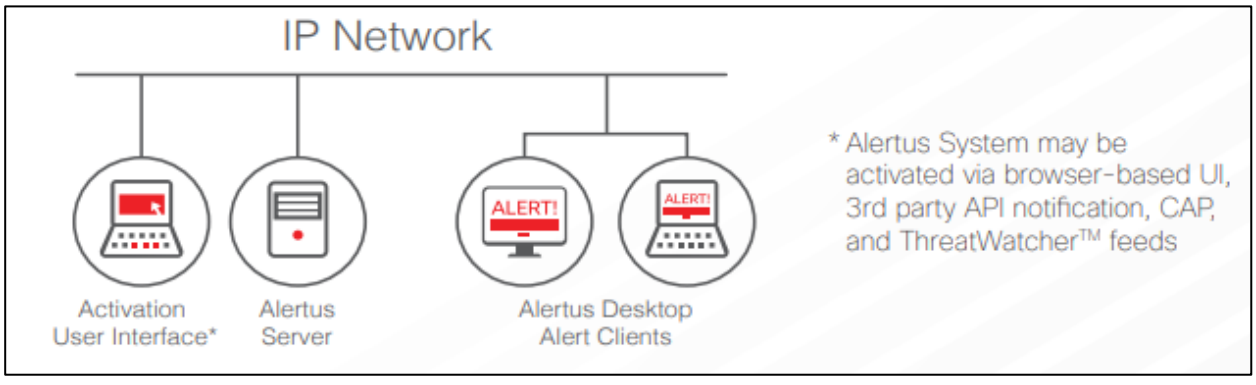
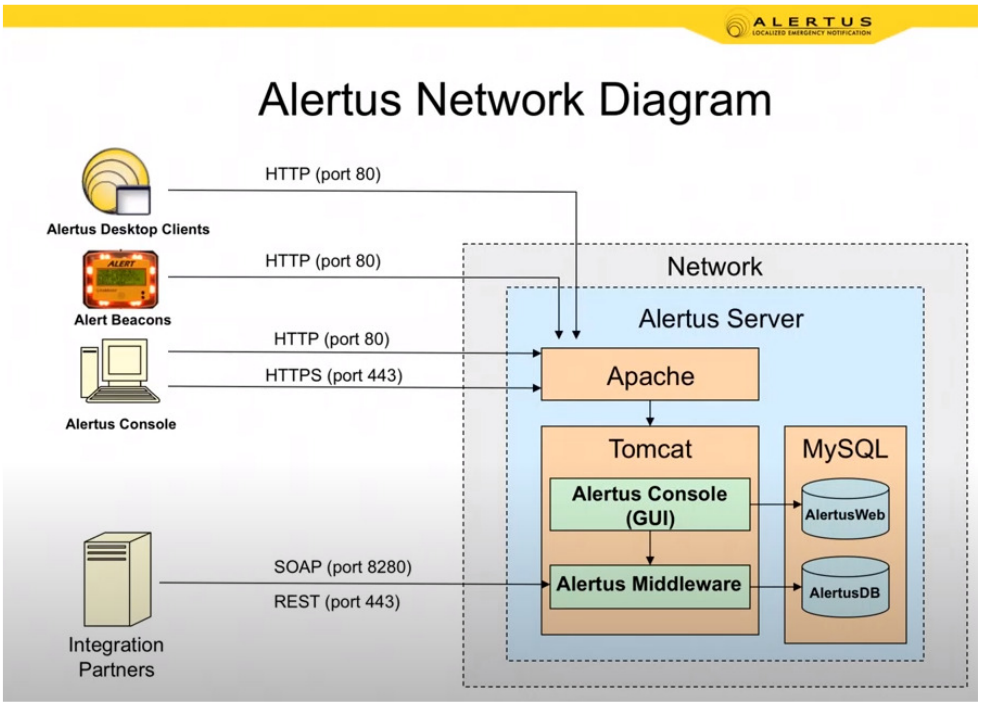


Exhibit B; *see also* https://help.alertus.com/s/article/Alertus-Solution-Overview?language=en_US (last visited Dec. 19, 2022).

19. As provided for in Exhibit B and recited by '765 Patent Claim 1 part [1], ATL's Alertus Desktop practices a "method for the dissemination of an alert message to a plurality of personal computers using a network communications protocol, said computers comprising clients, each said clients subscribing to a central server, said server comprising an alert message cache, said server adapted to receive and store alert messages, and said server adapted to generate and store alert ID numbers… ."




*See* https://www.youtube.com/watch?v=5AIHmJU5QUw, at 5:27 (last visited Dec. 19, 2022).

20. As provided for in Exhibit B and recited by '765 Patent Claim 1 part [2], ATL states that "[c]lients pull alerts using standard HTTP or HTTPS."

21. ATL further describes the Alertus Desktop as having "Intelligent Load Management: Dynamically adjusts polling interval to optimize notification speed while maintaining critical stability." *See* Exhibit B.

22. Based on publicly accessible information obtained from the Alertus Desktop code, ATL's Alertus Desktop provides the following polling code for its alert messaging system:

```
public override void OnRemoteActivity(bool fastPolling)
{
  base.OnRemoteActivity(fastPolling);
  lock (base.ThisLock)
  {
    if (this.pollingMode != ClientReliableSession.PollingMode.NotPolling)
    {
      if (!fastPolling)
      {
        this.pollingMode = ClientReliableSession.PollingMode.Idle;
      }
      else
      {
        this.pollingMode = ClientReliableSession.PollingMode.FastPolling;
      }

        this.pollingTimer.Set(this.GetPollingInterval());
    }
  }
```

23. Upon information and belief and relying on publicly accessible information obtained from the Alertus Desktop code, ATL's Alertus Desktop uses a "call" or "poll" that results in a Boolean value (true or false), which when "true" allows the client to make a call to get an unread alert. In other words, ATL's Alertus Desktop takes advantage of reducing the payload of a polling call as taught and claimed by the '765 Patent.

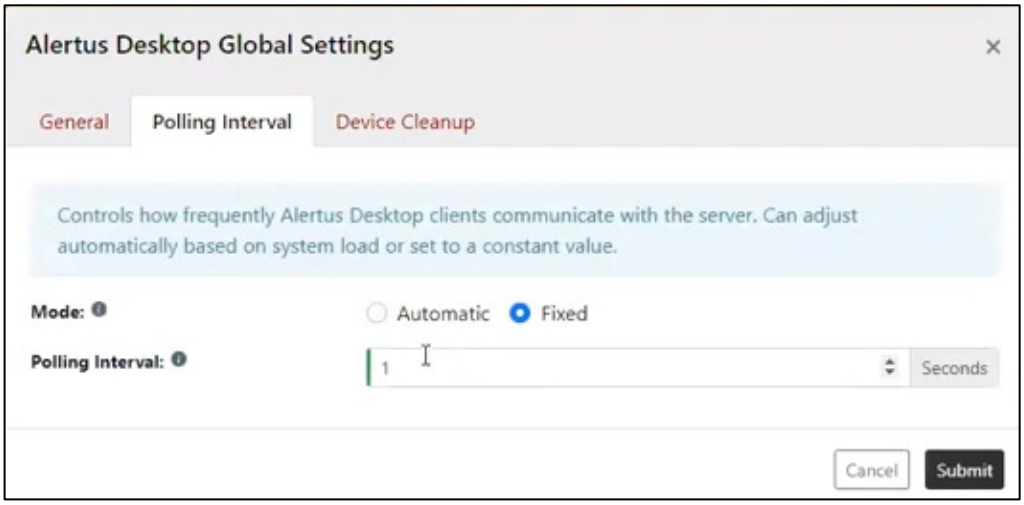
24. Another piece of code within ATL's Alertus Desktop is the following related to polling intervals set at predetermined polling frequencies as required by '765 Patent Claim 2:

```
private void AdjustTimer()
{
    lock (this._timerLock)
    {
        if (this._timerHandleRef != null)
        {
            Timer target = this._timerHandleRef.Target;
            if (this._physicalMemoryMonitor.IsAboveHighPressure() || this._cacheMemory
            {
                if (this._pollingInterval > 0x1388)
                {
                    this._pollingInterval = 0x1388;
                    target.Change(this._pollingInterval, this._pollingInterval);
                }
            }
            else if (this._cacheMemoryMonitor.PressureLast > this._cacheMemoryMonitor.
            {
                int num = Math.Min(this._configPollingInterval, 0x7530);
                if (this._pollingInterval != num)
                {
                    this._pollingInterval = num;
                    target.Change(this._pollingInterval, this._pollingInterval);
                }
            }
            else if (this._pollingInterval != this._configPollingInterval)
            {
                this._pollingInterval = this._configPollingInterval;
                target.Change(this._pollingInterval, this._pollingInterval);
            }
        }
    }
}
```

25. A polling interval of 0x1388 is hexadecimal for 5 seconds.

26. A polling interval of 0x7530 is hexadecimal for 30 seconds.

27. In its Summer Release 2022 webinar, ATL represented that it had polling intervals as low as 1 second.



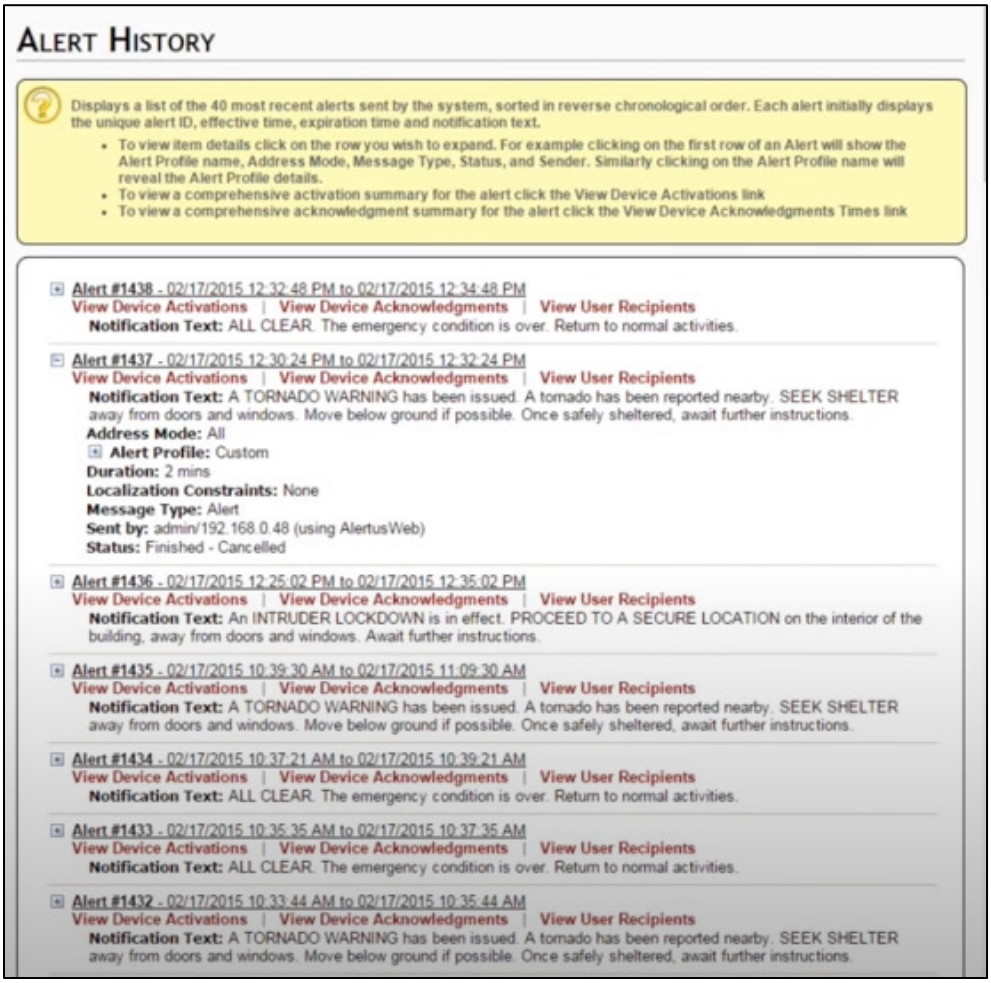

*See* https://www.youtube.com/watch?v=QpQ7ODQHELA, at 4:35 (last visited Dec. 19, 2022).

28. The Alertus Desktop's ability to increase the polling interval from one request every 30 seconds to one request every 5 seconds represents a six-fold increase in the polling interval.

29. The '765 Patent claims a method that results in at least doubling of the polling interval. *See* Exhibit A at Column 7, lines 21-27 ("In other words, if the polling interval of a system is at 60 seconds, the present improvement allows the polling interval to be set at 20 seconds without effecting performance. Even if one were to a follow a very conservative approach the present improvement easily allows one to double the polling interval.")

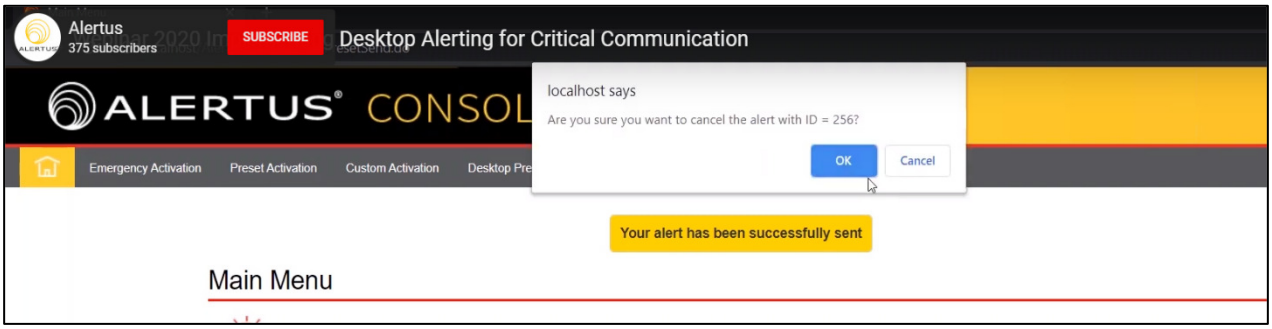
30. Upon information and belief, the Alertus Desktop's ability to increase polling at the same or greater magnitude than that disclosed and claimed by the '765 Patent is the result of a first triggering step using an approximately 20-byte HTTP packet comprising a request for a Boolean value relating to whether there are new alert messages, all of which is recited by '765 Patent Claim 1, part [2]. Alternatively, the methods used by Alertus Desktop practice the above-mentioned limitation of the '765 Patent using substantially the same function, in substantially the same way, to achieve the substantially same result.

31. In a 2015 version of the Alertus Desktop, each alert is provided an alert ID number that is based on a number of alerts. *See* https://www.youtube.com/watch?v=QpQ7ODQHELA, at 35:10-21 (last visited Dec. 19, 2022); *see also* https://www.youtube.com/watch?v=L8ueCzh7XOY, at 36:11 (last visited Dec. 19, 2022).



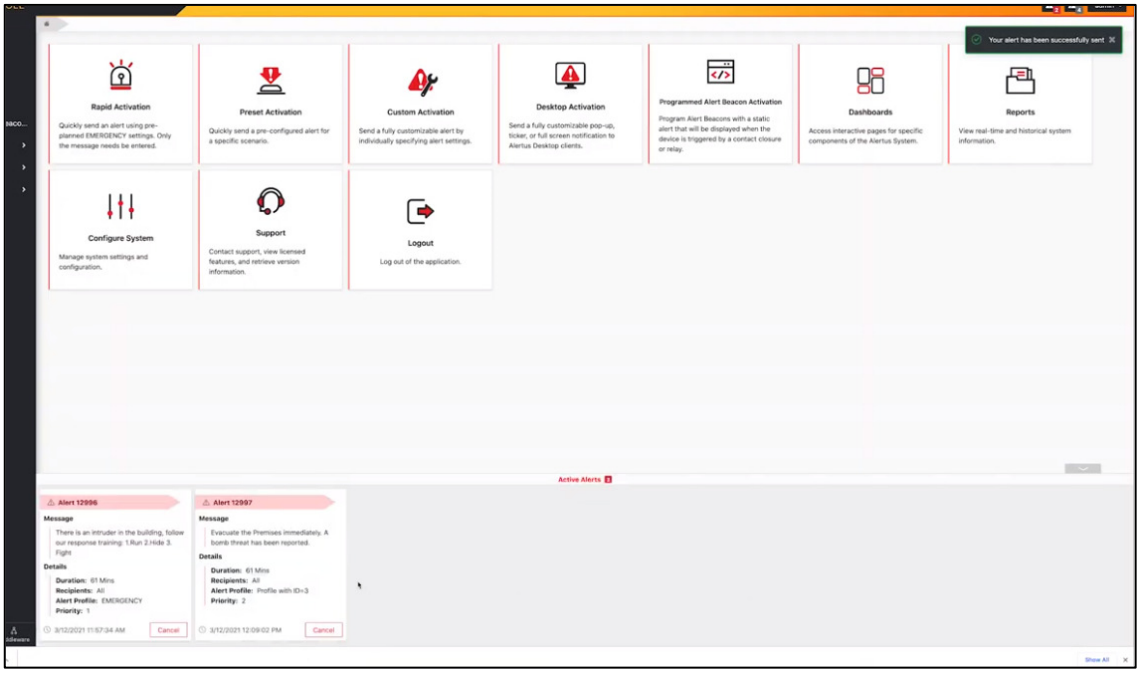

*See id.* ("Displays a list of the 40 most recent alerts sent by the system, sorted in reverse chronological order. Each alert initially displays the unique alert ID, effective time, expiration time and notification text.")

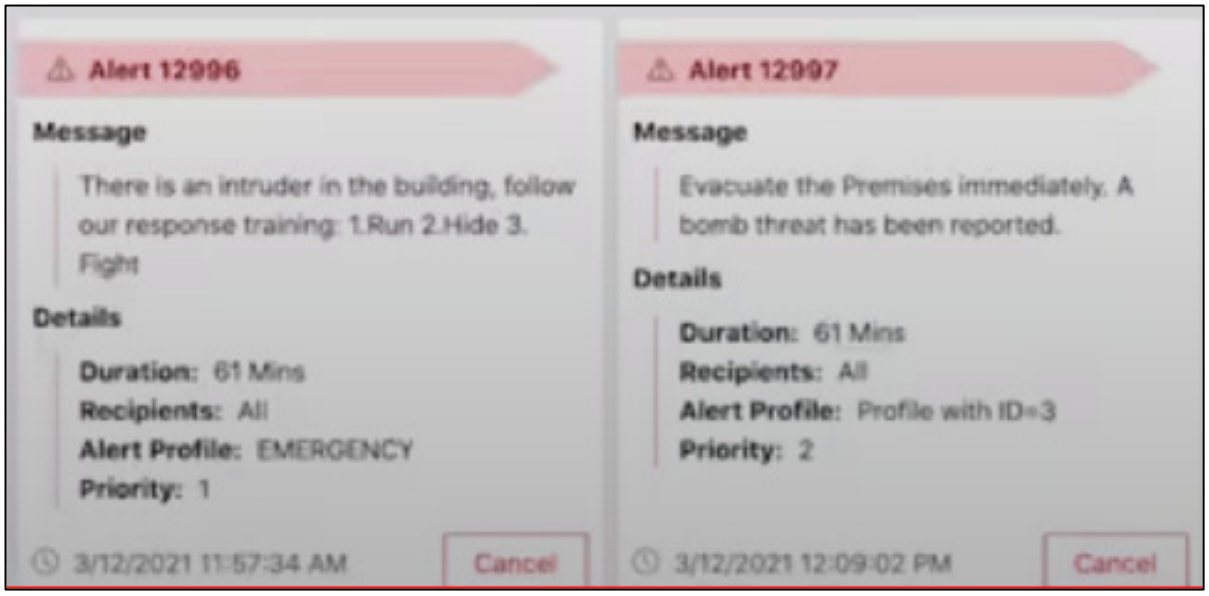
32. In later iterations, the Alertus Desktop refers to the alerts it sends using alert ID numbers.



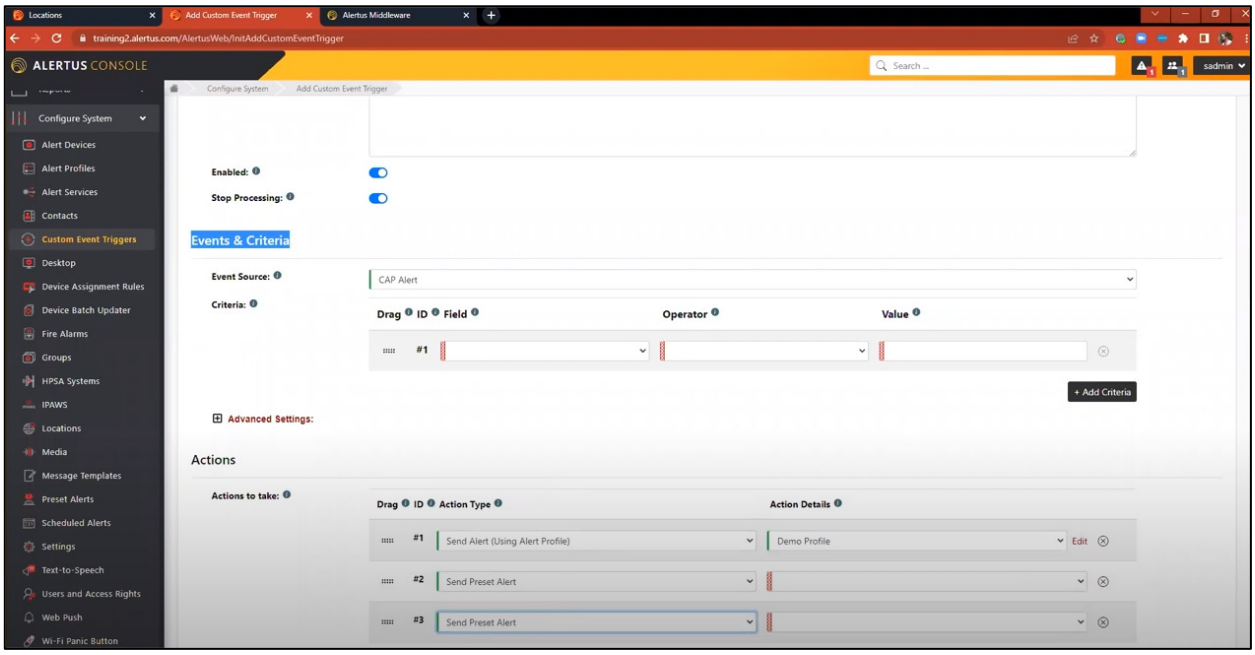

*See* https://www.alertus.com/replay-051220-implementing-desktop-alerting-webinar, at 23:44 (last visited Dec. 19, 2022) (stating, "localhost says Are you sure you want to cancel the alert with ID = 256?"); *also see id.* at 24:57 (stating, "localhost says Are you sure you want to cancel the alert with ID = 257?"); *id.* at 25:50 (stating, "localhost says Are you sure you want to cancel the alert with ID = 258?"); *id.* at 26:59 (stating, "localhost says Are you sure you want to cancel the alert with ID = 259?"); *id.* at 30:34 (stating, "localhost says Are you sure you want to cancel the alert with ID = 260?").

33. In still other versions of the Alertus Desktop, alerts are shown as having ID numbers:




34. In a 2022 version of the Alertus Desktop, alerts are shown having ID numbers:

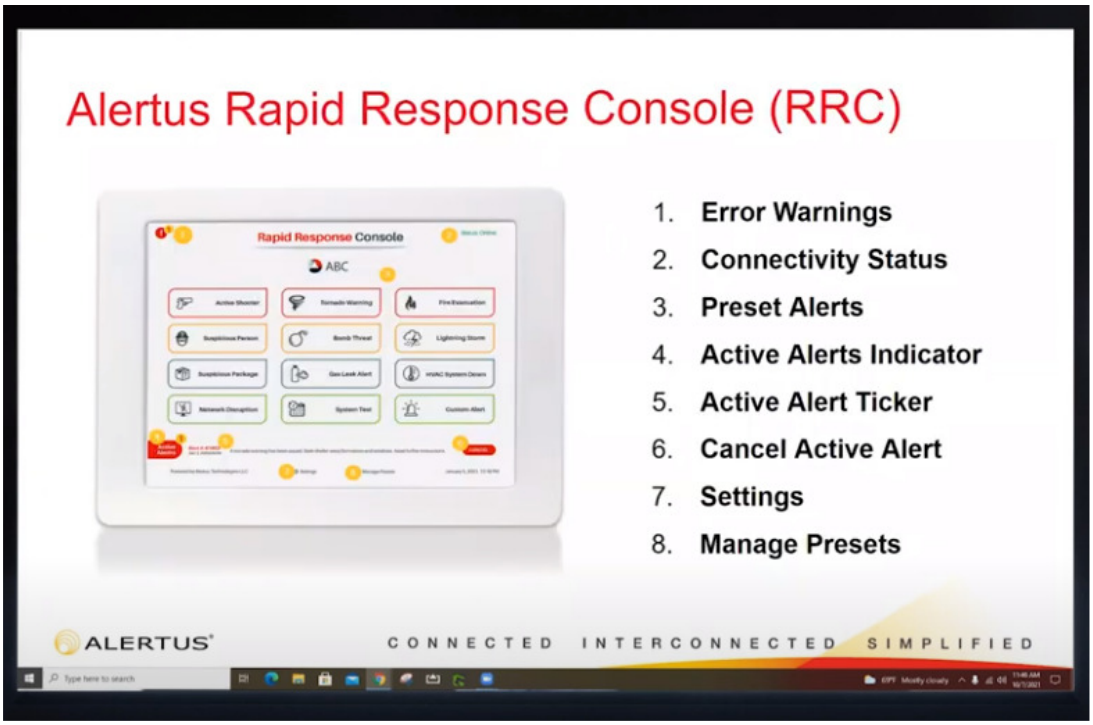



*See also* https://www.youtube.com/watch?v=QpQ7ODQHELA, at 35:10-21 (last visited Dec. 19, 2022).

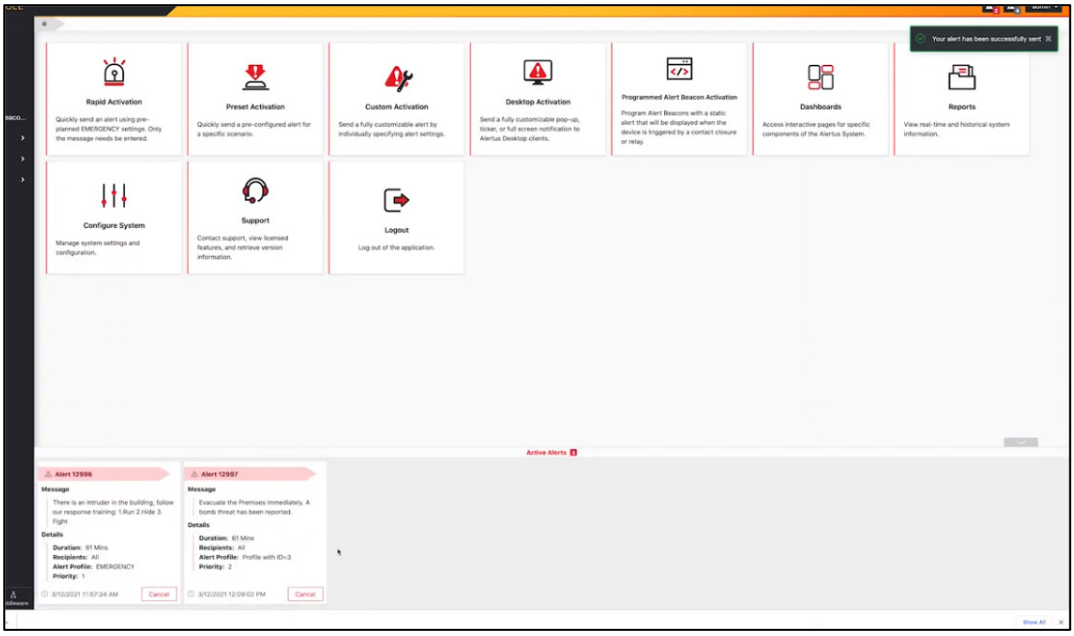
35. Upon information and belief, the Alertus Desktop enables the client to contact the central server and request the value of the alert ID number in the memory, which, upon information and belief, is the value reflecting the number of alert messages received by the central server as required by '765 Patent, Claim 1 Part [3].

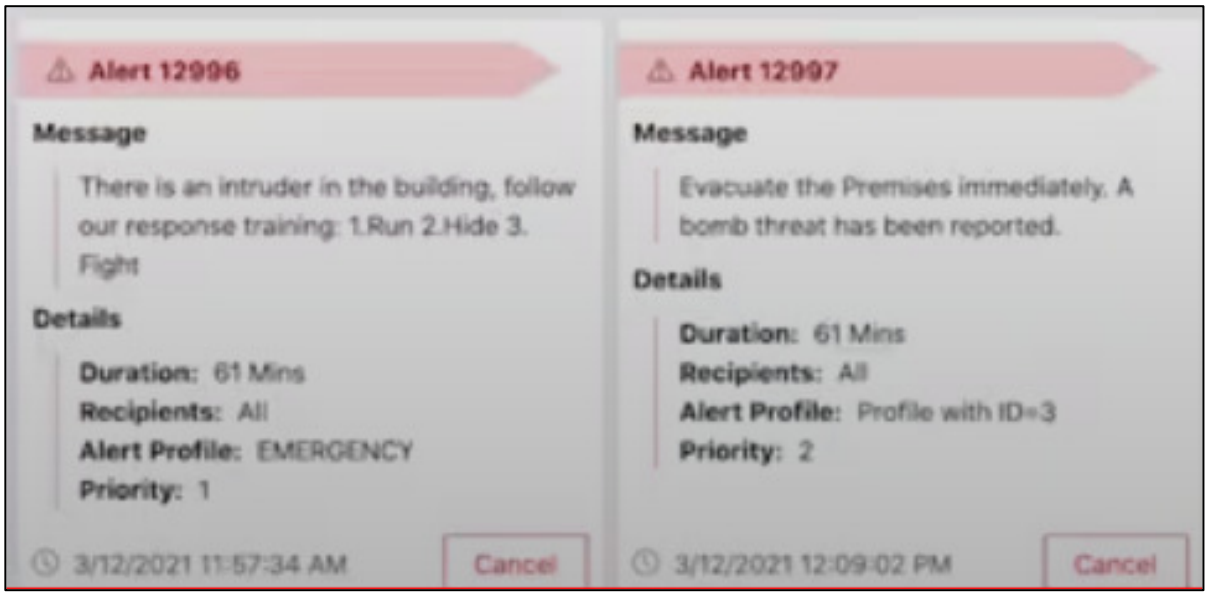
36. Upon information and belief and relying on publicly accessible information obtained from the Alertus Desktop code, the Alertus Desktop utilizes a server to transmit the value to the client computer to allow the client computer to compare the stored value with the value of the transmitted alert ID number as required by '765 Patent, Claim 1 Parts [4] and [5].

37. The Alertus Desktop also provides a Rapid Response Console ("RRC") in which a user sees active alert indicators and tickers. *See* https://www.youtube.com/watch?v=a2BgdpBFz04, at 0:39 (last visited Dec. 19, 2022).




The Alertus Desktop tracks all active alerts to different users such that all active alerts remain open until cancelled by the recipient user. *See* https://www.youtube.com/watch?v=L8ueCzh7XOY, at 35:21-26 (last visited Dec. 19, 2022); *see also* https://www.youtube.com/watch?v=w6Z_oQI5OCU, at 24:49-26:12 (last visited Dec. 19, 2022).

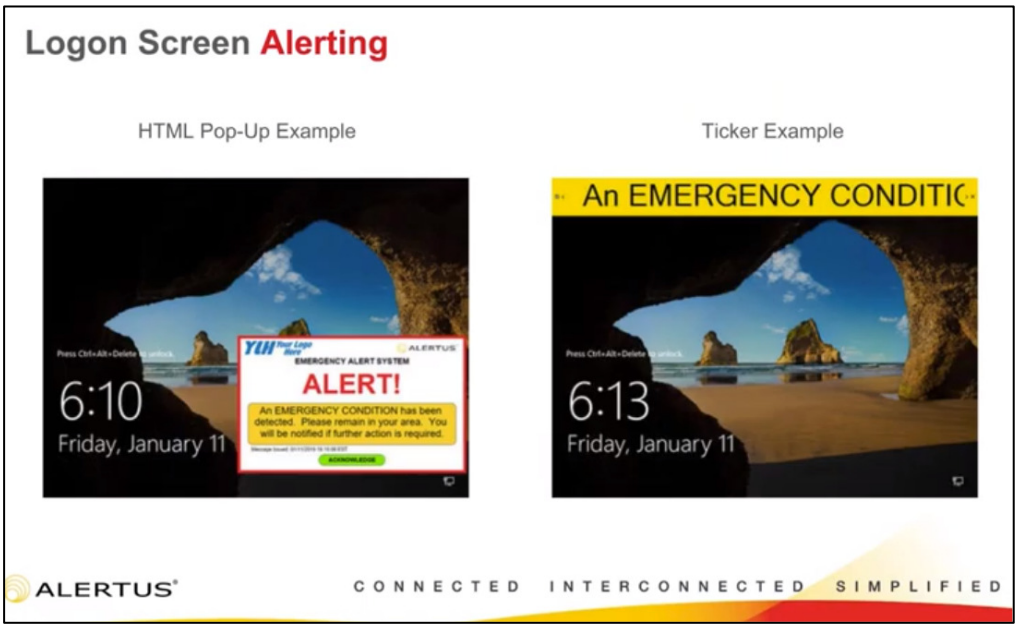


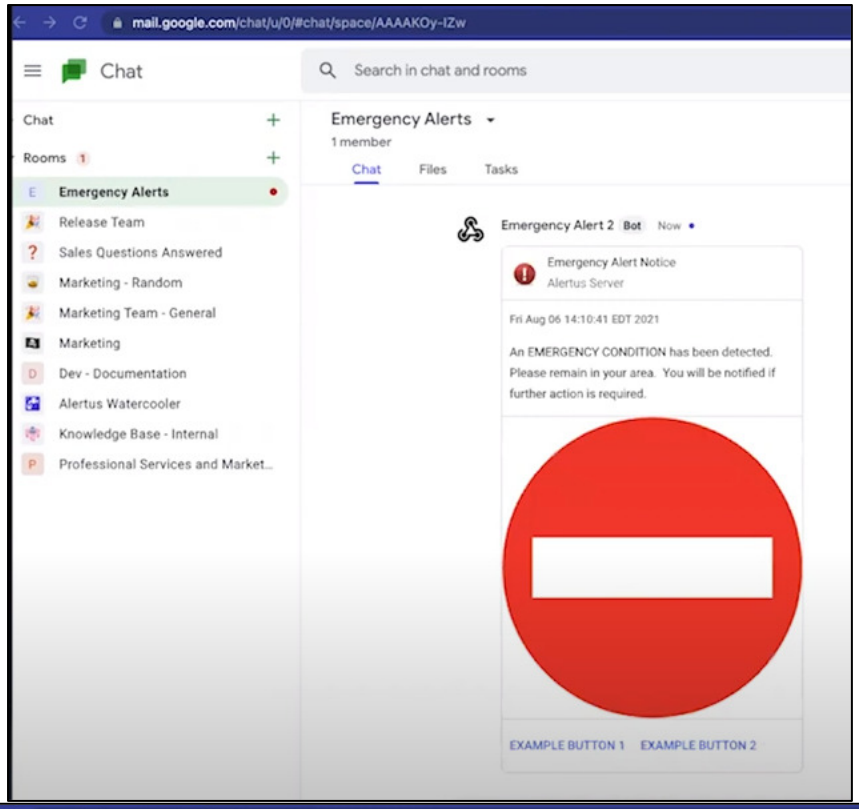

Therefore, upon information and belief, by providing the client with a list of unread and/or uncancelled messages, the Alertus Desktop transmits one or more second messages to the server to request all unread alert messages that are specific to the client, and, if there are unread alert messages specific to the client in the server, the server sends to the client all unread alert messages specific to the client as required by '765 Patent parts [6]-[7].

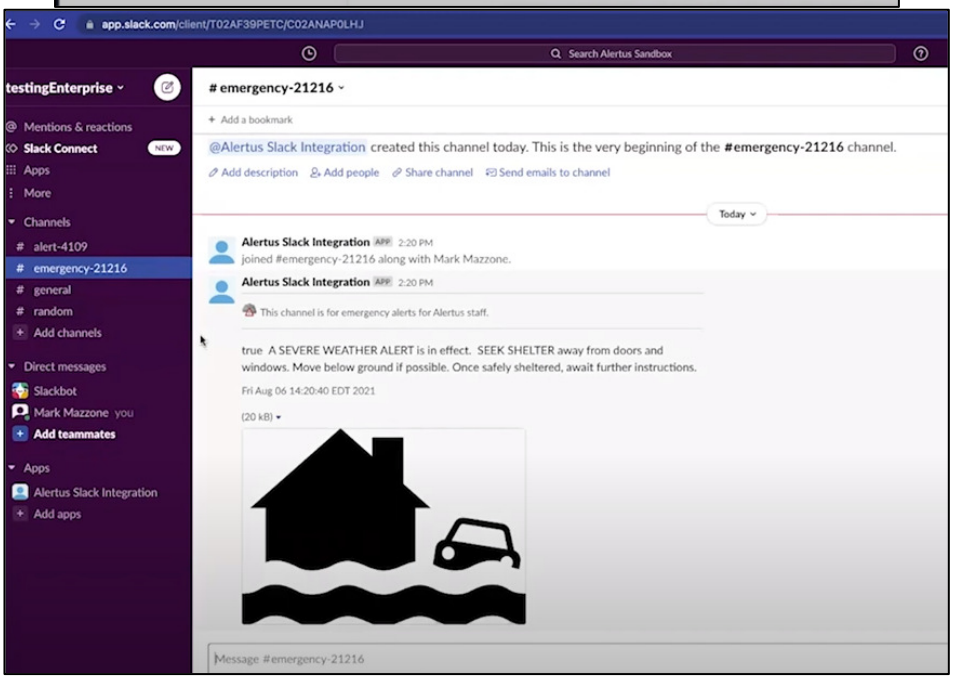
38. The Alertus Desktop will track and maintain unread alert messages specific to the client until they are acknowledged. *See* https://www.youtube.com/watch?v=w6Z_oQI5OCU, at 24:49-26:12 (last visited Dec. 19, 2022); *see also* Exhibit B ("Unacknowledged alert messages will display until expiration or cancellation.") By being able to attribute a priority value to one of the unacknowledged alert messages, it is, upon information and belief, that the Alertus Desktop engages with a client to update the stored value in its memory to reflect the number of additional unread alert messaged transmitted from the server to the client in response to the second message as required by '765 Patent part [8].

39. ATL states that in its Alertus Desktop product, "[i]mages can be easily embedded in the desktop pop up alert, or selected from the provided library of useful emergency alert and informational icon images." *See* https://www.alertus.com/desktop, "Audio & Image Options" (last visited Dec. 19, 2022). ATL also states that the Alertus Desktop uses pop-up alerts on select computers. *See* Exhibit D (Infographic Alertus 2018).



https://www.youtube.com/watch?v=w6Z_oQI5OCU, at 11:15 (last visited Dec. 19, 2022); *see also* https://www.youtube.com/watch?v=S4nMVwWEtDM, at 0:54-0:58 (last visited Dec. 19, 2022).



The above shows that the alert messages are in instant message format and the client opens a window on a display panel to display said alert messages, as required by '765 Patent claim 1, part [9].

40. ATL's data sheet for the Alertus Desktop provides the following:

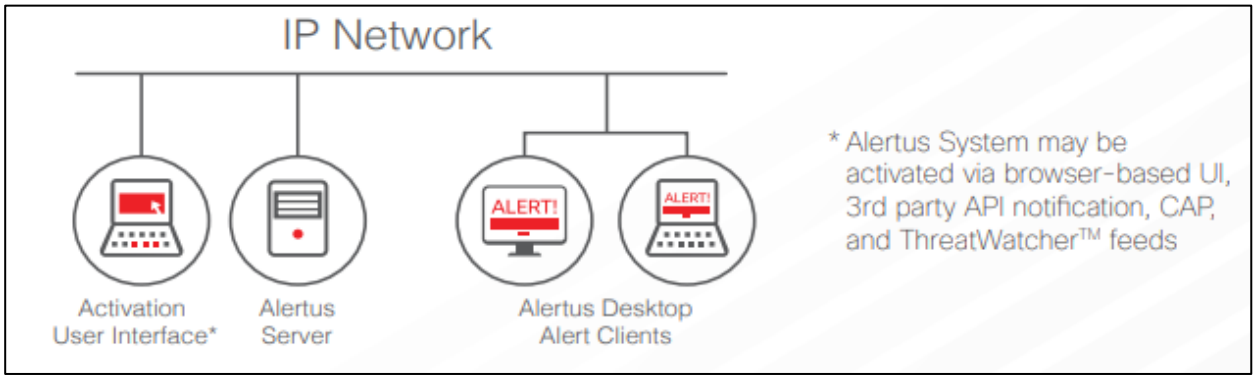



Exhibit B. The above confirms that the Alertus Desktop uses protocols for transmission of messages over the internet as required by '765 Patent Claim 1 part [10].

41. ATL further states that its Alertus Desktop is compatible with "SOAP and REST APIs that enable third-party systems to communicate with the Alertus system… ." *See* Exhibit D, page 2 ("Additional ENS Features & Capabilities: … Inbound Activation"); *see also* https://www.youtube.com/watch?v=5AIHmJU5QUw, 3:35 (last visited Dec. 19, 2022) (""TCP Port 8280 – For Alertus SOAP API integrations"). Thus, upon information and belief, the Alertus Desktop is configured to engage with a client so that the communications between the client(s) and the server(s) uses a SOAP protocol as required by '765 Patent claim 3.

42. ATL's Alertus Desktop also provides the date the message was received by the server, the time the message was received by the server, a date when the message was sent to the client, the time when the message was sent to the client, or combinations of the foregoing as required by '765 Patent claim 9.

43. Plaintiff provided actual notice of the patent application publication that matured into the '765 Patent, U.S. Patent Application Publication No. US2012/0036208 A1, to the public on numerous occasions, including at least in a February 21, 2014 Press Release and a January 22, 2016 Press Release, each of which is attached hereto as Exhibit E. The publication number to which each of these press releases refers is visible on the cover of the '765 Patent to the right of the text that reads "(65)" and as discussed in each of the Press Releases, is represented as an embodiment of a product made, offered for sale, and sold by Plaintiff.

44. Each of the 2014 and 2016 Press Releases were and are available via the website, www.prweb.com at the following links: http://www.prweb.com/pdfdownload/11604172.pdf, (last visited Dec. 19, 2022) (February 2014 Press Release with patent publication number) and https://www.prweb.com/pdfdownload/13177571.pdf, (last visited Dec. 19, 2022) (January 2016 Press Release with patent publication number).

45. ATL does and has previously accessed www.prweb.com with the specific purpose of reading and finding press releases authored by and distributed by Plaintiff. For example, ATL has searched for and reproduced a press release authored by Plaintiff that it filed in this district court as Dkt. No. 1-8 in Civil Case No. 8:20-cv-00154-PWG.

46. Alertus provides weekly training sessions for its products. See https://help.alertus.com/s/article/Live-Weekly-Training?language=en_US, (last visited Dec. 19, 2022).

## COUNT I
**Direct Infringement under 35 U.S.C. § 271(a)**

47. Plaintiff incorporates each of the foregoing allegations by reference as if fully set forth herein.

48. ATL contracts with third-party users, including Alertus Desktop customers, to operate ATL's Alertus Desktop software and ATL's servers to directly infringe at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents.

49. ATL conditioned and still conditions the infringing use of its Alertus Desktop software and servers by contracting with third-party users, including Alertus Desktop customers, and promising them one or more benefits, including, but not limited to, timely alert messaging to them and others at their places of operation.

50. Through its web-based tutorials, end-user agreements, written and in-person instruction(s), ATL further controls and/or directs the manner or timing of performance by its third-party users, including Alertus Desktop customers, of those aspects of the Alertus Desktop that in conjunction with ATL's software and servers directly infringe at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents.

51. ATL provides step-by-step instructions to its third-party users, including Alertus Desktop customers, telling them how to integrate the Alertus Desktop and ATL software into their own client systems to allow the third-party users, including Alertus Desktop customers, and ATL to operate the Alertus Desktop to infringe directly at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents.

52. Upon information and belief, a third-party user's failure to follow ATL's instructions that lead to their and ATL's direct infringement of at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents can adversely impact the availability and/or derivation of the anticipated benefits of the Alertus Desktop as provided by ATL's contract with that third-party user and/or Alertus Desktop customer.

53. Upon information and belief, a third-party user's failure to follow ATL's instructions that lead to their and ATL's joint direct infringement of at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents can adversely impact the ability of the third-party user and/or Alertus Desktop customer to ensure the Alertus Desktop will send timely notification of emergencies to those who rely on the Alertus Desktop for their personal safety from harm.

54. Upon information and belief, a third-party user will avoid failing to follow ATL's instructions that lead to their and ATL's joint direct infringement of at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents because inoperability of ATL's Alertus Desktop can lead to harm and possibly death of those third-party users, including Alertus Desktop customers, who rely on the Alertus Desktop for their personal safety from harm.

55. ATL jointly infringes the '765 Patent with actual knowledge of the patent application that matured into the '765 Patent and/or having had knowledge of the '765 Patent, or willfully blinding itself to the fact, while also having knowledge that its third-party users, including Alertus Desktop customers, follow its instructions to perform acts that together with its own acts directly infringe the '765 Patent both literally and/or at least under the doctrine of equivalents.

56. ATL encourages or assists the jointly infringing activity by, for example, providing its Alertus Desktop product and directing its use by ATL's third-party users, including Alertus Desktop customers, in an infringing manner, and providing instructions for engaging in uses that infringe the '765 Patent both literally and/or at least under the doctrine of equivalents.

57. ATL instructs and intends for others, including the third-party users, including Alertus Desktop customers, to practice with ATL, either literally or equivalently, at least each and every element of the method of claim 1 of the '765 Patent.

58. ATL engages in such conduct without the consent or authorization of Plaintiff.

59. ATL directs and assists the jointly infringing activity by providing instructions on how third-party users, including Alertus Desktop customers, can enable the Alertus Desktop product to engage in the polling methods and get requests of at least Claim 1 of the '765 Patent.

60. ATL knew that making and selling its Alertus Desktop with instructions for using the same for alert messaging result in direct infringement of the '765 Patent, both literally and/or at least under the doctrine of equivalents, and/or ATL willfully blinded itself to the fact that such instructed uses do result in such direct infringements of the '765 Patent.

61. ATL has acted with reckless disregard of Plaintiff's intellectual property rights.

62. Plaintiff has been damaged as a result of ATL's willfully infringing conduct. For example, despite knowledge of its infringement of the '765 Patent, ATL engaged in a course of conduct that allowed it to continue to join its third-party users, including Alertus Desktop customers, in directly infringing the '765 Patent both literally and/or at least under the doctrine of equivalents.

63. Plaintiff has been damaged by the willfully infringing activity alleged herein, and ATL is liable to Plaintiff in an amount that adequately compensates for such infringements which, by law, cannot be less than a reasonable royalty but may be the greater of such reasonable royalty or lost profits incurred by Plaintiff, together with interest and costs as fixed by this Court under 35 U.S.C. § 284. Additionally, this Court should enhance the damages assessed against ATL to compensate Plaintiff for ATL's willful infringements under 35 U.S.C. §

284. Further, this Court should find that this is an exceptional case warranting attorney fees against ATL and in favor of Plaintiff.

**COUNT II**
**Induced Infringement under 35 U.S.C. § 271(b)**

64. Plaintiff incorporates each of the foregoing allegations by reference as if fully set forth herein.

65. Third-party users, including Alertus Desktop customers, of ATL's Alertus Desktop directly infringe at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents.

66. ATL induced the third-party users, including Alertus Desktop customers, to perform the acts that directly infringe the '765 Patent both literally and/or at least under the doctrine of equivalents.

67. ATL had actual knowledge of the patent application that matured into the '765 Patent and/or has had knowledge of the '765 Patent, or willfully blinded itself to the fact, and also has had knowledge that the third-party users, including Alertus Desktop customers, are performing the acts that directly infringe the '765 Patent both literally and/or at least under the doctrine of equivalents.

68. ATL encourages or assists the infringing activity by, for example, providing its Alertus Desktop product and encouraging its use by ATL's third-party users, including Alertus Desktop customers, in an infringing manner, and providing instructions for engaging in uses that infringe the '765 Patent both literally and/or at least under the doctrine of equivalents.

69. ATL instructs and intends for others, including the third-party users, including Alertus Desktop customers, to practice, literally or equivalently, at least each and every element of the method of at least claim 1 of the '765 Patent.

70. ATL engages in such conduct without the consent or authorization of Plaintiff.

71. ATL encourages or assists the infringing activity by providing instructions on how third-party users, including Alertus Desktop customers, can enable the Alertus Desktop product to engage in the polling methods and get requests of at least Claim 1 of the '765 Patent.

72. ATL knew that making and selling its Alertus Desktop with instructions for using the same for alert messaging and management of the same results in direct infringement of the '765 Patent, both literally and/or at least under the doctrine of equivalents, and/or ATL willfully blinded itself to the fact that such instructed uses do result in such direct infringements of the '765 Patent.

73. ATL has acted with reckless disregard of Plaintiff's intellectual property rights.

74. Plaintiff has been damaged as a result of ATL's willfully infringing conduct. For example, despite knowledge of its infringement of the '765 Patent, ATL engaged in a course of conduct that allowed it to continue to induce third parties to directly infringe the '765 Patent both literally and/or at least under the doctrine of equivalents.

75. Plaintiff has been damaged by the willfully infringing activity alleged herein, and ATL is liable to Plaintiff in an amount that adequately compensates for such infringements which, by law, cannot be less than a reasonable royalty but may be the greater of such reasonable royalty or lost profits incurred by Plaintiff, together with interest and costs as fixed by this Court under 35 U.S.C. § 284. Additionally, this Court should enhance the damages assessed against ATL to compensate Plaintiff for ATL's willful infringements under 35 U.S.C. §

284. Further, this Court should find that this is an exceptional case warranting attorney fees against ATL and in favor of Plaintiff.

**COUNT III**
**Contributory Infringement under 35 U.S.C. § 271(c)**

76. Plaintiff incorporates each of the foregoing allegations by reference as if fully set forth herein.

77. Third-party users, including Alertus Desktop customers, operate the Alertus Desktop in a manner that directly infringes at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents.

78. ATL had actual knowledge of the patent application that matured into the '765 Patent and/or has had knowledge of the '765 Patent, or willfully blinded itself to the fact, and also has had knowledge that the third-party users, including Alertus Desktop customers, are performing the acts that directly infringe the '765 Patent both literally and/or at least under the doctrine of equivalents.

79. ATL instructs and intends for third-party users, including Alertus Desktop customers, to practice the method of claim 1 of the '765 Patent so as to directly infringe at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents.

80. ATL manufactures and sells its Alertus Desktop with the specific intent that third-party users, including Alertus Desktop customers, practice the methods of at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents.

81. ATL contributes to direct infringement of the '765 Patent by making and selling the Alertus Desktop to be compatible with the computer systems and software of third-party users, including Alertus Desktop customers.

82. ATL's Alertus Desktop is specially designed to practice the method of at least claim 1 of the '765 Patent both literally and/or at least under the doctrine of equivalents.

83. ATL's Alertus Desktop constitutes a material part of the practice of the method of at least claim 1 of the '765 Patent.

84. ATL's Alertus Desktop is not a staple article of commerce suitable for substantial non-infringing uses.

85. ATL engages in such conduct without the consent or authorization of Plaintiff.

86. ATL knew that its making and selling of its Alertus Desktop contributed to direct infringement of the '765 Patent by third-party users, including Alertus Desktop customers, or it was otherwise willfully blind to that fact.

87. ATL has acted with reckless disregard of Plaintiff's intellectual property rights.

88. Plaintiff has been damaged as a result of ATL's willfully infringing conduct. For example, despite knowledge of its indirect infringement of the '765 Patent, ATL engaged in a course of conduct that allowed it to continue to instruct others to contribute to infringement of the '765 Patent.

89. Plaintiff has been damaged by the willfully infringing activity alleged herein, and ATL is liable to Plaintiff in an amount that adequately compensates for such infringements which, by law, cannot be less than a reasonable royalty but may be the greater of such reasonable royalty or lost profits incurred by Plaintiff, together with interest and costs as fixed by this Court under 35 U.S.C. § 284. Additionally, this Court should enhance the damages assessed against ATL to compensate Plaintiff for ATL's willful infringements under 35 U.S.C. § 284. Further, this Court should find that this is an exceptional case warranting attorney fees against ATL and in favor of Plaintiff.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. A judgment that ATL's Alertus Desktop is configured to directly infringe the '765 Patent literally or at least under the doctrine of equivalents and does so directly infringe through a joint enterprise between ATL and its third-party users, including Alertus Desktop customers;

B. A judgment that ATL has contributorily infringed the '765 Patent and/or induced infringement of the '765 Patent;

C. A judgment that ATL's induced and/or contributory infringements of the '765 Patent has been willful;

D. A ruling that this case be found to be exceptional under 35 U.S.C. § 285;

E. A judgment awarding to Plaintiff its attorneys' fees incurred in prosecuting this action;

F. A judgment and order requiring ATL to pay Plaintiff damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and enhanced damages for willful infringement as provided by 35 U.S.C. § 284.

G. A judgment and order requiring ATL to pay Plaintiff the costs of this action (including all disbursements);

H. A judgment and order requiring ATL to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded;

I. A judgment and order requiring that Plaintiff be awarded a compulsory ongoing licensing fee; and

J. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Date: December 22, 2022

Respectfully submitted,

/s/ Andrew C. Aitken
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