

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**Lloyd Industries, Inc.,
BC Group Int'l, Inc.**

Plaintiffs,

v.

Datrend Systems, Inc.,

Defendant.

Case. No. 1:23-cv-998

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Lloyd Industries, Inc. and BC Group Int'l, Inc., allege, as set forth in detail below, that Defendant Datrend Systems, Inc. willfully infringes U.S. Patent No. 9,883,903 ("903 Patent").

INTRODUCTION

1. BC Group is a leading provider of test and measurement equipment for the worldwide technical services marketplace.
2. Lloyd conceived, developed, and ultimately patented innovative technology related to analyzing electrosurgical units (ESUs), including as disclosed in the '903 Patent. Attached as Exhibit 1 is a true and correct copy of the Patent.

3. Lloyd is the owner by assignment of all right, title, and interest in the '903 Patent, which discloses and claims an ESU analyzer and a method for analyzing signals from an electrosurgical generator.

4. BC Group has an exclusive license to practice the '903 Patent.

5. Lloyd discovered that Datrend sells a "vPad-RF ESU Analyzer" product ("ESU Analyzer") for testing ESUs that infringes the Patent.

6. Lloyd notified Datrend of infringement of the '903 Patent by the ESU Product and attempted to resolve the infringement. While Datrend initially appeared agreeable to amicably resolving the infringement issue, Datrend stopped communicating with Lloyd for an extended period, and continued selling the same ESU Product. At the same time, Datrend increased its sales efforts with respect to the ESU Product, including sales efforts directed at customers of BC Group.

7. Lloyd and BC Group now bring this action for damages and injunctive relief for willful patent infringement by Datrend.

THE PARTIES

8. Plaintiff Lloyd is a Missouri corporation with its principal place of business in St. Charles, Missouri.

9. BC Group Int'l, Inc. is a Missouri corporation with its principal place of business in St. Charles, Missouri and sells the patented product.

10. On information and belief, Defendant Datrend is a Canadian Corporation with its principal place of business at 130 - 4020 Viking Way, Richmond, BC, Canada, V6V 2L4.

JURISDICTION AND VENUE

11. This action arises under the Patent Act of 1952, 35 U.S.C. §§ 1 *et seq.*, as amended.

12. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the United States.

13. Personal jurisdiction over Defendant is proper in this District because Defendant transacts business within this District; and Defendant has caused tortious injury to Lloyd in this District by its infringement of the '903 Patent.

14. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant is a foreign corporation and is subject to personal jurisdiction in this District.

15. Moreover, venue and personal jurisdiction are proper in this District because Defendant and its agents offered the infringing product for sale in this District at the AAMI Exchange Trade Show on June 3-6, 2022.

16. Additionally, venue and personal jurisdiction are proper in this District because Defendant, through its U.S. distributor, regularly offers the infringing product for sale in the District and throughout the State of Texas.

17. Venue and personal jurisdiction are also proper in this District because Defendant operates an interactive website through which it offers the infringing product for sale. A customer may go to the interactive website and request and receive a quote for the infringing product. See <https://www.datrend.com/product/vpad-rf/>. The interactive website may be accessed in this District.

FACTUAL ALLEGATIONS

18. Lloyd developed and owns electrosurgical analyzing technology disclosed and claimed in the '903 Patent that is used for testing electrosurgical devices. As explained in the '903 Patent specification, "medical instruments may be used during a medical procedure to facilitate or assist in performing a particular operation. For example, electrosurgical devices may be used to heat tissue within a patient. The electrosurgical devices operate to apply a high-frequency electric current to the tissue. The use of electrosurgical devices allows for precise tissue cutting with reduced or limited blood loss." '903 Patent, col. 1, lines 6-12.

19. Lloyd's electrosurgical analyzing technology allows for testing electrosurgical devices by detecting and analyzing more complex waveforms of signals generated by these devices, including continuous and non-continuous

waveforms (see Patent, e.g., Figure 10), than was possible with conventional testing systems. The waveform of a signal is the graphical representation of the signal as a function of time.

20. Lloyd's electrosurgical analyzing technology is able to test advanced, complex outputs of electrosurgical devices that generate different types of waveforms including continuous and non-continuous waveforms. This ensures that electrosurgical devices used on patients during surgical and other medical operations meet performance criteria, operate within specified or required guidelines, and/or comply with different healthcare regulations. *See, e.g.* '903 Patent, col. 3, lines 22-28.

21. Prior to Lloyd's electrosurgical analyzing technology, conventional testing systems could not provide the response time required for testing complex waveforms. These conventional testing systems could not provide digitization and sampling of the incoming waveform to allow for customizable testing with a programmable design (e.g., allow for programming different test pulses, such as for advanced pulse modes).

22. Lloyd recognized this deficiency in the conventional testing systems and the need for improved technology in analyzing ESUs. Lloyd developed and patented technology that allowed for customizable testing that can be programmed to analyze more complex waveforms, such as pulsed waveforms, in addition to

basic waveforms. The patented technology allows for the detection, measurement, and/or analysis of one or more signals or waveforms with more accuracy and that allows for analyzing complex waveforms that could not previously be analyzed with this type of testing equipment. As such, the patented technology provides a programmable design that allows for detection and analysis of different types of waveforms than was previously possible.

23. Lloyd contacted Datrend on multiple occasions, including on May 19, 2016 (*see* unsigned letter to Datrend attached as Exhibit 2), October 17, 2018 (*see* unsigned letter to Datrend and reply letter from Datrend dated October 29, 2018 attached as Exhibit 3), and October 20, 2022 (*see* letter attached as Exhibit 4) to notify Datrend of infringement and attempt to amicably resolve the issue.

24. The October 20, 2022 communication resulted in a response from Datrend on December 6, 2022 (*see* letter attached as Exhibit 5), and then a reply from Lloyd to Datrend on January 11, 2023 (*see* letter attached as Exhibit 6.) Some discussion followed, starting on May 17, 2023, but ultimately, Datrend again went silent until August 9, 2023. *See* email communications attached as Exhibit 7. Datrend's continual delays and lack of meaningful efforts to resolve the continued infringement of the '903 Patent made it apparent to Lloyd that further discussions were unlikely to be productive.

25. From the original notice of infringement provided by Lloyd to Datrend, and continuing to the present, Datrend sold and continues to sell the ESU Product, without substantial modification, including promoting the ESU Product on its website. See <https://www.datrend.com/product/vpad-rf/>. And Lloyd believes that Datrend is increasing its efforts to grow the sales of the ESU Product in the United States, including to customers of BC Group.

26. Accordingly, Lloyd and BC Group decided to bring this action to protect their intellectual property rights.

OVERVIEW OF THE '903 PATENT

27. The '903 Patent is titled “Systems and Methods for Analyzing An Electrosurgical Unit” and issued on February 6, 2018.

28. The '903 Patent claims methods and systems for analyzing signals from an electrosurgical unit that includes performing waveform detection on signals received from an electrosurgical generator using programmable waveform detection and displaying the results. The programmable waveform detection can be performed using a configured field-programmable gate array (FPGA) that facilitates analyzing complex waveforms corresponding to the signals.

COUNT I - DIRECT INFRINGEMENT OF THE '903 PATENT

29. Lloyd and BC Group incorporate and re-allege each and every allegation contained in the foregoing paragraphs of this complaint, as though fully set forth herein.

30. Datrend has directly infringed and continues to directly infringe, literally or under the doctrine of equivalents, the Patent at least by making, using, selling, offering for sale, and/or importing the ESU Product, which embodies and/or otherwise practices the inventions of the Patent in violation of 35 U.S.C. § 271(a).

31. The ESU Product meets each and every limitation of at least claims 1 and 5 of the '903 Patent. The ESU Product includes at least an input, a measurement subsystem, an analog to digital (A/D) converter and a user interface as recited in claim 1. Attached as Exhibit 8 is an exemplary claim chart demonstrating how Datrend's ESU Product satisfies each element of at least claims 1 and 5 of the Patent. The claim chart is incorporated by reference into this complaint.

32. Datrend's infringement of the '903 Patent has caused and will continue to cause Lloyd and BC Group irreparable harm. Datrend is marketing its ESU product directly to BC Group's customers thereby interfering with and disrupting long-established relationships.

33. Datrend's infringement of the Patent has caused and will continue to cause Lloyd and BC Group damages.

34. Datrend's infringement has been, and continues to be knowing, intentional, and willful.

35. Lloyd and BC Group are entitled to injunctive relief, damages, attorneys' fees, and any other relief in accordance with 35 U.S.C. §§ 283, 284, 285, and 315(d).

COUNT II - INDUCED INFRINGEMENT OF THE '903 PATENT

36. Lloyd and BC Group incorporate and re-allege each and every allegation contained in the foregoing paragraphs of this complaint, as though fully set forth herein.

37. Datrend has induced and continues to induce infringement of one or more claims of the Patent under 35 U.S.C. § 271(b) by actively and knowingly inducing others, including without limitation its customers, purchasers, and/or end users to use the claimed system or perform the claimed method of the '903 Patent, either literally or under the doctrine of equivalents. Datrend encourages and instructs customers and end users how to practice the '903 Patent claims and makes available on its website documents and videos teaching its customers, purchasers, and/or users how to use the ESU Product in a manner that infringes the '903 Patent. *See, e.g.*, <https://www.datrend.com/product/vpad-rf/>.

38. On information and belief, Datrend designed the ESU Product to operate in a manner that infringes at least claim 1 of the '903 Patent and intends for the ESU Product to be used in normal operation to practice the inventions claimed in the '903 Patent. Datrend's ESU Product includes hardware and/or software that is designed to operate in an infringing manner.

39. Datrend had knowledge of the application (U.S. Application Serial No. 14/702,385) that issued as the Patent at least as early as May 19, 2016, when Lloyd notified Datrend of its belief that the application included claims that would be infringed by the ESU Product when the Patent issued.

40. Datrend had knowledge of the issued Patent and infringement thereof no later than October 17, 2018, when Lloyd notified Datrend of its infringement of the '903 Patent.

41. Since having notice and knowledge of how the ESU Product infringes the '903 Patent, Datrend acted with specific intent or with willful blindness to infringe the '903 Patent by continuing to sell the ESU Product without substantial modification to avoid infringement, continuing to market the ESU Product for use in normal operation to practice the '903 Patent, and continuing to support, encourage, aid and abet infringing use of the ESU Product by existing users knowing such use constituted direct infringement of the '903 Patent.

42. Datrend has known or was willfully blind to the fact that it was and is inducing others, including customers, purchasers, and/or users to infringe by practicing, either themselves or in concert with Datrend, one or more of the claims of the '903 Patent. Datrend intended that its continued actions would induce indirect infringement by those users.

43. Datrend's ESU Product has been and continues to be used as intended by Datrend by its customers to directly infringe the '903 Patent.

44. Datrend's induced infringement of the '903 Patent has caused and will continue to cause Lloyd and BC Group irreparable harm. Datrend is marketing its ESU product directly to BC Group's customers thereby interfering with and disrupting long-established relationships.

45. Datrend's induced infringement of the Patent has caused and will continue to cause Lloyd and BC Group damages.

46. Datrend's induced infringement has been, and continues to be knowing, intentional, and willful.

47. Lloyd and BC Group are entitled to injunctive relief, damages, attorneys' fees, and any other relief in accordance with 35 U.S.C. §§ 283, 284, 285, and 315(d).

COUNT III - CONTRIBUTORY INFRINGEMENT OF THE '903 PATENT

48. Lloyd and BC Group incorporate and re-allege each and every allegation contained in the foregoing paragraphs of this complaint, as though fully set forth herein.

49. Datrend has and continues to contribute to the infringement of one or more claims of the Patent by offering to sell and selling the ESU Product in the United States, knowing it to be especially made or especially adapted for practicing the invention of the Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use, in violation of 35 U.S.C. § 271(c).

50. Datrend publishes instructional materials (*see, e.g.*, <https://www.datrend.com/product/vpad-rf/>) describing the ESU production functionality and capabilities, which are designed to practice the '903 Patent.

51. Datrend's ESU Product is not a staple article or commodity of commerce suitable for any substantial non-infringing use because it has no use apart from the electrosurgical unit analyzer and method recited in one or more claims of the '903 Patent.

52. Datrend designed the ESU Product to function in normal operation in a manner that infringes at least claim 1 of the '903 Patent. Defendant's ESU Product includes hardware and/or software that is designed and intended to operate in an infringing manner.

53. Datrend's ESU Product is implemented and operated by Datrend's customers to perform the processes claimed in the '903 Patent, thereby infringing one or more of those claims, either literally or under the doctrine of equivalents, as described in Datrend's instructions for operating the ESU Product. Datrend contributorily infringes at least claim 1 of the '903 Patent.

54. In normal operation, Datrend's ESU Product is implemented and operated by Datrend's customers and end users to perform the steps of acquiring an RF signal, performing waveform detection of the RF signal, configuring an FPGA to define one or more thresholds for waveform detection, performing A/D conversion, and displaying information, thereby infringing at least claim 10 of the '903 Patent. The ESU Product has no other substantial use.

55. Datrend has had actual knowledge or or been willfully blind to the fact that it was and is contributing to infringement by others, including customers, purchasers, and/or users who practice themselves or in concert with Datrend, one or more of the claims of the '903 Patent.

56. Datrend intended that its continued actions would contribute to direct infringement by its customers and end users of the ESU Product.

57. Datrend's contributory infringement has been and continues to be knowing, intentional, and willful.

58. Datrend's contributory infringement of the Patent has caused and will continue to cause Lloyd and BC Group irreparable harm. Datrend is marketing its ESU product directly to BC Group's customers thereby interfering with and disrupting long-established relationships.

59. Defendant Datrend's indirect infringement of the Patent has caused and will continue to cause Lloyd damages.

60. Lloyd and BC Group are entitled to injunctive relief, damages, attorneys' fees, and any other relief in accordance with 35 U.S.C. §§ 283, 284, 285, and 315(d).

PRAYER FOR RELIEF

WHEREFORE, Lloyd and BC Group, respectfully request the Court to enter judgment in favor of Lloyd and BC Group and against Defendant as to all claims asserted herein as follows:

- a) Adjudging that Defendant Datrend has infringed, actively induced infringement of, and contributorily infringed one or more claims of the '903 Patent in violation of 35 U.S.C. §§ 271(a), (b), and/or (c);
- b) Granting an injunction and permanently enjoining Defendant Datrend, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, distributors, and all of those in active concert and participation with any of the foregoing persons or

entities from infringing, contributing to the infringement of, or inducing infringement of the '903 Patent;

- c) Ordering Defendant Datrend to provide an accounting and pay damages adequate to compensate Lloyd and BC Group for Defendant's infringement of the Patent and pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;
- d) Ordering that the damages award be increased up to three times the actual amount assessed pursuant to 35 U.S.C. § 284;
- e) Declaring this case exceptional and awarding Lloyd and BC Group their reasonable attorneys' fees, pursuant to 35 U.S.C. § 285;
- f) Awarding Lloyd and BC Group interest, including prejudgment and post-judgment interest, on the foregoing sums; and
- g) Awarding such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rules of Civil Procedure Rule 38, Lloyd and Datrend demand a trial by jury on all issues so triable.

August 23, 2023

Respectfully submitted,

By:  _____

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