

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

XMARK CORP.,

Plaintiff,

v.

INZWA TECHNOLOGIES LLC,

Defendant.

Civil Action No.:

Jury Trial Demanded

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Xmark Corp. (hereinafter “Plaintiff” or “Xmark”), a Canadian corporation, by and through its attorneys, for its Complaint against defendant Inzwa Technologies LLC (hereinafter “Defendant” or “Inzwa”), hereby alleges as follows:

NATURE OF THE CASE

1. This is a civil action for patent infringement arising under the Patent Act of the United States, 35 U.S.C. § 1, *et seq.*
2. This action arises out of Inzwa’s infringement of Xmark’s United States Patent No. 10,794,929 (attached as Exhibit A) (the “‘929 Patent,” “Asserted Patent” or the “Patent-in-Suit”).

THE PARTIES

3. Xmark is a Canadian corporation having a principal place of business at 309 Legget Drive, Ottawa, Ontario, K2K 3A3, Canada.
4. Xmark does business under the name “InstanTel,” and has an Office at 808 Commerce Park Drive, Ogdensburg, New York, 13669, United States of America.

5. Upon information and belief, Defendant Inzwa is a Pennsylvania limited liability company, with its principal place of business located at 200 W. Butler Avenue, Unit 3111, Philadelphia, PA 19002.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271, *et seq.*

7. This Court has personal jurisdiction over Defendant because it is doing business in the State of Pennsylvania and has (1) substantial, continuous, and systematic contacts within the Eastern District of Pennsylvania (“this District”), (2) maintains a principal place of business within this District, and (3) enjoys substantial income from sales of infringing products within this District in violation of 35 U.S.C. § 271.

8. Venue in this Court is proper under 28 U.S.C. § 1400(b).

PLAINTIFF’S BUSINESS AND U.S. PATENT NO. 10,794,929

9. Xmark, doing business under the name InstanTEL, has for over 35 years, been a global leader providing best-in-class vibration, noise and air overpressure monitoring equipment for use in quarries, mining, construction, civil, geotechnical and other applications. Xmark’s products are utilized around the world in customers’ projects in over 120 countries. From specialized sensors and recording systems, to remote data collection, monitoring software, and a cloud-based data hosting solution, Xmark has a history of innovation and industry firsts.

10. Xmark owns by assignment all right, title and interest in U.S. Pat. 10,794,929, titled “System for Vibration Sensing,” and holds the right to sue and recover damages for infringement thereof, including for past infringement. The ‘929 Patent duly and lawfully issued on October 6,

2020, with Robert C. Turnbull, Terance D. Brown and Damon Kuttan listed as the inventors. The ‘929 Patent issued from U.S. Application Serial No. 16/067,333, which was filed on June 29, 2018 and claims priority to a PCT Patent Application No. PCT/US2016/040305, filed on June 30, 2016, which claims the benefit of priority to U.S. Provisional Patent Application No. 62/310,260, filed on March 18, 2016.

11. The ‘929 Patent is directed to a vibration sensor for construction and industrial projects comprising, *inter alia*, a plurality of accelerometers, including a low acceleration range accelerometer for measuring acceleration data below a threshold, and a high acceleration range accelerometer for measuring acceleration data above a threshold.

12. In particular, claim 1 of the ‘929 Patent claims a “vibration sensor system for construction and industrial projects, comprising: a water-proof housing; a low acceleration range accelerometer disposed in the housing for measuring acceleration data below a first threshold; a high acceleration range accelerometer disposed in the housing for measuring acceleration data above a second threshold; and an analog-to-digital conversion circuit connected to the low and high acceleration range accelerometers, wherein the analog-to-digital conversion circuit provides acceleration data along x-, y- and z-axes; and a data processing circuit receiving the acceleration data from the analog-to-digital conversion circuit, wherein the data processing circuit determines the directional orientation of the vibration sensor assembly, and determines a correction factor to be applied to the acceleration data to compensate for the directional orientation of the vibration sensor assembly.” Exhibit A, ‘929 Patent at 4:48-67.

13. The patent marking requirements of 35 U.S.C. § 287(a) are inapplicable. Specifically, since the ‘929 Patent granted on October 10, 2020, Xmark has not offered for sale or

sold any products embodying an invention covered by the '929 Patent and has not granted any third-party a license under the '929 Patent to make or sell a product covered by the '929 Patent.

14. Xmark has otherwise complied with any applicable patent marking requirements of 35 U.S.C. § 287(a).

INZWA'S INFRINGING ACTIVITY

15. Inzwa competes with Xmark in the construction and infrastructure monitoring market, more specifically in the field of vibration monitoring systems and services.

16. Upon information and belief, Inzwa markets to customers in the United States and worldwide, vibration monitoring sensors and a remote sensor data monitoring platform.

17. Inzwa advertises its products and services via its website, www.inzwa.io.

18. Inzwa makes, uses, sells or offers for sale, and imports into the United States a vibration sensor system product referred to as the Veva III environmental monitoring sensor (the "Accused Product"). Technical specifications for the Accused Product are attached hereto as Exhibit B and Exhibit C.

19. Upon information and belief, the Accused Product is used to collect vibration measurements and sends the measurement data wirelessly to Inzwa's "Inzwa Cloud" platform, which is accessible to customers through the internet.

20. Upon information and belief, through the Inzwa Cloud platform, which Inzwa makes available to customers for a fee, Inzwa's customers can use the Accused Product by, among other things, configuring it and monitoring the data it collects.

21. The Accused Product infringes one or more claims of the '929 Patent, including at least claims 1, 6-8 and 15-17.

22. The Accused Product meets each and every limitation of at least claims 1 and 8 of the '929 Patent as shown in the chart comparing claims 1 and 8 to the Accused Product, which is representative of all versions of the Accused Product, attached hereto as Exhibit D.

23. Upon information and belief, Inzwa has infringed and continues to infringe the '929 Patent by at least using, selling and offering for sale the Accused Product in the United States and importing the Accused Product into the United States. Specifically, upon information and belief, Inzwa markets the Accused Product to customers in the United States by, *inter alia*, selling or offering to sell the Accused Product to customers, providing subscription-based products and services to customers, facilitating their ongoing use of the Accused Product, and providing support services for the Accused Product to customers.

24. In that the Accused Product meets the limitations of one or more claims of the '929 Patent either literally or under the doctrine of equivalents, including at least claim 1, the use of the Accused Product by Inzwa's customers to monitor vibration constitutes an infringing use of a device covered by the '929 Patent.

25. In connection with the sale of the Accused Product to customers, Inzwa provides customers with detailed instructions, tools and assistance for installing the Accused Product and using the Accused Product and the Inzwa Cloud platform.

26. On information and belief, Inzwa is inducing and is continuing to induce infringement of the '929 Patent by actively and knowingly inducing others to use, sell, offer for sale, or import the Accused Product, which infringes one or more claims of the '929 Patent. Specifically, Inzwa has sold, continues to sell, and presently intends to sell, the Accused Product to customers in the United States; has provided, continues to provide, and presently intends to provide those customers with detailed instructions, tools and assistance for selling and/or using the

Accused Product; and, as of at least the filing date of this complaint, such acts are performed by Inzwa with knowledge that the use or sale of the Accused Product by Inzwa's customers infringes the '929 Patent and with the specific intent that Inzwa's customers engage in such infringing activity.

COUNT ONE

(Infringement of the '929 Patent, 35 U.S.C. §271)

27. Plaintiff Xmark repeats and realleges as if fully set forth herein the allegations contained in all the preceding paragraphs ¶¶ 1-26.

28. The '929 Patent is valid and enforceable.

29. The Accused Product meets the limitations of one or more claims of the '929 Patent either literally or under the doctrine of equivalents, including at least claims 1, 6-8 and 15-17.

30. Inzwa has directly infringed and continues to directly infringe one or more claims of the '929 Patent in violation of 35 U.S.C. § 271(a) by manufacturing, using, providing, selling, offering to sell, importing and/or distributing without authority the Accused Product in the United States and in this District.

31. Inzwa indirectly infringes and continues to indirectly infringe one or more claims of the '929 Patent, including at least claims 1, 6-8 and 15-17, in violation of 35 U.S.C. § 271(b), by knowingly inducing one or more of Inzwa's customers to purchase, install, use and/or sell the Accused Product that embodies the '929 Patent with the specific intent that Inzwa's customers engage in such infringing activity.

32. As outlined above, under the totality of the circumstances, Inzwa's infringement of the '929 Patent is willful from at least the date that Inzwa first learned of the '929 Patent.

33. In any event, Inzwa had knowledge of the '929 Patent, Inzwa's infringement of the '929 Patent, and the infringement of the '929 Patent by Inzwa's customers, at the latest as of the filing date of this complaint.

34. On information and belief, Inzwa has gained profits and market share by virtue of its infringement of the '929 Patent.

35. Xmark has sustained damages as a direct and proximate result of Inzwa's infringement of the '929 Patent.

36. Xmark is entitled to recover at least a reasonable royalty, and its lost profits, enhanced damages, costs and expenses and attorney fees, and all other relief allowed under the Patent Act.

37. Xmark will suffer and is suffering irreparable harm from Inzwa's infringement of the '929 Patent. Xmark has no adequate remedy at law and is entitled to an injunction against Inzwa's continuing infringement of the '929 Patent. Unless enjoined, preliminarily and permanently, Inzwa will continue its infringing conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Xmark respectfully requests that the Court grant the following relief:

- a. A judgment that Defendant Inzwa has infringed one or more claims of the '929 Patent;
- b. A judgment that Defendant Inzwa's infringement of the '929 Patent was willful;
- c. An order preliminarily and permanently enjoining Inzwa, its owners, subsidiaries, divisions, branches, affiliates, predecessors or successors in business, parents and wholly owned or partially owned entities, and any entities acting or purporting to

act for or on behalf of the foregoing, including any agents, employees, representatives, officers, directors, servants, partners, and those persons in active concert or participation with them, from further acts of infringement of Xmark's asserted '929 Patent;

- d. An award of damages to compensate Xmark for Inzwa's infringement under 35 U.S.C. § 284;
- e. An Order awarding Xmark at least a reasonable royalty;
- f. An award of all damages, including treble damages based on any infringement found to be willful, pursuant to 35 U.S.C. § 284;
- g. An Order awarding Xmark pre-judgment and post-judgment interest on all applicable damages at the maximum rates permitted by applicable law;
- h. An accounting for all damages not presented at trial;
- i. An Order declaring this case exceptional and awarding Xmark its reasonable attorney fees pursuant to 35 U.S.C. § 285; and
- j. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Xmark demands a trial by jury on all issues so triable.

Dated: January 4, 2024



Michael J. Salmanson, ID. 46707
SALMANSON GOLDSHAW, P.C.
Two Penn Center, Suite 1230
1500 John F. Kennedy Boulevard
Philadelphia, PA 19102
215-640-0593 (Main)
215-640-0594 (Direct)
215-640-0596 (fax)
E-Mail: msalmans@salmangold.com

Robert M. Isackson (*pro hac vice*
forthcoming)
Henry A. Gabathuler (*pro hac vice*
forthcoming)
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Phone: (914) 288-0022
Fax: (914) 288-0023
Email: isackson@leasonellis.com,
gabathuler@leasonellis.com,
lelitdocketing@leasonellis.com

Attorneys for Plaintiff Xmark Corp.