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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 KEPHART CONSULTING, LLC,

13 Plaintiff,

14 v.

15 AXXONSOFT US, INC.,

16 Defendant.
17

Case No.: 5:24-cv-06770

**PLAINTIFF’S COMPLAINT FOR
PATENT INFRINGEMENT**

(35 U.S.C. § 271)

JURY TRIAL DEMANDED

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19 Plaintiff Kephart Consulting, LLC (“Kephart”) files this Original
20 Complaint and demand for jury trial seeking relief from patent infringement of the
21 claims of U.S. Patent No. 10,796,137 (“the ‘137 patent”) and, U.S. Patent No.
22 10,248,849 (“the ‘849 patent”) (referred to as the “Patents-in-Suit”) by AxxonSoft
23 US, Inc., (“Defendant” or “Axxon”).
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26 **I. THE PARTIES**
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1 1. Plaintiff Kephart is a company organized under the laws of Arizona with a
2 principal place of business located in Prescott, Arizona.

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4 2. On information and belief, Defendant is a corporation organized and existing
5 under the laws of the Virgin Islands that maintains a regular and established place of
6 business at 1900 Camden Ave., San Jose, CA 95124. Defendant can be served with
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8 process at its established place of business, its registered agent Alan Ataev, 1900
9 Camden Avenue, San Jose, California 95124, at its place of business, or anywhere
10 else it can be found. On information and belief, Defendant sells and offers to sell
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12 products and services throughout Texas, including in this judicial district, and
13 introduces products and services that perform infringing methods or processes into
14 the stream of commerce knowing that they would be sold in California and this
15
16 judicial district.

17 **II. JURISDICTION AND VENUE**

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19 3. This Court has original subject-matter jurisdiction over the entire action
20 pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claim arises under an
21 Act of Congress relating to patents, namely, 35 U.S.C. § 271.

22
23 4. This Court has personal jurisdiction over Defendant because: (i) Defendant is
24 present within or has minimum contacts within the State of California and this judicial
25 district; (ii) Defendant has purposefully availed itself of the privileges of conducting
26
27 business in the State of California and in this judicial district; and (iii) Plaintiff's cause
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1 of action arises directly from Defendant’s business contacts and other activities in the
2 State of California and in this judicial district.

3
4 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b).
5 Defendant has committed acts of infringement and has a regular and established place
6 of business in this District. Further, venue is proper because Defendant conducts
7
8 substantial business in this forum, directly or through intermediaries, including: (i) at
9 least a portion of the infringements alleged herein; and (ii) regularly doing or
10 soliciting business, engaging in other persistent courses of conduct and/or deriving
11
12 substantial revenue from goods and services provided to individuals in California and
13 this District.

14 **III. INFRINGEMENT - Infringement of the '137 Patent**

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16 6. On October 6, 2020, U.S. Patent No. 10,796,137 (included as Exhibit A)
17 entitled “Technique for Providing Security” was duly and legally issued by the U.S.
18 Patent and Trademark Office. Plaintiff owns the '137 patent by assignment.

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20 7. The '137 patent relates to methods and systems for comparing captured facial
21 images to a database of facial data for persons of interest and alerting security
22 personnel.

23
24 8. Axxon maintains, operates, and administers devices/products, methods,
25 systems, and processor-readable media that infringe one or more claims of the '137
26 patent, including one or more of claims 1-23, literally or under the doctrine of
27 equivalents. Defendant put the inventions claimed by the '137 Patent into service (i.e.,
28

1 used them); but for Defendant's actions, the claimed-inventions embodiments
2 involving Defendant's products and services would never have been put into service.
3
4 Defendant's acts complained of herein caused those claimed-invention embodiments
5 as a whole to perform, and Defendant's procurement of monetary and commercial
6 benefit from it.

7
8 9. The claimed technology of the '137 patent relates generally to
9 devices/products, methods, systems, and processor-readable media for comparing
10 captured facial images to a database of facial data for persons of interest.
11
12 Embodiments of the claimed invention provide numerous benefits over the prior art,
13 including, but not limited to, proactive prevention of violence at large venues. As
14 well, the patent specification provides that such notifications were not possible prior
15 to the claimed invention, instead security at large venues have relied upon reactive
16 tactics, simply responding after a security event has taken place. Further,
17 embodiments of the invention provide an improved and efficient approach for
18 scanning the facial image of everyone entering a large venue and comparing the
19 scanned images to the images of known miscreants and when a match is found alerting
20 security personnel.
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24 10. Support for the allegations of infringement may be found in the preliminary
25 exemplary table attached as Exhibit B. These allegations of infringement are
26 preliminary and are therefore subject to change.
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1 11.Axxon has and continues to induce infringement. Axxon has actively
2 encouraged or instructed others (e.g., its customers and/or the customers of its related
3 companies), and continues to do so, on how to use its products and services and related
4 services that provide methods and systems/products for comparing captured facial
5 images to a database of facial data for persons of interest and alerting security
6 personnel such as to cause infringement of one or more of claims 1–23 of the ‘137
7 patent, literally or under the doctrine of equivalents.
8

9
10 12.Axxon has and continues to contributorily infringe. Axxon has actively
11 encouraged or instructed others (e.g., its customers and/or the customers of its related
12 companies), and continues to do so, on how to use its products and services and related
13 services that provide methods and systems/products for comparing captured facial
14 images to a database of facial data for persons of interest and alerting security
15 personnel such as to cause infringement of one or more of claims 1–23 of the ‘137
16 patent, literally or under the doctrine of equivalents. The components marketed and
17 sold by Axxon do not have any substantial non-infringing uses.
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20
21 13.Axxon has caused and will continue to cause Kephart damage by direct and
22 indirect infringement of (including inducing infringement of) the claims of the ‘137
23 patent.
24

25 **IV. INFRINGEMENT - Infringement of the ‘849 Patent**
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1 14. On April 2, 2019, U.S. Patent No. 10,248,849 (included as Exhibit C) entitled
2 “Technique for Providing Security to an Area” was duly and legally issued by the
3 U.S. Patent and Trademark Office. Plaintiff owns the ’849 patent by assignment.
4

5 15. The ’849 patent relates to methods and systems for comparing captured facial
6 images to a database of facial data for persons of interest.
7

8 16. Defendant maintains, operates, and administers systems, products, and services
9 in the field of comparing captured facial images to a database of facial data that
10 infringes one or more of claims of the ’849 patent, including one or more of claims 1-
11 23, literally or under the doctrine of equivalents. Defendant put the inventions claimed
12 by the ’849 Patent into service (i.e., used them); but for Defendant’s actions, the
13 claimed-inventions embodiments involving Defendant’s products and services would
14 never have been put into service. Defendant’s acts complained of herein caused those
15 claimed-invention embodiments as a whole to perform, and Defendant’s procurement
16 of monetary and commercial benefit from it.
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19 17. The claimed technology of the ’849 patent relates generally to
20 devices/products, methods, systems, and processor-readable media for comparing
21 captured facial images to a database of facial data for persons of interest.
22 Embodiments of the claimed invention provide numerous benefits over the prior art,
23 including, but not limited to, proactive prevention of violence at large venues. As
24 well, the patent specification provides that such notifications were not possible prior
25 to the claimed invention, instead security at large venues have relied upon reactive
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1 tactics, simply responding after a security event has taken place. Further,
2 embodiments of the invention provide an improved and efficient approach for
3 scanning the facial image of everyone entering a large venue and comparing the
4 scanned images to the images of known miscreants and when a match is found alerting
5 security personnel.
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7
8 18.Support for the allegations of infringement may be found in the preliminary
9 exemplary table attached as Exhibit D. These allegations of infringement are
10 preliminary and are therefore subject to change.
11

12 19. Axxon has and continues to induce infringement. Axxon has actively
13 encouraged or instructed others (e.g., its customers and/or the customers of its related
14 companies), and continues to do so, on how to use its products and services and related
15 services that provide methods and systems/products for comparing captured facial
16 images to a database of facial data for persons of interest and alerting security
17 personnel such as to cause infringement of one or more of claims 1–23 of the ‘849
18 patent, literally or under the doctrine of equivalents.
19
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21 20.Axxon has and continues to contributorily infringe. Axxon has actively
22 encouraged or instructed others (e.g., its customers and/or the customers of its related
23 companies), and continues to do so, on how to use its products and services and related
24 services that provide methods and systems/products for comparing captured facial
25 images to a database of facial data for persons of interest and alerting security
26 personnel such as to cause infringement of one or more of claims 1–23 of the ‘849
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1 patent, literally or under the doctrine of equivalents. The components marketed and
2 sold by Axxon do not have any substantial non-infringing uses.

3
4 21. Axxon has caused and will continue to cause Kephart damage by direct and
5 indirect infringement of (including inducing infringement of) the claims of the '849
6 patent.

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9 **V. CONDITIONS PRECEDENT**

10 22. Plaintiff has never sold a product. Upon information and belief, Plaintiff
11 predecessors-in-interest have never sold a product. Plaintiff is a non-practicing entity,
12 with no products to mark. Plaintiff has pled all statutory requirements to obtain pre-
13 suit damages. Further, all conditions precedent to recovery are met. Under the rule
14 of reason analysis, Plaintiff has taken reasonable steps to ensure marking by any
15 licensee producing a patented article.

16
17
18 23. Plaintiff and its predecessors-in-interest have entered into settlement
19 licenses with several defendant entities, but none of the settlement licenses were to
20 produce a patented article, for or under the Plaintiff's patents. Duties of confidentiality
21 prevent disclosure of settlement licenses and their terms in this pleading but discovery
22 will show that Plaintiff and its predecessors-in-interest have substantially complied
23 with Section 287(a). Furthermore, each of the defendant entities in the settlement
24 licenses did not agree that they were infringing any of Plaintiff's patents, including
25 the Patents-in-Suit, and thus were not entering into the settlement license to produce
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1 a patented article for Plaintiff or under its patents. Further, to the extent necessary,
2 Plaintiff has limited its claims of infringement to method claims and thereby remove
3 any requirement for marking.
4

5 24. To the extent Defendant identifies an alleged unmarked product
6 produced for Plaintiff or under Plaintiff's patents, Plaintiff will develop evidence in
7 discovery to either show that the alleged unmarked product does not practice the
8 Patents-in-suit and that Plaintiff has substantially complied with the marking statute.
9 Defendant has failed to identify any alleged patented article for which Section 287(a)
10 would apply. Further, Defendant has failed to allege any defendant entity produce a
11 patented article.
12

13
14 25. The policy of §287 serves three related purposes: (1) helping to avoid
15 innocent infringement; (2) encouraging patentees to give public notice that the article
16 is patented; and (3) aiding the public to identify whether an article is patented.
17 These policy considerations are advanced when parties are allowed to freely settle
18 cases without admitting infringement and thus not require marking. All settlement
19 licenses were to end litigation and thus the policies of §287 are not violated. Such a
20 result is further warranted by 35 U.S.C. §286 which allows for the recovery of
21 damages for six years prior to the filing of the complaint.
22
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24
25 26. For each previous settlement license, Plaintiff understood that (1) the
26 settlement license was the end of litigation between the defendant entity and Plaintiff
27 and was not a license where the defendant entity was looking to sell a product under
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1 any of Plaintiff's patents; (2) the settlement license was entered into to terminate
2 litigation and prevent future litigation between Plaintiff and defendant entity for
3 patent infringement; (3) defendant entity did not believe it produced any product that
4 could be considered a patentable article under 35 U.S.C. §287; and, (4) Plaintiff
5 believes it has taken reasonable steps to ensure compliance with 35 U.S.C. §287 for
6 each prior settlement license.
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9 27. Each settlement license that was entered into between the defendant entity and
10 Plaintiff was negotiated in the face of continued litigation and while Plaintiff believes
11 there was infringement, no defendant entity agreed that it was infringing. Thus, each
12 prior settlement license reflected a desire to end litigation and as such the policies of
13 §287 are not violated.
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16 **VI. JURY DEMAND**

17 Kephart hereby requests a trial by jury on issues so triable by right.
18

19 **VII. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for relief as follows:

- 21 a. enter judgment that Defendant has infringed the claims of the Patents-in-Suit;
22
23 b. award Plaintiff damages in an amount sufficient to compensate it for
24 Defendant's infringement of the Patents-in-Suit in an amount no less than a
25 reasonable royalty or lost profits, together with pre-judgment and post-
26 judgment interest and costs under 35 U.S.C. § 284;
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- 1 c. award Plaintiff an accounting for acts of infringement not presented at trial and
2 an award by the Court of additional damage for any such acts of infringement;
3
4 d. declare this case to be “exceptional” under 35 U.S.C. § 285 and award Plaintiff
5 its attorneys’ fees, expenses, and costs incurred in this action;
6
7 e. provided discovery reveals that Defendant knew (1) knew of the patent-in-suit
8 prior to the filing date of the lawsuit; (2) after acquiring that knowledge, it
9 infringed the patent; and (3) in doing so, it knew, or should have known, that
10 its conduct amounted to infringement of the patent, declare Defendants’
11 infringement to be willful and treble the damages, including attorneys’ fees,
12 expenses, and costs incurred in this action and an increase in the damage
13 award pursuant to 35 U.S.C. § 284;
14
15 f. a decree addressing future infringement that either (i) awards a permanent
16 injunction enjoining Defendant and its agents, servants, employees, affiliates,
17 divisions, and subsidiaries, and those in association with Defendant from
18 infringing the claims of the Patents-in-Suit, or (ii) awards damages for future
19 infringement in lieu of an injunction in an amount consistent with the fact that
20 for future infringement the Defendant will be an adjudicated infringer of a
21 valid patent, and trebles that amount in view of the fact that the future
22 infringement will be willful as a matter of law; and
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24 award Plaintiff such other and further relief as this Court deems just and proper.
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Dated: September 26, 2024

Respectfully submitted,

RAMEY LLP

/s/ Susan S.Q. Kalra

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DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury on issues so triable by right.

Dated: September 26, 2024

Respectfully submitted,

RAMEY LLP

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