



attorneys' fees and other costs as result of its small-entity status, pursuant to 28 U.S.C. §1498.

2. On information and belief, Defendant Department of Defense, Department of Justice, and Department of Homeland Security are independent departments of the Executive Branch of the Government of the United States.

### **Jurisdiction and Venue**

3. This is an action for unlicensed procurement and authorization of manufacture and use of patented inventions arising under 28 U.S.C. §1498. This Court has federal subject-matter jurisdiction, and venue is proper under 28 U.S.C. §1498.

### **Statement of Facts**

#### *The Patents-in-Suit*

4. Blue Spike founder, Scott Moskowitz, pioneered—and continues to invent—technology that makes the management of digital content possible. In describing his pioneering technology, Moskowitz coined the term “signal abstracting,” which enhanced the ability to catalog, archive, identify, authorize, transact, and monitor the use and application of signals, such as images (for example, scanned fingerprints), audio, video, and multimedia works. This technology greatly improves the efficiency and speed of monitoring, analyzing, and identifying signals and enables the optimal compression of the signals and their associated signal abstracts for memory accommodation.

5. “Signal abstracting” applies to biometric identification and many of today’s security systems—such as fingerprint, facial, and optic systems—that analyze, catalogue, monitor, and identify a person’s biometric features. Once an image is created from the features of these biometric identifiers, signal abstracting can be used to optimally compress the signal and its associated abstract, resulting in less memory usage and increased accuracy and speed of signal analysis and identification. Further, signal abstracts of the biometric information images can be stored independently, meaning that authentication and verification of the identifying abstract do not compromise the original information. Thus, many biometric-identification systems rely on the inventions of the Patents-in-Suit to be implemented.

6. Some government vendors of biometric-identification systems—including Aware, Inc., BIO-key International, and Cross Match Technologies, Inc.—have entered into confidential settlements with Blue Spike allowing them to use Blue Spike’s technology. Most recently, Defendant (through DHS) awarded additional contracts to Aware, Inc. for biometric-identification systems. Similarly, Cross Match Technologies, Inc., received a \$159-million DoD contract in 2011. And the FBI employs the biometric products and services of BIO-key International, Inc.

7. U.S. Patent No. 8,214,175 (“the ’175 Patent”) is valid, is enforceable, and was duly and legally issued on July 3, 2012. A true and correct copy of the ’175 Patent is attached as Exhibit 1.

8. U.S. Patent No. 7,949,494 (“the ’494 Patent”) is valid, is enforceable, and was duly and legally issued on May 24, 2011. A true and correct copy of the ’494 Patent is attached as Exhibit 2.

9. U.S. Patent No. 7,660,700 (“the ’700 Patent”) is valid, is enforceable, and was duly and legally issued on February 9, 2010. A true and correct copy of the ’700 Patent is attached as Exhibit 3.

10. U.S. Patent No. 7,346,472 (“the ’472 Patent”) is valid, is enforceable, and was duly and legally issued on March 18, 2008. A true and correct copy of the ’472 Patent is attached as Exhibit 4.

11. Blue Spike, LLC is assignee of the Patents-in-Suit all titled “Method and Device for Monitoring and Analyzing Signals” and has had at all times relevant to these claims ownership of all substantial rights in the ’175, ’494, ’700, and ’472 Patents, including the rights to grant sublicenses, to exclude others from using them, and to sue and obtain damages and other relief for past and future acts of patent infringement, including use by the United States Government complained of herein.

*Defendant’s Contracts for Infringing Products and Services with ImageWare Systems, AOptix, Lumidigm, Iris ID Systems, MorphoTrust, and Agnitio Corp.*

12. Defendant—acting through the DoD, DOJ, and DHS—has entered into several contracts with contractors, with the Defendant authorizing the manufacture and use of products and services that infringe the Patents-in-Suit. Those contracts include (but are not limited to) the following:

- a contract with ImageWare Systems, Inc. (the “ImageWare Contract”); *see* Ex. 5 (“ImageWare Systems Wins \$1.2 Million Federal Government Contract to Develop Multi-Biometric Identity Management Solution”); Ex. 6 (“ImageWare [Systems] Selected for BOSS-U [Army Biometric Task Force] Participation”); Ex. 7 (“Image[W]are Named to SeaPort-e [U.S. Navy] Contract”); Ex. 8 (“ImageWare Systems Awarded \$2.2 Million Contract to Expand Biometric Identity Management Services for U.S. Dept. of Veterans Affairs”).
- a contract with AOptix (the “AOptix Contract”); *see* Ex. 9 (“AOptix Lands DoD Contract to Turn Smartphones Into Biometric Data-Gathering Tools”);
- a contract with Lumidigm, Inc. (the “Lumidigm Contract”); *see* Ex. 10 (“Lumidigm Awarded \$730K SBIR Phase II Contract from U.S. Army”);
- a contract with Iris ID Systems Inc. (the “Iris ID Contract”); *see* Ex. 11 (“Iris ID Wins US Department of Defense Award to Provide iCAM TD100 for Biometric Automated Toolset Systems (BAT-A) for U.S. Army”);
- a contract with MorphoTrust (the “MorphoTrust Contract”); *see* Ex. 12 (“DoD Selects MorphoTrust to Maintain Key Biometrics Platform”); and
- a contract with Agnitio Corp. (the “Agnitio Contract”); *see* Ex. 13 (“Agnitio Corp. Awarded Contract by the United States Government’s TSWG”); *see also* Ex. 14 (“[FBI] intends to negotiate a . . . contract with Agnitio Corp.”; “Agnitio Corp. is to provide . . . BATVOX Pro software and additional BATVOX Pro clients, BATVOX Pro Training and SIFT Installation and Training”); Ex. 15 (showing the DOJ and Drug Enforcement Administration have already procured \$126,938 of Agnitio products and services).

13. Under the terms of these contracts, Defendant agreed to pay for the manufacture and use of products and services employing biometric signal abstracts, yet those products and services infringe one or more of the claims of the Patents-in-Suit.

14. On information and belief, Defendant (acting through the DoD, DOJ, and DHS) has accepted delivery of the products and services manufactured and developed by the contractors under the terms of the ImageWare Contract, AOptix Contract, Lumidigm Contract, Iris ID Contract, MorphoTrust Contract, and Agnitio Contract.

15. On information and belief, the DoD, DOJ, and DHS do not have a license from Blue Spike, but nevertheless have operated, and continue to operate, biometric products and services at their facilities, employing the signal-abstract inventions claimed in the Patents-in-Suit. By doing so, Defendant has created the immediate need for Blue Spike to protect its licensed vendors and to enforce its patent rights. This enforcement action targets only the Defendant's contracts with unlicensed Blue Spike vendors: (1) ImageWare Systems, (2) AOptix, (3) Lumidigm, (4) Iris ID Systems, (5) MorphoTrust, and (6) Agnitio Corp.

16. On information and belief, the DoD, DOJ, and DHS have thereby used or procured the manufacture of inventions described in Blue Spike's '175, '494, '700, and '472 Patents without license or lawful right to do so and have entered into subsequent non-public agreements with the named contractors above to supply these government entities with infringing products.

**Statement of Claims**

**Count One**

**(Infringement of the '175 Patent)**

17. The allegations of paragraphs 1 through 16 are repeated and realleged as if fully set forth herein.

18. The DoD, DOJ, and DHS have procured and authorized the unlicensed manufacture of the invention as claimed in the '175 Patent by contracting with vendors that do not have a license from Blue Spike, including the following vendors: ImageWare Systems, AOptix, Iris ID, Lumidigm, MorphoTrust, and Agnitio. Such procurements have authorized the manufacture of products that employ signal abstracting to enhance the ability to catalogue, archive, identify, authorize, transact, and monitor the use or application of biometric identifiers. By procuring and authorizing the unlicensed manufacture of such products, and all like products, Defendant, acting through the Department of Defense, Department of Justice, and Department of Homeland Security, has infringed the '175 Patent and is thus liable to Blue Spike pursuant to 28 U.S.C. §1498.

19. On information and belief, Defendant has used the invention covered in the '175 Patent without license from Blue Spike.

20. Defendant's unlicensed procurement and authorization of the manufacture of the invention claimed in the '175 Patent, as well as its unlicensed use, resulted in injury to Blue Spike. Blue Spike is thus entitled to reasonable and

entire compensation, including damages, costs, expenses, attorneys' fees, and prejudgment and post-judgment interest, pursuant to 28 U.S.C. §1498.

21. As a result of Defendant's unlicensed procurement and authorization of the manufacture of the invention claimed in the '175 Patent, Blue Spike is entitled to monetary damages in an amount adequate to compensate for Defendant's unlicensed procurement of the manufacture, but in no event less than a reasonable royalty for the procurement and authorization of the manufacture made of the '175 Patent by Defendant, together with interest and costs as fixed by the Court.

### **Count Two**

#### **(Infringement of the '494 Patent)**

22. The allegations of paragraphs 1 through 21 are repeated and realleged as if fully set forth herein.

23. The DoD, DOJ, and DHS have procured and authorized the unlicensed manufacture of the invention as claimed in the '494 Patent by contracting with vendors that do not have a license from Blue Spike, including the following vendors: ImageWare Systems, AOptix, Iris ID, Lumidigm, MorphoTrust, and Agnitio. Such procurements have authorized the manufacture of products that employ signal abstracting to enhance the ability to catalogue, archive, identify, authorize, transact, and monitor the use or application of biometric identifiers. By procuring and authorizing the unlicensed manufacture of such products, and all like products,

Defendant, acting through the DoD, DOL, and DHS, has infringed the '494 Patent and is thus liable to Blue Spike pursuant to 28 U.S.C. §1498.

24. On information and belief, Defendant has used the invention covered in the '494 Patent without license from Blue Spike.

25. Defendant's unlicensed procurement and authorization of the manufacture of the invention claimed in the '494 Patent, as well as its unlicensed use, resulted in injury to Blue Spike. Blue Spike is thus entitled to reasonable and entire compensation, including damages, costs, expenses, attorneys' fees, and prejudgment and post-judgment interest, pursuant to 28 U.S.C. §1498.

26. As a result of Defendant's unlicensed procurement and authorization of the manufacture of the invention claimed in the '494 Patent, Blue Spike is entitled to monetary damages in an amount adequate to compensate for Defendant's unlicensed procurement of the manufacture, but in no event less than a reasonable royalty for the procurement and authorization of the manufacture made of the '494 Patent by Defendant, together with interest and costs as fixed by the Court.

### **Count Three**

#### **(Infringement of the '700 Patent)**

27. The allegations of paragraphs 1 through 26 are repeated and realleged as if fully set forth herein.

28. The DoD, DOJ, and DHS have procured and authorized the unlicensed manufacture of the invention as claimed in the '700 Patent by contracting with

vendors that do not have a license from Blue Spike, including the following vendors: ImageWare Systems, AOptix, Iris ID, Lumidigm, MorphoTrust, and Agnitio. Such procurements have authorized the manufacture of products that employ signal abstracting to enhance the ability to catalogue, archive, identify, authorize, transact, and monitor the use or application of biometric identifiers. By procuring and authorizing the unlicensed manufacture of such products, and all like products, Defendant, acting through the DoD, DOJ, and DHS, has infringed the '700 Patent and is thus liable to Blue Spike pursuant to 28 U.S.C. §1498.

29. On information and belief, Defendant has used the inventions covered in the '700 Patent without license from Blue Spike.

30. Defendant's unlicensed procurement and authorization of the manufacture of the invention claimed in the '700 Patent, as well as its unlicensed use, resulted in injury to Blue Spike. Blue Spike is thus entitled to reasonable and entire compensation, including damages, costs, expenses, attorneys' fees, and prejudgment and post-judgment interest, pursuant to 28 U.S.C. §1498.

31. As a result of Defendant's unlicensed procurement and authorization of the manufacture of the invention claimed in the '700 Patent, Blue Spike is entitled to monetary damages in an amount adequate to compensate for Defendant's unlicensed procurement of the manufacture, but in no event less than a reasonable royalty for the procurement and authorization of the manufacture made of the '700 Patent by Defendant, together with interest and costs as fixed by the Court.

**Count Four**

**(Infringement of the '472 Patent)**

32. The allegations of paragraphs 1 through 31 are repeated and realleged as if fully set forth herein.

33. The DoD, DOJ, and DHS have procured and authorized the unlicensed manufacture of the invention as claimed in the '472 Patent by contracting with vendors that do not have a license from Blue Spike, including the following vendors: ImageWare Systems, AOptix, Iris ID, Lumidigm, MorphoTrust, and Agnitio. Such procurements have authorized the manufacture of products that employ signal abstracting to enhance the ability to catalogue, archive, identify, authorize, transact, and monitor the use or application of biometric identifiers. By procuring and authorizing the unlicensed manufacture of such products, and all like products, Defendant, acting through the DoD, DOJ, and DHS, has infringed the '472 Patent and is thus liable to Blue Spike pursuant to 28 U.S.C. §1498.

34. On information and belief, Defendant has used the inventions covered in the '472 Patent without license from Blue Spike.

35. Defendant's unlicensed procurement and authorization of the manufacture of the invention claimed in the '472 Patent, as well as its unlicensed use, resulted in injury to Blue Spike. Blue Spike is thus entitled to reasonable and entire compensation, including damages, costs, expenses, attorneys' fees, and prejudgment and post-judgment interest, pursuant to 28 U.S.C. §1498.

36. As a result of Defendant's unlicensed procurement and authorization of the manufacture of the invention claimed in the '472 Patent, Blue Spike is entitled to monetary damages in an amount adequate to compensate for Defendant's unlicensed procurement of the manufacture, but in no event less than a reasonable royalty for the procurement and authorization of the manufacture made of the '472 Patent by Defendant, together with interest and costs as fixed by the Court.

37. Time is of the essence in resolving this patent-enforcement action as the damages to Blue Spike are difficult to calculate. Also, this is the only Court with jurisdiction to stop immediately a persisting harm against vendors, such as, Aware Inc., Cross Match Technologies, and BIO-key International by Defendant's continued use of unlicensed Blue Spike vendors (ImageWare Systems, AOptix, Iris ID, Lumidigm, MorphoTrust, and Agnitio) for biometric identification systems.

**Prayer for Relief**

Plaintiff Blue Spike respectfully requests that this Court enter:

(a) a judgment in favor of Blue Spike on all of Blue Spike's claims in this patent-enforcement action against the Defendant for its willful decision to continue to use ImageWare Systems, AOptix, Iris ID, Lumidigm, MorphoTrust, and Agnitio as vendors of biometric-related identification systems even though those vendors do not have any license from Blue Spike to make, sell, offer to sell, or use such products; Blue Spike had to file this action for the protection of properly licensed

Blue Spike vendors such as Aware, Inc., Cross Match Technologies, and BIO-key International;

(b) a judgment in favor of Blue Spike that Defendant United States, acting through the DoD, DOJ, and DHS, has made unlicensed procurement of manufacture and use of the invention claimed in U.S. Patent Nos. 8,214,175, 7,949,494, 7,660,700, and 7,346,472;

(c) a judgment and order requiring Defendant to pay Blue Spike reasonable and entire compensation for the unlicensed procurement of manufacture and use of the invention claimed in U.S. Patent Nos. 8,214,175, 7,949,494, 7,660,700, and 7,346,472, including damages (conservatively estimated without benefit of data from Defendant to exceed \$200 million);

(d) a judgment and order awarding expenses, attorneys' fees, and prejudgment and post-judgment interest, as provided under 28 U.S.C. §1498(a);

(e) any and all other relief to which Blue Spike may show itself to be entitled.

Respectfully submitted,

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