

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NXEGEN, LLC and NXEGEN HOLDINGS,
INC.,

Plaintiffs,

v.

SENSUS USA, INC.,

Defendant.

: CIVIL NO. _____

:
: July 29, 2011

:
: **JURY TRIAL DEMANDED**

COMPLAINT

The Plaintiffs, Nxegen, LLC and Nxegen Holdings, Inc. (collectively, “Nxegen” or “Plaintiffs”), file this original complaint against the Defendant Sensus USA, Inc. (“Sensus” or “Defendant”) for infringement of United States Patent No. 6,633,823 B2 and United States Patent No. 7,135,956 B2 pursuant to 35 U.S.C. § 271. Nxegen alleges as follows:

PARTIES

1. The Plaintiff, Nxegen, LLC, is a limited liability company organized under the laws of Delaware with a principal place of business at 362 Industrial Park Road, Middletown, Connecticut 06457.
2. The Plaintiff, Nxegen Holdings, Inc., is a limited liability company organized under the laws of Delaware with a principal place of business at 362 Industrial Park Road, Middletown, Connecticut 06457. Nxegen Holdings, Inc. was formerly named Nxegen, Inc.
3. Upon information and belief, the Defendant, Sensus USA, Inc., is a Delaware corporation with its principal place of business at 8601 Six Forks Road, Suite 700, Raleigh, North Carolina 27615. Sensus is continuously and systematically conducting business in Connecticut. The

causes of action against Sensus arose from or are connected with Sensus's purposeful acts committed in Connecticut, including Sensus's offering for sale and installing systems for monitoring and controlling power usage systems, including but not limited to Sensus's FlexNet Advanced Metering solution, that fall within the scope of at least one claim of Nxegen's patents described below.

4. Sensus may be served with process through its registered agent for service of process, CT Corporation System, One Corporate Center, Floor 11, Hartford, CT 06103.

JURISDICTION AND VENUE

5. This claim arises under the United States patent laws, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. § 271. Subject matter jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331, 1338 in that this is a civil action arising out of the patent laws of the United States.

6. This Court has personal jurisdiction over the Defendant under Connecticut's long arm statute, Conn. Gen. Stat. § 52-59b:

(a) The Defendant conducts business in Connecticut and has, upon information and belief, committed acts of patent infringement within Connecticut. Such acts include, but are not limited to, implementation of Sensus's FlexNet Advanced Metering Infrastructure solution for Groton Utilities in Groton, Connecticut; and

(b) The Defendant has purposely availed itself of the privilege of conducting business in Connecticut.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391, 1400(b) because, among other reasons, the Defendant is subject to personal jurisdiction in Connecticut and has committed acts of infringement in Connecticut.

BACKGROUND

8. The Plaintiffs are, and at all times relevant to the matters alleged in this Complaint have been, energy services and energy information companies focused on energy conservation. Nxegen's metering services, system monitoring services and re-commissioning services are essential tools in achieving maximum energy savings and cost reduction.

9. Nxegen Holdings, Inc. is the owner of all right, title, and interest in and to United States Patent No. 6,633,823 B2 ("the '823 patent") entitled "System and Method for Monitoring and Controlling Energy Usage," which duly and legally issued to Nxegen, Inc. on October 14, 2003 as assignee of the '823 patent. Nxegen Holdings, Inc. is the successor in interest to Nxegen, Inc. A copy of the '823 patent is attached to this Complaint as **Exhibit A**.

10. Nxegen, LLC is owner by exclusive license to substantial right, title, and interest in and to the '823 patent by nature of a license agreement with Nxegen Holdings, Inc.

11. Nxegen Holdings, Inc. is the owner of all right, title, and interest in and to United States Patent No. 7,135,956 B2 ("the '956 patent") entitled "System and Method for Monitoring and Controlling Energy Usage," which duly and legally issued as assigned to Nxegen, Inc. on November 14, 2006 as the assignee of the '965 patent. Nxegen Holdings, Inc. is the successor in interest to Nxegen, Inc.. A copy of the '956 patent is attached to this Complaint as **Exhibit B**.

12. Nxegen, LLC is owner by exclusive license to substantial right, title, and interest in and to the '965 patent by nature of a license agreement with Nxegen Holdings, Inc.

13. Nxegen has expended considerable expense and effort in obtaining the '823 and '956 patents, as well as in developing, implementing, and promoting Nxegen's patented systems and methods for monitoring and controlling energy usage.

14. The Defendant has been and will continue to be unjustly enriched by implementing, making and selling products, systems, and methods that infringe Nxegen's '823 patent and '956 patent. For example, upon information and belief, Sensus has, *inter alia*, implemented its infringing FlexNet Advanced Metering Infrastructure ("AMI") solution for Groton Utilities in Groton, Connecticut. The Defendant's actions violate Nxegen's exclusive rights in the '823 patent and '956 patent and constitute infringement thereof.

15. The Defendant's actions have greatly and irreparably damaged Nxegen and will continue to do so unless restrained by the Court, wherefore Nxegen is without adequate remedy at law.

16. Upon information and belief, the Defendant has used, offered to sell, sold, and/or implemented, and continues to use, offer to sell, sell and implement products, services, systems and/or methods embodying the inventions of the '823 and '956 patents in Connecticut and throughout the United States.

COUNT I – PATENT INFRINGEMENT: U.S. PATENT NO. 6,633,823 B2

17. Nxegen incorporates the foregoing allegations in Paragraphs 1 through 16 as if set forth in full herein.

18. Upon information and belief, the Defendant has been, and currently is, infringing, directly and/or indirectly by way of inducement or contributory infringement, literally or through the doctrine of equivalents, the '823 patent by using, selling, offering for sale, contributing to the use of by others, and/or inducing others to use products, services, and methods that infringe the '823 patent including but not limited to methods including Sensus's Smart Grid technology systems, including but not limited to systems utilizing Power Vista™, Scada Xchange, and/or FlexNet Advanced Metering Infrastructure ("AMI") in connection with remote monitoring and control devices and associated services and/or data systems (including but not limited to Home Area Networks ("HAN")) that fall within the scope of at least one claim of the '823 patent.

19. The Defendant's activities have been without express or implied license from Nxegen.

20. Upon information and belief, the Defendant's infringement of the '823 patent will continue unless enjoined by this Court.

21. As a direct and proximate consequence of the Defendant's infringement of the '823 patent, Nxegen has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which Nxegen is entitled to relief.

COUNT II – PATENT INFRINGEMENT: U.S. PATENT NO. 7,135,956

22. Nxegen incorporates the foregoing allegations in Paragraphs 1 through 16 as if set forth in full herein.

23. Upon information and belief, the Defendant has been, and currently is, infringing, directly and/or indirectly by way of inducement or contributory infringement, literally or through the doctrine of equivalents, the '956 patent by using, selling, offering for sale, contributing to the

use of by others, and/or inducing others to use products, services, and methods that infringe the '956 patent including but not limited to methods including Sensus's Smart Grid technology systems, including but not limited to systems utilizing Power Vista™, Scada Xchange, and/or FlexNet Advanced Metering Infrastructure ("AMI") in connection with remote monitoring and control devices and associated services and/or data systems (including but not limited to Home Area Networks ("HAN")) that fall within the scope of at least one claim of the '956 patent.

24. The Defendant's activities have been without express or implied license from Nxegen.

25. Upon information and belief, the Defendant's infringement of the '956 patent will continue unless enjoined by this Court.

26. As a direct and proximate consequence of the Defendant's infringement of the '956 patent, Nxegen has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which Nxegen is entitled to relief.

PRAYER FOR RELIEF

27. Wherefore, Nxegen requests entry of judgment in its favor and against the Defendant as follows:

- (a) Enter judgment that the Defendant has infringed the '823 patent;
- (b) Enter judgment that the Defendant has infringed the '956 patent;
- (c) Enter a temporary, preliminary and permanent injunction restraining and enjoining the Defendant and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order

by personal service or otherwise, from any further sales or use of their infringing products and/or services and any other infringement of the '823 Patent, whether direct or indirect;

(d) Enter a temporary, preliminary and permanent injunction restraining and enjoining the Defendant and their respective officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from any further sales or use of their infringing products and/or services and any other infringement of the '956 Patent, whether direct or indirect;

(e) Award damages to compensate Nxegen for the Defendant's infringement of the '823 Patent pursuant to 35 U.S.C. § 284;

(f) Award damages to compensate Nxegen for the Defendant's infringement of the '956 Patent pursuant to 35 U.S.C. § 284;

(g) Award enhanced damages, pursuant to 35 U.S.C. § 284;

(h) Award pre-judgment and post-judgment interest and costs to Nxegen in accordance with 35 U.S.C. § 284;

(i) Enter a judgment declaring that this case is exceptional and an award of attorneys' fees and costs in this action pursuant to 35 U.S.C. § 285 and/or any other applicable provision and/or statutes;

(j) Grant to Nxegen such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

DEMAND FOR JURY TRIAL

Nxegen respectfully demands a trial by jury on all claims and issues so triable.

DATED: July 29, 2011

Respectfully submitted,

By: 

James A. Wade (ct00086)

Craig A. Raabe (ct04116)

Nuala E. Droney (ct27192)

J. Tyler Butts (ct28641)

Robinson & Cole LLP

280 Trumbull Street

Hartford, CT 06103-3597

Tel. No.: (860) 275-8200

Fax No.: (860) 275-8299

E-mail: jwade@rc.com;

craabe@rc.com; ndroney@rc.com;

jbutts@rc.com

ATTORNEYS FOR THE
PLAINTIFFS NXEGEN, LLC AND
NXEGEN HOLDINGS, INC.