

ROBINS KAPLAN LLP
ATTORNEYS AT LAW
MINNEAPOLIS

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Andrea Gothing, SBN: 302633
AGothing@RobinsKaplan.com
Seth A. Northrop, SBN: 301229
SNorthrup@RobinsKaplan.com
Li Zhu, SBN: 302210
LZhu@RobinsKaplan.com
Robins Kaplan LLP
2440 W. El Camino Real,
Mountain View, CA 94040
Telephone: 650-784-4012
Facsimile: 612-339-4181

Christopher K. Larus (*pro hac vice* pending)
CLarus@RobinsKaplan.com
David A. Prange (*pro hac vice* pending)
DPrange@RobinsKaplan.com
Robins Kaplan LLP
2800 LaSalle Plaza, 800 LaSalle Avenue,
Minneapolis, MN 55402
Telephone: 612-349-8500
Facsimile: 612-339-4181

Attorneys for Plaintiff Sensus USA, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Sensus USA, Inc.,)
) Case Number: 3:16-CV-3376
)
Plaintiff,) **COMPLAINT**
)
vs.)
) **DEMAND FOR JURY TRIAL**
Badger Meter, Inc.,)
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Defendants.)
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COMPLAINT FOR DECLARATORY RELIEF

1 Plaintiff Sensus USA, Inc. ("Sensus USA"), hereby brings this action for a
2 declaratory judgment of non-infringement against Defendant Badger Meter, Inc.
3 ("Badger Meter"), and states and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is a lawsuit for declaratory judgment arising out of a patent dispute
6 between Badger Meter and Sensus USA. Badger Meter accuses Sensus USA of infringing
7 U.S. Patent No. 8,539,827 ("the '827 patent"). Sensus USA denies liability because none
8 of Sensus USA's products or services infringe the '827 patent. In short, there is a current,
9 actual controversy between the parties that requires this Court's intervention.

10 **THE PARTIES**

11 2. Plaintiff Sensus USA is a corporation organized and existing under the
12 laws of Delaware with a principle place of business at 8601 Six Forks Road, Suite 700,
13 Raleigh, North Carolina 27601.

14 3. On information and belief, Badger Meter is a corporation organized and
15 existing under the laws of Wisconsin with a principle place of business at 4545 West
16 Brown Deer Road, Milwaukee, Wisconsin 53224.

17 4. Badger Meter claims ownership by assignment of the '827 patent.

18 **JURISDICTION AND VENUE**

19 5. This action is brought pursuant to the Federal Declaratory Judgment Act,
20 28 U.S.C. §§ 2201 and 2202, and further arises under the patent laws of the United States,
21 35 U.S.C. § 1, *et seq.* An actual case and controversy exists by reason of Badger Meter
22 sending Sensus a letter asserting that Sensus's Ally smart water meter purportedly
23 infringes the '827 patent.

24 6. This Court has subject matter jurisdiction over this action pursuant to 28
25 U.S.C. §§ 1331, 1338, 2201, and 2202.

26 7. This Court has personal jurisdiction over Badger Meter because Badger
27 Meter resides in this District at least by maintaining and continuously operating an
28 office facility, the Badger Meter Silicon Valley Innovation Center, at 3 ½ N. Santa Cruz

1 Ave., Suite B, Los Gatos, California, 95030; Badger Meter transacts business in this
2 District, including without limitation by sales of Badger Meter products to distributors
3 located in this District; and Badger Meter is registered to do business in the State of
4 California.

5 8. Venue in this District is proper under 28 U.S.C. § 1391 because Badger
6 Meter resides in this District and is subject to the Court's personal jurisdiction.

7 9. Sensus USA is entitled to declaratory relief because Sensus USA has not
8 and does not infringe a valid claim, if any, of the '827 patent and because Sensus USA
9 wishes to continue using and commercializing its products and processes free from
10 allegations of infringement by Badger Meter.

11 **BACKGROUND FACTS**

12 10. Sensus USA is a leading clean technology solutions company offering
13 smart meters, communication systems, software, and services for the water, gas, and
14 electric industries (collectively, the "Sensus Product Line").

15 11. Sensus has announced a new smart water meter commercially known as
16 Ally. Sensus has made and used prototypes of the Ally smart water meter, has made and
17 distributed beta versions of the Ally smart water meter, has introduced to the
18 marketplace the Ally smart water meter by advertising, and Sensus's offer for sale of the
19 Ally smart water meter is imminent.

20 12. On September 24, 2013, the United States Patent and Trademark Office
21 ("USPTO") issued the '827 patent, titled "Water Meter with Integral Flow Restriction
22 Valve." A copy of the '827 patent is attached hereto as **Exhibit 1**.

23 13. Badger Meter is the owner of the '827 patent.

24 14. On June 8, 2016, Badger Meter sent Sensus USA a letter notifying Sensus
25 that its "Ally water meter infringes Badger Meter's U.S. Patent No. 8,539,827." A copy of
26 the June 8, 2016 letter is attached hereto as **Exhibit 2**. In the June 8, 2016, letter, Badger
27 Meter has demanded that Sensus "[i]mmediately withdraw the Ally water meter from
28 Sensus' product offerings[;] agree that Sensus will not exhibit, show or promote the Ally

1 water meter at the AWWA show this month[;] agree that Sensus will discontinue all
2 marketing, promotion and sale of the Ally water meter as well as any other meter that
3 has an electrically operable flow control valve for restricting the flow of water through
4 the valve or otherwise embodies the features of the '827 patent[; and] provide written
5 confirmation that you have ceased all such use and assure that you will not resume such
6 use in the future." *Id.*

7 15. On June 13, 2016, Sensus USA sent Badger Meter a response seeking
8 "greater detail regarding the exact claims that it alleges Sensus is infringing, the specific
9 products or services it alleges infringe the claims, and the specific facts that cause Badger
10 to believe that Sensus' sale or provision of these products or services infringes on the
11 alleged infringed claims." A copy of Sensus USA's June 13, 2016 letter is attached hereto
12 as **Exhibit 3**.

13 16. On the same day, Badger Meter sent Sensus USA a response and claim
14 chart stating that Sensus USA's "Ally water meter infringes at least claim 1-3, 7, 12-13,
15 15, 17 & 21" of the '827 patent. A copy of Badger Meter's June 13, 2016 letter and claim
16 chart is attached hereto as **Exhibit 4**.

17 17. Sensus USA contends that its Ally smart water meter does not infringe,
18 either alone, or with any other entity, directly or indirectly, any claims of the '827 patent.

19 18. Any condition precedent necessary to bring the instant action has been
20 performed, waived or excused.

21 19. For all the foregoing reasons, an actual controversy exists between Sensus
22 USA and Badger Meter regarding the alleged infringement of the '827 patent.

23 **COUNT I**

24 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

25 20. Sensus USA repeats and realleges Paragraphs 1-19 of this Complaint as if
26 fully set forth herein.

27 21. An actual and justiciable controversy exists between Sensus USA and
28 Badger Meter as to whether the '827 patent is infringed by Sensus USA. A judicial

1 declaration is necessary and appropriate so that Sensus USA may ascertain its rights
2 regarding the '827 patent.

3 22. Sensus USA does not directly infringe any claim of the '827 patent under
4 35 U.S.C. § 271(a), either alone or with any other entity.

5 23. Sensus USA does not induce others to infringe any claim of the '827 patent
6 under 35 U.S.C. § 271(b), either alone or with any other entity.

7 24. Sensus USA does not contributorily infringe any claim of the '827 patent
8 under 35 U.S.C. § 271(c), either alone or with any other entity.

9 25. Sensus USA is entitled to a declaratory judgment of that the making, using,
10 and imminent offering for sale of its products, including without limitation the Ally
11 smart water meter, does not directly or indirectly infringe any claim of the '827 patent.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Sensus USA respectfully request that judgment be entered in its
14 favor and prays that the Court grant the following relief:

15 a. A declaration that Sensus USA's products, and in particular the Ally smart
16 water meter, do not infringe any claim of the '827 patent;

17 b. A declaration that the use, offer to sell, and/or sale of Sensus USA's
18 products, and in particular the Ally smart water meter, do not infringe any claim of the
19 '827 patent;

20 c. A declaration that Sensus USA is free to operate without a cloud of
21 infringement claims by Badger Meter;

22 d. An order enjoining Badger Meter and/or its officers, agents, servants,
23 employees and attorneys, and all others acting for, on behalf of, or in active concert or
24 participation with any of them, from stating, implying or suggesting that Sensus USA or
25 any products in the Sensus Products Line infringe any claim of the '827 patent;

26 e. An order enjoining Badger Meter and/or its officers, agents, servants,
27 employees and attorneys, and all others acting for, on behalf of, or in active concert or
28 participation with any of them, from charging infringement of, or instituting any action

1 of infringement of the '827 patent against Sensus USA and/or any of Sensus USA's
2 customers;

3 f. An order declaring Sensus USA the prevailing party, and that this is an
4 exceptional case, awarding Sensus USA its reasonable attorneys' fees, expenses, and
5 costs in this action under 35 U.S.C. § 285, and all other applicable statutes, rules, and
6 common law; and

7 g. Such other further relief as this Court may deem just and proper.

8 **DEMAND FOR A JURY TRIAL**

9 Pursuant to Federal Rule of Civil Procedure 38(b) and Northern District of
10 California Rule 3-6(a), Sensus USA respectfully requests a jury trial on all issues so
11 triable.

12
13 Dated: June 16, 2016

/s/ Li Zhu

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Li Zhu, SBN: 302210
LZhu@RobinsKaplan.com
15 Andrea Gothing, SBN: 302633
Seth A. Northrop, SBN: 301229
SNorthrop@RobinsKaplan.com
16 Robins Kaplan LLP
2440 W. El Camino Real,
17 Mountain View, CA 94040
Telephone: 650-784-4012
18 Facsimile: 612-339-4181

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24 **Attorneys for Plaintiff Sensus USA, Inc.**

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