

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

InVue Security Products Inc.,

Plaintiff,

v.

Mobile Tech, Inc. d/b/a Mobile Technologies
Inc. and MTI, formerly known as
Merchandising Technologies, Inc.

Defendant.

Civil Action No.: 1:18-cv-2653

COMPLAINT
(Demand for Jury Trial)



Provided by:
[Overhauser Law Offices LLC](http://www.iniplaw.org)
www.iniplaw.org
www.overhauser.com

Plaintiff InVue Security Products Inc. (“Plaintiff” or “InVue”) files this Complaint for patent infringement against Defendant Mobile Tech, Inc. (“Defendant” or “MTI”) and alleges as follows:

1. InVue brings this action pursuant to the United States Patent Act, 35 U.S.C. § 100, *et seq.* MTI has infringed and continues to infringe one or more claims of U.S. Patent No. 10,062,266 (“ ’266 patent” or “patent-in-suit”). The patent-in-suit is entitled “Programmable Security System and Method for Protecting Merchandise.”

2. The patent-in-suit issued from United States Application No. 15/954,143 and claims priority through United States Application No. 15/586,939, filed on May 4, 2017, and now United States Patent No. 10,013,867, which is a continuation of United States Application No. 15/397,362, filed on January 3, 2017, and now United States Patent No. 9,659,472, which is a continuation of United States Application No. 15/241,708, filed on August 19, 2016, and now United States Patent No. 9,576,452, which is a continuation of United States Application No. 15/047,218, filed on February 18, 2016, and now United States Patent No. 9,478,110, which is a continuation of United States Application No. 14/825,436, filed on August 13, 2015, and now

United States Patent No. 9,269,247, which is a continuation of United States Application No. 14/529,516, filed on October 31, 2014, and now United States Patent No. 9,135,800, which is a continuation of United States Application No. 14/254,244, filed on April 16, 2014, and now United States Patent No. 8,884,762, which is a continuation of United States Application No. 13/169,968, filed on June 27, 2011, and now abandoned, which is a continuation-in-part of United States Application No. 12/770,321, filed on April 29, 2010, and now United States Patent No. 7,969,305, which is a continuation of United States Application No. 11/639,102, filed on December 14, 2006, and now United States Patent No. 7,737,846, which claims the benefit of United States Provisional Application No. 60/753,908, filed on December 23, 2005.

3. MTI has committed, and continues to commit, acts of direct infringement, contributory infringement, and inducement infringement of one or more claims of the patent-in-suit.

The Parties

4. InVue is a corporation formed under the laws of Ohio with a principal place of business at 9201 Baybrook Ln, Charlotte, NC 28277.

5. MTI is a corporation formed under the laws of Indiana with a principal place of business at 1050 NW 229th Avenue, Hillsboro, Oregon 97124.

Jurisdiction and Venue

6. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the United States Patent Act, 35 U.S.C. § 100, *et seq.*

7. This Court has personal jurisdiction over MTI because MTI is a corporation organized and existing pursuant to the laws of Indiana, has transacted business within the State

of Indiana and has, upon information and belief, engaged in infringing acts in the State of Indiana.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1400(b) because MTI is a corporation organized and existing pursuant to the laws of the State of Indiana and therefore, resides in Indiana pursuant to 28 U.S.C. §1400(b); MTI is subject to personal jurisdiction here; and MTI's registered agent is located in this District.

Patent-in-Suit

9. On August 28, 2018, the United States Patent and Trademark Office duly and legally issued the '266 patent, entitled "Programmable Security System and Method for Protecting Merchandise." True and accurate copies of the Issue Notification for the '266 patent and allowed claims of the '266 patent are attached as Exhibit A.¹

10. The patent-in-suit describes an invention that advanced the art and relates to methods of protecting merchandise and programmable security systems that can include in certain embodiments, for example, at least one programmable key, including a memory, and a programming station, including a memory. The programmable key can be configured such that a security code can be stored in the memory of the programmable key. The security system can also include a security device that has an alarm. The security device can be attached to an item of merchandise. The alarm of the security device can be activated in response to the integrity of the security device being compromised. The programmable key can be configured to provide the security code to the programming station and the security code can be stored in the memory of the programming station. The programmable key can also communicate wirelessly with the programming station to authorize the programmable key to control the security device if the

¹ The '266 patent issued on August 28, 2018, just before this Complaint was filed. InVue will supplement Exhibit A with a true and accurate copy of the '266 patent as issued.

security code stored in the memory of the programmable key matches the security code stored in the memory of the programming station. Various embodiments with additional or different features are also described.

11. InVue is the owner of all rights, title, and interest in the patent-in-suit, including the right to bring this suit for injunctive relief and damages.

12. InVue has not authorized MTI or its customers to manufacture, offer to sell, sell, use, or import any product or method covered by the patent-in-suit.

Defendant's Infringing Activities

13. Upon information and belief, MTI has infringed, and continues to infringe, the patent-in-suit by making, using, offering for sale, selling, and/or importing products, namely security systems, that practice the invention of the patent-in-suit (hereinafter the "Accused Products") and by inducing its customers to use the Accused Products.

14. The Accused Products include, by way of example and not limitation, programmable security systems having at least one programming station, with a memory, and at least one programmable key, with a memory. A security code can be stored in the memory of the at least one programmable key of the Accused Products. The Accused Products also include at least one security device that includes an alarm. The security device can be attached to an item of merchandise and the alarm of the security device can be activated in response to the integrity of the security device being compromised. The programmable key of the Accused Products can provide the security code to the programming station and the security code can be stored in the memory of the programming station. The programmable key can also communicate wirelessly with the programming station to authorize the programmable key to control the security device if the security code stored in the memory of the programmable key matches the security code stored in the memory of the programming station.

15. MTI has used various names for the Accused Products as well as components of the Accused Products including, without limitation, devices and components MTI refers to as the “Intellikey”, “Intellikey 3.0”, “Intellikey 3.0 Gateway”, “Gateway”, “Freedom Micro”, “Manager Key”, “User Key”, and such other security devices and components that function in a similar manner and operate with an Intellikey and Gateway, such others operating as described above in preceding Paragraph 15, and as may be further identified during this action.

16. MTI’s customers use the Accused Products in the U.S. including, for example, use by one or more retailers of the Accused Products within the U.S.

17. The Accused Products and use of the Accused Products by MTI and MTI’s customers embodies and practices the invention claimed in the patent-in-suit.

MTI’S NOTICE OF INVUE’S PATENT RIGHTS

18. On April 11, 2018, the chief executive officers of both InVue and MTI met in person (the “April Meeting”).

19. On this same day, MTI admitted to InVue the structure and operation of Intellikey 3.0 and its Gateway, and identified a video published earlier at <https://vimeo.com/178867009>, that also described the structure and operation of Intellikey 3.0 and its Gateway. MTI also admitted that in 2016, it began deploying Intellikey 3.0 with its customers, including AT&T.

20. On May 31, 2018, InVue provided MTI with a copy of at least Claim 1 of the ’266 patent, as it was then pending, notifying MTI of the patent application that has now issued as the ’266 patent. This claim was the same as claim 1 of the ’266 patent. InVue also informed MTI that Intellikey 3.0 would infringe the claims of InVue’s pending application (which ultimately issued as the ’266 patent).

21. On August 16, 2018, the application that resulted in the '266 patent published as 2018/0233024 (the "'024 Publication"). A true and accurate copy of the '024 Publication is attached as Exhibit B.

22. Many claims of the '024 Publication are identical, or substantially the same as, the claims of the '266 patent.

23. Upon information and belief, MTI has also had actual notice of the '024 Publication after its publication and prior to the filing of the Complaint.

24. MTI has had actual knowledge of the '266 patent since at least the date on which MTI received the Complaint in this action.

COUNT 1

First Cause of Action: Direct Infringement of U.S. Patent No. 10,062,266

25. InVue incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

26. MTI's manufacture, offer for sale, sale, importation, and/or use of the Accused Products in the United States directly infringes the '266 patent.

27. MTI's manufacture, offer for sale, sale, importation, and/or use of the Accused Products infringes, for example, at least claim 1 of the '266 patent.

28. One or more of the Accused Products, for example, includes a security system that protects items of merchandise from theft. This security system includes a programming station (referred to sometimes by MTI as a "Gateway" or "Hub") with a memory. This security system also includes at least one key (referred to sometimes by MTI as an "Intellikey", "key", "user key", and/or "manager key") with a memory. A security code can be stored in the memory of the programmable key.

29. Such security system also includes at least one security device that, for some of the Accused Products, is referred to by MTI as a “puck”. The security device has an alarm. The security device can be attached to an item of merchandise and will activate an alarm if the integrity of the security device is compromised by, for example, tampering with the security device or removing the item of merchandise from the security device.

30. The programmable key of MTI’s security system is configured to and can provide the security code to the programming station (e.g., the Gateway or Hub) and the security code can be stored in the memory of the programming station.

31. The programmable key of MTI’s security system is configured to and can communicate wirelessly with the programming station to authorize the programmable key to control the security device upon a matching of the security code stored in the memory of the programmable key with the security code stored in the memory of the programming station.

32. MTI’s direct infringement of the ’266 patent causes financial damages to InVue, including for example, lost sales revenue caused by MTI’s sales of the Accused Products.

33. MTI’s direct infringement of the ’266 patent irreparably damages InVue, including for example, avoiding InVue’s right to exclude others from making, using, selling, or offering to sell products embodying the invention patented in the ’266 patent.

34. MTI’s direct infringement of the ’266 patent will continue unless enjoined by the Court under 35 U.S.C. § 283 and/or the equitable powers of the Court.

35. MTI has had actual knowledge of the ’266 patent since at least the date on which MTI received the Complaint in this action.

36. MTI’s direct infringement of the ’266 patent constitutes willful infringement because such continues to proceed despite an objectively high likelihood that its conduct

infringes valid claims of the '266 patent, and this likelihood is either known to MTI or so obvious that MTI should have known that its conduct infringed valid claims of the '266 patent.

COUNT 2

Second Cause of Action: Contributory Infringement of U.S. Patent No. 10,062,266

37. InVue incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

38. MTI has had actual knowledge of the '266 patent since at least the date on which MTI received the Complaint in this action.

39. Upon information and belief, MTI has had actual knowledge that the '266 patent would issue on August 28, 2018 because the application that resulted in the '266 patent and its file history in the United States Patent and Trademark Office (USPTO), including the Issue Notification attached as Exhibit A, were publicly available on the USPTO's Public Application Information Retrieval website beginning on August 16, 2018, the date of publication of the application. Because InVue provided MTI with a copy, on May 31, 2018, of at least claim 1 of the application that issued as the '266 patent, and because the '266 patent issued from an application that was a continuation of one or more applications, which include applications that are now United States Patent No. 9,659,472 (the '472 patent), United States Patent No. 9,576,452 (the '452 patent), United States Patent No. 9,478,110 (the '110 patent), United States Patent No. 9,396,631 (the '631 patent), United States Patent No. 9,269,247 (the '247 patent), United States Patent No. 9,135,800 (the '800 patent) and United States Patent No. 8,884,762 (the '762 patent), which are all asserted against MTI in Civil Action No. 3:17-cv-01356-SI in the U.S. District Court for the District of Oregon, and because the written description and drawings of the '266 patent describes exemplary embodiments of the inventions also described in the '472 patent '452 patent, the '110 patent, the '631 patent, the '247 patent, the '800 patent, and the '762

patent, upon information and belief, MTI would have monitored the prosecution of the application that resulted in the '266 patent and been aware of its issuance on August 28, 2018.

40. The Accused Products are configured only for infringing use as security systems protecting items of merchandise. For example, the Accused Products include one or more security devices that are configured only for purposes of attachment to an item of merchandise to protect the item of merchandise from theft and are used with programmable keys programmed with a security code.

41. The Accused Products are not staple articles of commerce.

42. The Accused Products are not suitable for substantial non-infringing use.

43. The Accused Products are especially made or especially adapted for use in an infringement of the '266 patent.

44. The use of the Accused Products by MTI's customers constitutes direct infringement of the '266 patent.

45. On information and belief, MTI knows that the Accused Products are not staple articles of commerce, are not suitable for substantial non-infringing use, and are especially made or adapted for use in a manner that infringes InVue's patent rights associated with the '266 patent.

46. MTI's actions constitute contributory infringement of the '266 patent.

47. MTI's contributory infringement of the '266 patent causes financial damages to InVue, including for example, lost sales revenue caused by MTI's sales of the Accused Products.

48. MTI's contributory infringement of the '266 patent irreparably damages InVue, including for example, avoiding InVue's right to exclude others from making, using, selling, or offering to sell products embodying the invention patented in the '266 patent.

49. MTI's contributory infringement of the '266 patent will continue unless enjoined by the Court under 35 U.S.C. § 283 and/or the equitable powers of the Court.

50. MTI's contributory infringement of the '266 patent is willful infringement because such continues to proceed despite an objectively high likelihood that its conduct infringes valid claims of the '266 patent, and this likelihood is either known to MTI or so obvious that MTI should have known that its conduct infringed valid claims of the '266 patent.

COUNT 3

Third Cause of Action: Inducement Infringement of U.S. Patent No. 10,062,266

51. InVue incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

52. MTI has had actual knowledge of the '266 patent since at least the date on which MTI received service the Complaint in this action.

53. Upon information and belief, MTI has had actual knowledge that the '266 patent would issue on August 28, 2018 because the application that resulted in the '266 patent and its file history in the United States Patent and Trademark Office (USPTO), including the issue Notification attached as Exhibit A, were publicly available on the USPTO's Public Application Information Retrieval website beginning on August 16, 2018, the date of publication of the application. Because InVue provided MTI with a copy, on May 31, 2018, of at least claim 1 of the application that issued as the '266 patent, and because the '266 patent issued from an application that was a continuation of one or more applications, which include applications that are now United States Patent No. 9,659,472 (the '472 patent), United States Patent No. 9,576,452 (the '452 patent), United States Patent No. 9,478,110 (the '110 patent), United States Patent No. 9,396,631 (the '631 patent), United States Patent No. 9,269,247 (the '247 patent), United States Patent No. 9,135,800 (the '800 patent) and United States Patent No. 8,884,762 (the

'762 patent), which are all asserted against MTI in Civil Action No. 3:17-cv-01356-SI in the U.S. District Court for the District of Oregon, and because the written description and drawings of the '266 patent describe exemplary embodiments of the inventions also described in the '472 patent, '452 patent, the '110 patent, the '631 patent, the '247 patent, the '800 patent, and the '762 patent, upon information and belief, MTI would have monitored the prosecution of the application that resulted in the '266 patent and been aware of its issuance on August 28, 2018.

54. MTI sells and continues to sell the Accused Products to its customers with the intent that its customers will use and operate the Accused Products in the United States in a manner that infringes the '266 patent.

55. MTI provides its customers with instructions regarding the infringing use and operation of the Accused Products in the United States.

56. Upon information and belief, MTI trains its customers in the infringing use and operation of the Accused Products in the United States.

57. Upon information and belief, MTI has observed its customers using and operating the Accused Products in the United States in an infringing manner.

58. Upon information and belief, MTI is aware or should have known that use and operation of the Accused Products in the United States by MTI or its customers would directly infringe the '266 patent.

59. MTI's actions to aid and abet its customers to directly infringe the '266 patent with knowledge that use of the Accused Products in the United States would directly infringe the '266 patent constitutes inducement infringement.

60. MTI's inducement infringement of the '266 patent causes financial damages to InVue, including for example, lost sales revenue caused by MTI's sales of the Accused Products.

61. MTI's inducement infringement of the '266 patent irreparably damages InVue, including for example, avoiding InVue's right to exclude others from making, using, selling, or offering to sell products embodying the invention patented in the '266 patent.

62. MTI's inducement infringement of the '266 patent will continue unless enjoined by the Court under 35 U.S.C. § 283 and/or the equitable powers of the Court.

63. MTI's inducement infringement of the '266 patent is willful infringement because such continues to proceed despite an objectively high likelihood that its conduct infringes valid claims of the '266 patent, and this likelihood is either known to MTI or so obvious that MTI should have known that its conduct infringed valid claims of the '266 patent.

COUNT 4
Fourth Cause of Action: Liability for Pre-Issuance Damages

64. InVue incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

65. The application that resulted in the '266 patent published on August 16, 2018 as the '024 Publication.

66. One or more claims, including Claim 1, of the '024 Publication are substantially identical to one or more claims of the '266 Patent, including Claim 1 of the '266 patent.

67. On information and belief, MTI became aware of and thus had actual notice of the '024 Publication after its publication and prior to the issuance of the '266 patent. As previously stated, on May 31, 2018, InVue provided MTI with claim 1 of the '266 patent, as it was then pending in the application for the '266 Patent, thereby providing MTI with notice of the same.

68. On information and belief, prior to the issuance of the '266 patent, MTI made, used, offered for sale, and/or sold into the United States and/or imported into the United States

the Accused Products and thus the invention as claimed in the '024 Publication, including but not limited to, Claim 1 and 14 of the '024 Publication.

69. On information and belief, MTI gained profits by virtue of its manufacture, sales, offers for sale, uses and importations of the Accused Products subsequent to the publication of the '024 Publication and prior to the issuance of the '266 patent.

70. InVue sustained damages as a direct and proximate result of MTI's manufacture, sales, offers for sale, uses and importations of the Accused Products subsequent to the publication of the '024 Publication and prior to the issuance of the '266 patent.

71. InVue is entitled to a reasonable royalty for MTI's manufacture, sales, offers for sale, uses and importations of the Accused Products subsequent to the publication of the '024 Publication and prior to the issuance of the '266 patent pursuant to 35 U.S.C. § 154(d).

Request for Relief

Wherefore, InVue respectfully requests the entry of judgment against Defendant MTI and its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation, providing the following relief:

A. Finding that Defendant MTI has directly infringed, either literally or by doctrine of equivalents, has committed contributory infringement, and/or has committed inducement infringement of one or more claims of the patent-in-suit and finding that such infringement has been willful;

B. Entering a permanent injunction, under 35 U.S.C. § 283 and the equitable powers of the Court, against Defendant MTI and all those in active concert or participation with Defendant MTI, to prevent further direct and/or indirect infringement of the patent-in-suit;

C. Awarding Plaintiff InVue damages in an amount that will be proved at trial and that will adequately compensate Plaintiff InVue for the infringement but in no amount less than a reasonable royalty as authorized by 35 U.S.C. § 284;

D. Increasing the damages awarded to Plaintiff InVue up to three times the amount of Plaintiff's actual damages as authorized by 35 U.S.C. § 284;

E. Finding that this is an exceptional case and award Plaintiff InVue its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285 and/or other applicable laws;

F. A judgment awarding InVue a reasonable royalty for MTI's manufacture, sales, offers for sale, uses and importations of the Accused Products subsequent to the publication of the '024 Publication and prior to the issuance of the '266 patent pursuant to 35 U.S.C. § 154(d).

G. Awarding Plaintiff InVue prejudgment interest and costs under 35 U.S.C. § 284 and/or other applicable laws; and

H. Granting such other legal and equitable relief and the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues triable to a jury.

Respectfully submitted,

/s/ Richard A. Smikle

Richard A. Smikle, Esq.

Eric J. McKeown, Esq.

ICE MILLER LLP

One American Square

Suite 2900

Indianapolis, IN 46282

Telephone: (317) 236-2100

richard.smikle@icemiller.com

eric.mckeown@icemiller.com

Tim F. Williams (*pro hac vice forthcoming*)

DORITY & MANNING, P.A.

Two Liberty Square

75 Beattie Place, Suite 1100

Greenville, SC 29601

Telephone: (864) 271-1592

Fax: (864) 233-7342

timw@dority-manning.com

***Attorneys for the Plaintiff, InVue Security
Products Inc.***