

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

_____	)	
SECURITYPOINT HOLDINGS, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:11-cv-00268-EGB
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
_____	)	

**FIRST AMENDED COMPLAINT**

Plaintiff SecurityPoint Holdings, LLC ("Plaintiff" or "SecurityPoint"), through its undersigned counsel, as and for its First Amended Complaint, alleges as follows:

**NATURE OF ACTION**

1. This is an action against the defendant The United States of America ("Defendant" or "the United States") pursuant to 28 U.S.C. § 1498(a) for infringement of one or more claims of U.S. Patent Number 6,888,460 (the "'460 Patent") issued May 3, 2005 and entitled "Advertising Trays for Security Screening." The '460 Patent was duly and legally issued by the United States Patent and Trademark Office ("PTO") to the inventor of the '460 Patent, and has been assigned to SecurityPoint. A true and correct copy of the '460 Patent is attached as **Exhibit A** hereto, and incorporated herein.

2. The facts detailed below, when stated to be "upon information and belief," constitute allegations that are likely to have further evidentiary support after a reasonable opportunity for further investigation or discovery.

3. Upon information and belief, the Defendant has infringed and is infringing one or more of the claims of the '460 Patent, and specifically, the United States Department of

Homeland Security, Transportation Security Administration ("TSA"), has infringed and is infringing one or more claims of the '460 Patent by or through the use of the inventions of such claims by or for the United States at security screening checkpoint areas at all or most of the more than four hundred federalized airports in the United States, where the TSA provides security screening.

### **THE PARTIES**

4. Plaintiff SecurityPoint is a limited liability company that is organized under the laws of the State of Florida with its principal place of business at 11201 Corporate Circle North, Suite 120, St. Petersburg, Florida 33716-11201.

5. Plaintiff has had no more than five hundred employees at any time during the five year period preceding the use of the patented inventions by or for the United States.

6. The United States, by and through the TSA, operates and controls security screening at security screening checkpoints at more than four hundred airports throughout the United States, and utilizes carts, trays and scanning devices at these checkpoints. On information and belief, the TSA has performed and continues to perform methods that infringe one or more of the claims of the '460 Patent at all or most of these airports.

### **JURISDICTION AND VENUE**

7. This is an action for unauthorized use of patented inventions under 28 U.S.C. § 1498(a). This Court has jurisdiction over the subject matter of this action and venue is proper in this Court pursuant to 28 U.S.C. § 1498(a).

### **STATEMENT OF FACTS**

8. Prior to the terrorist attacks on September 11, 2001, the airport security checkpoint screening system in use in the United States was distinctly different from the system in use today. The carts and trays (also known as "bins") system that is now commonplace at U.S. airports did not exist.

9. The application for the '460 Patent was filed on July 2, 2003. The invention reflected in the '460 Patent provides, among other things, for a more efficient use, storage and movement of trays used to screen personal items.

10. The application was related to and claimed the benefit under 35 U.S.C. 119(e) of U.S. Provisional Patent Application Serial No. 60/393,637, filed July 3, 2002.

11. In view of the importance of developing technologies for countering terrorism and the desirability of prompt disclosure of advances made in these fields, the PTO will accord "special" status to patent applications for inventions which materially contribute to countering terrorism.

12. In a "Petition to Make Special" filed in connection with the patent application so that the application could receive priority consideration by the PTO, the applicant stated:

[T]he present invention contributes to the countering of terrorism. . . . through teaching an apparatus, system and method for increasing the efficiency and efficacy of security checkpoints through the use of specially designed trays and tray carts. The invention directly contributes to countering terrorism by providing a mechanism or means to (1) immediately associate individuals with their personal items or vice versa during the screening process, (2) convey safety messages during the screening process, (3) generate revenue to maintain state-of-the art screening areas, (4) facilitate the visual inspection of personal items and (5) allow security personnel to more fully focus on the process of security screening rather than on peripheral diversions associated with the process. The invention achieves these benefits by providing for the more efficient use, storage and movement of trays used to screen personal items.

13. In its Petition to Make Special, the applicant also stated, *inter alia*, that "[a]nother disadvantage with presently-used screening processes is the lack of an efficient process to dispense and recollect personal item trays. . . . With no efficient or ordered process to accomplish this peripheral, yet essential task, the attention of security personnel often is diverted away from the vital process of screening."

14. On May 7, 2004, the PTO granted the Petition To Make Special, concluding that "[t]he statements made in the petition show how the technology of the instant application directly contributes to the countering of terrorism."

15. The invention reflected in the '460 Patent also protects personnel involved in the security checkpoint screening process from injuries that they would otherwise sustain from moving stacks of screening bins by hand.

16. The PTO took an active role in the prosecution of the '460 Patent, engaging in extensive communications with the inventor's representatives and, ultimately, concluded that the claims of the '460 Patent were fully patentable and not anticipated by, or obvious in light of, the relevant prior art.

17. The TSA "Security Checkpoint Layout Design/Reconfiguration Guide" (revision dated November 6, 2006) (the "2006 Checkpoint Design Guide") (a true and correct copy of which is attached as **Exhibit B** hereto and incorporated herein), did not direct TSA personnel or airports to use trays or carts in the airport security screening process.

18. The 2006 Checkpoint Design Guide acknowledged that the security checkpoint system then in place at U.S. airports resulted in a "significant injury risk" to TSA personnel assigned to checkpoints. The Guide stated:

Another important consideration is the return of bins from the passenger composure area to the divest side of the X-ray. *Lifting and carrying of bins by TSOs is known to be a significant injury risk and should be eliminated if possible. At this time there is no single TSA standard bin return system to eliminate the need for TSOs to lift and carry bins*; two possible systems which can be considered are a roller/slide system and a non-metallic bin cart system. (Exhibit B, at 16) (emphasis added)

19. In contrast to the 2006 Checkpoint Design Guide, the TSA's "Checkpoint Design Guide" dated February 11, 2009 (Contract Number: HSTS04-05-D-DEP-003) (the "2009 Checkpoint Design Guide") (a true and correct copy of which is attached a **Exhibit C** hereto and incorporated herein), expressly directs TSA personnel and U.S. airports to use bins and carts at airport security checkpoint areas, in the manner taught in the '460 Patent.

20. The 2009 Checkpoint Design Guide "provide[s] a description of the [security screening checkpoint] equipment that exists [at U.S. airports] today and the knowledge necessary to locate that equipment within the checkpoint in order to provide the highest level of security and efficiency beginning at the queue and continuing through the composure area." *Id.* at 5. The 2009 Checkpoint Design Guide specifies that its information "should be used when designing new checkpoints or reconfiguring existing checkpoints" at U.S. airports. With regard to bins and carts, the 2009 Checkpoint Design Guide states:

Bin carts can be one (1) or two (2) bins wide with bins stacked on top to slightly below the handle height equating to approximately 40 bins. *Each lane requires at least two bin carts per lane and TSA recommends maintaining about 60 bins per lane. A fully-loaded bin cart should be located at the start of the divest tables on the non-sterile side of the lane awaiting passenger pick up. The other bin cart should be positioned at the end of the roller tables on the sterile side so that the TSA agent can collect empty bins after passengers have picked up their belongings.* (Exhibit C, at 26) (emphasis added)

21. The above-quoted language in the 2009 Checkpoint Design Guide directly tracks the literal method steps of multiple claims of the '460 Patent, and demonstrates that the TSA is directing its personnel at airports throughout the United States to "use" the methods defined in the claims of the '460 Patent.

22. On March 12, 2007, Plaintiff sued the Adason Group, LLC, the Conner Group and Stephen Connor in the United States District Court of the Middle District of Florida (Case No. 8:07cv444-T17TGW) (the "Adason Litigation"), alleging that the defendants, among other things, induced infringement of the '460 Patent through their manufacture, use, sale, offer for sale, and/or import of a "security checkpoint advertising system under the trade name 'On-The-Go™ Security Ads.'" (Complaint ¶¶ 15, 41)

23. In 2008, the parties settled the Adason Litigation, pursuant to which the defendants agreed to refrain from further infringing the '460 Patent.

#### **CLAIM FOR RELIEF**

24. Plaintiff re-alleges and incorporates the foregoing paragraphs.

25. On May 3, 2005, the '460 Patent (Exhibit A hereto) – entitled "Advertising Trays for Security Screening" – was duly and legally issued to Joseph T. Ambrefe, Jr., as inventor.

26. The '460 Patent is generally directed to one or more methods or systems for the placement of objects that are processed through a secured area, and its claims are directed to methods that utilize carts and trays with a scanning device at, for example, an airport security checkpoint.

27. SecurityPoint is the successor in interest to the Assignee on the face of the '460 Patent, and is the current owner, by assignment, of all right, title and interest in and to the '460 Patent.

28. Upon information and belief, the United States has, within the six years immediately preceding the filing of this Complaint, directly infringed, and continues to directly infringe, one or more claims of the '460 Patent, and specifically in connection with the operation and control by the TSA of security screening checkpoint areas at passenger terminals at all or most of the more than four hundred federalized airports in the United States where TSA provides security screening, including, without limitation, Washington Dulles Airport and Washington National Ronald Reagan Airport. For example, and without limitation, on information and belief, each and every one of the following steps enumerated in the method defined in claim 1 of the '460 Patent is performed by or for the United States at TSA-operated security screening checkpoints at all or most of the federalized airports in the United States (including, without limitation, the aforementioned Washington, D.C.-area airports):

- a. positioning a first tray cart containing trays at the proximate end of a scanning device through which objects may be passed, wherein said scanning device comprises a proximate end and a distal end,
- b. removing a tray from said first tray cart,
- c. passing said tray through scanning device from said proximate end through to said distal end,
- d. providing a second tray cart at said distal end of said scanning device,
- e. receiving said tray passed through said scanning device in said second tray cart, and
- f. moving said second cart to said proximate end of said scanning device so that said trays in said second cart be passed through said scanning device at said proximate end.

29. The use of the patented invention by or for the United States is also evidenced by the fact that the TSA's 2009 Checkpoint Design Guide specifically directs TSA personnel and airports to use a bin and cart system at U.S. airport security checkpoints in a manner that is taught by the '460 Patent.

30. As a result of Defendant's unauthorized infringing use of the methods claimed in the '460 Patent, SecurityPoint has been and will continue to be damaged and is entitled to reasonable and entire compensation under 28 U.S.C. § 1498(a).

### **PRAYER FOR RELIEF**

WHEREFORE, SecurityPoint prays that the Court enter a judgment against Defendant United States as follows:

A. A decree that U.S. Patent No. 6,888,460 is valid and enforceable and that the inventions claimed therein have been used by or for Defendant without license or lawful right;

B. An award of damages against Defendant sufficient to reasonably and entirely compensate SecurityPoint for all unauthorized infringing use of the inventions claimed in the '460 Patent at airport security screening checkpoint areas in the United States by or for the Defendant United States within the six years prior to the filing of this Complaint, and through the date of trial and the life of the '460 Patent, in an amount not less than SecurityPoint's lost profits, the cost savings to Defendant from the use of the patented inventions, and/or a reasonable royalty, pursuant to 28 U.S.C. §1498(a);

C. An award of reasonable attorneys' fees, expert fees and other costs incurred by SecurityPoint in connection with its pursuit of this action, pursuant to 28 U.S.C. §1498(a);



D. An award of prejudgment interest, pursuant to 35 U.S.C. § 284, and a further award of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid; and

E. All other relief to which SecurityPoint is entitled under the applicable United States statute or as this Court deems just and proper.

Respectfully submitted,

Dated: July 15, 2011

/s/ M. Roy Goldberg  
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**CERTIFICATE OF SERVICE**

I certify that on July 15, 2011, using the CM/ECF system, I electronically caused to be filed with the Clerk of the U.S. Court of Federal Claims the above First Amended Complaint. Participants in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Roy Goldberg  
Roy Goldberg