

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ARRIVALSTAR, S.A. *
67 RueMichel *
Welter L-2730, Luxembourg *

and *

MELVINO TECHNOLOGIES LIMITED *
P.O. Box 3152 *
RG Hodge Building *
Road Town, Tortola, *
British Virgin Islands, *

Plaintiffs *

v. * Case No. 1:11-CV-00761 JKB

RALIGN T. WELLS *
6 St. Paul Street *
Baltimore, Maryland 21202 *

and *

JOHN DOE, representing other officials *
of the State of Maryland responsible for *
deprivation of Plaintiffs’ constitutional rights, *

and *

MARYLAND TRANSIT *
ADMINISTRATION *
6 St. Paul Street *
Baltimore, MD 21202, *

Defendants. *

* * * * *

AMENDED COMPLAINT

Plaintiffs, ArrivalStar S.A. and Melvino Technologies Limited (collectively, “Plaintiffs”), by their undersigned attorneys and pursuant to Rule 15(a) of the Federal Rules

of Civil Procedure, files this Amended Complaint against Ralign T. Wells (“Wells”), John Doe representing other officials of the State of Maryland responsible for deprivation for Plaintiffs’ constitutional rights, and Maryland Transit Administration (“MTA”), and allege as follows:

NATURE OF LAWSUIT

1. This action involves claims against the MTA for damages, treble damages, and attorney’s fees and expenses for patent infringement and claims for unauthorized takings and use, more specifically, for injunctive relief to stop Defendant Wells and other state officials presently unknown from continued deprivation of Plaintiffs’ constitutionally protected property rights arising under the patent laws of the United States without due process in violation the Fourteenth Amendment of the U.S. Constitution.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, in that one or more of Plaintiffs’ claims arise under the laws of the United States, pursuant to 28 U.S.C. § 1338, granting district courts original jurisdiction over any civil action relating to patents, and pursuant to the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, preventing improper taking of property rights by a State and its actors with due process.

3. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b).

THE PARTIES

4. ArrivalStar S.A. is a corporation organized under the laws of Luxembourg and having offices at 67 Rue Michel, Welter L-2730, and Luxembourg.

5. Melvino Technologies Limited is a corporation organized under the laws of the British Virgin Island of Tortola, having offices at P.O. Box 3152, RG Hodge Building, Road Town, Tortola, British Virgin Islands.

6. ArrivalStar owns all property rights, title and interest in United States Patent No. 6,317,060 (“the ‘060 patent”), entitled “Base station system and method for monitoring travel of mobile vehicles and communicating notification messages,” issued November 13, 2001. A copy of the ‘060 patent is attached to the original Complaint (Document No. 1) as Exhibit A.

7. ArrivalStar owns all property rights, title and interest in United States Patent No. 7,030,781 (“the ‘781 patent”), entitled “Notification system and method that informs a party of vehicle delay,” issued April 18, 2006. A copy of the ‘781 patent is attached to the original Complaint (Document No. 1) as Exhibit B.

8. Prior to the introduction into the marketplace, and in order to protect their interest and investment in the invention, Plaintiffs obtained patents issued by the United States Patent and Trademark Office.

9. By and through agreement, Arrivalstar S.A. licensed the invention to Plaintiff, Melvino Technologies Limited, such that both parties are proper litigants to this action. Plaintiffs have not granted permission to the Defendants to take or use their property rights.

10. Defendant MTA is an agency of the State of Maryland with a place of business at 6 St. Paul St., Baltimore, Maryland 21202. MTA uses, operates, and promotes a monitoring, communicating, and notification system for the purpose of allowing riders to access information about the schedule and about delays and arrival status. MTA transacts business and has, at a minimum, offered to provide and/or provided in this judicial district

and throughout the State of Maryland services that infringe claims of the '060 and '781 patents.

11. Wells is the Administrator of the MTA, regularly and habitually engages in his business occupation within the State of Maryland, and is responsible for all operations of the MTA including the MTA's use of a monitoring, communicating, and notification system for riders of transit vehicles.

12. John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to notify riders about the impending arrival of a plurality of vehicles,

13. In fulfillment of these responsibilities, Wells and John Doe representing other officials of the State of Maryland, have discretion in the selection, procurement, and use of monitoring, communicating, notification systems used by the MTA and its riders. As a result of their actions and authority, Plaintiffs have been deprived of their property rights in violation of the Fourteenth Amendment to the United States Constitution. Their acts as officials of the State of Maryland are the cause of the deprivation of Plaintiffs' property rights under the '060 and the '781 Patents.

THE ACTS OF DEFENDANT MTA

14. Defendant MTA has infringed claims of the '060 and '781 patents through, among other activities, the use of MTA's Alert tracking system.

15. MTA's Alert tracking system notifies users about the impending arrival of a plurality of vehicles.

16. MTA's Alert tracking system includes line/route information for a plurality of vehicles.

17. MTA's Alert tracking system allows users to select specific periods of time in which notification events are expected to occur.

18. MTA's Alert tracking system monitors the travel of vehicles during user selected times

19. The MTA Alert tracking system is configured to disregard travel data indicating delays of less than a minimum time.

20. The MTA Alert tracking system is configured to analyze travel data and transmit an alert notification upon the determination that vehicles are delayed.

21. The MTA Alert tracking system sends out notification alerts via email and SMS text message.

22. MTA's Alert tracking system monitors travel data associated with the vehicles in service along many different planned routes.

23. MTA's Alert tracking system compares the planned scheduled of a train to the train's actual travel and notifies users when the train is delayed.

24. MTA's Alert tracking system sends out notifications via email and SMS regarding vehicles in advance of the vehicles arriving at scheduled stops.

25. In addition to notifying users of a delayed vehicle, the MTA Alert tracking system is configured to provide users with updated arrival timing information.

26. Defendant MTA's infringing use has injured and will continue to injure Plaintiffs, causing damages.

27. Defendant MTA's infringement will continue unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further use of methods and systems that come within the scope of the '060 and '781 patents.

28. Defendant MTA has obtained indemnification from its vendor(s) to provide for defense of infringement of Plaintiffs' patent, and the MTA has made arrangements that payment of any patent infringement judgment would be made by the vendors and not by the State of Maryland.

THE ACTS OF DEFENDANT WELLS

29. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to notify riders about the impending arrival of a plurality of vehicles, constituting a taking of Plaintiffs' property rights without due process.

30. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to provide line/route information for a plurality of vehicles, constituting a taking of Plaintiffs' property rights without due process.

31. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to allow riders to select specific periods of time in which notification events are expected to occur, constituting a taking of Plaintiffs' property rights without due process.

32. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to monitor the travel of vehicles during user selected times, constituting a taking of Plaintiffs' property rights without due process.

33. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system in a way that disregards travel data indicating delays of less than a minimum time, constituting a taking of Plaintiffs' property rights without due process.

34. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to analyze travel data and transmit an alert notification upon the determination that vehicles are delayed, constituting a taking of Plaintiffs' property rights without due process.

35. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to send out notification alerts via email and SMS text message, constituting a taking of Plaintiffs' property rights without due process.

36. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to monitor travel data associated with the vehicles in service along many different planned routes, constituting a taking of Plaintiffs' property rights without due process.

37. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to compare the planned scheduled of a train to the train's actual travel and notify users when the train is delayed, constituting a taking of Plaintiffs' property rights without due process.

38. Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system sends out notifications via email and SMS regarding vehicles in advance of the vehicles arriving at scheduled stops, constituting a taking of Plaintiffs' property rights without due process.

39. In addition to notifying users of a delayed vehicle, Wells and John Doe representing other officials of the State of Maryland have caused the MTA to use its Alert tracking system to provide users with updated arrival timing information, constituting a taking of Plaintiffs' property rights without due process.

40. Because Wells and John Doe representing other officials of the State of Maryland are engaged in the unauthorized taking and use of property rights in violation of the Fourteenth Amendment of the U. S. Constitution, the State's sovereign immunity under the Eleventh Amendment is not available to them.

41. Wells and John Doe representing other officials of the State of Maryland are violating Plaintiffs' property rights without due process in violation of the Fourteenth Amendment.

**DEFENDANTS TAKINGS OF PLAINTIFFS' PROPERTY RIGHTS LEAVE
PLAINTIFFS WITHOUT ADEQUATE REMEDY UNDER STATE LAW**

42. Federal courts have exclusive jurisdiction over lawsuit involving the infringement of patents. U.S. Constitution, Art. I, Section 8; 28 U.S.C. §1338.

43. Maryland does not provide an adequate remedy for patent infringement. The Maryland Tort Claims Act and the MTA Tort Claims Act do not waive sovereign immunity of the State of Maryland for patent infringement claims. MD Code Ann., State Gov't, §12-101 *et. seq.*; MD Code Ann., Transp., §7-702 *et. seq.* These waivers of immunity are partial and arbitrarily limit damages.

44. The MTA is attempting to prevent the Plaintiffs' from resorting to the federal courts for the purpose of determining the validity of their acts, constituting a violation of due process under the Fourteenth Amendments.

COUNT I — INFRINGEMENT BY MTA

45. Paragraphs 1-10, 14-28, 42-44 are incorporated by reference in this Count.

46. Defendant MTA's use of its alert and notification system has infringed and continues to infringe one or more of the claims of the '060 and the '781 Patents.

47. As a consequence of the Defendants' infringing activities in contravention of Plaintiffs' rights under federal law, Plaintiffs have suffered monetary damages.

48. Plaintiffs have no adequate remedy in the courts of the State of Maryland. The courts of the State of Maryland do not hear or adjudicate patent infringement cases. Federal district courts have exclusive original jurisdiction over patent infringement cases.

**COUNT II — TAKING, USE, AND DEPRIVATION OF PROPERTY RIGHTS
BY DENDENDANTS WELLS AND JOHN DOE WITHOUT DUE PROCESS**

49. Each and every allegation set forth above is incorporated by reference in this Count.

50. Defendants, Wells and John Doe representing other officials of the State of Maryland, in their capacity as employees of the Maryland Transit Administration, took, deprived, and continue to deprive Plaintiffs of their exclusive federal patent rights by using Plaintiffs' property rights without authorization and without due process in violation of the Fourteenth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court for the following relief:

As to Count I

A. Entry of Judgment against the MTA for damages adequate to compensate Plaintiffs for the infringement that has occurred, together with prejudgment interest from the date that the MTA's infringement of the Plaintiffs' patents began.

B. Entry of Judgment for increased damages as permitted under 35 U.S.C. § 284.

C. A finding that this case is exceptional and an award to Plaintiffs of their attorneys' fees and costs as provided by 35 U.S.C. § 285.

As to Count II

D. Issuance of a preliminary injunction against Defendants Ralign T. Wells and John Doe representing other officials of the State of Maryland their agents, servants, employees, successors, and all others in active concert or participation with them or acting on their behalf be permanently enjoined from taking and using Plaintiffs' property rights and from depriving Plaintiffs' of their property rights without due process.

As to All Counts

E. Such other and further relief as this Court or a jury may deem proper and just.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues presented in this Amended Complaint that are triable by jury.

/s/

Anthony E. Dowell
aedowell@dowellbaker.com
Geoffrey D. Smith
GSmith@dowellbaker.com
DOWELL BAKER, P.C.
201 Main St., Suite 710
Lafayette, IN 47901
(765) 429-4004
(765) 429-4114 (fax)

/s/

Francis J. Gorman
FJGorman@GandWlaw.com
Bar No. 00690
Jason N. Smith
JNSmith@GandWlaw.com
Bar No. 28909

36 South Charles Street, Suite 900
Baltimore, MD 21201
(410) 528-0600
(410) 528-0602

Attorneys for Plaintiffs

Certificate of Service

Service was made on MTA's attorneys through the CM/ECF system on June 1, 2011.

Francis J. Gorman