

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

E-NUMERATE SOLUTIONS, INC. and  
E-NUMERATE, LLC,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

No. 19-859 C

Judge Ryan T. Holte

**DEFENDANT’S ANSWER TO PLAINTIFFS’ SECOND AMENDED COMPLAINT**

Pursuant to Rules 8 and 12 of the Rules of the United States Court of Federal Claims, the United States (“Defendant”) hereby answers the allegations made in each of the numbered paragraphs of Plaintiff’s Second Amended Complaint filed on April 27, 2021. Each numbered paragraph 1 to 179 below responds to the corresponding numbered paragraph of the Second Amended Complaint. Upon current information and belief, all allegations of the Second Amended Complaint are denied except to the extent expressly admitted below.

**THE PARTIES**

1. The allegations in paragraph 1 are a plaintiff’s characterizations of itself, to which no response is required. To the extent required, Defendant admits that Plaintiff e-Numerate Solutions, Inc. (“ESI”) is named as a plaintiff in this action, and that the online business entity database of the State of Delaware identifies “E-NUMERATE SOLUTIONS INCORPORATED” as a corporation. Defendant denies the remainder of the allegations for lack of knowledge or information sufficient to form a belief as to their truth.

2. The allegations in paragraph 2 are a plaintiff’s characterizations of itself, to which no response is required. To the extent required, Defendant admits that Plaintiff e-Numerate,

LLC is named as a plaintiff in this action, and that the online business entity database of the State of Delaware identifies “ENUMERATE, LLC” as a limited liability company. Defendant denies the remainder of the allegations for lack of knowledge or information sufficient to form a belief as to their truth.

3. The allegations contained in paragraph 3 constitute conclusions of law to which no answer is required. To the extent required, Defendant admits that the first page of each of the “Asserted Patents” identifies “e-Numerate Solutions, Inc.” as “Assignee.” Defendant denies the remainder of the allegations for lack of knowledge or information sufficient to form a belief as to their truth.

4. With respect to paragraph 4 of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

5. With respect to paragraph 5 of the Second Amended Complaint, Defendant admits that Plaintiffs have identified the United States as the Defendant, and that the U.S. Securities and Exchange Commission (“SEC”), the Federal Deposit Insurance Corporation (“FDIC”), the Federal Financial Institutions Examining Council (“FFIEC”), the United States Department of the Treasury (“USDOT”), the Office of Management and Budget (“OMB”), the Federal Energy Regulatory Commission (“FERC”) and the United States Department of Energy (“DOE”) are agencies of the United States. Defendant denies any remaining allegations.

#### **ALLEGED JURISDICTION AND VENUE**

6. The allegations contained in paragraph 6 constitute conclusions of law to which no answer is required. To the extent required, Defendant admits that 35 U.S.C. § 271 provides a cause of action for patent infringement against private parties, but denies that it provides a cause of action against the United States. Defendant denies any remaining allegations.

7. The allegations contained in paragraph 7 constitute conclusions of law to which no answer is required. To the extent required, Defendant admits that 28 U.S.C. § 1498(a) confers jurisdiction with the United States Court of Federal Claims. Defendant denies any remaining allegations.

**ALLEGED PRIOR LITIGATION INVOLVING THE ‘355, ‘816, ‘383 AND ‘748  
PATENTS**

8. Defendant admits the allegations in paragraph 8 of the Second Amended Complaint.

9. Defendant admits the allegations in paragraph 9 of the Second Amended Complaint.

10. Defendant admits the allegations in paragraph 10 of the Second Amended Complaint.

11. The allegations contained in paragraph 11 constitute conclusions of law to which no answer is required. To the extent required, Defendant admits the allegations to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations. Defendant further denies that the Statement of Interest references “FDIC/FFIEC” and “FERC/DOE.”

12. The allegations contained in paragraph 12 constitute conclusions of law to which no answer is required. To the extent required, Defendant admits the allegations to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the allegations.

13. The allegations contained in paragraph 13 constitute conclusions of law to which no answer is required. To the extent required, Defendant admits the allegations to the extent supported by the document cited, which is the best evidence of its contents; otherwise denies the

allegations. Defendant further denies that the Statement of Interest references “FDIC/FFIEC” and “FERC/DOE.”

#### **ALLEGED BACKGROUND OF THE TECHNOLOGY**

14. With respect to paragraph 14 of the Second Amended Complaint, Defendant admits that Russell T. Davis is identified as an inventor on the Asserted Patents. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and on that basis denies the same.

15. With respect to paragraph 15 of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

16. With respect to paragraph 16 of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

a. With respect to paragraph 16.a of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

b. With respect to paragraph 16.b of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

c. With respect to paragraph 16.c of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

d. With respect to paragraph 16.d of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

17. With respect to paragraph 17 of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

a. With respect to paragraph 17.a of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

b. With respect to paragraph 17.b of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

c. With respect to paragraph 17.c of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

i. With respect to paragraph 17.c.i of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

ii. With respect to paragraph 17.c.ii of the Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the same.

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