



## **THE PARTIES**

2. Plaintiff Innovative Wireless Solutions, LLC (“IWS”) is a Texas limited liability company with a place of business at 555 Republic Drive, Suite 200, Plano, Texas 75074.

3. Defendant Heritage Inn Number VII, Limited Partnership (“Heritage VII”) is a limited partnership organized under the laws of the State of North Dakota. On information and belief Heritage VII has an address at 1202 Westrac Drive, P.O. Box 10519, Fargo, North Dakota 58106. On information and belief, Heritage VII owns and operates lodging facilities within this District.

4. Defendant Heritage Inn Number VIII, Limited Partnership (“Heritage VIII”) is a limited partnership organized under the laws of the State of North Dakota. On information and belief Heritage VIII has an address at 1202 Westrac Drive, P.O. Box 10519, Fargo, North Dakota 58106. On information and belief, Heritage VIII owns and operates lodging facilities within this District.

5. Defendant Heritage Inn Number X, Limited Partnership (“Heritage X”) is a limited partnership organized under the laws of the State of North Dakota. On information and belief Heritage X has an address at 1202 Westrac Drive, P.O. Box 10519, Fargo, North Dakota 58106. On information and belief, Heritage X owns and operates lodging facilities within this District.

6. Defendant Heritage Inn Number XII, Limited Partnership (“Heritage XII”) is a limited partnership organized under the laws of the State of North Dakota. On information and belief Heritage XII has an address at 1202 Westrac Drive, P.O. Box 10519, Fargo, North Dakota 58106. On information and belief, Heritage XII owns and operates lodging facilities within this District.

7. Defendant Heritage Inn Number XIV, Limited Partnership (“Heritage XIV”) is a limited partnership organized under the laws of the State of North Dakota. On information and belief Heritage XIV has an address at 1202 Westrac Drive, P.O. Box 10519, Fargo, North Dakota 58106. On information and belief, HAC owns and operates lodging facilities within this District.

8. Defendant Heritage Inn Number XV, Limited Partnership (“Heritage XV”) is a limited partnership organized under the laws of the State of North Dakota. On information and belief Heritage XV has an address at 1202 Westrac Drive, P.O. Box 10519, Fargo, North Dakota 58106. On information and belief, Heritage XV owns and operates lodging facilities within this District.

9. Heritage Inn Number VII, Limited Partnership, Heritage Inn Number VIII, Limited Partnership, Heritage Inn Number X, Limited Partnership, Heritage Inn Number XI, Limited Partnership, Heritage Inn Number XIV, Limited Partnership, Heritage Inn Number XV, Limited Partnership will be referred to collectively herein as “the Heritage Entities” or “Defendants.”

### **JURISDICTION AND VENUE**

10. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

11. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

12. On information and belief, the Defendants are subject to the jurisdiction of this Court by reason of their acts of patent infringement which have been committed in this Judicial District, and by virtue of their regularly conducted and systematic business contacts in this State. Further, Defendants have operated infringing wireless networks in the forum which are at least used in and/or accessible at Defendants’ locations in this forum. On information and belief, the

Defendants are subject to this Court's specific and general personal jurisdiction, pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including business related to the infringements alleged herein. Further, on information and belief, Defendants are subject to the Court's general jurisdiction as a result of their activities in the forum, including, regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in Texas. As such, the Defendants have purposefully availed themselves of the privilege of conducting business within this Judicial District; have established sufficient minimum contacts with this Judicial District such that they should reasonably and fairly anticipate being haled into court in this Judicial District; have purposefully directed activities at residents of this State; and at least a portion of the patent infringement claims alleged herein arise out of or are related to one or more of the foregoing activities.

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

### **THE PATENTS-IN-SUIT**

14. The allegations set forth in the foregoing paragraphs 1 through 13 are hereby realleged and incorporated herein by reference.

15. On June 15, 1999, U.S. Patent Number 5,912,895 (the "'895 Patent"), entitled "Information network access apparatus and methods for communicating information packets via telephone lines," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '895 Patent is attached as Exhibit A to this Complaint.

16. On December 4, 2001, U.S. Patent Number 6,327,264 (the "'264 Patent"), entitled "Information network access apparatus and methods for communicating information packets via telephone lines," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '264 Patent is attached as Exhibit B to this Complaint.

17. On July 1, 2003, U.S. Patent Number 6,587,473 (the “‘473 Patent”), entitled “Information network access apparatus and methods for communicating information packets via telephone lines,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘473 Patent is attached as Exhibit C to this Complaint.

18. IWS is the assignee and owner of the right, title and interest in and to the ‘895, ‘264 and ‘473 Patents (henceforth collectively the “patents-in-suit”) including the right to assert all causes of action arising under said patents and the right to any remedies for infringement.

### **JOINDER**

19. Joinder is proper under 35 U.S.C. § 299. On information and belief, the allegations of infringement contained herein are asserted against the Defendants jointly, severally, or in the alternative and arise, at least in part, out of the same series of transactions or occurrences relating to the making, using, offering for sale, and selling of the same accused product and processes. On information and belief, the Defendants are part of the same corporate family of companies, and the infringement allegations arise at least in part from the Defendants’ collective activities with respect to the wireless networks at the Defendants’ lodging properties in this District. Questions of fact common to the Defendants will arise in the action, including questions relating to the ownership and management of the Defendants’ wireless networks, the structure and operation of the Defendants’ wireless networks, and validity of the patents-in-suit.

### **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,912,895**

20. The allegations set forth in the foregoing paragraphs 1 through 19 are hereby realleged and incorporated herein by reference.

21. IWS provided actual notice to the Defendants of their infringement of the ‘895 Patent in letters dated April 10, 2013 from IWS to the Defendants. In those letters, IWS informed the Defendants that they were infringing the ‘895 Patent by making, using, offering to

sell, and selling the use of an IEEE 802.11 wireless network that includes a wireless access point (“WAP”) connected to an Ethernet network (collectively, “wireless Internet access”). IWS’s letters further informed the Defendants that their wireless network satisfied all of limitations of at least claim 48 of the ‘895 patent in at least the following manner:

a. The WAP in the Defendants’ WiFi network provides communication with a CSMA/CD network (an Ethernet network) via a bidirectional communications path (an 802.11 wireless path).

b. The WAP is located at a first end of the 802.11 wireless path and includes an Ethernet interface to an Ethernet network. Ethernet is a CSMA/CD technology. The WAP includes a buffer for buffering information packets received from the Ethernet network via the Ethernet interface for supply to the 802.11 wireless path. The WAP also includes a buffer for buffering information packets received from the 802.11 wireless path for supply to the Ethernet network via the Ethernet interface. The WAP also includes a controller that implements the medium access control (“MAC”) protocol as defined in IEEE 802.11.

c. A wireless station is connected at a second end of the 802.11 wireless path. The wireless station includes a buffer for buffering information packets received from the 802.11 wireless path, a buffer for buffering information packets to be supplied to the 802.11 wireless path, and a MAC controller.

d. The MAC controller in the WAP and the MAC controller in the wireless station are arranged to exchange control information over the 802.11 wireless path so as to allow information packets to be communicated bi-directionally over the 802.11

wireless path between the buffers of the WAP and the wireless station in a half-duplex manner.

22. IWS's letters further informed the Defendants that they were inducing infringement of the '895 Patent by offering wireless Internet access, advertising that wireless Internet access, and encouraging others to use that wireless Internet access. IWS's letters also informed the Defendants that they were contributing to infringement of the '895 Patent by providing wireless Internet access because their wireless network constitutes a material part of the invention, was especially made or especially adapted for use in an infringement of the '895 Patent, and has no substantial non-infringing uses. The letters explained that the Defendants' wireless network constitutes a material part of the claimed invention at least because it contains the components that interface the wireless network to an Ethernet network and provide control information to the wireless devices as claimed in the '895 Patent. The letters also explained that the Defendants' wireless network was made or especially adapted for use in an infringement of the '895 Patent and has no substantial non-infringing uses at least because it contains components whose only purpose is to interface the wireless network to an Ethernet network and to provide control information to the wireless devices as claimed in the '895 Patent. With respect to both induced infringement and contributory infringement, IWS's letters informed the Defendants that the direct infringers were their guests, customers and end users.

23. The Defendants have had actual knowledge of the '895 Patent and their infringement of that patent since at least the date that the Defendants received the April 10, 2013 notice letters from IWS.

24. In violation of 35 U.S.C. § 271(a), the Defendants have directly infringed and continue to directly infringe, both literally and under the doctrine of equivalents, the '895 Patent

by making, using, offering to sell, and selling the use of wireless networks, including an IEEE 802.11 wireless network that includes a wireless access point coupled to an Ethernet network.

25. Upon information and belief, the Defendants have induced and continue to induce others to infringe the '895 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including, but not limited to, the Defendants' customers and guests whose connection of wireless devices to the Defendants' wireless networks and use of the Defendants' wireless networks constitutes direct infringement of at least claim 48 of the '895 Patent. In particular, the Defendants' actions that aid and abet others such as their customers and guests to infringe include offering wireless Internet access, advertising that wireless Internet access, and encouraging others to use that wireless Internet access. On information and belief, the Defendants have engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because the Defendants have had actual knowledge of the '895 Patent and that their acts were inducing their customers and guests to infringe the '895 Patent since at least the date they received the notice letters from IWS notifying the Defendants that their wireless networks infringed the '895 Patent.

26. Upon information and belief, the Defendants have committed and continue to commit acts of contributory infringement of the '895 Patent under 35 U.S.C. § 271(c) by offering to sell and selling the use of their wireless networks to others, including their customers and guests, while knowing or willfully blind to the fact that that these products constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '895 Patent, and have no substantial non-infringing uses. The Defendants' wireless networks constitute a material part of the invention at least because they contain the components that



interface the wireless network to an Ethernet network and provide control information to the wireless devices as claimed in the '895 Patent. The Defendants' wireless networks were especially made or especially adapted for use in an infringement of the '895 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to interface the Defendants' wireless networks to an Ethernet network and to provide control information to the wireless devices as claimed in the '895 Patent. The Defendant's customers and guests directly infringe at least claim 48 of the '895 Patent by connecting their wireless device to the Defendants' wireless networks. The Defendants have known or remained willfully blind to these facts since at least the date they received the notice letter from IWS notifying the Defendants that the use of their wireless networks infringed the '895 Patent.

27. IWS has been harmed by the Defendants' infringing activities.

28. IWS notified Defendants of their infringement of the '895 Patent including an identification of the particular infringing product and features, but the Defendants thereafter continued to infringe the '895 Patent by continuing the activities described in Paragraph 21-22. On information and belief, Defendants have not obtained an opinion of counsel regarding the claims of '895 Patent. The Defendants' continued infringement has therefore been in reckless disregard of IWS's patent rights. On information and belief, the Defendants' infringement has been and continues to be willful.

#### **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 6,327,264**

29. The allegations set forth in the foregoing paragraphs 1 through 28 are hereby realleged and incorporated herein by reference.

30. IWS provided actual notice to the Defendants of their infringement of the '264 Patent in letters dated April 10, 2013 from IWS to the Defendants. In those letters, IWS informed the Defendants that they were infringing the '264 Patent by making, using, offering to

sell, and selling the use of an IEEE 802.11 wireless network that includes a wireless access point connected to an Ethernet network. IWS's letters further informed the Defendants that their wireless network satisfied all of limitations of at least claim 5 of the '264 patent in at least the following manner:

a. The WAP in the Defendants' WiFi network allows wireless devices to connect to a network.

b. The WAP includes an Ethernet interface for coupling to an Ethernet network. Ethernet is a CSMA/CD technology.

c. The WAP includes an 802.11 interface for coupling to the 802.11 wireless network which provides a wireless bidirectional communications path.

d. The WAP includes a controller that implements the medium access control ("MAC") protocol as defined in IEEE 802.11. In accordance with the MAC protocol, the controller provides information that controls when wireless devices connected to the network are allowed to transmit, thereby causing the communications over the wireless network to occur in a half-duplex manner.

e. The WAP includes a first buffer that holds frames received from the Ethernet network via the Ethernet interface and then supplies those frames via the 802.11 interface to the wireless network.

f. The WAP includes a second buffer that holds frames received from the wireless network via the 802.11 interface and then supplies those frames via the Ethernet interface to the Ethernet network.

31. IWS's letters further informed the Defendants that they were inducing infringement of the '264 Patent by offering wireless Internet access, advertising that wireless

Internet access, and encouraging others to use that wireless Internet access. With respect to induced infringement, IWS's letters informed the Defendants that the direct infringers were their guests, customers and end users.

32. The Defendants have had actual knowledge of the '264 Patent and their infringement of that patent since at least the date that the Defendants received the April 10, 2013 notice letters from IWS.

33. In violation of 35 U.S.C. § 271(a), the Defendants have directly infringed and continue to directly infringe, both literally and under the doctrine of equivalents, the '264 Patent by making, using, offering to sell, and selling the use of wireless networks, including an IEEE 802.11 wireless network that includes a wireless access point coupled to an Ethernet network.

34. Upon information and belief, the Defendants have induced and continue to induce others to infringe the '264 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including, but not limited to, the Defendants' customers and guests whose use of the Defendants' wireless networks constitutes direct infringement of at least claim 5 of the '264 Patent. In particular, the Defendants' actions that aid and abet others such as their customers and guests to infringe include offering wireless Internet access, advertising that wireless Internet access, and encouraging others to use that wireless Internet access. On information and belief, the Defendants have engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because the Defendants have had actual knowledge of the '264 Patent and that their acts were inducing their customers and guests to infringe the '264 Patent since at least the date they received the notice letters from IWS notifying the Defendants that their wireless networks infringed the '264 Patent.

35. IWS has been harmed by the Defendants' infringing activities.

36. IWS notified Defendants of their infringement of the '264 Patent including an identification of the particular infringing product and features, but the Defendants thereafter continued to infringe the '264 Patent by continuing the activities described in Paragraph 30-31. On information and belief, Defendants have not obtained an opinion of counsel regarding the claims of '264 Patent. The Defendants' continued infringement has therefore been in reckless disregard of IWS's patent rights. On information and belief, the Defendants' infringement has been and continues to be willful.

**COUNT III – INFRINGEMENT OF U.S. PATENT NO. 6,587,473**

37. The allegations set forth in the foregoing paragraphs 1 through 36 are hereby realleged and incorporated herein by reference.

38. IWS provided actual notice to the Defendants of their infringement of the '473 Patent in its letters dated April 10, 2013 from IWS to the Defendants. In those letters, IWS informed the Defendants that they were infringing the '473 Patent through the use of their IEEE 802.11 wireless network. IWS's letters further informed the Defendants that they were infringing at least claim 40 of the '473 Patent by performing each of the steps of that claim in at least the following manner:

a. The WAP in the Defendants' WiFi network provides communication between a CSMA/CD network (an Ethernet network) and a bidirectional communications path (an 802.11 wireless network).

b. The WAP includes an Ethernet interface that contains an Ethernet modem that receives information packets from an Ethernet network.

c. The WAP transmits the information packets over the 802.11 wireless path in a direction towards a mobile station.

d. The WAP includes a controller that implements the medium access control (“MAC”) protocol as defined in IEEE 802.11. In accordance with the MAC protocol, the controller provides information that controls when wireless devices connected to the network are allowed to transmit, thereby causing the communications over the wireless network to occur in a half-duplex manner.

e. The WAP receives information corresponding to information packets from the 802.11 wireless path at the Ethernet modem and transmits those information packets over the Ethernet network.

39. IWS’s letters further informed the Defendants that they were inducing infringement of the ‘473 Patent by offering wireless Internet access, advertising that wireless Internet access, and encouraging others to use that wireless Internet access. IWS’s letters also informed the Defendants that they were contributing to infringement of the ‘473 Patent by providing wireless Internet access because their wireless network constitutes a material part of the invention, was especially made or especially adapted for use in an infringement of the ‘473 Patent, and has no substantial non-infringing uses. The letters explained that the Defendants’ wireless network constitutes a material part of the claimed invention at least because it contains the components that interface the wireless network to an Ethernet network and provide control information to the wireless devices as claimed in the ‘473 Patent. The letters also explained that the Defendants’ wireless network was made or especially adapted for use in an infringement of the ‘473 Patent and has no substantial non-infringing uses at least because it contains components whose only purpose is to interface the wireless network to an Ethernet network and to provide control information to the wireless devices as claimed in the ‘473 Patent. With

respect to both induced infringement and contributory infringement, IWS's letters informed the Defendants that the direct infringers were their guests, customers and end users.

40. The Defendants have had actual knowledge of the '473 Patent and their infringement of that patent since at least the date that the Defendants received the April 10, 2013 notice letters from IWS.

41. In violation of 35 U.S.C. § 271(a), the Defendants have directly infringed and continue to directly infringe, both literally and under the doctrine of equivalents, the '473 Patent by using wireless networks, including an IEEE 802.11 wireless network that includes a wireless access point coupled to an Ethernet network.

42. Upon information and belief, the Defendants have induced and continue to induce others to infringe the '473 Patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including, but not limited to, the Defendants' customers and guests whose connection of wireless devices to the Defendants' wireless networks and use of the Defendants' wireless networks constitutes direct infringement of at least claim 40 of the '473 Patent. In particular, the Defendants' actions that aid and abet others such as their customers and guests to infringe include offering wireless Internet access, advertising that wireless Internet access, and encouraging others to use that wireless Internet access. On information and belief, the Defendants have engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because the Defendants have had actual knowledge of the '473 Patent and that their acts were inducing their customers and guests to infringe the '473 Patent since at least the date they received the notice letters from IWS notifying the Defendants that their wireless networks infringed the '473 Patent.

43. Upon information and belief, the Defendants have committed and continue to commit acts of contributory infringement of the '473 Patent under 35 U.S.C. § 271(c) by offering to sell and selling the use of their wireless networks to others, including their customers and guests, while knowing or willfully blind to the fact that that these products constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '473 Patent, and have no substantial non-infringing uses. The Defendants' wireless networks constitute a material part of the claimed invention at least because they contain the components that interface the wireless network to an Ethernet network and provide control information to the wireless devices as claimed in the '473 Patent. The Defendants' wireless networks were especially made or especially adapted for use in an infringement of the '473 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to interface the Defendants' wireless networks to an Ethernet network and to provide control information to the wireless devices as claimed in the '473 Patent. The Defendant's customers and guests directly infringe at least claim 40 of the '473 Patent by connecting their wireless devices to the Defendants' wireless network and using that network. The Defendants have known or remained willfully blind to these facts since at least the date they received the notice letter from IWS notifying the Defendants that the use of their wireless networks infringed the '473 Patent.

44. IWS has been harmed by the Defendants' infringing activities.

45. IWS notified Defendants of their infringement of the '473 Patent including an identification of the particular infringing product and features, but the Defendants thereafter continued to infringe the '473 Patent by continuing the activities described in Paragraph 38-39 above. On information and belief, Defendants have not obtained an opinion of counsel regarding

the claims of '473 Patent. The Defendants' continued infringement has therefore been in reckless disregard of IWS's patent rights. On information and belief, the Defendants' infringement has been and continues to be willful.

**JURY DEMAND**

46. IWS demands a jury trial on all issues and claims so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, IWS prays for judgment as follows:

- a. An adjudication that Defendants have infringed one or more claims of each of the patents-in-suit;
- b. An award of damages to be paid by the Defendants adequate to compensate IWS for past infringement of the patents-in-suit, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- c. An order that Defendants must pay an ongoing royalty in an amount to be determined for any continued infringement after the date judgment is entered;
- d. An award of treble damages under 35 U.S.C. § 284;
- e. A declaration finding this to be an exceptional case, and awarding IWS attorney fees under 35 U.S.C. §285; and
- f. For such further relief at law and in equity as the Court may deem just and proper.



Respectfully submitted,

Dated: April 24, 2013

GILLAM & SMITH, L.L.P.

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