

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FatPipe, Inc.

Plaintiff

vs.

Talari Networks, Inc.,

Defendant.

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Civil Action No. _____

JURY TRIAL DEMANDED

PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff FatPipe, Inc. (“FatPipe” or “Plaintiff”), by and through its undersigned counsel, files this Complaint against Defendant Talari Networks, Inc. (“Talari” or “Defendant”) as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

PARTIES

1. FatPipe is a Utah company with a principal place of business at 4455 South 700 East, Salt Lake City, Utah 84107.

2. On information and belief, Talari is a company incorporated under the laws of the State of Delaware and has a principal place of business at 550 S. Winchester Blvd., Suite 500, San Jose, California 95128. Talari maintains a registered agent in Texas, C T Corporation System, 350 North St. Paul Street, Ste. 2900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285.

4. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. Defendant is subject to this Court's specific and general personal jurisdiction due to its substantial business in this forum, and Defendant maintains a registered agent for service in Texas. On information and belief, Defendant is also subject to the jurisdiction of this Court by reason of its acts constituting direct patent infringement, as alleged herein, which have been committed in this Judicial District.

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

PATENTS

7. On August 10, 2004, U.S. Patent Number 6,775,235, entitled "Tools and techniques for directing packets over disparate networks" (the "'235 Patent") was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '235 Patent is attached as Exhibit "A" to this Complaint.

8. On July 29, 2008, U.S. Patent Number 7,406,048, entitled "Tools and techniques for directing packets over disparate networks" (the "'048 Patent") was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '048 Patent is attached as Exhibit "B" to this Complaint.

9. FatPipe is the exclusive licensee of the '235 Patent and '048 Patent (collectively the "patents-in-suit") with all substantial rights in the patents-in-suit, including the right to assert all causes of action arising under the patents-in-suit and the right to any remedies for infringement.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 6,775,235

1. The allegations set forth in the foregoing paragraphs 1 through 9 are hereby realleged and incorporated herein by reference.

2. Upon information and belief, in violation of 35 U.S.C. § 271(a), Defendant has directly infringed and continues to directly infringe, literally or under the doctrine of equivalents, at least claim 4 of the '235 Patent by making, using, offering for sale, selling, or importing devices or systems, in this judicial district and elsewhere in the United States (directly or through intermediaries), that, alone or in combination with other devices and/or systems, provide a controller having (i) a site interface connecting the controller to a site; (ii) at least two network interfaces which send packets toward the networks; and (iii) a packet path selector which selects between network interfaces on a per-packet basis according to at least: a destination of the packet, an optional presence of alternate paths to that destination, and at least one specified criterion for selecting between alternate paths when such alternate paths are present; wherein the controller receives a packet through the site inter-face and sends the packet through the network interface that was selected by the packet path selector. Talari's infringing products and services include, without limitation, the Talari Mercury Appliances, including the T510, T730, T750, T860, T3010 and T5000 appliances.

3. Upon information and belief, in violation of 35 U.S.C. § 271(b), Talari has induced and continues to induce others (*e.g.*, Talari's customers, distributors, partners and/or third parties) to infringe, literally or under the doctrine of equivalents, the '235 Patent by providing instructions via its website, or through other documents that induce others to directly infringe at least claim 4 of the '235 Patent.

4. Talari induces its customers to infringe the '235 Patent by, for example and without limitation, actively promoting the use of the Talari Mercury appliances and services or software to perform the claimed systems and methods. According to the Talari Appliances Databasheet (http://www.talari.com/products/pdf/Talari_Appliance_Datasheet.pdf)

Talari, path selection is performed for every single data packet. Per-packet path selection allows sub-second switchover to a better path in the middle of an application session if the current path becomes unavailable or its performance degrades. As a result, the application session will not be interrupted and the switchover is totally seamless, even for real-time applications such as VoIP.

Talari representatives have also instructed that (i) “We make per-packet forwarding decisions, not simply per-flow” (<http://www.networkworld.com/newsletters/frame/2011/050911wan1.html>) and (ii) “you can mix and match as you please. You could have, e.g., four DSL links from the local RBOC plus a T1 from Sprint. Probably half our customers will initially combine an existing MPLS connection with a single Internet connection to get started.” (<http://www.networkworld.com/newsletters/frame/2011/041811wan2.html>)

5. Upon information and belief, Talari contributorily infringes at least claim 4 of the ‘235 Patent because it sells, imports, or offers to sell components of infringing products, including, for example, components of Talari’s Mercury Appliances, that constitute a material part of the invention of the ‘235 Patent, knowing the components to be especially made or especially adapted for use in an infringement of the ‘235 Patent, and knowing the components are not a staple article or commodity of commerce suitable for substantial noninfringing use.

6. Talari’s infringement of the ‘235 Patent is without consent of, authority of, or license from FatPipe.

7. Upon information and belief, Talari actively and knowingly infringed and is continuing to infringe the ‘235 Patent with prior knowledge of FatPipe’s patent rights and without a reasonable basis for believing Talari’s conduct is lawful. Talari has had knowledge of the ‘235 Patent since at least November 6, 2009, when Talari submitted a copy of the ‘235 Patent to the United States Patent and Trademark Office during prosecution of Talari’s own patent; U.S. Patent No. 8,125,907. Talari has also been on notice of FatPipe’s patent rights by

correspondence including, without limitation, letter dated November 25, 2013 to Talari's CEO, Emerick Woods.

8. Upon information and belief, Talari's infringement of the '235 Patent has been and is willful. This action, therefore, is "exceptional" within the meaning of 35 U.S.C. § 285 entitling FatPipe to its attorneys' fees and expenses.

COUNT II - INFRINGEMENT OF U.S. PATENT NO. 7,406,048

9. The allegations set forth in the foregoing paragraphs 1 through 17 are hereby realleged and incorporated herein by reference.

10. Upon information and belief, in violation of 35 U.S.C. § 271(a), Defendant has directly infringed and continues to directly infringe, literally or under the doctrine of equivalents, at least claim 1 of the '048 Patent by making, using, offering for sale, selling, or importing devices or systems, in this judicial district and elsewhere in the United States (directly or through intermediaries), that, alone or in combination with other devices and/or systems, provide a controller having (i) a site interface connecting the controller to a site; (ii) at least two network interfaces which send packets toward the disparate networks; and (iii) a packet path selector which selects between network interfaces, using at least two known location address ranges which are respectively associated with disparate networks, according to at least: a destination of the packet, an optional presence of alternate paths to that destination, and at least one specified criterion for selecting between alternate paths when such alternate paths are present; wherein the controller receives a packet through the site interface and sends the packet through the network interface that was selected by the packet path selector. Talari's infringing products and services include, without limitation, the Talari Mercury Appliances, including the T510, T730, T750, T860, T3010 and T5000 appliances.

11. Upon information and belief, in violation of 35 U.S.C. § 271(b), Talari has induced and continues to induce others (e.g., Talari's customers, distributors, partners and/or third parties) to infringe, literally or under the doctrine of equivalents, the '048 Patent by providing instructions via its website, or through other documents that induce others to directly infringe at least claim 1 of the 048 Patent.

12. Talari induces its customers to infringe the '048 Patent by, for example and without limitation, actively promoting the use of the Talari Mercury appliances and services or software to perform the claimed systems and methods. According to the Talari Appliances Datasheet (http://www.talari.com/products/pdf/Talari_Appliance_Datasheet.pdf):

Talari, path selection is performed for every single data packet. Per-packet path selection allows sub-second switchover to a better path in the middle of an application session if the current path becomes unavailable or its performance degrades. As a result, the application session will not be interrupted and the switchover is totally seamless, even for real-time applications such as VoIP.

Talari representatives have also instructed that (i) "We make per-packet forwarding decisions, not simply per-flow" (<http://www.networkworld.com/newsletters/frame/2011/050911wan1.html>) and (ii) "you can mix and match as you please. You could have, e.g., four DSL links from the local RBOC plus a T1 from Sprint. Probably half our customers will initially combine an existing MPLS connection with a single Internet connection to get started." (<http://www.networkworld.com/newsletters/frame/2011/041811wan2.html>)

13. Upon information and belief, Talari contributorily infringes at least claim 1 of the '048 Patent because it sells, imports, or offers to sell components of infringing products, including, for example, components of Talari's Mercury Appliances, that constitute a material part of the invention of the '048 Patent, knowing the components to be especially made or

especially adapted for use in an infringement of the '048 Patent, and knowing the components are not a staple article or commodity of commerce suitable for substantial noninfringing use.

14. Talari's infringement of the '048 Patent is without consent of, authority of, or license from FatPipe.

15. Upon information and belief, Talari actively and knowingly infringed and is continuing to infringe the '048 Patent with prior knowledge of FatPipe's patent rights and without a reasonable basis for believing Talari's conduct is lawful. Talari has been on notice of FatPipe's patent rights by correspondence including, without limitation, letter dated November 25, 2013 to Talari's CEO, Emerick Woods.

16. Upon information and belief, Talari's infringement of the '048 Patent has been and is willful. This action, therefore, is "exceptional" within the meaning of 35 U.S.C. § 285 entitling FatPipe to its attorneys' fees and expenses.

JURY DEMAND

FatPipe hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

FatPipe respectfully requests that the Court find in its favor and against Talari, and that the Court grant FatPipe the following relief:

A. a judgment that Talari has infringed, directly or indirectly, the '235 Patent and/or '048 Patent;

B. a judgment that Talari's infringement of the '235 Patent and/or '048 Patent has been willful;

C. injunctive relief enjoining Talari, its officers, agents, servants, employees and attorneys and all other persons in active concert or participation with it from (i) making, using, selling, offering to sell, importing, and/or exporting and product or service that falls within the scope of the claims of the '235 Patent and/or '048 Patent, (ii) inducing others to infringe the '235 Patent and/or '048 Patent, or (iii) engaging in any acts constituting contributory infringement of any claims of the '235 Patent and/or '048 Patent;

D. a judgment and order requiring Talari to pay FatPipe its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendant's infringement of the '235 Patent and/or '048 Patent as provided under 35 U.S.C. § 284;

E. an award to FatPipe for enhanced damages as provided under 35 U.S.C. § 284;

F. a declaration that this case is exceptional under 35 U.S.C. § 285, and an award of FatPipe's reasonable attorneys' fees; and,

G. any and all other relief at law or in equity as the Court deems just and proper.

Dated: May 6, 2015

Respectfully submitted,

By: /s/ Kelly D. Hine

Kelly D. Hine
Texas Bar No: 24002290
khine@perkinscoie.com
PERKINS COIE LLP
500 N. Akard Street, Suite 3300
Dallas, TX 75201
214.965.7700 – office
214.965.7799 – facsimile

Timothy J. Carroll (Lead Attorney)
Illinois State Bar No: 6269515
tcarroll@perkinscoie.com
Steven M. Lubezny
Illinois State Bar No. 6275394
slubenz@perkinscoie.com
PERKINS COIE LLP
131 South Dearborn Street, Suite 1700
Chicago, Illinois 60603-5559
312-324-8400 – office
312-324-9400 – facsimile

ATTORNEYS FOR PLAINTIFF FATPIPE, INC.