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RUCKUS WIRELESS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

RUCKUS WIRELESS, INC., a Delaware corporation, Plaintiff, vs. NETGEAR, INC., a Delaware corporation; and RAYSPAN CORPORATION, a Delaware corporation Defendants.	CASE NO. 4:09-cv-05271-PJH **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT** **(U.S. Patent No. 7,525,486)** **DEMAND FOR JURY TRIAL**

In accordance with the Court's Order of February 11, 2010 (Docket No. 29), Plaintiff Ruckus Wireless, Inc. ("RUCKUS") hereby alleges for its first amended complaint against Defendants NETGEAR, Inc. ("NETGEAR") and Rayspan Corporation ("RAYSPAN") (each individually a "DEFENDANT" and collectively "DEFENDANTS") as follows:

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JURISDICTION AND VENUE

1. The United States District Court for the Northern District of California (the "Court") has jurisdiction over this matter because it is an action for infringement arising under the United States Patent Act (35 U.S.C. § 1 *et seq.*). Accordingly, the Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. RUCKUS is informed and believes, and thereon alleges, that the DEFENDANTS are subject to personal jurisdiction in the Northern District of California (the "District") because the DEFENDANTS have caused tortious injury in this District by acts committed both inside and outside the District. The DEFENDANTS are further subject to personal jurisdiction in the District because the DEFENDANTS regularly solicit business in the District or derive substantial revenue from sales of goods—including goods infringing the patent-in-suit—in the District. Defendant NETGEAR, too, maintains its headquarters and principal place of business in the District. In any case, the DEFENDANTS have engaged in a persistent course of conduct in the District.

3. Venue for this action is proper in the District pursuant to 28 U.S.C. §§ 1391 and 1400 because a significant portion of the NETGEAR and RAYSPAN's infringing activities have occurred in the District. Defendant NETGEAR, too, maintains its headquarters and principal place of business in the District.

INTRA-DISTRICT ASSIGNMENT

4. For the purposes of Civil L.R. 3-2(c) and (d), this is an Intellectual Property action and has been assigned to the Oakland Division.

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THE PARTIES

5. RUCKUS is a Delaware corporation that has its principal place of business in Sunnyvale, California. RUCKUS was formed in 2004 with the primary focus to make Wi-Fi sufficiently reliable to be used as a utility in the home, office, hot spots, and around the world.

6. RUCKUS is a pioneer in 'Smart Wi-Fi' technology. RUCKUS' Smart Wi-Fi technology delivers reliable signal quality over an extended range and is capable of automatically adapting to environmental changes in real-time. RUCKUS' patented Smart Wi-Fi technology solves a number of interference and signal range problems by focusing radio frequency (RF) energy and steering it around interference as it is experienced. As a result, RUCKUS Smart Wi-Fi technology allows for a more predictable Wi-Fi signal that reaches farther and that may support delay sensitive applications such as streaming voice and multicast Internet Protocol (IP) video that heretofore had been difficult for Wi-Fi to reliably support.

7. RUCKUS' contributions to Wi-Fi have not gone unnoticed. RUCKUS was named a 2007 Technology Pioneer by the World Economic Forum. World Economic Forum Technology Pioneers are "innovators—companies that are developing and applying the most innovative and transformational technologies" and whose work "represents an enormous source of entrepreneurial talent"; Technology Pioneers are "at the forefront of change."

8. RUCKUS and its Smart Wi-Fi technologies are the recipients of any number of other awards. These awards include the 2008 SPIFFY Award for Engineering Excellence for RUCKUS' innovative Smart Wi-Fi technology; the CableLabs 2008 Best New Product Idea Most Likely to Succeed; the 2007 NXTComm Eos Award for Home Networking; the 2007 CRN Emerging Vendor Award for delivering innovative and easy-to-use solutions that undercut those of industry giants; the 2007 ACE Award for Startup of the Year; the 2007 IPTV World Series Award for Best IPTV Transport Solution; and the CES Innovations 2007 Design and Engineering Award Honoree for unique and novel products that contribute to consumers' quality of life.

9. RUCKUS and its network of distributors and resellers ship Wi-Fi systems to customers around the world. RUCKUS has also procured financing from premier venture capital investors, consumer electronics companies, and broadband operators.

10. RUCKUS' Smart Wi-Fi products have received favorable reviews from a number of publications and reviewing entities including TechWorld; CWNP; Jones-Petrick and Associates; ZD Net; PC World; Network Computing; MSNBC; Hardware Zone; About.com; eWeek; Untangled Life; PC Pro; GadgetCentre.com; Network World; and EDN.

11. RUCKUS' technologies have been adopted by industry giants such as Deutsche Telekom, PCCW, Swisscom, SingTel, and Belgacom.

12. NETGEAR is a Delaware corporation that has its principal place of business at 350 East Plumeria Drive, San Jose, California. NETGEAR purports to design, develop, and market branded network products that address the specific needs of small and medium business and home users including wireless network products such as wireless routers.

13. RAYSPAN is a Delaware corporation that has its principal place of business at 11975 El Camino Real, Suite 301, San Diego, California. RAYSPAN claims to be the world's leading innovator of revolutionary meta-material air interface solutions for high performance wireless communication networks. RAYSPAN represents that its meta-material technology is integrated into a number of NETGEAR wireless products.

GENERAL ALLEGATIONS

The WPN824v1 and WPN824v2

14. On or about December 23, 2004, RUCKUS—then operating under the name of Video54 Technologies, Inc.—and NETGEAR entered into a Technology License Agreement. As a part of the Technology License Agreement, NETGEAR agreed to pay RUCKUS a royalty for each and every wireless router sold as a part of the WPN 824 product line and that incorporated certain RUCKUS proprietary and patent pending technologies. That proprietary and patent pending

technology was inclusive of a hardware design for an 802.11g/b wireless access point with a dynamically configurable antenna array for interference mitigation and performance optimization.

15. On January 5, 2005, at the 2005 Consumer Electronics Show in Las Vegas, Nevada, NETGEAR and RUCKUS announced the release of the RangeMax WPN 824v1 wireless router. The RangeMax WPN 824v1 was designed to boost wireless range in home networks and eliminate dead spots thereby improving support for bandwidth-intensive applications such as streaming audio and video, playing online games, and transferring large data files.

16. NETGEAR characterized the RangeMax WPN 824v1 as incorporating seven smart multiple-input-multiple-output (MIMO) antennas to deliver 127 unique antenna patterns that adapt 'on the fly' to the network environment by adjusting to RF interference, locations of a client, and physical barriers thereby resulting in extraordinary range and consistent high-speed data transfer performance.

17. According to Patrick Lo, the CEO and Chairman of NETGEAR, by partnering with RUCKUS, NETGEAR was "able to launch the revolutionary RangeMax technology which dynamically optimizes performance to vastly improve the speed and range of the wireless network, supporting the increasing performance demands of the home network for applications such as streaming multimedia content." RUCKUS' technology allowed NETGEAR to address "[o]ne of the pervasive issues encountered in the implementation of wireless networks": "sub-par network performance caused by elements such as RF interference and the physical structure in which the network is running."

18. On March 7, 2005, Vivek Pathela, NETGEAR Senior Director of Product Marketing for Consumer Products, characterized the RUCKUS powered RangeMax WPN824v1 wireless router as "the ideal solution for bandwidth-intensive consumer applications because it is uniquely able to dynamically optimize network connections by adapting on-the-fly to changes in the RF (Radio Frequency) environment such as interference introduced to the environment by turning on a microwave oven or using a 2.4GHz cordless phone." According to Pathela, the RangeMax WPN 824v1 utilizes "intelligent antenna overlay technology that enables [the] router to deliver superior coverage, speed and adaptability to changing wireless environments."

19. Following the release of the RangeMax WPN 824v1, NETGEAR requested the research and development support of RUCKUS to develop a second and more cost effective version of the RangeMax wireless router—the WPN 824v2. RUCKUS complied with NETGEAR's request and the WPN 824v2 was made available for purchase from NETGEAR and any number of NETGEAR resellers.

20. RUCKUS is informed and believes, and thereon alleges, that RUCKUS received a royalty on each of the RangeMax WPN 824v1 and WPN 824v2 routers sold by NETGEAR and/or its resellers in accordance with the December 2004 Technology License Agreement in that the RangeMax WPN 824v1 and WPN 824v2 routers incorporated certain Ruckus proprietary and patent pending technology.

The WPN824v3

21. On October 31, 2007, the Federal Communications Commission's (FCC) Office of Engineering and Technology (OET) Laboratory Division released certain Certification request information for a new version of NETGEAR's RangeMax Wireless Router—the WPN824v3. RUCKUS was not and had not been involved in the manufacture, design, or production of the WPN 824v3. Until the release of the aforementioned information by the FCC OET Laboratory Division, RUCKUS was unaware of the existence of the WPN 824v3. There is no contractual obligation or license by and between RUCKUS and NETGEAR (or any proxy or partner thereof, including but not limited to RAYSPAN) that permits the incorporation of any RUCKUS intellectual property in any NETGEAR WPN product other than the 824v1 and 824v2.

22. NETGEAR characterizes the RangeMax WPN 824v3 as extending wireless network coverage up to ten times that of standard 802.11 due to an advanced intelligent antenna system. These intelligent antennas, according to NETGEAR, continuously scan your home or office and automatically sense obstacles and electronic interference. The antennas, according to NETGEAR, dynamically adjust the wireless signal to compensate and maintain a clear connection.

23. In early February 2008, and following discovery of the pending release of the WPN 824v3 via the FCC OET Laboratory Division, William Kish—the co-founder and Chief Technology Officer of RUCKUS—conferred with Patrick Rada—the Senior Principal Wireless Engineer for NETGEAR—concerning the WPN 824v3. During that discussion, William Kish raised concerns with Patrick Rada that the WPN 824v3 embodied certain RUCKUS intellectual property. Patrick Rada indicated to William Kish that NETGEAR was unaware of any RUCKUS patents.

24. On or about February 12, 2008, and following William Kish's discussion with Patrick Rada, Selina Lo—the President and CEO of RUCKUS—met with Patrick Lo of NETGEAR concerning the WPN 824v3. NETGEAR informed RUCKUS that NETGEAR had begun substituting retail sales of the WPN 824v2 with the WPN 824v3. Patrick Lo indicated that NETGEAR would discontinue the manufacture and sale of the WPN 824v1 and WPN 824v2 models by the end of 2008 in favor of the WPN 824v3. NETGEAR also indicated that RUCKUS would not receive any licensing royalty revenue from sales of WPN 824v3.

25. When informed by RUCKUS as to the existence of certain patents on intellectual property utilized in the WPN 824v1 and WPN 824v2 as well as the newly released WPN 824v3, NETGEAR indicated that it had undertaken no due diligence with respect to any RUCKUS patents. NETGEAR indicated its intent to rely upon the indemnification obligations of the component providers of the WPN 824v3 with respect to any third-party intellectual property claims. RUCKUS is informed and believes, and thereon alleges, that RAYSPAN is one of the primary component providers with an indemnification obligation to NETGEAR. Among the components provided by RAYSPAN to NETGEAR are meta-material antenna components specifically designed by RAYSPAN for the RangeMax 824v3.

26. Having decided to no longer work with RUCKUS with respect to the RangeMax wireless router line, specifically with respect to the WPN 824v3, NETGEAR was required to find a new partner for provisioning, at the least, antenna technology and components to allow for the emission and control of directional radiation patterns. RAYSPAN, who contends to have "developed . . . proprietary meta-material air interface products which offer breakthrough improvements in performance," eventually partnered with NETGEAR to provide said antenna

technology, including the aforementioned meta-material antenna components specifically designed by RAYSPAN for the RangeMax 824v3.

27. RUCKUS is informed and believes and thereon alleges that RAYSPAN was aware of the previous partnership by and between RUCKUS and NETGEAR with respect to the RangeMax 824v1 and RangeMax 824v2 when RAYSPAN and NETGEAR elected to partner as to RAYSPAN providing the aforementioned meta-material antenna components for the RangeMax 824v3.

The First NETGEAR / RAYSPAN Litigation

28. On May 5, 2008, RUCKUS filed an action against NETGEAR and RAYSPAN in the United States District Court for the Northern District of California ("NETGEAR/RAYSPAN I") alleging that RUCKUS was the "assignee of the entire right, title, and interest in 7,193,562 (the "'562 Patent") and 7,358,912 (the "'912 Patent")." NETGEAR/RAYSPAN I was assigned case number 3:08-cv-2310. Following NETGEAR's and RAYSPAN's declination to proceed before a United States magistrate, the matter was assigned to the Honorable Phyllis J. Hamilton.

29. In NETGEAR/RAYSPAN I, RUCKUS alleged that "NETGEAR makes, uses, offers to sell, and sells in the United States and imports into the United States wireless routers that infringe [the '562 and '912 Patents], including but not limited to the RangeMax WPN 824v3."

30. In NETGEAR/RAYSPAN I, RUCKUS alleged that "RAYSPAN makes, uses, offers to sell, and sells in the United States and imports into the United States components incorporated into wireless routers that infringe [the '562 and '912 Patents], including but not limited to the RangeMax WPN 824v3."

31. On July 31, 2008, counsel for RUCKUS, NETGEAR, and RAYSPAN held an initial Rule 26(f) conference for NETGEAR/RAYSPAN I. At that conference, counsel for Defendants NETGEAR and RAYSPAN advised counsel for Plaintiff RUCKUS that the Defendants were preparing to file requests for *inter partes* reexamination of the patents-in-suit in the United States

Patent and Trademark Office, and would seek to stay NETGEAR/RAYSPAN I pending completion of the reexamination proceedings.

32. On September 4, 2008, NETGEAR and RAYSPAN filed requests for *inter partes* reexamination of the '562 and '912 Patents with the United States Patent and Trademark Office.

33. On September 8, 2008, NETGEAR and RAYSPAN moved the Court in NETGEAR/RAYSPAN I for an order to stay the litigation pending the outcome of the *inter partes* re-examination of the '562 and '912 Patents.

34. On November 25, 2008, the Honorable Phyllis J. Hamilton issued an order staying NETGEAR/RAYSPAN I pending completion of the *inter partes* reexamination of the '562 and '912 Patents.

Re-Examination of the '562 Patent

35. NETGEAR and RAYSPAN's *Request for Inter Partes Reexamination Under 35 U.S.C. § 311 and 37 C.F.R. § 1.913* of the '562 Patent noted that "[a] number of prior art publications—none of which were before the Patent Office during prosecution—raise substantial new questions of patentability for all claims of the '562 patent." In the "Introduction" to the *Request for Inter Partes Reexamination Under 35 U.S.C. § 311 and 37 C.F.R. § 1.913,* NETGEAR and RAYSPAN identified eight specific references—U.S. patent number 7,064,717 to Kalunzi et al., U.S. patent number 6,531,985 to Jones, *A 2.4 GHz Polarization-Diversity Planar Printed Dipole Antenna for WLAN and Wireless Communication Applications* by Chuang et al., U.S. patent number 6,052,093 to Yao et al., U.S. patent publication number 2004-0145528 to Mukai et al., U.S. patent number 6,943,749 to Paun, U.S. patent number 6,876,836 to Lin et al., and U.S. patent number 6,104,356 to Hikuma et al. NETGEAR and RAYSPAN stated that "the prior art references cited in this Request disclose pertinent teachings that were missing from the record during prosecution of the '562 patent and [that] raise substantial new questions of patentability about claims 1-36 of the '562 patent."

36. In the "Patents and Printed Publications Presented to Show Substantial New Questions of Patentability" of the *Request for Inter Partes Reexamination Under 35 U.S.C. § 311 and 37 C.F.R. § 1.913*, NETGEAR and RAYSPAN identified the aforementioned eight references and six additional references—*Smart Antennas Based on Spatial Multiplexing of Local Elements (SMILE) for Mutual Coupling Reduction* to Frederick et al., U.S. patent number 5,767,755 to Kim et al., U.S. patent number 6,424,311 to Tsai et al., U.S. patent number 6,339,404 to Johnson et al., *The PIN Diode Circuit Designer's Handbook* to Doherty, Jr. et al., and *A Switched Radio Divider for an L-Band Mobile Satellite Radio* to Varnes et al.

37. On November 28, 2008, the United States Patent and Trademark Office issued an *Order Granting Request for Inter Partes Reexamination*. The November 28, 2008 *Order Granting Request for Inter Partes Reexamination* addressed five references, all of which had been identified by NETGEAR and RAYSPAN in their *Request for Inter Partes Reexamination Under 35 U.S.C. § 311 and 37 C.F.R. § 1.913*—U.S. patent number 7,064,717 to Kalunzi et al., U.S. patent number 6,052,093 to Yao et al., U.S. patent number 6,531,985 to Jones et al., *A 2.4 GHz Polarization-Diversity Planar Printed Dipole Antenna for WLAN and Wireless Communication Applications* by Chuang et al., and U.S. patent number 6,104,356 to Hikuma et al.

38. The November 28, 2008 *Order Granting Request for Inter Partes Reexamination* also stated that "[t]he Examiner does not agree with [NETGEAR's and RAYSPAN's] characterization of the reasons for allowance of claims 1-36." The November 28, 2008 *Order Granting Request for Inter Partes Reexamination* further stated that "the issue of whether the alleged prior art references submitted by [NETGEAR's and RAYSPAN's] present a [Substantial New Question of Patentability] will be determined according to the reasons for allowance expressly stated by the Examiner in the prosecution history of the ['562 Patent].

39. The November 28, 2008 *Order Granting Request for Inter Partes Reexamination* stated that "[i]t is <u>not</u> agreed that the consideration of Kalunzi raises a [Substantial New Question of Patentability] as to <u>claims 1-10 and 18-36</u>" (underlining in the original). The Examiner did "agree[] that consideration of Kalunzi raises a [Substantial New Question of Patentability] as to <u>claims 11-17</u> of the ['562 Patent]."

40. The November 28, 2008 *Order Granting Request for Inter Partes Reexamination* stated that "[i]t is not agreed that the consideration of Jones raises a [Substantial New Question of Patentability] as to claims 1 and 18" (underlining in the original). The Examiner further stated that "there is not a substantial likelihood that a reasonable examiner would consider the teachings of Jones important in deciding whether claims 1-10 and 18-36 of the ['562 Patent] are patentable" (underlining in the original).

41. The November 28, 2008 *Order Granting Request for Inter Partes Reexamination* stated that "[i]t is not agreed that the consideration of Chuang raises a [Substantial New Question of Patentability] as to claims 1-10 and 18-36" (underlining in the original). The Examiner further stated that "there is not a substantial likelihood that a reasonable examiner would consider the teachings of Chuang important in deciding whether claims 1-10 and 18-36 of the ['562 Patent] are patentable" (underlining in the original). The Examiner did find that "there is a substantial likelihood that a reasonable examiner would consider the teachings of Chuang important in deciding whether claims 11-17 of the ['562 Patent] are patentable.

42. The November 28, 2008 *Order Granting Request for Inter Partes Reexamination* stated that "[i]t is not agreed that the consideration of Hikuma raises a [Substantial New Question of Patentability] as to claims 1-10 and 18-36" (underlining in the original). The Examiner further stated that "there is not a substantial likelihood that a reasonable examiner would consider the teachings of Hikuma important in deciding whether claims 1-10 and 18-36 of the ['562 Patent] are patentable" (underlining in the original). The Examiner further stated that "[i]t is not agreed that the consideration of Hikuma raises a [Substantial New Question of Patentability] as to claims 11-17" (underlining in the original). The Examiner further stated that "there is not a substantial likelihood that a reasonable examiner would consider the teachings of Hikuma important in deciding whether claims 11-17 of the ['562 Patent] are patentable" (underlining in the original).

43. The November 28, 2008 *Order Granting Request for Inter Partes Reexamination* stated that only "claims 11-17 of the ['562 Patent] will be reexamined" (underlining in the original).

44. Accompanying the November 28, 2008 *Order Granting Request for Inter Partes Reexamination* was an *Action Closing Prosecution (37 CFR 1.949)* stating that claims 1-18 and 18-

36 were *not* subject to reexamination, that claims 11-17 *were* subject to reexamination, and that claims 11-17 were confirmed as patentable. The *Action Closing Prosecution (37 CFR 1.949)* further indicated that all nine of the references identified by NETGEAR and RAYSPAN had been cited and considered in re-examination of the '562 Patent.

45. On December 17, 2008, NETGEAR and RAYSPAN filed a *Petition to Order Reexamination of Claims 1-10 and 18-36*. The *Petition to Order Reexamination of Claims 1-10 and 18-36* correctly indicated that the review "must be '*de novo*.'" The *Petition to Order Reexamination of Claims 1-10 and 18-36* specifically addressed the Kalunzi, Chuang, Hikuma, and Yao references. NETGEAR and RAYSPAN, in addition to the arguments of counsel, submitted a declaration by Professor Michael A. Jensen, Ph.D., addressing the Kalunzi reference, the Hikuma reference, and the Yao reference and otherwise supporting the *Petition to Order Reexamination of Claims 1-10 and 18-36.*

46. On July 10, 2009, the United States Patent and Trademark Office issued a *Petition Decision Denying Request to Order (sic) Additional Claims*. Through that decision ("Petition Decision"), the United States Patent and Trademark Office denied NETGEAR's and RAYSPAN's request that reexamination of claims 1-10 and 18-36 of the '562 Patent be re-examined. The Petition Decision considered NETGEAR and RAYSPAN's arguments with respect to the Kalunzi, Chuang, Hikuma, and Yao references as well as the declaration by Professor Michael A. Jensen, Ph.D. addressing the Kalunzi reference, the Hikuma reference, and the Yao reference and otherwise supporting the *Petition to Order Reexamination of Claims 1-10 and 18-36.* As a result of the Petition Decision, further consideration of claims 1-10 and 18-36 of the present re-examination is foreclosed.

47. On August 6, 2009, NETGEAR and RAYSPAN appealed the finding of patentability of claims 11-17 of the '562 Patent. On October 5, 2009, NETGEAR and RAYSPAN filed an appeal brief addressing, specifically, the Kalunzi, Hikuma, and Chuang references.

48. Notwithstanding its right to do so, RUCKUS elected not to file a brief responsive to that of NETGEAR and RAYSPAN. Such a brief was unnecessary in that the United States Patent Office has agreed with RUCKUS as to maintaining the patentability of each and every one of the

claims of the '562 Patent. As such, RUCKUS has not created any additional prosecution history with respect to the '562 Patent. The file history of the re-examination of the '562 Patent is nothing more than a series of failed attempts by NETGEAR and Rayspan to suggest that even a single claim of the '562 Patent is invalid and the U.S. Patent Office repeatedly educating NETGEAR and RAYSPAN that their technical and/or factual as well as their legal arguments are wrong.

49. RUCKUS is informed and believes, and thereon alleges, that all art that could have been identified to the United States Patent and Trademark Office by NETGEAR and RAYSPAN with respect to claims 1-10 and 18-36 has been identified to the United States Patent and Trademark Office by NETGEAR and RAYSPAN.

50. RUCKUS is informed and believes, and thereon alleges, that all issues that could have been raised before the United States Patent and Trademark Office by NETGEAR and RAYSPAN with respect to claims 1-10 and 18-36 have been raised before the United States Patent and Trademark Office by NETGEAR and RAYSPAN.

51. RUCKUS is informed and believes, and thereon alleges, that all art that could have been identified to the United States Patent and Trademark Office by NETGEAR and RAYSPAN with respect to claims 11-17 has been identified to the United States Patent and Trademark Office by NETGEAR and RAYSPAN.

52. RUCKUS is informed and believes, and thereon alleges, that all issues that could have been raised before the United States Patent and Trademark Office by NETGEAR and RAYSPAN with respect to claims 11-17 have been raised before the United States Patent and Trademark Office by NETGEAR and RAYSPAN.

53. NETGEAR and RAYSPAN have not identified new prior art during the *inter partes* reexamination of the '562 Patent.

54. RUCKUS is informed and believes, and thereon alleges, that NETGEAR and RAYSPAN have not sought out new prior art during the *inter partes* reexamination of the '562 Patent.

55. NETGEAR and RAYSPAN will be estopped from later asserting the invalidity of any claim finally determined to be valid and patentable on any ground which the third-party requester raised or could have raised during *inter partes* reexamination of the '562 Patent in accordance with 35 U.S.C. § 315(c).

U.S. Patent No. 7,525,486

56. RUCKUS is the assignee of the entire right, title, and interest in United States Patent Number 7,525,486 (the "'486 Patent"). The '486 Patent issued on April 28, 2009 and is entitled "Increased Wireless Coverage Patterns." A true and correct copy of the '486 Patent is attached hereto as Exhibit A.

57. The '486 Patent is a continuation of U.S. patent application number 11/022,080. U.S. patent application number 11/022,080 is the application that eventually issued as RUCKUS' '562 Patent. The '562 Patent, as addressed above, is currently under re-examination. Reexamination of claims 1-10 and 18-36 of the '562 Patent has been twice denied by the United States Patent and Trademark Office. Reexamination of claims 11-17 of the '562 Patent has been granted by the United States Patent and Trademark Office. The United States Patent and Trademark Office has found claims 11-17 of the '562 Patent to be patentable and not requiring further amendment.

58. On May 30, 2008, the Examiner for the application that matured into the '486 Patent issued an office action rejecting all claims of that application as being anticipated by U.S. Patent Number 7,064,717 to Kalunzi et al. U.S. Patent Number 7,064,717 to Kalunzi had been identified by NETGEAR and RAYSPAN in their *Request for Inter Partes Reexamination Under 35 U.S.C. § 311 and 37 C.F.R. § 1.913* of the '562 Patent. The Examiner applied the Kalunzi reference against each and every claim of the application that matured into the '486 Patent.

59. On October 14, 2008, during prosecution of the application that matured into the '486 Patent, an *Information Disclosure Statement* was filed that identified, *inter alia*, U.S. Patent

Number 5,767,755 to Kim et al., U.S. Patent Number 6,052,093 to Yao et al., U.S. Patent Number 6,104,356 to Hikuma et al., U.S. Patent Number 6,339,404 to Johnson et al., U.S. Patent Number 6,424,311 to Tsai et al., U.S. Patent Number 6,531,985 to Jones, U.S. Patent Number 6,876,836 to Lin et al., U.S. Patent Number 6,943,749 to Paun, U.S. Patent Publication Number 2004-0145528 to Mukai et al., *A 2.4 GHz Polarization-Diversity Planar Printed Dipole Antenna for WLAN and Wireless Communication Applications* by Chuang et al., *Smart Antennas Based on Spatial Multiplexing of Local Elements (SMILE) for Mutual Coupling Reduction* to Frederick et al., *The PIN Diode Circuit Designer's Handbook* to Doherty, Jr. et al., and *A Switched Radio Divider for an L-Band Mobile Satellite Radio* to Varnes et al. Each of the foregoing references had been identified by NETGEAR and RAYSPAN in their *Request for Inter Partes Reexamination Under 35 U.S.C. § 311 and 37 C.F.R. § 1.913* of the '562 Patent.

60. On November 26, 2008, the applicants for what would become the '486 Patent responded to the May 30, 2008 rejection. As a part of the November 26, 2008 response, the applicants submitted a *Declaration Under 37 C.F.R. § 1.131* that declared that the application that would become the '486 Patent to be "a continuation . . . of U.S. patent application number 11/022,080 filed December 23, 2004, which is now U.S. Patent Number 7,193,562." The applicants also declared in the *Declaration Under 37 C.F.R. § 1.131* that "U.S. Patent Number 7,193,562 is presently subject to a request for *inter partes* re-examination filed September 4, 2008 (control number 95/001,078)." The applicants also declared in the *Declaration Under 37 C.F.R. § 1.131* that the application that would become the '486 Patent was then rejected as being "anticipated by U.S. patent number 7,064,717 to Kaluzni," which "has been identified in the aforementioned request for *inter partes* re-examination."

61. The applicants, as a part of the aforementioned *Declaration Under 37 C.F.R. § 1.131*, further declared that "the subject matter that is presently claimed in the independent claims of the" application that would mature into the '486 Patent was conceived "no later than November 10, 2004." November 10, 2004 is prior to the November 12, 2004 filing date of the Kaluzni reference.

62. Also on November 26, 2008, counsel for the applicants submitted a response that "direct[ed] the Examiner's attention to the request for *inter partes* re-examination lodged against U.S. Patent Number 7,193,562 to which the [application that would mature into the '486 Patent] claims a priority benefit." Also on November 26, 2008, counsel for the applicants submitted a response that noted "[a]ll references submitted in the request for re-examination of the '562 Patent have . . . been submitted" in the application that would mature into the '486 Patent. Counsel for the applicants also noted that because "the presently claimed invention was conceived before the filing date of Kalunzi," that "Kalunzi is not prior art against the presently claimed invention."

63. On December 24, 2008, the Examiner for the application that matured into the '486 Patent indicated that the references identified in the re-examination of the '562 Patent—U.S. Patent Number 5,767,755 to Kim et al., U.S. Patent Number 6,052,093 to Yao et al., U.S. Patent Number 6,104,356 to Hikuma et al., U.S. Patent Number 6,339,404 to Johnson et al., U.S. Patent Number 6,424,311 to Tsai et al., U.S. Patent Number 6,531,985 to Jones, U.S. Patent Number 6,876,836 to Lin et al., U.S. Patent Number 6,943,749 to Paun, U.S. Patent Publication Number 2004-0145528 to Mukai et al., *A 2.4 GHz Polarization-Diversity Planar Printed Dipole Antenna for WLAN and Wireless Communication Applications* by Chuang et al., *Smart Antennas Based on Spatial Multiplexing of Local Elements (SMILE) for Mutual Coupling Reduction* to Frederick et al., *The PIN Diode Circuit Designer's Handbook* to Doherty, Jr. et al., and *A Switched Radio Divider for an L-Band Mobile Satellite Radio* to Varnes et al.—had been "considered."

64. On January 9, 2009, the United States Patent and Trademark Office found "[c]laims 1-31 [to be] allowed" in that the "prior art of record" did not disclose one or more features set forth in the independent claims of the application that matured into the '486 Patent. The Examiner further found the declaration submitted "on 11/26/2008 under 37 CFR 1.131 [to be] sufficient to overcome the US Patent No 7,064,717 reference" to Kalunzi.

65. The '486 Patent issued on April 28, 2009. The '486 Patent issued over all references cited in the re-examination of the '562 Patent.

DEFENDANTS' Unlawful Conduct Relating to the '486 Patent

66. On May 22, 2009, RUCKUS, NETGEAR, and RAYSPAN filed a *Joint Status Report* in NETGEAR / RAYSPAN I.

67. In the May 22 *Joint Status Report*, RUCKUS noted that "U.S. patent application number 11/714,707, which is a direct continuation of the '562 Patent, issued as U.S. Patent Number 7,525,486." In the May 22 *Joint Status Report*, RUCKUS noted that "U.S. Patent [number] 7,525,486 issued after the United States Patent Office considered all of the references identified by the Defendants in the *inter partes* re-examination of the '562 Patent."

68. On June 17, 2009, counsel for RUCKUS sent correspondence to counsel for NETGEAR and RAYSPAN informing them of the issuance of U.S. Patent Number 7,525,486 notwithstanding the fact that '486 Patent had already been referenced in the May 22, 2009 *Joint Status Report*. In that correspondence, counsel for RUCKUS informed counsel for NETGEAR and RAYSPAN that "a number of claims in the '486 Patent read directly on your client's WPN824v3 RangeMax Wireless Router." Counsel for RUCKUS specifically identified claims 1-2, 5-8, 11-12, 15-28, and 31 of the '486 Patent. Counsel for RUCKUS stated that "*all* of the prior art references that were set forth in your client's Request for Reexamination of the patent asserted in pending Northern District of California action against NETGEAR and RAYSPAN were disclosed to and subsequently cited by the Examiner on the face of the '486 Patent." Counsel for RUCKUS also noted that "[t]he Examiner was also made expressly aware of the re-examination of the parent application" and that certain "references cited in the re-examination request were expressly addressed by the Examiner"; "[t]he '486 Patent issued notwithstanding the same."

69. NETGEAR and RAYSPAN did not respond to the June 17, 2009 correspondence.

70. RUCKUS alleges that NETGEAR makes, uses, offers to sell, and sells in the United States and imports into the United States wireless routers that infringe the '486 Patent, including but not limited to the RangeMax WPN 824v3.

71. NETGEAR states that the RangeMax 824v3 to be "an advanced Smart MIMO (Multi-In, Multi-Out) technology that uses 7 internal antennas" thus evidencing, at the least, that the

RangeMax 824v3 includes an antenna array as is recited in independent claim 1 of the '486 Patent, and an antenna system as is referenced in independent claim 18 of the '486 Paten t. NETGEAR also states that the "MIMO (multiple-input, multiple-output) technology [in the RangeMax Wireless Router WPN824] boosts network performance with up to 10x the speed and 10x the coverage of Wireless-G" thus evidencing that the RangeMax 824v3 increases wireless coverage as is recited in independent claim 1 of the '486 Patent.

72. NETGEAR states that the RangeMax 824v3 generates a wireless signal that complies with the IEEE 802.11 standard and encodes data using Direct Sequence Spread Spectrum (DSSS) (802.11b) and Orthogonal Frequency Division Multiplexing (OFDM) (802.11g) thus evidencing that the RangeMax 824v3 includes a radio frequency signal modulator that generates a modulated radio frequency signal as is recited in independent claim 1 of the '486 Patent. The circuitry that generates the aforementioned wireless signal likewise meets the communication circuitry element of independent claim 18 of the '486 Patent in that said circuitry is located in an interior area of a circuit board. The location of said circuitry is evidenced by visual reference to the motherboard of a RangeMax 824v3 wireless router. The location of said circuitry is also referenced in independent claim 18 of the '486 Patent.

73. NETGEAR states that the RangeMax 824v3 uses "seven internal smart antennas." These antennas emit modulated RF signals and are arranged around the motherboard of the RangeMax 824v3 in a substantially circular pattern. This configuration of antenna elements is evidenced by visual reference to the motherboard of a RangeMax 824v3 wireless router. Such a configuration of emission points (*i.e.*, antennas) is referenced in independent claim 1 of the '486 Patent. One or more of these antennas are proximate the edges of the motherboard. The location of these elements proximate the edges of the motherboard may likewise be evidenced by visual reference to the motherboard of a RangeMax 824v3 wireless router. The location of certain antenna elements vis-à-vis the edges of the circuit board is recited in independent claim 18 of the '486 Patent.

74. RUCKUS is informed, believes, and thereon alleges that the smart antennas are meta-material antenna components specifically designed for the RangeMax 824v3 by RAYSPAN.

Because these meta-material antenna components are specifically designed for the RangeMax 824v3 by RAYSPAN, RUCKUS is informed and believes that these particular meta-material antenna components have no other use than to be used in the RangeMax 824v3 wireless router.

75. NETGEAR states that the RangeMax 824v3 senses changes in a wireless environment "and selects from over 100 antenna configurations to deliver the fastest, clearest connection." To select from these various antenna configurations requires a switching network to control the aforementioned meta-material antenna components, specifically designed for the RangeMax 824v3 by RAYSPAN. The aforementioned switching network is recited in independent claims 1 and 18 of the '486 Patent.

76. The switching of the aforementioned meta-material antenna components, specifically designed for the RangeMax 824v3 by RAYSPAN, allows for the generation of a substantially 360-degree coverage pattern. Each of the aforementioned meta-material antenna components emits a directional radiation pattern that may be offset from the directional radiation pattern of any of the other meta-material antenna components. The formation of collective radiation patterns by means of combining individual directional radiation patterns is recited in independent claims 1 and 18 of the '486 Patent.

77. The adjustment of radiation patterns in response to environmental interference, as described above, is also recited in independent claims 8 and 15 of the '486 Patent. The selective coupling and decoupling of individual antenna elements—antenna elements specifically designed for the RangeMax 824v3 by RAYSPAN—to communication circuitry is also recited in independent claims 8 and 15 of the '486 Patent.

78. NETGEAR practices independent claims 1, 8, 15, and 18, in addition to any number of dependent claims without license or permission from RUCKUS. Said practice constitutes a direct infringement of the '486 Patent.

79. RAYSPAN provides the aforementioned meta-material antenna components, which are specifically designed for the RangeMax 824v3 wireless router. Said components have no other purpose but for use in the RangeMax 824v3 wireless router, which otherwise directly infringes the '486 Patent. RAYSPAN provides these meta-material antenna components with full knowledge of

the '486 Patent and knowing that said components have no other use but for incorporation into the infringing RangeMax 824v3 wireless router. RAYSPAN's provisioning therefore constitutes a contributory infringement of at least independent claims 1, 8, 15, and/or 18 of the '486 Patent absent license or permission from RUCKUS.

80. RUCKUS has not provided a license or any other permission to NETGEAR or RAYSPAN with respect to the practice of any claim of the '486 Patent in the RangeMax 824v3 wireless router or with respect to provisioning any component that contributes to the practice of the '486 Patent vis-à-vis the RangeMax 824v3 wireless router.

81. NETGEAR's unlawful activities in directly infringing the '486 Patent by way of the manufacture, sale, offer for sale, importation, and use of the RangeMax 824v3 have resulted in an unjust enrichment to NETGEAR and immediate and irreparable harm to RUCKUS. If NETGEAR's unlawful activities are not enjoined, NETGEAR will continue to be unjustly enriched and will continue to irreparably harm RUCKUS. RUCKUS has no adequate remedy at law.

82. RAYSPAN's unlawful activities in contributorily infringing the '486 Patent by providing meta-material antenna components specifically designed by RAYSPAN for use in the RangeMax 824v3 and that constitute a material part of the RangeMax 824v3 wireless router in that the RangeMax 824v3 wireless router will not operate without the antenna components, those components allowing for the emission of modulated RF signals and corresponding directional radiation patterns from the RangeMax 824v3, have resulted in an unjust enrichment to RAYSPAN and immediate and irreparable harm to RUCKUS. If RAYSPAN's unlawful activities are not enjoined, RAYSPAN will continue to be unjustly enriched and will continue to irreparably harm RUCKUS. RUCKUS has no adequate remedy at law.

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COUNT I

Direct Infringement of U.S. Patent No. 7,525,486 by NETGEAR Under 35 U.S.C. § 271(a)

83. RUCKUS repeats and re-alleges each of the allegations set forth in paragraphs 1 through 82, as though fully set forth herein.

84. NETGEAR's actions in making, using, importing, selling, and offering for sale the RangeMax 824v3 wireless router, and possibly other products, directly infringe at least claims 1-2, 5-8, 11-12, 15-28, and 31 of the '486 Patent. RUCKUS is informed and believes, and thereon alleges, that NETGEAR will continue to do so unless enjoined by the Court.

85. RUCKUS has been damaged by NETGEAR's infringing conduct and NETGEAR is therefore liable to RUCKUS for actual damages suffered and any profits realized on the sale of the RangeMax WPN 824v3 wireless router and possibly other infringing products, which are not taken into account in the computation of actual damages, as well as any statutory damages, such as treble damages. Moreover, such conduct is likely to cause substantial harm to RUCKUS, unless the Court enjoins the infringing conduct.

86. NETGEAR's direct infringement of the '486 Patent since at least May 22, 2009 has been and continues to be, deliberate and willful in that NETGEAR was and remains aware of the '486 Patent, but nevertheless continues to make, use, sell, offer for sale, and import the RangeMax 824v3 wireless router.

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COUNT II

Contributory Infringement of U.S. Patent No. 7,525,486

by RAYSPAN Under 35 U.S.C. § 271(c)

87. RUCKUS repeats and re-alleges each of the allegations set forth in paragraphs 1 through 86, as though fully set forth herein

88. As set forth in the context of COUNT I, NETGEAR directly infringes the '486 Patent.

89. RAYSPAN has had knowledge of the '486 Patent since at least May 22, 2009.

90. RAYSPAN has had knowledge that RUCKUS alleged infringement of the '486 Patent, including but not limited to claims 1-2, 5-8, 11-12, 15-28, and 31, since at least June 17, 2009.

91. RAYSPAN, as a part of its relationship with NETGEAR, provided meta-material antenna components specifically designed by RAYSPAN for use with the RangeMax 824v3 wireless router, which RUCKUS alleges to directly infringe the '486 Patent.

92. Notwithstanding knowledge of the '486 Patent and RUCKUS' allegations of infringement of the '486 Patent, including but not limited to claims 1-2, 5-8, 11-12, 15-28, and 31, RAYSPAN did and continues to provide meta-material antenna components to NETGEAR and that are specifically designed by RAYSPAN for use with the RangeMax 824v3 wireless router.

93. The meta-material antenna components specifically designed by RAYSPAN for use in the RangeMax 824v3 wireless router constitute a material part of the RangeMax 824v3 wireless router in that the RangeMax 824v3 wireless router will not operate without the antenna components that allow for the emission of modulated RF signals and corresponding directional radiation patterns from the RangeMax 824v3 wireless router.

94. As the meta-material antenna components used in the RangeMax 824v3 are designed by RAYSPAN specifically for use in the RangeMax 824v3, these meta-material antenna components are not a staple article or commodity of commerce suitable for non-infringing uses. The meta-material antenna components used in the RangeMax 824v3 have one purpose and one

purpose alone—to be used in the RangeMax 824v3, which constitutes direct infringement of the '486 Patent.

95. RUCKUS has been damaged by RAYSPAN's contributorily infringing conduct and RAYSPAN is therefore liable to RUCKUS for actual damages suffered and any profits realized on the sale of the RangeMax WPN 824v3 wireless router and possibly other infringing products, including but not limited to the meta-material antenna components used in the RangeMax 824v3 wireless router, which are not taken into account in the computation of actual damages, as well as any statutory damages, such as treble damages. Moreover, such conduct is likely to cause substantial harm to RUCKUS, unless the Court enjoins the infringing conduct.

96. RUCKUS alleges that RAYSPAN's contributory infringement of the '486 Patent has been, and continues to be, deliberate and willful, for at least the fact that RAYSPAN has been aware of the '486 Patent since May 22, 2009, and RUCKUS' assertion of infringement of at least claims 1-2, 5-8, 11-12, 15-28, and 31, since at least June 17, 2009. Notwithstanding that knowledge and the assertions of infringement, RAYSPAN did and continues to manufacture its specially designed meta-material antenna components for use in the otherwise infringing RangeMax 824v3 wireless router, if not other products. RUCKUS is informed and believes, and thereon alleges, that RAYSPAN will continue to do so unless enjoined by the Court

WHEREFORE, RUCKUS prays for relief as set forth herein.

PRAYER FOR RELIEF

WHEREFORE, RUCKUS requests entry of judgment in their favor and against the DEFENDANTS and each of them as follows:

A. On Count I, declaring that Defendant NETGEAR has directly infringed one or more claims of the ‘486 Patent;

B. On Count I, preliminarily and/or permanently enjoining Defendant NETGEAR and its officers, agents, servants, employees, and attorneys, and all persons acting in active concert or participation with NETGEAR, from further infringing, the ‘486 Patent, in accordance with 35 U.S.C. § 283;

C. On Count I, awarding RUCKUS a reasonable royalty in an amount adequate to compensate RUCKUS for NETGEAR’s infringement, in accordance with 35 U.S.C. § 154;

D. On Count I, awarding RUCKUS damages in an amount adequate to compensate RUCKUS for NETGEAR’s infringement, in accordance with 35 U.S.C. § 284;

E. On Count I, increasing the damages to three times the amount found or assessed by virtue of the deliberate and willful nature of NETGEAR’s infringement, in accordance with 35 U.S.C. § 284;

F. On Count II, declaring that Defendant RAYSPAN has contributorily infringed one or more claims of the ‘486 Patent;

G. On Count II, preliminarily and/or permanently enjoining Defendant RAYSPAN and its officers, agents, servants, employees, and attorneys, and all persons acting in active concert or participation with RAYSPANR, from further infringing, the ‘486 Patent, in accordance with 35 U.S.C. § 283;

H. On Count II, awarding RUCKUS a reasonable royalty in an amount adequate to compensate RUCKUS for RAYSPAN’s contributory infringement, in accordance with 35 U.S.C. § 154;

I. On Count II, awarding RUCKUS damages in an amount adequate to compensate RUCKUS for RAYSPAN’s contributory infringement, in accordance with 35 U.S.C. § 284;

J. On Count II, increasing the damages to three times the amount found or assessed by virtue of the deliberate and willful nature of RAYSPAN's contributory infringement, in accordance with 35 U.S.C. § 284;

K. On all counts, for actual damages according to proof;

L. On all counts, for interest on all the foregoing amounts, at the legal rate, with effect from the due date for payment;

M. On all counts, awarding RUCKUS its costs of suit, including reasonable attorneys' fees; and

On all counts, granting such other and further relief as this Court may deem just and appropriate.

Dated: March 5, 2010

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Attorneys for Plaintiff
RUCKUS WIRELESS, INC.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all issues so triable.

March 5, 2010

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