

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

WAVESTAR COMMUNICATIONS  
SYSTEMS LLC,

Plaintiff,

v.

FORTINET, INC.,

Defendant.

**Civil Action No.** \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Wavestar Communications Systems LLC (“Wavestar” or “Plaintiff”), for its Complaint against Defendant Fortinet, Inc., (“Fortinet” or “Defendant”) alleges the following:

**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.*

**THE PARTIES**

2. Plaintiff Wavestar Communications Systems LLC is a Limited Liability Company organized under the laws of the State of Texas with a place of business at 700 Lavaca Street, Suite 1401, Austin, Texas 78701.

3. Upon information and belief, Fortinet is a corporation organized and existing under the laws of Delaware, with a place of business at 899 Kifer Road, Sunnyvale, California 94086-5205, and can be served through its registered agent, Corporation Service Company at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. Upon information and belief, Fortinet sells and offers to sell products and services throughout the United States, including in

this judicial district, and introduces products and services that into the stream of commerce and that incorporate infringing technology knowing that they would be sold in this judicial district and elsewhere in the United States.

**JURISDICTION AND VENUE**

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

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c), (d) and/or 1400(b). On information and belief, Defendant conducts business in this District, the claims alleged in this Complaint arise in this District, and the acts of infringement have taken place and are continuing to take place in this District.

7. On information and belief, Defendant is subject to this Court's general and specific personal jurisdiction because Defendant has sufficient minimum contacts within the State of Texas and this District, pursuant to due process and/or the Texas Long Arm Statute because Defendant purposefully availed itself of the privileges of conducting business in the State of Texas and in this District, because Defendant regularly conducts and solicits business within the State of Texas and within this District, and because Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and this District.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,391,915**

8. The allegations set forth in the foregoing paragraphs 1 through 7 are incorporated into this First Claim for Relief.

9. On March 5, 2013, U.S. Patent No. 8,391,915 (“the ’915 patent”), entitled “Virtual Cells For Wireless Networks” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’915 patent is attached as Exhibit 1.

10. The inventions of the ’915 patent resolve technical problems related to the use of wireless communication networks, including wireless networks that involve roaming mobile devices. For example, the inventions disclose how several virtual cells are utilized to maintain a transmission with a mobile device and allow the mobile device to move from one cell to another.

11. The claims of the ’915 patent do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claims of the ’915 patent recite one or more inventive concepts that are rooted in wireless communication network technology such as utilizing a virtual cell concept to determine when the mobile device is moving out of one cell area and into another while allowing the virtual cell to move as well.

12. The claims of the ’915 patent recite an invention that is not merely the routine or conventional use of wireless communications networks or wireless roaming technology. Instead, the invention discloses a wireless communications network that utilizes virtual cells to determine when the mobile device is moving out of one cell area and into another while allowing the virtual cell to move as well. The ’915 patent claims thus specify how virtual cells can be applied to wireless networks in a way that allows for more reliable transmission handoff among cells.

13. The technology claimed in the ’915 patent does not preempt all ways of using wireless communications networks, nor preempt the use of all roaming technology, nor preempt any other well-known or prior art technology.

14. Accordingly, each claim of the '915 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

15. Plaintiff is the assignee and owner of the right, title and interest in and to the '915 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

16. Upon information and belief, Defendant has and continues to directly infringe at least claims 1, 2, and 3 of the '915 patent by making, using, selling, importing and/or providing and causing to be used products and services embodied by one or more claims of the '915 patent, including the use of networks equipped with virtual cells that determine when a mobile device is moving out of one cell area and into another, which products and services, by way of example, include Fortinet's Infrastructure Wi-Fi suite, formerly known as Meru Networks (the "Accused Instrumentalities").

17. In particular, claim 1 of the '915 patent generally recites a network made up of a network backbone capable of two-way communications and a plurality of radio transceivers attached to the network backbone. The plurality of radio transceivers: have overlapping coverage areas; establish communications with a first mobile device; determine that the first mobile device is communicating with a first plurality of radio transceivers; simultaneously transmit a first communication to a mobile device from a first set of radio transceivers, where the first set of radio transceivers comprises at least two of the plurality of radio transceivers; receive a second communication from the mobile device by one or more of the first set of radio transceivers and; a network controller adapting to determine a movement vector for the mobile device.

18. The Accused Instrumentalities infringe claim 1 of the '915 patent. (*See, e.g.*, <https://www.fortinet.com/meru/>;  
[http://www2.voicedata.com/SOLUTIONS/Meru\\_Networks\\_Virtual\\_Cell\\_Virtual\\_Port\\_Videos](http://www2.voicedata.com/SOLUTIONS/Meru_Networks_Virtual_Cell_Virtual_Port_Videos);  
[https://www.fortinet.com/content/dam/fortinet/assets/data-sheets/Fortinet\\_Wireless\\_Product\\_Matrix.pdf](https://www.fortinet.com/content/dam/fortinet/assets/data-sheets/Fortinet_Wireless_Product_Matrix.pdf); <https://www.fortinet.com/products/wlan-switching/wireless-lan/infrastructure-wifi-controllers.html>;  
<https://www.fortinet.com/content/dam/fortinet/assets/data-sheets/FortiWLC.pdf>;  
<https://www.fortinet.com/products/wlan-switching/wireless-lan/infrastructure-wifi-access-points.html>; <https://www.fortinet.com/content/dam/fortinet/assets/solution-guides/deployment-guide-infrastructure-secure-access.pdf>.)

19. Claim 2 of the '915 patent generally recites the network of claim 1 wherein the first set of the plurality of radio transceivers are selected based on their geographical positions.

20. The Accused Instrumentalities infringe claim 2 of the '915 patent. (*See, e.g.*, [http://www2.voicedata.com/SOLUTIONS/Meru\\_Networks\\_Virtual\\_Cell\\_Virtual\\_Port\\_Videos](http://www2.voicedata.com/SOLUTIONS/Meru_Networks_Virtual_Cell_Virtual_Port_Videos);  
[https://www.fortinet.com/content/dam/fortinet/assets/data-sheets/Fortinet\\_Wireless\\_Product\\_Matrix.pdf](https://www.fortinet.com/content/dam/fortinet/assets/data-sheets/Fortinet_Wireless_Product_Matrix.pdf);  
<https://www.fortinet.com/content/dam/fortinet/assets/data-sheets/FortiWLC.pdf>;  
<https://www.fortinet.com/products/wlan-switching/wireless-lan/infrastructure-wifi-access-points.html>.)

21. Claim 3 of the '915 patent generally recites the network of claim 2 that includes a network controller that communicates with the plurality of radio transceivers and adapts to establish a virtual cell of the first set of plurality of radio transceivers.

22. The Accused Instrumentalities infringe claim 3 of the '915 patent. (*See, e.g.*, <https://www.fortinet.com/meru/>; [http://www2.voicedata.com/SOLUTIONS/Meru\\_Networks\\_Virtual\\_Cell\\_Virtual\\_Port\\_Videos](http://www2.voicedata.com/SOLUTIONS/Meru_Networks_Virtual_Cell_Virtual_Port_Videos); [https://www.fortinet.com/content/dam/fortinet/assets/data-sheets/Fortinet\\_Wireless\\_Product\\_Matrix.pdf](https://www.fortinet.com/content/dam/fortinet/assets/data-sheets/Fortinet_Wireless_Product_Matrix.pdf); <https://www.fortinet.com/products/wlan-switching/wireless-lan/infrastructure-wifi-controllers.html>; <https://www.fortinet.com/content/dam/fortinet/assets/data-sheets/FortiWLC.pdf>; <https://www.fortinet.com/products/wlan-switching/wireless-lan/infrastructure-wifi-access-points.html>; <https://www.fortinet.com/content/dam/fortinet/assets/solution-guides/deployment-guide-infrastructure-secure-access.pdf>.)

23. On information and belief, these Accused Instrumentalities are used marketed, provided to, and/or used by or for Defendant's partners, clients, customers and end users across the country and in this District.

24. Defendant was made aware of the '915 patent and its infringement thereof at least as of the filing and/or service of this Complaint.

25. Upon information and belief, since at least the time Defendant received notice, Defendant has induced and continues to induce others to infringe at least one claim of the '915 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 Defendant's partners, clients, customers, and end users, whose use of the Accused Instrumentalities constitutes direct infringement of at least one claim of the '915 patent.

26. In particular, Defendant's actions that aid and abet others such as its partners, customers, clients, and end users to infringe include advertising and distributing the Accused

Instrumentalities and providing instruction materials, training, and services regarding the Accused Instrumentalities. On information and belief, Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Defendant has had actual knowledge of the '915 patent and knowledge that its acts were inducing infringement of the '915 patent since at least the date Defendant received notice that such activities infringed the '915 patent.

27. Upon information and belief, Defendant is liable as a contributory infringer of the '915 patent under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United States wireless communications system products and services using virtual cells to be especially made or adapted for use in an infringement of the '915 patent. The Accused Instrumentalities are a material component for use in practicing the '915 patent and are specifically made and are not a staple article of commerce suitable for substantial non-infringing use.

28. Plaintiff has been harmed by Defendant's infringing activities.

#### **JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment for itself and against Defendant as follows:

- A. An adjudication that Defendant has infringed the '915 patent;
- B. An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement of the '915 patent, 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. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

D. An award to Plaintiff of such further relief at law or in equity as the Court deems just and proper.

Dated: December 30, 2016

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