

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WILMERDING COMMUNICATIONS
LLC,

Plaintiff,

v.

CONNECTIFY, INC.,

Defendant.

Civil No. _____

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Wilmerding Communications LLC (“Wilmerding”) files this Complaint against Defendant, Connectify, Inc. (“Connectify”), and alleges as follows:

NATURE OF ACTION

1. This is a civil action for patent infringement arising under 35 U.S.C. §§ 1, *et seq.* Wilmerding seeks damages and injunctive relief as provided in 35 U.S.C. §§ 281, 283-285.

THE PARTIES

2. Wilmerding is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 9737 Great Hills Trail, Suite 260, Austin, Texas 78759.

3. On information and belief, Defendant Connectify, Inc., is a company organized under the laws of Delaware, with its principal place of business at 1429 Walnut St., Suite 201, Philadelphia, PA 19102.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction based on applicable statutory provisions, including 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent

laws of the United States, 35 U.S.C. §§ 1, *et seq.*

5. This Court has general and specific personal jurisdiction over Connectify. Connectify resides in this District and solicits and transacts business in this District on a regular basis. Furthermore, on information and belief, Connectify has committed and continues to commit acts of patent infringement in this District, as set forth below. On information and belief, in conducting its business in this District, Connectify derives substantial revenue from its patent infringement. On information and belief, Connectify has established minimum contacts with the District of Delaware such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice. For example, on information and belief, Connectify places infringing products into the stream of commerce via an established distribution channel that includes the App Store and Google Play Store, among others, with the knowledge and expectation that such products would be sold in the State of Delaware.

6. Venue is proper in the District of Delaware under 35 U.S.C. §§ 1391(b), 1391(c), 1391(d), and 1400(b) because Connectify has committed acts within this District giving rise to this action, and Connectify has conducted and continues to conduct business in this District, including one or more acts of using, selling, and offering to sell its infringing products and/or services in this judicial district.

THE PATENTS-IN-SUIT

U.S. PATENT NO. 8,644,816 (“THE ’816 PATENT”)

7. On February 4, 2014, the U.S. Patent and Trademark Office (“USPTO”) duly and legally issued U.S. Patent 8,644,816 (“the ’816 Patent”), titled “Transmitting Data over a Plurality of Different Networks.” A true and correct copy of the ’816 Patent is attached as Exhibit 1.

8. Wilmerding is the owner of all right, title, and interest in and to the '816 Patent by assignment.

9. The '816 Patent relates generally to “communication between a mobile communication device and a server and specifically to configuring a communication protocol to provide improved communication between the wireless device and the server, especially when the wireless device is using two or more different communication interfaces.” Exh. 1, 1:4-9.¹

10. Defendant has been on notice of this asserted patent prior to the filing of this Complaint.

U.S. PATENT NO. 8,707,389 (“THE '389 PATENT”)

11. On April 22, 2014, the USPTO duly and legally issued U.S. Patent 8,707,389 (“the '389 Patent”), titled “Multi-transport mode devices having improved data throughput.” A true and correct copy of the '389 Patent is attached as Exhibit 2.

12. Wilmerding is the owner of all right, title, and interest in and to the '389 Patent by assignment.

13. The '389 Patent relates generally to devices having multi-transport modes and specifically to a method for improving the devices' data throughput to enhance access to more bandwidth than was available through existing connections available at the time, such as Ethernet. Exh. 2, 1:4-8 and 11-61. One aspect of the invention described in the '389 Patent is to provide the “ability for a device to transmit and receive data using different data transmission technologies available on a single device, practically at the same time.” Exh. 2, 1:66-2:2.

¹ In this Complaint “Exhibit” is abbreviated as “Exh.”, and patent exhibits (Exhibits 1-3) are cited using column and line references, as follows: “Exh. [No.]; [Col. No.]:[Line Nos.]” or “Exh. [No.]; [Col. No.]:[Line No.]-[Col. No.]:[Line No.]”.

14. Defendant has been on notice of this asserted patent prior to the filing of this Complaint.

U.S. PATENT NO. 9,838,319 (“THE ’319 PATENT”)

15. On December 5, 2017, the USPTO duly and legally issued U.S. Patent No. 9,838,319 (“the ’319 Patent”), titled “Encapsulation System Featuring an Intelligent Network Component.” A true and correct copy of the ’319 Patent is attached as Exhibit 3.

16. Wilmerding is the owner of all right, title, and interest in and to the ’319 Patent by assignment.

17. The ’319 Patent relates generally to a system for encapsulating data and transmitting it across a network featuring one or more intelligent network components, including intelligent traffic routing logic that resides on both sides of the communication network and thereby improves the performance of the system while reducing the amount of signaling traffic required. Exh. 3, 1:5-7 and 59-63.

18. Defendant has been on notice of this asserted patent prior to the filing of this Complaint.

19. Collectively, the ’816 Patent, the ’389 Patent, and the ’319 Patent are “the Patents-in-Suit” and the technology covered by these patents is generally referred to as bandwidth aggregation technology.

DEFENDANT’S KNOWLEDGE OF THE PATENTS-IN-SUIT

20. On October 25, 2018, Wilmerding, by its counsel, sent a letter to Ms. Bhana Grover, Co-founder & President of Connectify, notifying Connectify of its infringement of the Patents-in-Suit and inviting Connectify to discuss early resolution of such issues.

21. Connectify responded through its counsel on October 30, 2018, indicating that they had “undertaken to study the matter” and that a “substantive reply” would be received

“within a reasonable period of time, when our investigation is complete.” Thus, on information and belief, Connectify has had knowledge since at least October 30, 2018.

22. Subsequently, the parties engaged in negotiations to evaluate a potential business relationship or license arrangement regarding Wilmerding’s intellectual property. The parties were unable to reach mutually agreeable terms.

THE INFRINGING PRODUCT AND SERVICE

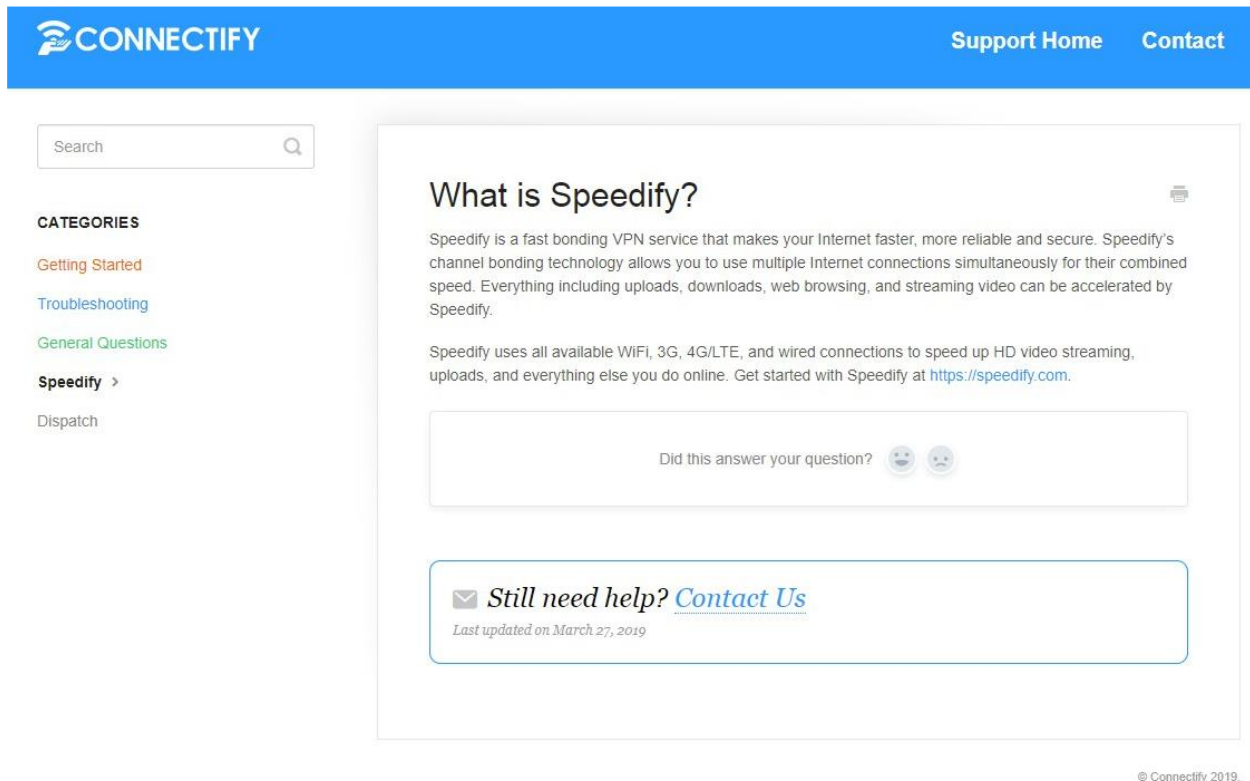
23. Connectify has directly and indirectly infringed and is continuing to directly and indirectly infringe one or more claims of the Patents-in-Suit, literally and/or under the doctrine of equivalents, by selling, offering to sell, and using within the United States, and/or importing into the United States at least its downloadable software application (referred to as an “app”), which it calls “Speedify”, as well as the services Connectify offers under that same brand name.

24. Connectify’s company website touts Speedify as “a fast bonding VPN service that makes your Internet faster, more reliable and secure” (<https://support.connectify.me/article/192-what-is-speedify>). According to the website, “Speedify uses all available WiFi, 3G, 4G/LTE, and wired connections to speed up HD video streaming, uploads, and everything else you do online.” Though originally advertised as a mobile phone application (*see, e.g.*, <https://www.connectify.me/category/blog/speedify/>), Connectify also advertises Speedify as “available for PC & Mac” (<https://www.connectify.me/blog/speedify/how-to-share-speedify-with-your-hotspot/>).

25. Connectify directs consumers from its company website to a website dedicated exclusively to advertising the infringing product and service (<http://speedify.com/>). There, Connectify touts Speedify as “a revolutionary channel bonding VPN that combines Wi-Fi and Cellular (and more!) to create a faster, more reliable, and secure connection.” “Speedify’s channel bonding technology allows you to use multiple Internet connections simultaneously for

their combined speed.” Speedify “allows you to combine multiple Internet connections for improved performance and connectivity.”

26. Images from Connectify’s company website touting Speedify, captured March 28, 2019, are shown below:



(available at <https://support.connectify.me/article/192-what-is-speedify>)

Blog

» BLOG » HOW TO SHARE SPEEDIFY WITH YOUR HOTSPOT

How To Share Speedify with Your Hotspot

Alex Gizis / September 3, 2015 / [Blog](#), [Share Internet Connection](#), [Speedify](#)



Some of you have been wondering if it's possible to use our new [Speedify](#) service with your Connectify Hotspot. With Speedify, you can combine multiple Wi-Fi, 3G/4G, and wired Internet connections for faster speeds and increased reliability. Wouldn't it be awesome if you could share your Speedify Internet with all of your other Wi-Fi-enabled gadgets? You can, and it's a breeze to set up, too. Connectify Hotspot is already fully-integrated with Speedify, making it easy-as-pie to share your Speedify connection by turning your laptop into a Wi-Fi hotspot.

- Download and install Speedify** - If you haven't already, [click here](#) to start your free Speedify Trial. Remember, even though Speedify is available for PC & Mac, you'll want to install the PC version in order to share with your PC-only Connectify Hotspot.
- Begin Bonding Connections with Speedify** - Connect your computer to multiple Internet connections and Speedify automatically begins bonding them for faster speeds and reliability. Detailed instructions on connecting a variety of Internet connections can be found in our Knowledge Base [here](#).
- Launch Connectify Hotspot** - Once you're all up-and-running with Speedify, fire up Connectify Hotspot as you normally would.
- Give your Hotspot a Name and Password** - Head back to the Connectify UI and enter your hotspot's name and password in the appropriate fields.

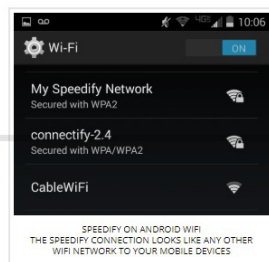
Hotspot Name

Password

- Select Speedify in 'Internet to Share' Dropdown** - In Hotspot's 'Internet to Share' dropdown, select 'Speedify Virtual Adapter'

Internet to Share [Help me pick](#)

- Start Sharing Speedify** - Now, just click 'Start Hotspot', and *voila...* all of your mobile devices can see and connect to your Speedify hotspot like any other WiFi hotspot.



That's all there is to it! With Speedify in your arsenal, now you've got a super-charged Hotspot so that all your devices can enjoy fast, seamless Internet.

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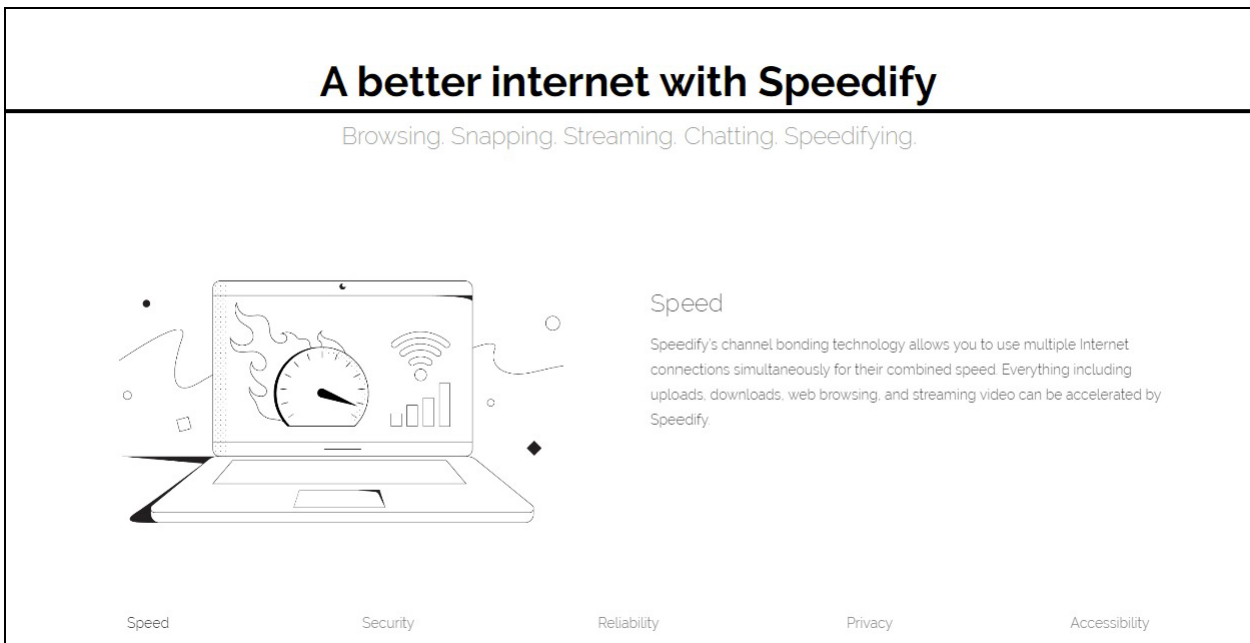
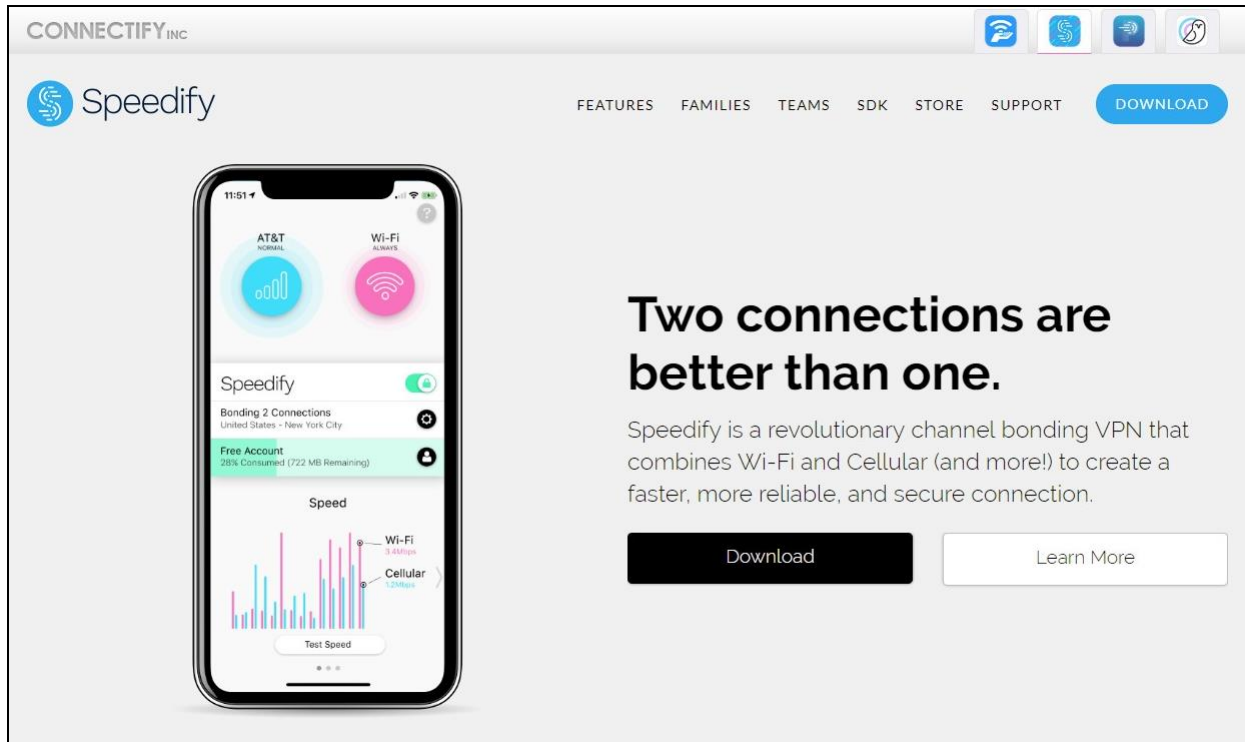
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- [Internet](#)

(available at <https://www.connectify.me/blog/speedify/how-to-share-speedify-with-your-hotspot/>.)

27. Images from the Speedify website, captured March 28, 2019, are shown here:



Reliability, Speed, and Security

At its core, Speedify is a VPN or "virtual private network." But, in addition to encrypting everything you send or receive online, it allows you to combine multiple Internet connections for improved performance and connectivity.

Speedify - What is a VPN?

lifehacker engadget TC TechCrunch tom's HARDWARE

Speedify has options for everyone.

<p>5GB MONTHLY DATA</p> <p>Starter Plan 👤</p> <p>Try Speedify risk-free! We'll optimize your first 5GB of data usage every month - no account needed.</p> <p>Download ></p> <ul style="list-style-type: none">• 5GB Monthly Data• Use on 1 Device• Super Secure Encryption• Channel Bonding• Redundant Mode• Automatic Failover• Packet Loss & Error Correction• Servers Worldwide	<p>UNLIMITED DATA</p> <p>Individuals 👤</p> <p>Need more data? Upgrade to a monthly or annual plan with unlimited data for non-stop speed & security on up to 5 devices.</p> <p>Buy Now ></p> <ul style="list-style-type: none">• Unlimited Data• Use on up to 5 Devices• Super Secure Encryption• Channel Bonding• Redundant Mode• Automatic Failover• Packet Loss & Error Correction• Servers Worldwide	<p>UNLIMITED DATA</p> <p>Families 👤👤</p> <p>The same fast, reliable, and secure internet you get from our app—now for your entire household!</p> <p>Buy Now ></p> <ul style="list-style-type: none">• Unlimited Data• Accounts for you and 4 family members• Admin Dashboard• Super Secure Encryption• Channel Bonding• Redundant Mode• Automatic Failover• Packet Loss & Error Correction• Servers Worldwide
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(available at <http://speedify.com/>.)

COUNT I
INFRINGEMENT OF THE '816 PATENT

28. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-27 above.

29. Wilmerding holds all legal title, interest, and rights in the '816 Patent.

30. Connectify has not and does not have any objectively sound or good faith basis to believe that it has the right to make, use, import, offer to sell, and/or sell products and/or processes within the scope of protection of the '816 Patent.

31. Claim 16 of the '816 Patent is illustrative of the system claimed by the '816 Patent. It claims:

16. A system configured to exchange data between a mobile communication device and a remote server via a proxy server, wherein:

the mobile communication device comprises:

- a wireless communication interface for communicating across a wireless network;
- a processor for executing non-transitory computer-readable instructions; and
- memory for storing the non-transitory computer-readable instructions, the computer-readable instructions operable to:
 - exchange data between an application and a client protocol controller using a first communication protocol;
 - exchange the data with the proxy server using an intermediary communication protocol, the intermediary protocol being different from the first protocol and configured for the wireless network;

the proxy server comprises:

- a communication interface for communicating across the wireless network;
- a processor for executing non-transitory computer-readable instructions; and
- memory for storing the non-transitory computer-readable instructions, the non-transitory computer-readable instructions operable to:
 - exchange the data with the mobile communication device using the intermediary communication protocol; and
 - exchange the data with the remote server using the first communication protocol.

32. On information and belief, Connectify has and continues to make, use, sell, and offer to sell, without authority from Wilmerding, its software applications and services for

bandwidth aggregation, including by way of example only, its Speedify software application and service.

33. On information and belief, users of the Speedify software application and/or service directly infringe at least claim 16 of the '816 Patent when they download the Speedify app onto a smartphone or tablet and use the app to connect to the internet, in accordance with the instructions provided by Defendant with its product.

34. On information and belief, through its company and product websites as well as the App Store and Google Play Store, Connectify actively induces smart phone users to download the Speedify app and use a system that infringes at least claim 16 of Wilmerding's '816 Patent. Connectify's sale, offer for sale, and/or importation of the Speedify software application, with instructions to make and use the claimed systems of the '816 Patent, induces infringement of the '816 Patent under 35 U.S.C. § 271(b).

35. On information and belief, Speedify is a component of the patented system of Claim 16 of the '816 Patent, that constitutes a material part of the invention, which Defendant knows is especially made for use in the infringement of the '816 Patent, and is not a staple article or commodity of commerce suitable for substantial non-infringing use. Connectify's sale, offer for sale, and/or importation of the Speedify software application, with instructions to make and use the claimed systems of the '816 Patent, are acts of contributory infringement of the '816 Patent under 35 U.S.C. § 271(c).

36. On information and belief, Connectify's manufacture, use, sale, and offer to sell at least its Speedify software application and service, infringes at least claim 16 of Wilmerding's '816 Patent, as demonstrated by Exhibit 4 filed herewith, titled "CLAIM CHART FOR INFRINGEMENT OF U.S. PATENT NO. 8,644,816 - SPEEDIFY."

37. On information and belief, from at least October 30, 2018, when Connectify responded to Wilmerding's cease and desist letter putting Connectify on notice of infringement of the '816 Patent, Connectify's infringement has been and continues to be with full knowledge of the '816 Patent and therefore is deliberate and willful.

38. Unless Connectify's infringement is permanently enjoined, Wilmerding will continue to be damaged and irreparably harmed.

COUNT II
INFRINGEMENT OF THE '389 PATENT

39. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-38 above.

40. Wilmerding holds all legal title, interest, and rights in the '389 Patent.

41. Connectify has not and does not have any objectively sound or good faith basis to believe that it has the right to make, use, import, offer to sell, and/or sell products and/or processes within the scope of protection of the '389 Patent.

42. Claim 1 of the '389 Patent is illustrative of the method claimed by the '389 Patent. It claims:

16. A method for transmitting data between a client and a proxy server, the method comprising the steps of:
segmenting the data into a plurality of data packets;
scheduling each of the plurality of packets to be transmitted via corresponding ones of a plurality of access points, thereby increasing the effective bandwidth available for transmitting the data, each of the plurality of access points configured to:
communicate with the client using a different protocol;
and
communicate with the proxy server using a different network path; and

transmitting each of the plurality of data packets between the client and the proxy server via the scheduled plurality of access points.

43. On information and belief, Connectify has and continues to make, use, sell, and offer to sell, without authority from Wilmerding, its software applications and services for bandwidth aggregation, including by way of example only, its Speedify software application and service.

44. On information and belief, Connectify's manufacture, use, sale, and offer to sell at least its Speedify software application and service, infringes at least claim 1 of Wilmerding's '389 Patent, as demonstrated by Exhibit 5 filed herewith, titled "CLAIM CHART FOR INFRINGEMENT OF U.S. PATENT NO. 8,707,389 - SPEEDIFY."

45. On information and belief, from at least the time of filing of this Complaint, Connectify's infringement has been and continues to be with full knowledge of the '389 Patent and therefore is deliberate and willful.

46. Unless Connectify's infringement is permanently enjoined, Wilmerding will continue to be damaged and irreparably harmed.

COUNT III
INFRINGEMENT OF THE '319 PATENT

47. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1-46 above.

48. Wilmerding holds all legal title, interest, and rights in the '319 Patent.

49. Connectify has not and does not have any objectively sound or good faith basis to believe that it has the right to make, use, import, offer to sell, and/or sell products and/or processes within the scope of protection of the '319 Patent.

50. Claim 1 of the '319 Patent is illustrative of the component claimed by the '319 Patent. It claims:

1. An intelligent network component for facilitating communication of traffic between a destination server and a client over a network comprising a plurality of network paths, the network component comprising:

memory for storing computer-readable instructions; and

a processor configured to implement the computer-readable instructions, the computer-readable instructions operable to:

intermittently exchange status information with the client via a control channel using one or more of the plurality of network control paths, the status information including network performance parameters of the plurality of network paths;

encapsulate the traffic for transmission to the client;

decapsulate the traffic received from the client; and

selectively schedule traffic to the client via multiple ones of the plurality of network paths using logic common with the client based on the status information exchanged with the client.

51. On information and belief, Connectify has and continues to make, use, sell, and offer to sell, without authority from Wilmerding, its software applications and services for bandwidth aggregation, including by way of example only, its Speedify software application and service.

52. On information and belief, users of the Speedify software application and/or service directly infringe at least claim 1 of the '319 Patent when they download the Speedify app onto a smartphone or tablet and use the app to connect to the internet, in accordance with the instructions provided by Defendant with its product.

53. On information and belief, through its company and product websites as well as the App Store and Google Play Store, Connectify actively induces smart phone users to

download the Speedify app and use an intelligent network component that infringes at least claim 1 of Wilmerding's '319 Patent. Connectify's sale, offer for sale, and/or importation of the Speedify software application, with instructions to make and use the claimed components of the '319 Patent, induces infringement of the '319 Patent under 35 U.S.C. § 271(b).

54. On information and belief, the Speedify app and/or the Speed Server each is a component of the patented component of Claim 1 of the '319 Patent, that constitutes a material part of the invention, which Defendant knows is especially made for use in the infringement of the '319 Patent, and is not a staple article or commodity of commerce suitable for substantial non-infringing use. Connectify's sale, offer for sale, and/or importation of the Speedify software application, with instructions to make and use the claimed systems of the '319 Patent, are acts of contributory infringement of the '816 Patent under 35 U.S.C. § 271(c).

55. On information and belief, Connectify's manufacture, use, sale, and offer to sell at least its Speedify software application and service, infringes at least claim 1 of Wilmerding's '319 Patent, as demonstrated by Exhibit 6 filed herewith, titled "CLAIM CHART FOR INFRINGEMENT OF U.S. PATENT NO. 9,838,319 - SPEEDIFY."

56. On information and belief, from at least the time of filing of this Complaint, Connectify's infringement has been and continues to be with full knowledge of the '319 Patent and therefore is deliberate and willful.

57. Unless Connectify's infringement is permanently enjoined, Wilmerding will continue to be damaged and irreparably harmed.

DEFENDANT'S WILLFUL INFRINGEMENT

58. The '816, '389, and '319 Patents are groundbreaking and pioneering inventions in the field of bandwidth aggregation technology. Defendant knew or should have known of each of these patents no later than October 30, 2018.

59. By deciding to sell and continuing to sell the Speedify software application and service despite knowing of the '816, '389, and '319 Patents, and without authority from Wilmerding, the Defendant has recklessly disregarded Wilmerding's rights in these patents and willfully infringed these patents. Defendant's conduct is sufficiently egregious to warrant an award of enhanced damages pursuant to 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, Wilmerding prays for the following relief:

1. A declaration that Connecfity has infringed and continues to infringe one or more claims of the '816, '389, and '319 Patents and is liable to Wilmerding for infringement;
2. A declaration that the '816, '389, and '319 Patents are not invalid, and are enforceable;
3. A permanent injunction against Connecfity and its parents, subsidiaries, affiliates, officers, directors, agents, servants, employees, successors and assigns and all others in active concert or participation with any of the foregoing from any further acts of infringement, including contributing to and/or inducing infringement, of the '816, '389, and '319 Patents;
4. An award of damages, including pre-judgment and post-judgment interest, in an amount adequate to compensate Wilmerding for Connecfity's infringement of the '816, '389, and '319 Patents, and that the damages be trebled pursuant to 35 U.S.C. § 284;

5. An equitable accounting of damages owed by Connecfity for the period of infringement of the '816, '389, and '319 Patents, following the period of damages established by Wilmerding at trial;
6. A finding that this case is exceptional and an award of attorneys' fees pursuant to 35 U.S.C. § 285;
7. An award of costs, expenses, and disbursements; and,
8. Such other relief, in law or equity, as the Court deems just and proper.

Dated: March 29, 2019

CHIPMAN BROWN CICERO & COLE, LLP

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