

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

SIPCO, LLC,

Plaintiff,

v.

**ARUBA NETWORKS, INC., and
HEWLETT PACKARD ENTERPRISE
COMPANY**

Defendants.

Civil Action No.

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for Patent infringement in which Plaintiff SIPCO, LLC complains against Defendants Aruba Networks, Inc. and Hewlett Packard Enterprise Company, all upon information and belief, as follows:

Identification of Parties, Jurisdiction and Venue

1. Plaintiff SIPCO, LLC (“SIPCO”) is a limited liability company organized and existing under the laws of the State of Georgia, having its principal office at 13921 Park Center Road, Suite 380, Herndon, Virginia 20171.

2. Defendant Aruba Networks, Inc. (“Aruba”) is a corporation organized under the laws of the State of Delaware with its registered office at Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, and a principal place of business at 333 Scott Blvd., Santa Clara, CA 95054. Aruba is a subsidiary of Hewlett Packard Enterprise Company.

3. Hewlett Packard Enterprise Company (“HPE”) is a corporation organized under the laws of the State of Delaware, with its registered office at Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, and its principal place of business at 3000 Hanover Street, Palo Alto, CA 94304.

4. Aruba and HPE have acted jointly with respect to all matters recited in this Complaint. For example, HPE is the listed applicant before the Federal Communications Commission seeking authorization for at least some, if not all, of the Accused Instrumentalities recited in this Complaint. Hereafter, the term “Aruba” shall include both Aruba and HPE unless otherwise stated.

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant by virtue of the Defendant being a corporation created and existing under the laws of the State of Delaware.

7. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(c) and 1400(b) at least because Aruba is incorporated in this District and resides in this District.

Background

8. SIPCO is a small research, development and technology company now based in Virginia. T. David Petite is a founding member of the company.

9. In the 1990’s, through his own individual research and development efforts, Mr. Petite invented a large number of wireless control and distribution technology applications. The inventions resulting from Mr. Petite’s efforts include, but are not limited to, various ways of moving data as economically and seamlessly as possible over both wired and wireless networks.

10. Through the 1990's and early 2000's investors contributed tens of millions of dollars for technology development and implementation of networks. Clients included Georgia Power, Alabama Power, Newnan Utilities GA, Johnson Controls, Synovus Bank and Grand Court Lifestyles residential living facilities.

11. After proving that the technology worked in the field, several companies competed to purchase an exclusive license to Mr. Petite's technology for the market known as "smart grid." Landis+Gyr (<http://www.landisgyr.com/>) (previously Siemens Metering) took an exclusive license to the smart grid technology in 2002 and in 2005 purchased rights to the technology for utility applications for \$30,000,000. Mr. Petite's technology has been deployed in millions of meters deployed across North America and throughout the world.

12. SIPCO retained the rights to the mesh network Patents, and for use of the technology outside of the utility space. It still maintains ownership of the software, firmware, hardware and Patent portfolio that resulted from Mr. Petite's research and development efforts, and SIPCO continues to develop and deploy wireless technology applications and wireless technology systems throughout the United States.

13. SIPCO's Patent portfolios (of which the Patents in suit are a part) include inventions that are widely recognized as pioneering in various fields of use. As a result, over 100 companies have taken licenses to them. Licensees include companies operating in the vertical markets of Industrial Controls, Smart Grid, Building Automation, Network Backhaul, Home Appliance, Home Automation and Entertainment, Sensor Monitoring, and Internet Service Provisioning. Licensed products include products using standard wireless mesh protocols such as WirelessHART, ZigBee, IEEE 802.15.4, Z-Wave, and as well as proprietary wireless protocols such as that marketed by EnOcean.

14. Plaintiff wrote to Aruba on February 13, 2020, advising that certain Aruba products required were within the scope of the Plaintiff's patent claims. Plaintiff specifically advised Aruba that it was infringing Plaintiff's U.S. Patent Nos. 6,891,838; 7,103,511; 7,263,073; and 8,924,587 by commercializing Aruba Access Point with integrated Zigbee radio (e.g., AP-303P); Aruba Access Point with IOT expansion radio (e.g., AP-510 series, AP-530 series, AP-550 series); Aruba Access Point with integrated BLE radio (e.g., AP-303P, AP-530 series, AP-550 series, etc.).

15. Plaintiff did not receive any response from Aruba. Thus, on March 26, 2020, Plaintiff again wrote to Aruba asking for a response to the original letter, and stating that if no response was received by April 8, 2020, Plaintiff would have no choice but to take action to defend its patent rights. Plaintiff again received no response from Aruba.

16. As a consequence of Aruba's misconduct in refusing to address the ongoing infringement issues, Plaintiff were forced to file the present action.

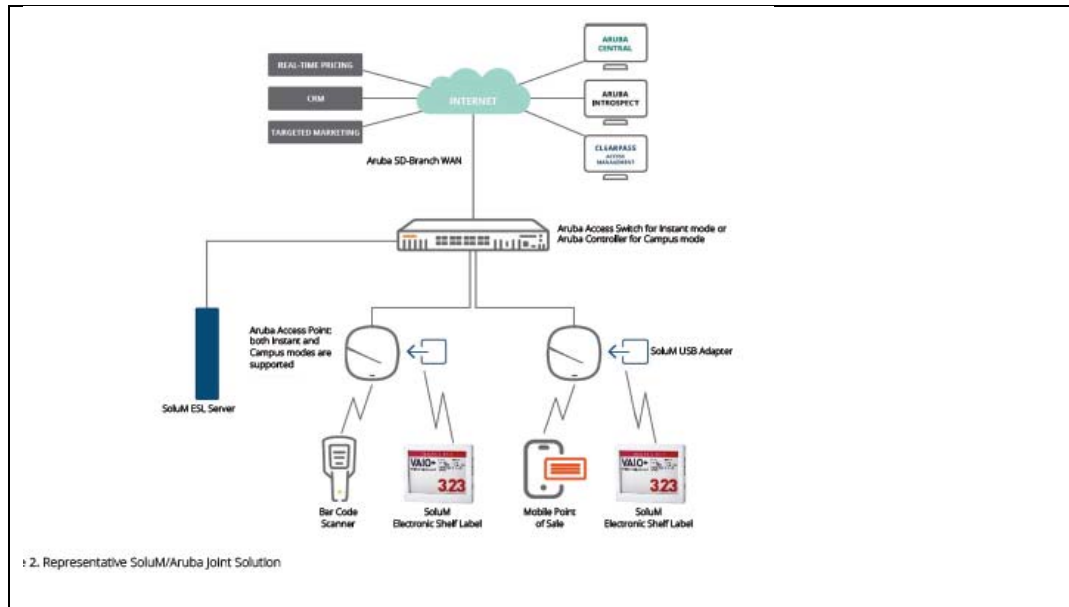
17. For purposes of this Complaint, the term IEEE 802.15.x refers to a technical standard which defines the operation of low-rate wireless personal area networks (LR-WPANs). It specifies the physical layer and media access control for LR-WPANs, and is maintained by the IEEE 802.15 working group. It has been the basis for, *inter alia*, the Zigbee ISA100.11a, Bluetooth and WirelessHART.

18. Exemplary of Aruba's products (including devices, platforms and systems) that infringe Plaintiff's patents are.

- a. Aruba 550 Series with an integrated Bluetooth 5 and/or 802.15.4 radio, and particularly Model APIN0555 (FC ID Q9DAPIN0555).
- b. Aruba 530 Series with an integrated Bluetooth 5 and/or 802.15.4 radio, and

particularly Model APIN0534 and Model APIN0535 (both FC ID Q9DAPIN0534535).

- c. Aruba 510 Series with an integrated Bluetooth 5 and/or 802.15.4 radio, and particularly Model APIN0514 and APIN0515 (FC ID Q9DAPIN0514515).
- d. Aruba 500 Series with an integrated Bluetooth 5 and/or 802.15.4 radio, and particularly Model APIN0505 (FC ID Q9DAPIN0504505).
- e. Aruba 303 Series with an integrated Bluetooth 5 and/or 802.15.4 radio, and particularly Model APINP303 (FC ID Q9DAPINP303) and Model APINO303 (FC ID Q9DAPINO303).
- f. Aruba Secure Enterprise Mesh is an Aruba solution to expand network coverage for outdoor and indoor enterprise environments. The Aruba Secure Enterprise Mesh extends wireless coverage by bridging, *inter alia*, the points identified as a through e, above.
- g. SoluM ESL Gateway. This is an optional third-party 802.15.4 Zigbee-based USB dongle provided, supported and/or recommended by Aruba. Aruba's proposed use of the SoluM gateway is reflected in the following Figure in Aruba's "Aruba and SoluM" datasheet:



The SoluM plugs into the USB port of an Aruba AP, obtains an IP address, and transfers data from a SoluM gateway server to the ESL tags that are within the range of the SoluM gateway. The SoluM gateway works as a wired client to the ESL tags and SoluM gateway. The USB port of the AP works as a wired Ethernet port and supports bridge mode. An Ethernet port on the AP allows the SoluM gateway traffic to pass through.

19. The above products may hereafter be referred to as the Accused Instrumentalities.

**COUNT I
INFRINGEMENT OF U.S. PATENT NO. 6,891,838**

20. Plaintiff hereby restates and re-alleges the allegations set forth in the preceding paragraphs 1-19 and incorporates them by reference.

21. On May 10, 2005, United States Patent No. 6,891,838 (“the ‘838 Patent”), titled “System and Method for Monitoring and Controlling Remote Devices,” was duly and legally issued by the United States Patent and Trademark Office to inventor Thomas D. Petite. The ‘838

Patent thereafter was reexamined by the United States Patent and Trademark Office in proceedings numbered Reexamination Serial Numbers 90/010,301; 90/010,510; 90/010,511; and 90/010,512. On September 6, 2011 Reexamination Certificate 6,891,838C1 was issued by the United States Patent and Trademark Office. A copy of the '838 Patent, including the original Patent and Reexamination Certificate 6,891,838C1, is attached hereto as Exhibit A.

22. Plaintiff SIPCO is the owner by assignment of the '838 Patent.

23. Defendant Aruba has directly and literally infringed from September 6, 2011 and continues to infringe at least independent claim 40 and dependent claim 44 (or under the doctrine of equivalents if any limitation of any asserted claim was to be found not literally present) by making, having had made, using, offering for sale and/or selling the Accused Instrumentalities. The correspondence between claims 40 and 44 of the '838 Patent and representative Aruba Accused Instrumentalities is shown in Exhibit B.

24. Aruba has been aware of the '838 Patent and its application to Aruba's products since at least February 17, 2020, when Plaintiff sent its first letter to Aruba.

25. Aruba's acts of infringement have caused and continue to cause damage to Plaintiff. Plaintiff are entitled to recover from Aruba the damages sustained to Plaintiff as a result of Aruba's wrongful acts.

26. Aruba has never responded to Plaintiff's letters with any explanation of why Aruba is not infringing, and without any attempt to justify its continuing infringement. Aruba's acts of infringement have been willful.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 7,103,511

27. Plaintiff hereby restates and re-alleges the allegations set forth in the preceding

paragraphs 1-19 and incorporates them by reference.

28. On September 5, 2006, United States Patent No. 7,103,511 titled “Wireless Communication Networks For Providing Remote Monitoring Of Devices,” was duly and legally issued by the United States Patent and Trademark Office to inventor Thomas D. Petite. Patent No. 7,103,511 was thereafter reexamined by the United States Patent and Trademark Office in proceedings numbered Reexamination Serial Numbers 90/010,505; 90/010,510; 90/010,507; 90/010,508 and 90/010,509. On October 25, 2011 Reexamination Certificate 7,103,511C1 was issued by the United States Patent and Trademark Office. Patent No. 7,103,511 was thereafter further reexamined by the United States Patent and Trademark Office in proceeding numbered Reexamination Serial Numbers 90/014,206. On September 9, 2019 Reexamination Certificate 7,103,511C2 was issued by the United States Patent and Trademark Office. A copy of Patent 7,103,511, including Reexamination Certificate 7,103,511C1, Reexamination Certificate 7,103,511C2 and a Certificate of Correction (collectively the ‘511 Patent), is attached hereto as Exhibit C.

29. Plaintiff Sipco is the owner of the Patent by assignment.

30. On February 2, 2015, FieldComm Group instituted an Inter Partes Review proceeding, in which the Petitioner alleged the unpatentability of claims 1–4, 6–11, 27–47, and 51–64 of Patent 7,103,511, as amended by Reexamination Certificate 7,103,511C1, IPR2015-00663. The Patent Trial And Appeal Board of the United States Patent and Trademark Office, however, denied the petition on grounds of lack of evidence of unpatentability.

31. On August 3, 2018, Sipco filed a complaint with the United States International Trade Commission (“ITC”) against Respondents Analog Devices, Inc., Linear Technology LLC, Emerson Electric Co., Emerson Process Management LLLP, Emerson Process Management Asia

Pacific Private Ltd., Emerson Process Management Manufacturing (M) Sdn. Bhd., Fisher-Rosemount Systems, Inc., Rosemount Inc., and Rosemount Inc. (collectively, "Respondents"). On September 5, 2018, the ITC instituted Investigation Number 337-1131, titled "Certain Wireless Mesh Networking Products and Related Components Thereof," Inv. No. 337-TA-1131. ("ITC Action"). The ITC Action involved originally U.S. Patent No. 6,914,893; 7,103,511; 8,964,708; and 9,439,126. Subsequently, Patents 7,103,511; and 9,439,126 were withdrawn, and the ITC Action was terminated as to those two patents.

32. In the ITC Action, the ITC Markman Order determined that the term "wide area network (WAN)," which is an element of all the '511 claims, was indefinite. The ITC had no jurisdiction to issue the determination as to the '511 Patent, because the '511 Patent was withdrawn and the ITC had already terminated investigation as to the '511 Patent, when the ITC Markman Order was issued. Further, even if the ITC Markman Order was properly entered, the ITC Markman Order as to this term is legally erroneous and will be challenged in future proceedings. Further, the determination as to this term is inconsistent with prior judicial construction of the term by the federal courts. See *SIPCO, LLC v. Amazon.com, Inc.*, 2012 WL 5195942 at *16 (E.D. Tex. 2012) ("construes the term 'wide area network' to have its plain and ordinary meaning," which "does not include a local area network"); see also *SIPCO, LLC v. ABB, Inc.*, 2012 WL 3112302 (E.D. Tex. 2012), adopted 2012 WL 12842877 (E.D. Tex. 2012).

33. Defendant Aruba has directly and literally infringed from September 6, 2011 and continues to infringe at least independent claim 1 (or under the doctrine of equivalents if any limitation of any asserted claim was to be found not literally present) by making, having had made, using, offering for sale and/or selling the Accused Instrumentalities. The correspondence between claim 1 of the '511 Patent and representative Aruba Accused Instrumentalities is shown

in Exhibit D.

34. Aruba has been aware of the '511 Patent and its application to Aruba's products since at least February 17, 2020, when Plaintiff sent its first letter to Aruba.

35. Aruba's acts of infringement have caused and continue to cause damage to Plaintiff. Plaintiff are entitled to recover from Aruba the damages sustained to Plaintiff as a result of Aruba's wrongful acts.

36. Aruba has never responded to Plaintiff's letters with any explanation of why Aruba is not infringing, and without any attempt to justify its continuing infringement. Aruba's acts of infringement have been willful.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 8,335,304

37. Plaintiff hereby restates and re-alleges the allegations set forth in the preceding paragraphs 1-19 and incorporates them by reference.

38. On December 12, 2012, United States Patent No. 8,335,304 titled "Wireless Communication Networks For Providing Remote Monitoring Of Devices," was duly and legally issued by the United States Patent and Trademark Office to inventor Thomas D. Petite ('304 Patent). A copy of the '304 Patent is attached hereto as Exhibit E.

39. Plaintiff SIPCO is the owner by assignment of the '304 Patent.

40. Aruba has directly infringed under 35 U.S.C. § 271(a) at least claim 7 of the '304 Patent by itself practicing the steps of the method claim. In developing, making, using and commercializing the Accused Instrumentalities, Aruba necessarily had to practice the steps of claim 7. The correspondence between claim 7 of the '304 Patent and Aruba actions and/or the normal practice of the Accused Instrumentalities is shown in Exhibit F.

41. Where acts constituting direct infringement of the '304 Patent had not been performed by Aruba, such acts constituting direct infringement of the '304 Patent were performed by Aruba's customers or end-users.

42. Aruba indirectly infringed at least claim 7 of the '304 patent by active inducement in violation of 35 U.S.C. § 271(b), by at least manufacturing, supplying, distributing, selling and/or offering for sale the Accused Instrumentalities to their customers with the knowledge and intent that use of those products would constitute direct infringement of the '304 patent. Aruba further encouraged, instructed, enabled, and otherwise caused Aruba's customers to use the Accused Instrumentalities in a manner which infringed the '304 Patent claim 7 by practicing the steps of the claim. Aruba at least should have been on notice of the '304 Patent at the time of the foregoing actions.

43. Further, Aruba also indirectly infringed at least claim 7 of the '304 Patent by contributory infringement in violation of 35 U.S.C. § 271(c). Aruba was aware that components of the Accused Instrumentalities are a material and substantial part of the invention claimed by the '304 Patent, and that they are designed for a use that is both patented and infringing, and that has no substantial non-infringing uses. Aruba at least should have been on notice of the '304 Patent at the time of the foregoing actions.

44. Aruba's acts of infringement have caused and continue to cause damage to Plaintiff. Plaintiff are entitled to recover from Aruba the damages sustained to Plaintiff as a result of Aruba's wrongful acts.

**COUNT IV
INFRINGEMENT OF U.S. PATENT NO. 8,924,587**

45. Plaintiff hereby restates and re-alleges the allegations set forth in the preceding paragraphs 1-19 and incorporates them by reference.

46. On December 30, 2014, United States Patent No. 8,924,587 (“the ‘587 Patent”), titled “Systems And Methods For Controlling Communication Between A Host Computer And Communication Devices,” was duly and legally issued by the United States Patent and Trademark Office to the inventor. A copy of the ‘587 Patent is attached as Exhibit G.

47. Plaintiff SIPCO is the owner by assignment of the ‘587 Patent.

48. Aruba has directly and literally infringed at least independent claim 3 of the Patent (or under the doctrine of equivalents if any limitation of any asserted claim was to be found not literally present) by making, having had made, used, offered for sale and/or sold the Accused Instrumentalities. The correspondence between claim 3 of the ‘587 Patent and representative Aruba Accused Instrumentalities is shown in Exhibit H.

49. Plaintiff has complied with 35 U.S.C. § 287(a), because (a) Plaintiff has not itself made, offered for sale or sold a product within the scope of any claim of the ‘587 Patent; and (b) has required all licensees under the ‘587 Patent to mark with the ‘587 Patent number any products that the licensee has made, offered for sale or sold under the license to the ‘587 Patent.

50. Aruba’s acts of infringement have caused and continue to cause damage to Plaintiff. Plaintiff are entitled to recover from Aruba the damages sustained to Plaintiff as a result of Aruba’s wrongful acts..

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter:

- A. A judgment in favor of Plaintiff that Defendants have directly infringed Patents 6,891,838; 7,103,511; 8,335,304 and 8,924,587 under 35 U.S.C. § 271(a); and indirectly infringed Patent 8,335,304 under 35 U.S.C. § 271(b) and/or (c);
- B. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, prejudgment and post-judgment interest, and post-judgment royalties for Aruba's infringement of Patents 6,891,838; 7,103,511; 8,335,304 and 8,924,587, as provided under 35 U.S.C. § 284;
- C. A judgment and order holding that Defendants' infringement as to Patents Nos. 6,891,838 and 7,103,511 was willful, and awarding treble damages and attorney fees and expenses;
- D. Judgment that this is an exceptional case, and, thus, awarding attorney fees and expenses to Plaintiff; and
- E. Any and all other relief to which the Court may deem Plaintiff entitled.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Respectfully Submitted,

/s/ George Pazuniak

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