

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

UNM RAINFOREST INNOVATIONS,

Plaintiff,

v.

TP-LINK TECHNOLOGIES CO., LTD., and
TP-LINK CORPORATION LIMITED,

Defendants.

CIVIL ACTION NO. 6:19-CV-00262-ADA

JURY TRIAL DEMANDED

**PLAINTIFF'S FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND JURY DEMAND**

Plaintiff UNM Rainforest Innovations (“UNMRI”) files this First Amended Complaint for Patent Infringement and Jury Demand against Defendants TP-Link Technologies Co., Ltd. and TP-Link Corporation Limited (collectively “Defendants” or “TP-Link”) Plaintiff alleges infringement of United States Patent Number 8,265,096 (“’096 Patent”) as follows:

I. PARTIES

1. Plaintiff UNMRI is a New Mexico nonprofit research park corporation formed, owned, and controlled entirely by the Board of Regents of the University of New Mexico (“UNM”).

2. UNM is a public educational institution based in Albuquerque, New Mexico and serves as the State of New Mexico’s flagship research institution. UNM serves over 25,000 students and comprises over 1,700 faculty members across its main campus in Albuquerque and branch campuses in Gallup, Los Alamos, Rio Rancho, Taos, and Los Lunas, New Mexico.

3. Over the past 20 years, UNM researchers have disclosed over 1,700 new inventions resulting in the issue of over 500 United States patents.

4. UNMRI's mission includes nurturing inventions researched and developed at UNM, promoting technological collaboration between UNM and other universities and research institutes, and thereby catalyzing economic development in the State of New Mexico.

5. UNMRI furthers its mission by licensing and, if necessary, enforcing its inventions and reinvesting proceeds into continued research and development at and technological collaboration with UNM, for the benefit of and for the State of New Mexico and the United States.

6. UNMRI is located at the UNM Lobo Rainforest Building, 101 Broadway Boulevard, Suite 1100, Albuquerque, New Mexico 87102.

7. Plaintiff UNMRI, UNM, and the Board of Regents of UNM are arms of the State of New Mexico and enjoy sovereign immunity under common law, statutes, and constitutions of the United States and the State of New Mexico including, but not limited to, the Eleventh Amendment of the United States Constitution and Article 12 of the New Mexico Constitution. *See Regents of University of New Mexico v. Knight*, 321 F.3d 1111 (Fed. Cir. 2003); *STC.UNM v. Quest Diagnostics Inc.*, CIV 17-1123 MV/KBM, 2019 WL 1091390, at *1 (D.N.M. Mar. 8, 2019).

8. By filing this lawsuit or prosecuting this action, Plaintiff UNMRI does not waive, either expressly or implicitly, its sovereign immunity, the sovereign immunity of UNM or its Board of Regents, or the sovereign immunity enjoyed by any arm of the State of New Mexico under the laws of the United States or the State of New Mexico, to any *inter partes* review, *ex parte* reexamination, or other post-grant proceeding at the United States Patent and Trademark Office or its Patent Trial and Appeal Board, to any other administrative actions or proceedings whatsoever, to any noncompulsory counterclaims, or to any other federal or state proceedings whatsoever, whether initiated by Defendants or an entity other than Defendants.

9. Defendant TP-Link Technologies Co., Ltd. is a Chinese company with an address

at South Building, No. 5 Keyuan Road, Central Zone Science & Technology Park, Nanshan, Shenzhen, Guangdong Province, People's Republic of China, Postcode: 518057.

10. Defendant TP-Link Corporation Limited f/k/a TP-Link International Ltd. is a corporation organized and existing under the laws of Hong Kong with an address at Room 901, 9/F., New East Ocean Centre, 9 Science Museum Road, Tsim Sha Tsui, Kowloon, Hong Kong.

II. JURISDICTION

11. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This is a patent infringement lawsuit over which this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

12. This United States District Court for the Western District of Texas has general and specific personal jurisdiction over Defendants because Defendants are present in and transact and conduct business in and with residents of this District and the State of Texas.

13. UNMRI's causes of action arise, at least in part, from Defendants' contacts with and activities in this District and the State of Texas.

14. Defendants have committed acts of infringing the '096 Patent within this District and the State of Texas by making, using, selling, offering for sale, and/or importing in or into this District and elsewhere in the State of Texas products made by practicing the claimed method of the '096 Patent. Defendants, directly and through intermediaries, make, use, sell, offer for sale, ship, distribute, advertise, promote, and/or otherwise commercialize such infringing products in this District and the State of Texas. Defendants regularly conduct and solicit business in, engage in other persistent courses of conduct in, and/or derive substantial revenue from goods and services provided to residents of this District and the State of Texas.

III. VENUE

15. Venue is proper for Defendants in this District because venue in a patent

infringement action against a foreign defendant is proper in any judicial district. *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1520 n.2 (2017) (citing *Brunette Mach. Works, Ltd. v. Kochum Indus., Inc.*, 406 U.S. 706, 711–714 (1972)).

16. UNMRI does not waive its sovereign immunity as to any venue, including district courts and administrative tribunals, other than this Court, namely the United States District Court for the Western District of Texas, Waco Division.

IV. UNITED STATES PATENT NUMBER 8,265,096

17. United States Patent Number 8,265,096 is titled “Method for Constructing Frame Structures.” The ’096 Patent issued from United States Patent Application Number 12/168,855, which was filed on July 7, 2008 and claims priority to United States Provisional Patent Application Number 60/929,798, which was filed on July 12, 2007, and United States Provisional Patent Application Number 60/973,157, which was filed on September 17, 2007. The ’096 Patent issued on September 11, 2012. A true and correct copy of the ’096 Patent is attached as Exhibit A.

18. The ’096 Patent claims patent-eligible subject matter and is valid and enforceable.

19. The ’096 Patent’s named inventors are Yan-Xiu Zheng, Ren-Jr Chen, Chang-Lung Hsiao, and Pang-An Ting.

20. The ’096 Patent’s original patentee was the Industrial Technology Research Institute (“ITRI”), which acquired exclusive ownership of the patented invention by written assignments from Yan-Xiu Zheng, Ren-Jr Chen, Chang-Lung Hsiao, and Pang-An Ting, recorded in the United States Patent and Trademark Office (“USPTO”) on or about April 16, 2009.

21. Thereafter, ITRI conveyed to Sino Matrix Technology, Inc. (“SMT”) all rights, title, and interest in and to the ’096 Patent, including the right to sue and recover for past infringements, by written assignment recorded in the USPTO on or about March 14, 2018.

22. Thereafter, SMT conveyed to Plaintiff all rights, title, and interest in and to the ’096

Patent, including the right to sue and recover for past infringements, by written assignment recorded in the USPTO on or about September 11, 2018.

23. Defendants are not licensed to the '096 Patent, either expressly or implicitly, nor do they enjoy or benefit from any rights in or to the '096 Patent whatsoever.

V. THE ACCUSED INSTRUMENTALITIES

24. Defendants design, manufacture, import, use, sell, offer for sale, and market products and processes, including communications equipment, networking devices, wireless receivers, and wireless routers, and other systems, which are configured to operate on or with the IEEE 802.11ac and/or IEEE 802.11ax wireless local area networking standard(s).

25. Defendants' "Accused Instrumentalities" include all products and processes configured to operate on or with the IEEE 802.11ac and/or IEEE 802.11ax wireless local area networking standard(s) (referred to as "Wireless Local Area Networks").

26. The Accused Instrumentalities include, but are not necessarily limited to, the following products: EAP265 HD, EAP245, EAP235-Wall, EAP225-Wall, EAP225-Outdoor, EAP225, Archer A8, Archer A54, Archer C80, Archer C50, Archer C4000, Archer C5400X, Archer A6, Archer A20, Archer A10, Archer C2300, Archer A9, Archer A7, Archer C6, Archer C80, Archer C7, Archer C59, Archer C20, TL-WR902AC, TL-WA1201, RE220, RE205, RE230, RE305, RE200, RE300, RE400, RE450, RE215, RE315, RE550, RE330, RE650, EAP620 HD, EAP610, EAP660 HD, Archer AX55, Archer GX90, Archer AX11000, Archer AX6000, Archer AX50, Archer AX3000, Archer AX21, Archer AX1800, Archer AX20, Archer AX10, Archer AX1500, Archer AX3200, Archer AX90, Archer AX73, RE700X, RE605X, RE603X, RE600X, RE500X, and RE505X.

**VI. DIRECT, INDUCED, AND CONTRIBUTORY INFRINGEMENT
OF THE '096 PATENT**

27. Defendants' Accused Instrumentalities capable of operation on a Wireless Local Area Network employ the patented frame structure for data transmission in which legacy communication format and very high throughput communication format are combined into a unitary frame structure. An exemplary chart illustrating this and how at least one claim of the '096 Patent covers an Accused Instrumentality is attached as Exhibit B.

28. Defendants have and continue to directly infringe the '096 Patent, literally and/or under the doctrine of equivalents, by making, using, selling, offering for sale, and/or importing in or into the United States one or more apparatuses that embody and practice at least claim 8 of the '096 Patent in violation of 35 U.S.C. § 271(a), including but not limited to Defendants' Accused Instrumentalities capable of operation on a Wireless Local Area Network.

29. Defendants likewise, with knowledge of the '096 Patent, and without authority, have actively induced and continues to actively induce infringement of at least claim 8 of the '096 Patent under 35 U.S.C. § 271(b), by intentionally inducing the infringing use, offer for sale, and/or sale of the Accused Instrumentalities by and with Wireless Local Area Networks and their operators and end-users. Each Accused Instrumentality employs the patented frame structure for data transmission in either the legacy format or the VHT format within a single frame. The Accused Instrumentalities are designed to be used by and with Wireless Local Area Networks and their operators in an infringing manner that practices the '096 Patent. Similarly, the Accused Instrumentalities are configured to be used by end-users of the Wireless Local Area Networks in an infringing manner that practices the '096 Patent.

30. Defendants actively induce Wireless Local Area Network operators and end-users to practice the '096 Patent, without authority, by, *inter alia*, designing and introducing into the

stream of commerce the Accused Instrumentalities, which employ the patented frame structure for data transmission. Defendants encourage infringing use of the Accused Instrumentalities by the Wireless Local Area Network operators and end-users by, for example, publishing manuals and promotional literature describing and instructing in the operation of the Accused Instrumentalities in an infringing manner. At the encouragement by and direction of Defendants, the Wireless Local Area Network operators sell and offer for sale Accused Instrumentalities to end-users to be used in an infringing manner. Such conduct results in induced infringements of at least claim 8 of the '096 Patent when the Accused Instrumentalities are used for their intended purpose.

31. Defendants likewise are liable for contributory infringement. Defendants, with knowledge of the '096 Patent, and without authority, have offered to sell, sold, and/or imported into the United States the Accused Instrumentalities for use in practicing the patented apparatus and methods embodied in at least claim 8, which use constitutes a material part of the claimed invention. Defendants offered to sell, sold, and/or imported into the United States the Accused Instrumentalities knowing that each is especially made or adapted for use in infringing the '096 Patent, and that each is not a staple article or commodity of commerce suitable for substantial noninfringing use as packaged, advertised, and/or sold because the Accused Instrumentalities are pre-configured by Defendants to employ the patented frame structure for data transmission.

32. Defendants' direct, indirect, and contributory infringement of the '096 Patent has caused, and will continue to cause, substantial and irreparable damage to Plaintiff. Plaintiff is, therefore, entitled to an award of damages adequate to compensate for Defendants' infringement of the '096 Patent, but not less than a reasonable royalty, together with pre- and post-judgment interest and costs as fixed by the Court under 35 U.S.C. § 284.

VII. JURY DEMAND

33. Plaintiff UNMRI hereby demands a trial by jury for all causes of action.

VIII. PRAYER FOR RELIEF

34. Plaintiff requests the following relief:

A. A judgment that Defendants have directly infringed either literally and/or under the doctrine of equivalents and continues to directly infringe the '096 Patent;

B. A judgment that Defendants have induced infringement and continues to induce infringement of the '096 Patent;

C. A judgment that Defendants have contributorily infringed and continues to contributorily infringe the '096 Patent;

D. A judgment and order requiring Defendants to pay Plaintiff damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement through entry of the final judgment with an accounting as needed;

E. A judgment that this is an exceptional case within the meaning of 35 U.S.C. § 285 and Plaintiff is therefore entitled to reasonable attorneys' fees.

F. A judgment and order requiring Defendants to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded;

G. A judgment and order awarding a compulsory ongoing royalty;

H. A judgment granting a preliminary and permanent injunction that restrains and enjoins Defendants, its officers, directors, employees, agents, servants, parents, subsidiaries, successors, assigns, and all those in privity, concert or participation with them from directly or indirectly infringing the '096 Patent; and

I. Such other and further relief as the Court deems just and equitable.

DATED: May 16, 2023

Respectfully submitted,

By: /s/ Corey M. Lipschutz

Michael W. Shore (Texas 18294915)
THE SHORE FIRM
901 Main Street, Suite 3300
Dallas, Texas 75202
Tel: (214) 593-9110
Fax: (214) 593-9111
mshore@shorefirm.com

Charles L. Ainsworth (Texas 00783521)
Robert Christopher Bunt (Texas 00787165)
PARKER, BUNT & AINSWORTH, P.C.
100 East Ferguson, Suite 418
Tyler, Texas 75702
Tel: (903) 531-3535
charley@pbatyler.com
rcbunt@pbatyler.com

Brian D. Melton (Texas 24010620)
John P. Lahad (Texas 24068095)
Corey M. Lipschutz (Texas 24099303)
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002-5096
Tel: (713) 651-9366
Fax: (713) 654-6666
bmelton@susmangodfrey.com
jlahad@susmangodfrey.com
clipschutz@susmangodfrey.com

Mark D. Siegmund (Texas 24117055)
STECKLER WAYNE CHERRY & LOVE, PLLC
8416 Old McGregor Road
Waco, Texas 76712
Tel: (254) 651-3690
Fax: (254) 651-3689
mark@swclaw.com

Counsel for Plaintiff
UNM Rainforest Innovations

Ellie R. Dupler (CA Bar No. 337607)
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
Tel: (310) 789-3100
Fax: (310) 789-3150
edupler@susmangodfrey.com

CERTIFICATE OF SERVICE

I hereby certify that I served counsel of record on May 16, 2023, with a copy of this document via the Court's CM/ECF system.

/s/ Corey M. Lipschutz
Corey M. Lipschutz