

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

NETGEAR, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
INNOVATIO IP VENTURES, LLC,	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
Defendant.	)	

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff NETGEAR, Inc. ("NETGEAR"), for its complaint against Innovatio IP Ventures, LLC ("Innovatio"), hereby alleges as follows:

**NATURE OF THIS ACTION**

1. This is an action for declaratory judgment of noninfringement and invalidity of seventeen United States patents pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the United States Patent Laws, 35 U.S.C. § 1 *et seq.*, and for such other relief as the Court deems just and proper.

**THE PARTIES**

2. Plaintiff NETGEAR is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 350 East Plumeria Drive, San Jose, California, 95134.

3. On information and belief, Defendant Innovatio is a limited liability company organized under the laws of the State of Delaware that was formed in February 2011. Innovatio is in the business of enforcing and licensing patents. Innovatio does not sell or offer for sale any products.

**JURISDICTION AND VENUE**

4. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

5. This Court has personal jurisdiction over Innovatio.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391.

7. Innovatio has accused numerous entities of infringing U.S. Patent Nos. 6,714,559, 7,386,002, 7,535,921, 7,548,553, 5,740,366, 5,940,771, 6,374,311, 7,457,646, 5,546,397, 5,844,893, 6,665,536, 6,697,415, 7,013,138, 7,710,907, 7,916,747, 7,873,343, and 7,536,167 (the “Patents-In-Suit”) in connection with their alleged use of certain wireless networking equipment. In particular, Innovatio has sent letters to numerous of NETGEAR’s customers (“Accused Customers”) alleging that Innovatio owns “controlling patents in the area of WLAN (e.g., Wi-Fi) and mesh networking technologies,” including the Patents-In-Suit, and that an Accused Customer infringes the Innovatio patents by operating “WLANs deployed in any manufacturing, distribution, retail, inventory management, warehousing, industrial monitoring or control, ‘smart energy,’ or corporate office environments” and that “claims of the Innovatio Patents cover, among other things, WLANs that use the IEEE 802.11 communication protocols.” Innovatio also has alleged that Accused Customers infringe the Patents-In-Suit by operating “WLANs at [their] retail locations, which networks provide [Accused Customer] customers and/or employees wireless network access.”

8. Plaintiff NETGEAR manufactures and sells products that are the subject of the accusations against the Accused Customers referenced above. NETGEAR supplies or has supplied one or more Accused Customers with such products.

9. NETGEAR has received demands from Accused Customers for indemnity against Innovatio's patent infringement claims.

10. NETGEAR and its products have not infringed and do not infringe, either directly or indirectly, any valid and enforceable claim of any of the Patents-in-Suit, either literally or under the doctrine of equivalents. A substantial controversy exists between the parties which is of sufficient immediacy and reality to warrant declaratory relief.

11. On information and belief, Innovatio granted Broadcom Corporation ("Broadcom") a license that includes rights to make, have made, use, sell, offer for sale or import products covered by the Patents-In-Suit. To the extent Innovatio's allegations of infringement are premised on the alleged making, use, sale, offer for sale, or importation of NETGEAR's products that incorporate Broadcom parts, such allegations are barred pursuant to such license and/or the doctrine of exhaustion.

12. On information and belief, Broadcom granted Agere Systems ("Agere") a license that includes rights to make, have made, use, sell, offer for sale, or import products covered by the Patents-In-Suit. To the extent Innovatio's allegations of infringement are premised on the alleged making, use, sale, offer for sale, or importation of NETGEAR's products that incorporate Agere parts, such allegations are barred pursuant to such license and/or the doctrine of exhaustion.

13. On information and belief, Broadcom granted STMicroelectronics a license that includes rights to make, have made, use, sell, offer for sale, or import products covered by the Patents-In-Suit. To the extent Innovatio's allegations of infringement are premised on the alleged making, use, sale, offer for sale, or importation of NETGEAR's products

that incorporate STMicroelectronics parts, such allegations are barred pursuant to such license and/or the doctrine of exhaustion.

14. On information and belief, Broadcom granted Qualcomm, Inc. (“Qualcomm”) a license that includes rights to make, have made, use, sell, offer for sale, or import products covered by the Patents-In-Suit. To the extent Innovatio’s allegations of infringement are premised on the alleged making, use, sale, offer for sale, or importation of NETGEAR’s products that incorporate Qualcomm parts, such allegations are barred pursuant to such license and/or the doctrine of exhaustion.

15. On information and belief, Broadcom granted Intermec Technologies Corp. (“Intermec”) a license that includes rights to make, have made, use, sell, offer for sale, or import products covered by the Patents-In-Suit. To the extent Innovatio’s allegations of infringement are premised on the alleged making, use, sale, offer for sale, or importation of NETGEAR’s products that incorporate Intermec parts, such allegations are barred pursuant to such license and/or the doctrine of exhaustion.

16. On information and belief, at least some of the products accused of infringement by Innovatio are licensed.

#### **THE PATENTS-IN-SUIT**

17. U.S. Patent No. 6,714,559 (“the ‘559 patent”) is entitled “Redundant Radio Frequency Network Having A Roaming Terminal Communication Protocol” and bears an issuance date of March 30, 2004. A copy of the ‘559 patent is attached hereto as Exhibit 1.

18. U.S. Patent No. 7,386,002 (“the ‘002 patent”) is entitled “Redundant Radio Frequency Network Having A Roaming Terminal Communication Protocol” and bears an issuance date of June 10, 2008. A copy of the ‘002 patent is attached hereto as Exhibit 2.

19. U.S. Patent No. 7,535,921 (“the ‘921 patent”) is entitled “Redundant Radio Frequency Network Having A Roaming Terminal Communication Protocol” and bears an issuance date of May 19, 2009. A copy of the ‘921 patent is attached hereto as Exhibit 3.

20. U.S. Patent No. 7,548,553 (“the ‘553 patent”) is entitled “Redundant Radio Frequency Network Having A Roaming Terminal Communication Protocol” and bears an issuance date of June 19, 2009. A copy of the ‘553 patent is attached hereto as Exhibit 4.

21. U.S. Patent No. 5,740,366 (“the ‘366 patent”) is entitled “Communication Network Having A Plurality Of Bridging Nodes Which Transmit A Beacon To Terminal Nodes In Power Saving State That It Has Messages Awaiting Delivery” and bears an issuance date of April 14, 1998. A copy of the ‘366 patent is attached hereto as Exhibit 5.

22. U.S. Patent No. 5,940,771 (“the ‘771 patent”) is entitled “Network Supporting Roaming, Sleeping Terminals” and bears an issuance date of August 17, 1999. A copy of the ‘771 patent is attached hereto as Exhibit 6.

23. U.S. Patent No. 6,374,311 (“the ‘311 patent”) is entitled “Communication Network Having A Plurality Of Bridging Nodes Which Transmit A Beacon To Terminal Nodes In Power Saving State That It Has Messages Awaiting Delivery” and bears an issuance date of April 16, 2002. A copy of the ‘311 patent is attached hereto as Exhibit 7.

24. U.S. Patent No. 7,457,646 (“the ‘646 patent”) is entitled “Radio Frequency Local Area Network” and bears an issuance date of November 25, 2008. A copy of the ‘646 patent is attached hereto as Exhibit 8.

25. U.S. Patent No. 5,546,397 (“the ‘397 patent”) is entitled “High Reliability Access Point For Wireless Local Area Network” and bears an issuance date of August 13, 1996. A copy of the ‘397 patent is attached hereto as Exhibit 9.

26. U.S. Patent No. 5,844,893 (“the ‘893 patent”) is entitled “System For Coupling Host Computer Means With Base Transceiver Units On A Local Area Network” and bears an issuance date of December 1, 1998. A copy of the ‘893 patent is attached hereto as Exhibit 10.

27. U.S. Patent No. 6,665,536 (“the ‘536 patent”) is entitled “Local Area Network Having Multiple Channel Wireless Access” and bears an issuance date of December 16, 2003. A copy of the ‘536 patent is attached hereto as Exhibit 11.

28. U.S. Patent No. 6,697,415 (“the ‘415 patent”) is entitled “Spread Spectrum Transceiver Module Utilizing Multiple Mode Transmission” and bears an issuance date of February 24, 2004. A copy of the ‘415 patent is attached hereto as Exhibit 12.

29. U.S. Patent No. 7,013,138 (“the ‘138 patent”) is entitled “Local Area Network Having Multiple Channel Wireless Access” and bears an issuance date of March 14, 2006. A copy of the ‘138 patent is attached hereto as Exhibit 13.

30. U.S. Patent No. 7,710,907 (“the ‘907 patent”) is entitled “Local Area Network Having Multiple Channel Wireless Access” and bears an issuance date of May 4, 2010. A copy of the ‘907 patent is attached hereto as Exhibit 14.

31. U.S. Patent No. 7,916,747 (“the ‘747 patent”) is entitled “Redundant Radio Frequency Network Having A Roaming Terminal Communication Protocol” and bears an issuance date of March 29, 2011. A copy of the ‘747 patent is attached hereto as Exhibit 15.

32. U.S. Patent No. 7,873,343 (“the ‘343 patent”) is entitled “Communication Network Terminal With Sleep Capability” and bears an issuance date of January 18, 2011. A copy of the ‘343 patent is attached hereto as Exhibit 16.

33. U.S. Patent No. 7,536,167 (“the ‘167 patent”) is entitled “Network Supporting Roaming, Sleeping Terminals” and bears an issuance date of May 19, 2009. A copy of the ‘167 patent is attached hereto as Exhibit 17.

**COUNT I - DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,714,559**

34. NETGEAR repeats and realleges the allegations in paragraphs 1-33 as though fully set forth herein.

35. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the ‘559 patent, either literally or under the doctrine of equivalents.

36. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

37. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the ‘559 patent.

**COUNT II - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,714,559**

38. NETGEAR repeats and realleges the allegations in paragraphs 1-37 as though fully set forth herein.

39. The ‘559 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

40. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

41. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the ‘559 patent.

**COUNT III –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,386,002**

42. NETGEAR repeats and realleges the allegations in paragraphs 1-41 as though fully set forth herein.

43. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '002 patent, either literally or under the doctrine of equivalents.

44. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

45. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '002 patent.

**COUNT IV - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,386,002**

46. NETGEAR repeats and realleges the allegations in paragraphs 1-45 as though fully set forth herein.

47. The '002 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

48. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

49. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '002 patent.



**COUNT V –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,535,921**

50. NETGEAR repeats and realleges the allegations in paragraphs 1-49 as though fully set forth herein.

51. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '921 patent, either literally or under the doctrine of equivalents.

52. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

53. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '921 patent.

**COUNT VI - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,535,921**

54. NETGEAR repeats and realleges the allegations in paragraphs 1-53 as though fully set forth herein.

55. The '921 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

56. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

57. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '921 patent.

**COUNT VII –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,548,553**

58. NETGEAR repeats and realleges the allegations in paragraphs 1-57 as though fully set forth herein.

59. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '553 patent, either literally or under the doctrine of equivalents.

60. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

61. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '553 patent.

**COUNT VIII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,548,553**

62. NETGEAR repeats and realleges the allegations in paragraphs 1-61 as though fully set forth herein.

63. The '553 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

64. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

65. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '553 patent.

**COUNT IX –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 5,740,366**

66. NETGEAR repeats and realleges the allegations in paragraphs 1-65 as though fully set forth herein.

67. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '366 patent, either literally or under the doctrine of equivalents.

68. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

69. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '366 patent.

**COUNT X - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 5,740,366**

70. NETGEAR repeats and realleges the allegations in paragraphs 1-69 as though fully set forth herein.

71. The '366 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

72. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

73. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '366 patent.

**COUNT XI –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 5,940,771**

74. NETGEAR repeats and realleges the allegations in paragraphs 1-73 as though fully set forth herein.

75. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '771 patent, either literally or under the doctrine of equivalents.

76. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

77. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '771 patent.

**COUNT XII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 5,940,771**

78. NETGEAR repeats and realleges the allegations in paragraphs 1-77 as though fully set forth herein.

79. The '771 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

80. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

81. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '771 patent.

**COUNT XIII –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,374,311**

82. NETGEAR repeats and realleges the allegations in paragraphs 1-81 as though fully set forth herein.

83. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '311 patent, either literally or under the doctrine of equivalents.

84. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

85. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '311 patent.

**COUNT XIV - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,374,311**

86. NETGEAR repeats and realleges the allegations in paragraphs 1-85 as though fully set forth herein.

87. The '311 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

88. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

89. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '311 patent.

**COUNT XV –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,457,646**

90. NETGEAR repeats and realleges the allegations in paragraphs 1-89 as though fully set forth herein.

91. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '646 patent, either literally or under the doctrine of equivalents.

92. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

93. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '646 patent.

**COUNT XVI - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,457,646**

94. NETGEAR repeats and realleges the allegations in paragraphs 1-93 as though fully set forth herein.

95. The '646 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

96. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

97. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '646 patent.

**COUNT XVII –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 5,546,397**

98. NETGEAR repeats and realleges the allegations in paragraphs 1-97 as though fully set forth herein.

99. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '397 patent, either literally or under the doctrine of equivalents.

100. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

101. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '397 patent.

**COUNT XVIII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 5,546,397**

102. NETGEAR repeats and realleges the allegations in paragraphs 1-101 as though fully set forth herein.

103. The '397 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

104. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

105. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '397 patent.

**COUNT XIX –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 5,844,893**

106. NETGEAR repeats and realleges the allegations in paragraphs 1-105 as though fully set forth herein.

107. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '893 patent, either literally or under the doctrine of equivalents.

108. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

109. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '893 patent.

**COUNT XX - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 5,844,893**

110. NETGEAR repeats and realleges the allegations in paragraphs 1-109 as though fully set forth herein.

111. The '893 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

112. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

113. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '893 patent.



**COUNT XXI –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,665,536**

114. NETGEAR repeats and realleges the allegations in paragraphs 1-113 as though fully set forth herein.

115. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '536 patent, either literally or under the doctrine of equivalents.

116. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

117. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '536 patent.

**COUNT XXII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,665,536**

118. NETGEAR repeats and realleges the allegations in paragraphs 1-117 as though fully set forth herein.

119. The '536 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

120. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

121. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '536 patent.

**COUNT XXIII –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 6,697,415**

122. NETGEAR repeats and realleges the allegations in paragraphs 1-121 as though fully set forth herein.

123. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '415 patent, either literally or under the doctrine of equivalents.

124. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

125. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '415 patent.

**COUNT XXIV - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 6,697,415**

126. NETGEAR repeats and realleges the allegations in paragraphs 1-125 as though fully set forth herein.

127. The '415 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

128. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

129. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '415 patent.

**COUNT XXV –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,013,138**

130. NETGEAR repeats and realleges the allegations in paragraphs 1-129 as though fully set forth herein.

131. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '138 patent, either literally or under the doctrine of equivalents.

132. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

133. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '138 patent.

**COUNT XXVI - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,013,138**

134. NETGEAR repeats and realleges the allegations in paragraphs 1-133 as though fully set forth herein.

135. The '138 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

136. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

137. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '138 patent.

**COUNT XXVII –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,710,907**

138. NETGEAR repeats and realleges the allegations in paragraphs 1-137 as though fully set forth herein.

139. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '907 patent, either literally or under the doctrine of equivalents.

140. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

141. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '907 patent.

**COUNT XXVIII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,710,907**

142. NETGEAR repeats and realleges the allegations in paragraphs 1-141 as though fully set forth herein.

143. The '907 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

144. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

145. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '907 patent.

**COUNT XXIX –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,916,747**

146. NETGEAR repeats and realleges the allegations in paragraphs 1-145 as though fully set forth herein.

147. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '747 patent, either literally or under the doctrine of equivalents.

148. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

149. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '747 patent.

**COUNT XXX - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,916,747**

150. NETGEARs repeats and realleges the allegations in paragraphs 1-149 as though fully set forth herein.

151. The '747 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

152. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

153. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '747 patent.

**COUNT XXXI –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,873,343**

154. NETGEAR repeats and realleges the allegations in paragraphs 1-153 as though fully set forth herein.

155. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '343 patent, either literally or under the doctrine of equivalents.

156. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

157. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '343 patent.

**COUNT XXXII - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,873,343**

158. NETGEAR repeats and realleges the allegations in paragraphs 1-157 as though fully set forth herein.

159. The '343 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

160. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

161. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '343 patent.

**COUNT XXXIII –  
DECLARATION OF NONINFRINGEMENT OF U.S. PATENT NO. 7,536,167**

162. NETGEAR repeats and realleges the allegations in paragraphs 1-161 as though fully set forth herein.

163. The accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '167 patent, either literally or under the doctrine of equivalents.

164. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

165. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights regarding the '167 patent.

**COUNT XXXIV - DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,536,167**

166. NETGEAR repeats and realleges the allegations in paragraphs 1-165 as though fully set forth herein.

167. The '167 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, 101, 102, 103, and 112.

168. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

169. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the '167 patent.

**COUNT XXXV - LICENSE**

170. NETGEAR repeats and realleges the allegations in paragraphs 1-169 as though fully set forth herein.

171. As set forth above, to the extent Innovatio's allegations of infringement are premised on the alleged making, use, sale, offer for sale, or importation of licensed products, such allegations are barred pursuant to such a license.

172. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

173. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the Patents-In-Suit.

**COUNT XXXVI - EXHAUSTION**

174. NETGEAR repeats and realleges the allegations in paragraphs 1-173 as though fully set forth herein.

175. As set forth above, to the extent Innovatio's allegations of infringement are premised on the alleged making, use, sale, offer for sale, or importation of licensed products, such allegations are barred pursuant to the doctrine of exhaustion.

176. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

177. A judicial declaration is necessary and appropriate so that NETGEAR may ascertain its rights with respect to the Patents-In-Suit.



**PRAYER FOR RELIEF**

WHEREFORE, NETGEAR respectfully requests that the Court enter judgment in its favor, granting the following relief:

A. A declaration that the accused mesh networking and WLAN products, networks and/or systems have not infringed and do not infringe any valid and enforceable claim of any of the Patents-in-Suit;

B. A declaration that the Patents-in-Suit are invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. §§ 100 et seq., 101, 102, 103, and/or 112;

C. A declaration that Innovatio's allegations of infringement are barred;

D. An injunction against Innovatio and its officers, agents, servants, employees, attorneys, and others in active concert or participation with them from asserting infringement or instituting or continuing any legal action for infringement of the Patents-in-Suit against NETGEAR or its suppliers, manufacturers, distributors, resellers of their products, customers or end users of its products;

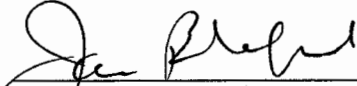
E. An order declaring that this is an exceptional case and awarding NETGEAR its costs, expenses, disbursements and reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law; and

F. Such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

In accordance with Rule 38 of the Federal Rules of Civil Procedure, Plaintiff NETGEAR demands a jury trial of all issues triable to a jury in this action.

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