

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NETGEAR, INC.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 10-999 (SLR)
)	
RUCKUS WIRELESS, INC.,)	JURY TRIAL DEMANDED
)	
Defendants.)	

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, NETGEAR, Inc. (“NETGEAR”), for its second Amended Complaint against Defendant Ruckus Wireless, Inc. (“Ruckus”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement pursuant the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff NETGEAR is a corporation duly organized and existing under the laws of Delaware, having a principal place of business on 350 East Plumeria Drive, San Jose, CA 95134-1911.

3. Defendant Ruckus is a corporation duly organized and existing under the laws of Delaware. On information and belief, Ruckus’s principal place of business is 880 West Maude Avenue, Suite 101, Sunnyvale, CA 94085. On information and belief, Ruckus is in the business of manufacturing and distributing communications devices.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising from Ruckus’s manufacture, use, sale, or offers for sale within the United States or importation into the United

States of products, including wireless communication products, that infringe United States Patent Nos. 5,812,531 (“the ‘531 patent”), 6,621,454 (“the ‘454 patent”), 7,263,143 (“the ‘143 patent”), 5,507,035 (“the ‘035 patent”), and 6,512,480 (“the ‘480 patent”) (collectively, “patents-in-suit”).

5. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Ruckus, which is incorporated under the laws of the State of Delaware. Venue properly lies in this District under 28 U.S.C. §§ 1391 and 1400(b).

COUNT I - INFRINGEMENT OF NETGEAR’S ‘531 PATENT

7. NETGEAR incorporates herein by reference the allegations in paragraphs 1-6 above as though fully set forth herein.

8. The United States Patent and Trademark Office duly and legally issued the ‘531 patent on September 22, 1998. A true and correct copy of the ‘531 patent is attached as Exhibit A.

9. The ‘531 patent has been assigned to NETGEAR. NETGEAR owns the ‘531 patent and has all rights to sue and recover for infringement.

10. On information and belief, Ruckus has infringed and continues to infringe the ‘531 patent by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products, including without limitation, the ZoneDirector and ZoneFlex products.

11. On information and belief, Ruckus has indirectly infringed and continues to indirectly infringe the ‘531 patent by making, using, selling, and/or offering for sale in the

United States and/or importing into the United States products, including without limitation, ZoneDirector and ZoneFlex products. Ruckus has had knowledge of the '531 patent at least since the November 19, 2010 filing of the original Complaint in this action and, notwithstanding its knowledge of the patent, as well NETGEAR's allegations of infringement, Ruckus has continued to make, use, sell, and/or offer for sale in the United States and/or import into the United States ZoneDirector and ZoneFlex products. On information and belief, in addition to Ruckus directly infringing, Ruckus' customers are also directly infringing the '531 patent through their use of Ruckus' ZoneDirector and ZoneFlex products. For example, NETGEAR is informed and believes that Ruckus' customers Baruch College, St. Vrain Valley School District, and the Sundance Institute use Ruckus' ZoneDirector to manage the wireless infrastructure and use of ZoneFlex products. NETGEAR is informed and believes that Ruckus has numerous other customers that use these products in a similar manner, including without limitation, entities in the education, hospitality, and health care industries. On information and belief, Ruckus has knowingly induced infringement and has had specific intent to induce infringement of the '531 patent by its activities relating to the marketing, support, and distribution of its ZoneDirector and ZoneFlex products to manage the use of ZoneFlex products. On information and belief, Ruckus had intent to commit contributory infringement of the '531 patent and Ruckus knew that its ZoneDirector and ZoneFlex products were components especially made or adapted for use in infringing the '531 patent, having no substantial non-infringing use. On information and belief, Ruckus has contributed to the infringement of the '531 patent by offering for sale and/or selling its ZoneDirector and ZoneFlex products to its customers.

12. Ruckus's infringement is causing damage and irreparable injury to NETGEAR, and NETGEAR will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

13. NETGEAR is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

14. On information and belief, Ruckus' induced and contributory infringement of the '531 patent since at least November 2010, has been and continues to be willful, making this an exceptional case under 35 U.S.C. § 285 and entitling NETGEAR to treble damages under 35 U.S.C. § 284.

COUNT II - INFRINGEMENT OF NETGEAR'S '454 PATENT

15. NETGEAR incorporates herein by reference the allegations in paragraphs 1-6 above as though fully set forth herein.

16. The United States Patent and Trademark Office duly and legally issued the '454 patent on September 16, 2003. A true and correct copy of the '454 patent is attached as Exhibit B.

17. The '454 patent has been assigned to NETGEAR. NETGEAR owns the '454 patent and has all rights to sue and recover for infringement.

18. On information and belief, Ruckus has infringed and continues to infringe the '454 patent by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products, including without limitation, ZoneFlex products.

19. On information and belief, Ruckus has indirectly infringed and continues to indirectly infringe the '454 patent by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products, including without limitation,

ZoneFlex products. Ruckus has had knowledge of the '454 patent and NETGEAR's infringement since at least the November 19, 2010 filing of the Complaint in this action and, notwithstanding its knowledge of the patent, as well NETGEAR's allegations of infringement, Ruckus has continued to make, use, sell, and/or offer for sale in the United States and/or import into the United States ZoneFlex products. On information and belief, in addition to Ruckus directly infringing, Ruckus' customers are also directly infringing through their use of Ruckus' ZoneFlex products. For example, NETGEAR is informed and believes that Ruckus' customers Baruch College, St. Vrain Valley School District, and the Sundance Institute use Ruckus' ZoneDirector to manage the wireless infrastructure and use of ZoneFlex products. Ruckus has numerous other customers that use ZoneFlex products in a similar manner, including without limitation, entities in the education, hospitality, and health care industries. On information and belief, Ruckus has knowingly induced infringement and has had specific intent to induce infringement of the '454 patent by its activities relating to the marketing, support, and distribution of its ZoneFlex products. On information and belief, Ruckus had intent to commit contributory infringement of the '454 patent and Ruckus knew its ZoneFlex products were components especially made or adapted for use in infringing the '454 patent, having no substantial non-infringing use. On information and belief, Ruckus has contributed to the infringement of the '454 patent by offering for sale and/or selling its ZoneFlex products to its customers.

20. Ruckus's infringement is causing damage and irreparable injury to NETGEAR, and NETGEAR will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

21. NETGEAR is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

22. On information and belief, Ruckus' induced and contributory infringement of the '454 patent since at least November 2010, has been and continues to be willful, making this an exceptional case under 35 U.S.C. § 285 and entitling NETGEAR to treble damages under 35 U.S.C. § 284.

COUNT III - INFRINGEMENT OF NETGEAR'S '143 PATENT

23. NETGEAR incorporates herein by reference the allegations in paragraphs 1-6 above as though fully set forth herein.

24. The United States Patent and Trademark Office duly and legally issued the '143 patent on August 28, 2007. A true and correct copy of the '143 patent is attached as Exhibit C.

25. The '143 patent has been assigned to NETGEAR. NETGEAR owns the '143 patent and has all rights to sue and recover for infringement.

26. On information and belief, Ruckus has infringed and continues to infringe the '143 patent by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products, including without limitation, ZoneFlex and MediaFlex products.

27. On information and belief, Ruckus has indirectly infringed and continues to indirectly infringe the '143 patent by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products, including without limitation, ZoneFlex products. Ruckus has had knowledge of the '143 patent since at least the November 19, 2010 filing of the Complaint in this action and, notwithstanding its knowledge of the patent,

as well NETGEAR's allegations of infringement, Ruckus has continued to make, use, sell, and/or offer for sale in the United States and/or import into the United States ZoneFlex products. On information and belief, in addition to Ruckus directly infringing, Ruckus customers are also directly infringing through their use of Ruckus' ZoneFlex products. For example, NETGEAR is informed and believes that Ruckus' customers Baruch College, St. Vrain Valley School District, and the Sundance Institute use ZoneDirector and/or FlexMaster to manage the wireless infrastructure and use of ZoneFlex products. Ruckus has numerous other customers that employ these products in a similar manner, including without limitation, entities in the education, hospitality, and health care industries. On information and belief, Ruckus has knowingly induced infringement and has had specific intent to induce infringement of the '143 patent by its activities relating to the marketing, support, and distribution of its ZoneFlex products. On information and belief, Ruckus had intent to commit contributory infringement of the '143 patent and Ruckus knew its ZoneFlex products were components especially made or adapted for use in infringing the '143 patent, having no substantial non-infringing use. On information and belief, Ruckus has contributed to the infringement of the '143 patent by offering for sale and/or selling its ZoneFlex products to its customers.

28. Ruckus's infringement is causing damage and irreparable injury to NETGEAR, and NETGEAR will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

29. NETGEAR is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

30. On information and belief, Ruckus' induced and contributory infringement of the '143 patent since at least November 2010, has been and continues to be willful, making

this an exceptional case under 35 U.S.C. § 285 and entitling NETGEAR to treble damages under 35 U.S.C. § 284.

COUNT IV - INFRINGEMENT OF NETGEAR'S '035 PATENT

31. NETGEAR incorporates herein by reference the allegations in paragraphs 1-6 above as though fully set forth herein.

32. The United States Patent and Trademark Office duly and legally issued the '035 patent on April 9, 1996. A true and correct copy of the '035 patent is attached as Exhibit D.

33. The '035 patent has been assigned to NETGEAR. NETGEAR owns the '035 patent and has all rights to sue and recover for infringement.

34. On information and belief, Ruckus has directly infringed and continues to directly infringe the '035 patent by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products, including without limitation, ZoneFlex products.

35. On information and belief, Ruckus has induced and contributed to the infringement of the '035 patent by making, using, selling, and/or offering for sale in the United States and/or importing into the United States products, including without limitation, ZoneFlex products. Ruckus has had knowledge of the '035 patent long before the filing of this lawsuit because Ruckus previously licensed the '035 patent from IBM Corporation. The license between Ruckus and IBM Corporation has terminated. Subsequent to its termination, IBM assigned the '035 patent to NETGEAR. In addition to Ruckus's direct infringement of the '035 patent, Ruckus's customers have infringed and are infringing the '035 patent their use of Ruckus's ZoneFlex products. For example, Ruckus's customers Douglas County School District and Satilla Regional Medical Center employ Ruckus's ZoneDirector and/or FlexMaster to manage

the wireless infrastructure and use of ZoneFlex products. Ruckus has numerous other customers that employ these products in a similar manner, including without limitation, entities in the education, hospitality, health care industries. On information and belief, Ruckus has knowingly induced infringement of the '035 patent with specific intent to do so by its activities relating to the marketing and distribution of its ZoneDirector, FlexMaster, and/or ZonePlanner products to manage the use of ZoneFlex products. On information and belief, Ruckus possessed intent to contributorily infringe the '035 patent, knowing that its ZoneFlex products were components especially made or adapted for use in infringing the '035 patent, having no substantial non-infringing use. On information and belief, Ruckus has contributed to the infringement of the '035 patent by marketing and distributing its ZoneFlex products to its customers.

36. Ruckus's infringement is causing damage and irreparable injury to NETGEAR, and NETGEAR will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

37. NETGEAR is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

38. Ruckus's infringement has been and continues to be willful, making this an exceptional case under 35 U.S.C. § 285 and entitling NETGEAR to treble damages under 35 U.S.C. § 284.

COUNT V - INFRINGEMENT OF NETGEAR'S '480 PATENT

39. NETGEAR incorporates herein by reference the allegations in paragraphs 1-6 above as though fully set forth herein.

40. The United States Patent and Trademark Office duly and legally issued the '480 patent on January 28, 2003. A true and correct copy of the '480 patent is attached as Exhibit E.

41. The '480 patent has been assigned to NETGEAR. NETGEAR owns the '480 patent and has all rights to sue and recover for infringement.

42. On information and belief, Ruckus has directly infringed and continues to directly infringe the '480 patent by making, using, selling, and/or offering for sale in the United States and/or importing into the United States wireless products, including without limitation, ZoneFlex and MediaFlex products.

43. On information and belief, at the filing of this Second Amended Complaint, Ruckus induces and/or contributes to the infringement of the '480 patent by acts which include making, using, selling, and/or offering for sale in the United States and/or importing into the United States wireless products, including without limitation, ZoneFlex and MediaFlex products. At least as since the time NETGEAR informed Ruckus of NETGEAR's proposal to file its proposed Second Amended Complaint, Ruckus has had knowledge of the '480 patent and NETGEAR's allegations of infringement. On information and belief, Ruckus continues to make, use, sell, and/or offer for sale in the United States and/or import into the United States ZoneFlex and MediaFlex products that infringe the '480 patent. On information and belief, in addition to Ruckus directly infringing, Ruckus' customers are directly infringing through their use of Ruckus's ZoneFlex and MediaFlex products. For example, NETGEAR is informed and believes that Ruckus's customers Baruch College, St. Vrain Valley School District, and the Sundance Institute use Ruckus's ZoneDirector to manage the wireless infrastructure and use of ZoneFlex products. Ruckus has numerous other customers that use ZoneFlex and

MediaFlex products in a similar manner, including without limitation, entities in the education, hospitality, health care industries, personal residences, among others. On information and belief, at least as the filing of this Second Amended Complaint, Ruckus continues to knowingly induce infringement and have specific intent to induce infringement of the '480 patent including by its activities relating to the marketing, support (including instructions on how to configure and use), sales and distribution of its ZoneFlex (including ZoneDirector) and MediaFlex products. In addition, Ruckus continues to knowingly induce infringement and have specific intent to induce infringement of the '480 patent by its activities relating to the distribution and support of FlexMaster and ZonePlanner products used in conjunction with ZoneFlex products. On information and belief, at least as of the filing of this Second Amended Complaint, Ruckus has intent to commit contributory infringement of the '480 patent and Ruckus knows that its ZoneFlex and MediaFlex products include components especially made or adapted for use in a manner that infringes the '480 patent, having no substantial non-infringing use. NETGEAR is informed and believes that Ruckus' ZoneFlex and MediaFlex products include components especially designed to implement "smart antenna" configurations that employ "adaptive polarization diversity" infringing upon the '480 patent and having no substantial non-infringing use.

44. Ruckus's infringement is causing damage and irreparable injury to NETGEAR, and NETGEAR will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

45. NETGEAR is entitled to injunctive relief and damages in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

PRAYER FOR RELIEF

WHEREFORE, NETGEAR prays for judgment as follows:

- a. That Ruckus has infringed each of the patents-in-suit;
- b. That, in accordance with 35 U.S.C. § 283, Ruckus, and all affiliates, employees, agents, officers, directors, attorneys, successors and assigns, and all those acting on behalf of or in active concert or participation with any of them, be preliminarily and permanently enjoined from infringing the patents-in-suit;
- c. For an award of damages sufficient to compensate NETGEAR for Ruckus’s infringement of the patents-in-suit;
- d. For an award of prejudgment and post-judgment interest;
- e. That Ruckus’s infringement of the ‘531 patent, the ‘454 patent, the ‘143 patent, and the ‘035 patent has been willful;
- f. For an award of increased damages in an amount not less than three times the damages assessed, in accordance with 35 U.S.C. § 284;
- g. For a declaration that this case is “exceptional” under 35 U.S.C. § 285, and an award to NETGEAR of its reasonable attorneys’ fees, expenses, and costs incurred in this action; and
- h. For such other and further relief as this Court shall deem appropriate.

DEMAND FOR JURY TRIAL

NETGEAR demands a jury trial of all issues triable to a jury in this action.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Jack B. Blumenfeld

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