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Ruckus Wireless, Inc.

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 RUCKUS WIRELESS, INC., a Delaware
14 corporation,

15 Plaintiff,

16 vs.

17 NETGEAR, INC., a Delaware corporation,

18 Defendant.

19 Case No. C08-2310-PJH

20 Case No. C09-5271-PJH (*Consolidated*)

21 **RUCKUS WIRELESS, INC.’S SECOND**
22 **AMENDED COMPLAINT FOR PATENT**
23 **INFRINGEMENT, BREACH OF**
24 **CONTRACT, and MISAPPROPRIATION**

25 Hon. Phyllis J. Hamilton

26 Plaintiff Ruckus Wireless, Inc. (“Ruckus”) submits its second amended complaint for
27 patent infringement, breach of contract, and misappropriation against Defendant NETGEAR,
28 Inc. (“NETGEAR” or “Defendant”).

1 **JURISDICTION AND VENUE**

2 1. One or more claims in this action arise under the United States Patent Act, 35 U.S.C.
3 § 1 *et seq.* The Court thus has subject matter jurisdiction over this action pursuant to 28 U.S.C.
4 §§ 1331 and 1338(a).

5 2. NETGEAR maintains its headquarters in San Jose, California. NETGEAR maintains
6 its principal place of business in San Jose, California. San Jose, California is located within the
7 Northern District of California. NETGEAR has previously submitted to the Court’s personal
8 jurisdiction by appearing before the United States District Court for the Northern District of
9 California in this action. NETGEAR is subject to personal jurisdiction in the United States
10 District Court for the Northern District of California.

11 3. A significant portion of NETGEAR’s complained of activities have occurred in San
12 Jose, California, at NETGEAR’s headquarters and principal place of business. NETGEAR
13 maintains its headquarters and principal place of business in the Northern District of California.
14 The United States District Court for the Northern District of California is a proper venue for this
15 action pursuant to 28 U.S.C. §§ 1391 and 1400.

16 **INTRA-DISTRICT ASSIGNMENT**

17 4. The Court previously assigned this action to the Oakland Division under Civil Local
18 Rule 3-2(c)–(d).
19

20 **THE PARTIES**

21 5. Ruckus is a Delaware corporation with a principal place of business at 350 West Java
22 Drive, Sunnyvale, California 94089.
23

24 6. Ruckus is a leading provider of carrier-class Wi-Fi solutions. Ruckus’s solutions, called
25 Smart Wi-Fi, are used by service providers and enterprises to solve network capacity and
26 coverage challenges associated with the rapidly increasing traffic and number of users on
27 wireless networks. Ruckus’s Smart Wi-Fi solutions offer carrier-class enhanced reliability,
28 consistent performance, extended range and massive scalability.

1 7. Ruckus's products include gateways, controllers and access points. Ruckus's products
2 incorporate various proprietary technologies, including Smart Radio, Smart QoS, Smart Mesh,
3 SmartCell and Smart Scaling. These valuable technologies enable high performance in a variety
4 of challenging operating conditions faced by service providers and enterprises.

5 8. Ruckus sells its products to service providers and enterprises globally. Ruckus has sold
6 its products to over 16,000 end-customers worldwide. Ruckus sells to enterprises through a
7 worldwide network of more than 5,300 value-added resellers and distributors.

8 9. Ruckus's enterprise end-customers are typically mid-sized organizations in a variety of
9 industries, including hospitality, education, healthcare, warehousing and logistics, corporate
10 enterprise, retail, state and local government and public venues, such as stadiums, convention
11 centers, airports and major outdoor public areas.

12 10. Ruckus also sells directly and indirectly to a range of service providers, including mobile
13 operators, cable companies, wholesale operators and fixed-line carriers. Ruckus has over 45
14 service provider end-customers, including Bright House Networks, The Cloud (a B SkyB
15 Company), KDDI, Tikona Digital Networks, Time Warner Cable and Towerstream.

16 11. NETGEAR is a Delaware corporation that maintains its principal place of business at 350
17 East Plumeria Drive, San Jose, California. NETGEAR purports to design, develop, and market
18 branded network products that address the specific needs of small and medium business and
19 home users including wireless network products such as wireless routers.

20
21 **FACTUAL BACKGROUND**

22 ***The Technology License Agreement***

23 12. On or about December 23, 2004, Ruckus—then operating under the name of Video54
24 Technologies, Inc.—and NETGEAR entered into a Technology License Agreement. Under the
25 Technology License Agreement, NETGEAR agreed to pay Ruckus a per unit royalty rate for
26 each and every wireless router sold as a part of the WPN824 product line and that incorporated
27 certain Ruckus proprietary technologies.
28

1 13. The Ruckus proprietary technology delivered under the Technology License
2 Agreement included “a hardware design and associated software that provides the functions for
3 an 802.11g/b wireless access point with a dynamically configurable antenna array for
4 interference mitigation and performance optimization.”

5 14. The Ruckus proprietary technology delivered under the Technology License
6 Agreement further included “a printed circuit board (PCB) design for an 802.11 g/b wireless
7 access point with multiple antenna on the peripheries of the PCB and circuitry for dynamic
8 antenna control.” The on-board antenna and antenna control designs were, per the Technology
9 License Agreement, “based on [then] patent pending technologies.”

10 15. The Ruckus proprietary technology delivered under the Technology License
11 Agreement further included “proprietary modifications” to “physical access point hardware on
12 the PCB” with Ruckus “proprietary modifications to enhance the [access point’s] reliability and
13 performance.”

14 16. The Ruckus proprietary technologies delivered under the Technology License
15 Agreement further included 802.11 g/b access point software” with Ruckus “proprietary
16 extensions and modifications that enable: control of an antenna with selectable antenna elements
17 to maximize performance in a wireless environment” and “performance optimization in wireless
18 transmit and receive operations and connection services such as rate adaptation and software
19 retry.”

20 17. The Technology License Agreement includes a confidentiality provision that provides
21 that “[a] receiving part shall not use any Confidential Information, except as expressly authorized
22 by this Agreement and shall not disclose any Confidential Information except to those employees
23 who are required to have the information for the purposes authorized under this Agreement and
24 who have signed agreements containing confidentiality provisions no less restrictive than the
25 terms of this [s]ection.”

26 18. The confidential information provision of the Technology License Agreement further
27 states that “[a] receiving party shall protect all such Confidential Information using the same
28

1 degree of care which it uses with respect to its own proprietary information, but in no event with
2 safeguards less than a reasonably prudent business would exercise under similar circumstances.”

3 19. The confidential information provision of the Technology License Agreement further
4 states that “[a] receiving party’s obligations regarding the protection of Confidential Information
5 shall survive any expiration or termination of the [Technology License] Agreement.”

6 20. Ruckus exercises reasonably prudent business practices with respect to maintaining
7 the confidentiality of its proprietary technology, including but not limited to the proprietary
8 technologies described in the Technology License Agreement.

9 21. Ruckus believes that it met its obligations and responsibilities under the Technology
10 License Agreement by providing the aforementioned proprietary technology to NETGEAR.

11 22. Ruckus further believes that it met its obligations and responsibilities under the
12 Technology License Agreement by virtue of the fact that NETGEAR did make, use, sell, offer
13 for sale, and import into the United States the RangeMax WPN 824v3, which utilized the
14 aforementioned Ruckus proprietary technologies.

15 23. Ruckus further believes that it met its obligations under the Technology License
16 Agreement in that NETGEAR paid Ruckus what Ruckus believes to be a per unit royalty on each
17 of the RangeMax WPN824v1 and WPN824v2 routers sold by NETGEAR and/or its resellers in
18 accordance with the Technology License Agreement. Ruckus was entitled to the aforementioned
19 per unit royalty because the RangeMax WPN824v1 and WPN824v2 routers incorporated the
20 Ruckus proprietary technologies as set forth in the Technology License Agreement.

21 24. Ruckus believes that its proprietary technologies, including those described in the
22 Technology License Agreement, have commercial value as third-parties that do not otherwise
23 have access to those proprietary technologies pay good and valuable consideration for access to
24 the same. NETGEAR is an example of a third-party that paid good and valuable consideration
25 for Ruckus’s proprietary technologies by way of the per unit royalty.
26
27
28

The WPN824v1 and WPN824v2 Routers

1
2 25. On January 5, 2005, at the 2005 Consumer Electronics Show in Las Vegas, Nevada,
3 NETGEAR and Ruckus announced the release of the RangeMax WPN824v1 wireless router.
4 The RangeMax WPN824v1 was developed in accordance with the Technology License
5 Agreement and included various Ruckus proprietary technologies.

6 26. The RangeMax WPN824v1 was designed to boost wireless range in home networks
7 and eliminate dead spots thereby improving support for bandwidth-intensive applications such as
8 streaming audio and video, playing online games, and transferring large data files.

9 27. NETGEAR characterized the RangeMax WPN824v1 as incorporating seven smart
10 multiple-input-multiple-output (MIMO) antennas to deliver 127 unique antenna patterns that
11 adapt ‘on the fly’ to the network environment by adjusting to radio frequency (“RF”)
12 interference, locations of a client, and physical barriers thereby resulting in extraordinary range
13 and consistent high-speed data transfer performance.

14 28. According to Patrick Lo, the CEO and Chairman of NETGEAR, by partnering with
15 Ruckus, NETGEAR was “able to launch the revolutionary RangeMax technology which
16 dynamically optimizes performance to vastly improve the speed and range of the wireless
17 network, supporting the increasing performance demands of the home network for applications
18 such as streaming multimedia content.” Ruckus’s technology allowed NETGEAR to address
19 “[o]ne of the pervasive issues encountered in the implementation of wireless networks”: “sub-par
20 network performance caused by elements such as RF interference and the physical structure in
21 which the network is running.”

22 29. On March 7, 2005, Vivek Pathela, NETGEAR Senior Director of Product Marketing
23 for Consumer Products, characterized the Ruckus powered RangeMax WPN824v1 wireless
24 router as “the ideal solution for bandwidth-intensive consumer applications because it is uniquely
25 able to dynamically optimize network connections by adapting on-the-fly to changes in the RF
26 (Radio Frequency) environment such as interference introduced to the environment by turning on
27 a microwave oven or using a 2.4GHz cordless phone.” According to Pathela, the RangeMax
28

1 WPN824v1 utilizes “intelligent antenna overlay technology that enables [the] router to deliver
2 superior coverage, speed and adaptability to changing wireless environments.”

3 30. Following the release of the RangeMax WPN824v1, NETGEAR requested the
4 research and development support of Ruckus to develop a second and more cost effective version
5 of the RangeMax wireless router—the WPN824v2. Ruckus complied with NETGEAR’s request
6 and the WPN824v2 was made available for purchase from NETGEAR and numerous
7 NETGEAR resellers. The RangeMax WPN824v2 wireless router also include various Ruckus
8 proprietary technologies that were delivered in accordance with the Technology License
9 Agreement.

10
11 ***The WPN824v3 Model Router***

12 31. On October 31, 2007, the Federal Communications Commission’s (FCC) Office of
13 Engineering and Technology (OET) Laboratory Division released certain Certification request
14 information for a new version of NETGEAR’s RangeMax Wireless Router—the WPN824v3.
15 Ruckus was not, and had never been, involved in the manufacture, design, or production of the
16 WPN824v3. Until the FCC OET Laboratory Division released the aforementioned information,
17 Ruckus was unaware of the WPN824v3’s existence.

18 32. There is no waiver, grant, contractual obligation, license, or any other permission by
19 and between Ruckus and NETGEAR that permits the incorporation of any Ruckus proprietary
20 technology in any NETGEAR WPN824 product absent payment of the per unit royalty as set
21 forth in the Technology License Agreement.

22 33. NETGEAR characterizes the RangeMax WPN824v3 as extending wireless network
23 coverage up to ten times that of standard 802.11 due to an advanced intelligent antenna system.
24 These intelligent antennas, according to NETGEAR, continuously scan your home or office and
25 automatically sense obstacles and electronic interference. The antennas, according to
26 NETGEAR, dynamically adjust the wireless signal to compensate and maintain a clear
27 connection.
28

1 34. In early February 2008, and following discovery of the pending release of the
2 WPN824v3 via the FCC OET Laboratory Division, William Kish—the co-founder and Chief
3 Technology Officer of Ruckus—conferred with Patrick Rada—the Senior Principal Wireless
4 Engineer for NETGEAR—concerning the WPN824v3. During that discussion, William Kish
5 raised concerns with Patrick Rada that the WPN824v3 embodied certain Ruckus proprietary
6 technologies, including patents. Patrick Rada indicated to William Kish that NETGEAR was
7 unaware of any Ruckus patents.

8 35. On or about February 12, 2008, and following William Kish’s discussion with Patrick
9 Rada, Selina Lo—the President and CEO of Ruckus—met with Patrick Lo of NETGEAR
10 concerning the WPN824v3. NETGEAR informed Ruckus that NETGEAR had begun
11 substituting retail sales of the WPN824v2 with the WPN824v3. Patrick Lo indicated that
12 NETGEAR would discontinue the manufacture and sale of the WPN824v1 and WPN824v2
13 models by the end of 2008 in favor of the WPN824v3. NETGEAR also indicated that Ruckus
14 would not receive a per unit royalty from sales of the WPN824v3.

15 36. When informed by Ruckus as to the existence of certain patents on intellectual
16 property utilized in the WPN824v1 and WPN824v2 as well as the newly released WPN824v3,
17 NETGEAR indicated that it had undertaken no due diligence with respect to any Ruckus patents.
18 NETGEAR indicated its intent to rely upon the indemnification obligations of the component
19 providers of the WPN824v3 with respect to any third-party intellectual property claims.

20 37. Having decided to no longer work with Ruckus with respect to the WPN824v3,
21 NETGEAR found new partners for provisioning certain components in the WPN824v3 product.
22 Amongst these partners was Rayspan Corporation of San Diego, California. Rayspan
23 Corporation contended to have “developed . . . proprietary meta-material air interface products
24 which offer breakthrough improvements in performance.” Rayspan Corporation partnered with
25 NETGEAR to provide various components for the WPN824v3 product including but not limited
26 to the aforementioned meta-material antenna components.

27 38. To assist Rayspan Corporation in its provisioning of certain components for the
28 RangeMax WPN824v3, NETGEAR provided Rayspan Corporation with certain Ruckus

1 proprietary technology delivered under the Technology License Agreement including a hardware
2 design and associated software that provides the functions for an 802.11g/b wireless access point
3 with a dynamically configurable antenna array for interference mitigation and performance
4 optimization.

5 39. To assist Rayspan Corporation in its provisioning of certain components for the
6 RangeMax WPN824v3, NETGEAR provided Rayspan Corporation with certain Ruckus
7 proprietary technology delivered under the Technology License Agreement including a printed
8 circuit board design for an 802.11 g/b wireless access point with multiple antenna on the
9 peripheries of the PCB and circuitry for dynamic antenna control.

10 40. To assist Rayspan Corporation in its provisioning of certain components for the
11 RangeMax WPN824v3, NETGEAR provided Rayspan Corporation with certain Ruckus
12 proprietary technology delivered under the Technology License Agreement including Ruckus
13 proprietary modifications to physical access point hardware on the PCB to enhance access point
14 reliability and performance.

15 41. To assist Rayspan Corporation in its provisioning of certain components for the
16 RangeMax WPN824v3, NETGEAR provided Rayspan Corporation with certain Ruckus
17 proprietary technology delivered under the Technology License Agreement including 802.11 g/b
18 access point software with Ruckus proprietary extensions and modifications that enable: control
19 of an antenna with selectable antenna elements to maximize performance in a wireless
20 environment and performance optimization in wireless transmit and receive operations and
21 connection services such as rate adaptation and software retry.

22
23 ***The '562 Patent***

24 42. Ruckus is the assignee of the entire right, title, and interest in United States patent
25 number 7,193,562 (the "562 Patent"). The '562 Patent issued on March 20, 2007 and is entitled
26 "Circuit Board Having a Peripheral Antenna Apparatus with Selectable Antenna Elements." The
27 '562 Patent subsequently went through an *inter partes* re-examination process invoked by
28 NETGEAR. A true and correct copy of the '562 Patent is attached hereto as Exhibit A. A true

1 and correct copy of the re-examination certificate for the '562 Patent is attached hereto as
2 Exhibit B.

3 43. The '562 Patent issued from a patent application that was pending during the course
4 of the Technology License Agreement. Said application, which later became the '562 Patent,
5 was one of the patent pending technologies referenced in the Technology License Agreement.

6 44. NETGEAR was also made aware of the existence of the '562 Patent as a result of
7 discussions with William Kish and Selino Lo. NETGEAR was specifically made aware of the
8 '562 Patent with respect to the WPN824v3. NETGEAR was made aware of the '562 Patent with
9 respect to the WPN824v3 prior to Ruckus filing the present action.

10
11 ***The '486 Patent***

12 45. Ruckus is the assignee of the entire right, title, and interest in United States patent
13 number 7,525,486 (the "'486 Patent"). The '486 Patent issued on April 28, 2009 and is entitled
14 "Increased Wireless Coverage Patterns." A true and correct copy of the '486 Patent is attached
15 hereto as Exhibit C.

16 46. The '486 Patent is a continuation of U.S. patent application number 11/022,080. U.S.
17 patent application number 11/022,080 is the application that eventually issued as Ruckus's '562
18 Patent. The '562 Patent, as addressed above, successfully emerged from reexamination.

19 47. On January 9, 2009, the United States Patent and Trademark Office found, with
20 respect to the examination of the claims of the application that would eventually become the
21 '486 Patent, that claims 1-31 were allowed and that the "prior art of record" did not disclose one
22 or more features set forth in the independent claims of the application that matured into the '486
23 Patent. On April 28, 2009, the '486 Patent issued over all references that had been cited in the
24 reexamination of the '562 Patent.

25 48. On May 22, 2009, Ruckus, NETGEAR, and Rayspan filed a *Joint Status Report* in
26 the present litigation. In the *Joint Status Report*, Ruckus noted that "U.S. patent application
27 number 11/714,707, which is a direct continuation of the '562 Patent, issued as U.S. Patent
28 Number 7,525,486." Ruckus further noted that "U.S. Patent [Number] 7,525,486 issued after the

1 United States Patent Office considered all of the references identified by the Defendants in the
2 *inter partes* reexamination of the ‘562 Patent.”

3 49. On June 17, 2009, counsel for Ruckus sent correspondence to counsel for NETGEAR
4 informing them of the issuance of U.S. patent number 7,525,486 notwithstanding the fact that
5 ‘486 Patent had already been referenced in the May 22, 2009 *Joint Status Report*. In that
6 correspondence, counsel for Ruckus informed counsel for NETGEAR and Rayspan that “a
7 number of claims in the ‘486 Patent read directly on your client’s WPN824v3 RangeMax
8 Wireless Router.” Counsel for Ruckus specifically identified claims 1-2, 5-8, 11-12, 15-28, and
9 31 of the ‘486 Patent. Counsel for Ruckus stated that “*all* of the prior art references that were set
10 forth in your client’s Request for Reexamination of the patent asserted in pending Northern
11 District of California action against NETGEAR and Rayspan were disclosed to and subsequently
12 cited by the Examiner on the face of the ‘486 Patent.” Counsel for Ruckus also noted that “[t]he
13 Examiner was also made expressly aware of the reexamination of the parent application” and
14 that certain “references cited in the reexamination request were expressly addressed by the
15 Examiner”; “[t]he ‘486 Patent issued notwithstanding the same.”

16 50. NETGEAR did not respond to the June 17, 2009 correspondence.

17
18 ***NETGEAR’s Unlawful Conduct***

19 51. NETGEAR has made, used, offered to sell, and sold in the United States and
20 imported into the United States wireless routers that infringe the ‘562 Patent, including but not
21 limited to the RangeMax WPN824v3. Exemplary infringement of the ‘562 Patent by
22 NETGEAR is shown in the chart attached hereto as Exhibit D.

23 52. NETGEAR has made, used, offered to sell, and sold in the United States and
24 imported into the United States wireless routers that infringe the ‘486 Patent, including but not
25 limited to the RangeMax WPN824v3. Exemplary infringement of the ‘486 Patent by
26 NETGEAR is shown in the chart attached hereto as Exhibit E.

27 53. Ruckus never granted NETGEAR a license or any other permission to practice any
28 claim of the ‘562 Patent in the RangeMax WPN824v3 wireless router.

1 54. Ruckus never granted NETGEAR a license or any other permission to practice any
2 claim of the '486 Patent in the RangeMax WPN824v3 wireless router.

3 55. NETGEAR's unlawful activities in directly infringing the '562 Patent by
4 manufacturing, selling, offering to sell, importing, and using the RangeMax WPN824v3 have
5 resulted in an unjust enrichment to NETGEAR and harm to Ruckus.

6 56. NETGEAR's unlawful activities in directly infringing the '486 Patent by
7 manufacturing, selling, offering to sell, importing, and using the RangeMax WPN824v3 have
8 resulted in an unjust enrichment to NETGEAR and harm to Ruckus.

9 57. NETGEAR breached its obligations under the Technology License Agreement by
10 continuing to utilize Ruckus proprietary technology in the RangeMax WPN824v3 wireless router
11 without paying Ruckus a per unit royalty for each router sold notwithstanding Ruckus having
12 satisfied its obligations under the Technology License Agreement and being ready, willing, and
13 able to continue performing its obligations under the Technology License Agreement.
14 NETGEAR's unlawful activities in breaching the terms of the Technology License Agreement
15 have resulted in an unjust enrichment to NETGEAR and harm to Ruckus.

16 58. NETGEAR misappropriated Ruckus proprietary technology provided for under the
17 Technology License Agreement by providing that proprietary technology to Rayspan
18 Corporation in the course of Rayspan Corporation provisioning certain components for the
19 RangeMax WPN824v3. Ruckus exercises reasonably prudent business practices in maintaining
20 the secrecy of those proprietary technologies from third-parties not otherwise under an obligation
21 of confidentiality to Ruckus. NETGEAR failed to exercise such reasonably prudent business
22 practices when it knowingly shared those proprietary technologies with Rayspan Corporation.
23 NETGEAR's unlawful activities in misappropriating Ruckus proprietary technology as to share
24 that technology with Rayspan Corporation resulted in an unjust enrichment to NETGEAR and
25 harm to Ruckus.

26 59. NETGEAR further breached the Technology License Agreement entered into with
27 Ruckus by providing Ruckus proprietary technology to Rayspan Corporation in the course of
28 Rayspan Corporation provisioning certain components for the RangeMax WPN824v3.

1 NETGEAR provided this proprietary technology to Rayspan Corporation notwithstanding an
2 express prohibition against such sharing in the Technology License Agreement. NETGEAR's
3 unlawful activities in effectuating a further breach of the Technology License Agreement
4 resulted in an unjust enrichment to NETGEAR and harm to Ruckus.

5
6 **COUNT I**

7 **Direct Infringement of U.S. Patent Number 7,193,562**

8 60. Ruckus repeats and re-alleges each of the allegations set forth in paragraphs 1 through
9 59, as though fully set forth herein.

10 61. NETGEAR's actions in making, using, importing, selling, and offering for sale the
11 RangeMax WPN824v3 wireless router, and possibly other products, directly infringes at least
12 claim 1, 18, 27, and 30 of the '562 Patent.

13 62. Ruckus has been damaged by NETGEAR's infringing conduct and NETGEAR is
14 therefore liable to Ruckus for actual damages suffered and any profits realized on the sale of the
15 RangeMax WPN824v3 wireless router and possibly other infringing products, which are not
16 taken into account in the computation of actual damages, as well as any statutory damages, such
17 as treble damages.

18 63. NETGEAR's direct infringement of the '562 Patent was deliberate and willful in that
19 NETGEAR was aware of the '562 Patent and its applicability to the RangeMax WPN 824v3
20 wireless router for the entire period of making, using, importing, selling, and offering for sale the
21 RangeMax WPN824v3 wireless router. Notwithstanding knowledge of the RangeMax
22 WPN824v3 router and its coverage by claims of the '562 Patent, NETGEAR continued to make,
23 use, sell, offer for sale, and import the RangeMax WPN824v3 wireless router.

COUNT II

Direct Infringement of U.S. Patent Number 7,525,486

64. Ruckus repeats and re-alleges each of the allegations set forth in paragraphs 1 through 59, as though fully set forth herein.

65. NETGEAR's actions in making, using, importing, selling, and offering for sale the RangeMax WPN824v3 wireless router, and possibly other products, directly infringes at least claims 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, and 31 of the '486 Patent.

66. Ruckus has been damaged by NETGEAR's infringing conduct and NETGEAR is therefore liable to Ruckus for actual damages suffered and any profits realized on the sale of the RangeMax WPN824v3 wireless router and possibly other infringing products, which are not taken into account in the computation of actual damages, as well as any statutory damages, such as treble damages.

67. NETGEAR's direct infringement of the '486 Patent was deliberate and willful in that NETGEAR was aware of the '486 Patent and its applicability to the RangeMax WPN 824v3 wireless router during the period of making, using, importing, selling, and offering for sale the RangeMax WPN824v3 wireless router. Notwithstanding knowledge of the RangeMax WPN824v3 router and its coverage by claims of the '486 Patent, NETGEAR continued to make, use, sell, offer for sale, and import the RangeMax WPN824v3 wireless router.

COUNT III

Breach of Contract

68. Ruckus repeats and re-alleges each of the allegations set forth in paragraphs 1 through 59, as though fully set forth herein

69. On or about December 23, 2004, Ruckus—then operating under the name of Video54 Technologies, Inc.—and NETGEAR entered into a Technology License Agreement.

1 70. As a part of the Technology License Agreement, NETGEAR agreed to pay Ruckus a
2 royalty for each and every wireless router sold as a part of the WPN824 product line and that
3 incorporated certain Ruckus proprietary technologies.

4 71. Ruckus performed its obligations under the Technology License Agreement by
5 providing the proprietary technologies described in the Technology License Agreement.

6 72. NETGEAR utilized the proprietary technologies described in the Technology License
7 Agreement in the RangeMax WPN824v3 wireless router.

8 73. NETGEAR has not paid Ruckus any licensing royalty revenue from sales of
9 RangeMax WPN824v3 wireless router.

10 74. In doing so, NETGEAR breached the Technology License Agreement.

11 75. As a result of its breach, NETGEAR owes Ruckus any and all per unit royalties that
12 would have otherwise been due under the Technology License Agreement.

13 76. Pursuant to the Technology License Agreement, NETGEAR is also liable for fees and
14 costs pursuant to an attorney's fees provision, which states "[i]n the event any proceeding or
15 lawsuit is brought by Licensor . . . in connection with this [Technology License] Agreement, the
16 prevailing party in such proceedings shall be entitled to receive its costs, expert witness fees and
17 reasonable attorneys' fees, including costs and fees on appeal."

18 77. As a further part of the Technology License Agreement, NETGEAR agreed to
19 maintain the confidentiality of certain Ruckus proprietary technologies provided under the
20 Technology License Agreement.

21 78. Notwithstanding the express obligations set forth under the Technology License
22 Agreement, NETGEAR shared those proprietary technologies described in the Technology
23 License Agreement with Rayspan Corporation in the course of Rayspan Corporation
24 provisioning certain components of the RangeMax WPN824v3 wireless router.

25 79. In doing so, NETGEAR breached the Technology License Agreement.

26 80. As a result of its breach, NETGEAR owes Ruckus damages in an amount to be
27 determined at trial.

1 81. Pursuant to the Technology License Agreement, NETGEAR is also liable for fees and
2 costs pursuant to an attorney's fees provision, which states "[i]n the event any proceeding or
3 lawsuit is brought by Licensor . . . in connection with this [Technology License] Agreement, the
4 prevailing party in such proceedings shall be entitled to receive its costs, expert witness fees and
5 reasonable attorneys' fees, including costs and fees on appeal."

6
7 **COUNT IV**

8 **Misappropriation of Trade Secrets**

9 82. Ruckus maintains exercises reasonably prudent practices in maintaining the
10 confidentiality of its proprietary technologies, including those that were provided under the
11 Technology License Agreement.

12 83. NETGEAR understood the need to maintain the confidentiality of certain Ruckus
13 proprietary technologies provided under the Technology License Agreement.

14 84. Notwithstanding the express understandings of confidentiality set forth under the
15 Technology License Agreement, NETGEAR misappropriated those proprietary technologies
16 described in the Technology License Agreement by delivering those proprietary technology to
17 Rayspan Corporation such that Rayspan Corporation could better implement certain components
18 in RangeMax WPN824v3, which would in turn deliver a financial benefit to NETGEAR by
19 virtue of sales of the RangeMAX WPN824v3 including those Ruckus proprietary technologies..

20 85. Ruckus believes that its proprietary technologies have value from not being known to
21 the general public.

22 86. Ruckus believes that its proprietary technologies have value by virtue of the fact that
23 third-parties pay for confidential access to those technologies.

24 87. As a result of the misappropriation of Ruckus proprietary technologies, NETGEAR
25 gained a financial benefit to the detriment of Ruckus.

26 88. As a result of its misappropriation of those proprietary technologies, NETGEAR
27 owes Ruckus damages in an amount to be determined at trial.
28

PRAYER FOR RELIEF

WHEREFORE, Ruckus requests entry of judgment in its favor and against each Defendant:

A. On Count I, declaring that Defendant NETGEAR has directly infringed one or more claims of the '562 Patent;

B. On Count I, awarding Ruckus at least a reasonable royalty in an amount adequate to compensate Ruckus for NETGEAR's infringement, in accordance with 35 U.S.C. § 154;

C. On Count I, increasing the damages to three times the amount found or assessed by virtue of the deliberate and willful nature of NETGEAR's infringement, in accordance with 35 U.S.C. § 284;

D. On Count II, declaring that Defendant NETGEAR has directly infringed one or more claims of the '486 Patent;

E. On Count II, awarding Ruckus at least a reasonable royalty in an amount adequate to compensate Ruckus for NETGEAR's infringement, in accordance with 35 U.S.C. § 154;

F. On Count II, increasing the damages to three times the amount found or assessed by virtue of the deliberate and willful nature of NETGEAR's infringement, in accordance with 35 U.S.C. § 284;

G. On Count III, finding that NETGEAR breached the Technology License Agreement with Ruckus by failing to pay a per unit royalty for incorporation of certain Ruckus proprietary technologies in the RangeMax WPN824v3;

H. On Count III, finding that NETGEAR breached the Technology License Agreement with Ruckus by disclosing Ruckus proprietary technology to Rayspan in direct violation of the terms of the Technology License Agreement;

I. On Count III, awarding Ruckus damages according to proof for the breach of the Technology License Agreement;

J. On Count III, awarding Ruckus its fees and costs as the prevailing party in accordance with the Technology License Agreement;

K. On Count IV, finding that NETGEAR misappropriated Ruckus proprietary technology in its sale of the RangeMax WPN824v3 wireless router;

1 L. On Count IV, awarding Ruckus damages according to proof for the misappropriation
2 of Ruckus proprietary technology in NETGEAR's sale of the RangeMAX WPN824v3 wireless
3 router;

4 M. On all counts, for interest on all the foregoing amounts, at the legal rate, with effect
5 from the due date for payment;

6 N. On all counts, granting such other and further relief as this Court may deem just and
7 appropriate.

8
9 Dated: March 13, 2013

/s/ Colby B. Springer

10 COLBY B. SPRINGER (SBN 214868)

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DEMAND FOR JURY TRIAL

Plaintiff Ruckus Wireless, Inc. hereby demands trial by jury of all issues so triable.

Dated: March 13, 2013

/s/ Colby B. Springer

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