

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 9:13-CV-80290-KMM

LINEX TECHNOLOGIES, INC.,

Plaintiff,

v.

SILVER SPRING NETWORKS, INC.,

Defendant.

AMENDED COMPLAINT

Plaintiff Linex Technologies, Inc. (“Plaintiff” or “Linex”), brings this action for patent infringement against Silver Spring Networks, Inc. (“Defendant” or “Silver Spring”), and states as follows:

The Parties

1. Linex is a Delaware corporation with its principal place of business in Palm Beach Gardens, Florida. Linex employs sophisticated electrical engineers who have successfully patented numerous inventions in a variety of fields, including wireless networking.

2. Linex engineers have more than 125 years of combined experience in wireless communications, have published numerous papers in the area of communications, are the inventors of more than 150 patents in the wireless area, and hold numerous awards for their contributions to the field.

3. Silver Spring is a Delaware corporation with its principal place of business in Redwood City, California. Silver Spring makes and sells wireless networks and wireless network

components, which infringe on at least two patents owned by Linex.

Jurisdiction and Venue

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and jurisdiction is properly based under sections 271 and 281, and 28 U.S.C. § 1338(a).

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c).

6. Silver Spring is subject to jurisdiction of Florida courts pursuant to section 48.193(1)(a) and (b) of the Florida Statutes because it conducts business activities in Florida and within this judicial district, including regularly doing or soliciting business, engaging in conduct and deriving substantial revenue from the sale of its infringing products in Florida. Silver Spring is registered to do business in Florida and maintains a registered agent in the State of Florida.

Background of Mesh Networks

7. This case involves an emerging communications technology known as “mesh networks.” Mesh networks efficiently connect large numbers of remote stations to central stations or gateways by using nodes. The nodes “talk” to one other through hardware and software to facilitate their interaction. By hopping from one mesh node to the next, the nodes can automatically choose the quickest and the most reliable path for information to be sent and received by the remote stations.

8. Efforts to standardize mesh networks have resulted in several published standards, including IEEE 802.11s and IEEE 802.15.4.

The Linex Patents-in-Suit

The ‘377 patent

9. Linex owns United States Patent No. 6,493,377 entitled “Distributed Network, Spread-Spectrum System,” which was issued on December 10, 2002 (“the original ‘377 patent”).

See **Exhibit A**. The original ‘377 patent encompassed an invention for distributed networks having a plurality of remote stations and plurality of nodes commonly referred to as a “mesh” network.

10. On September 20, 2013, third party Aerohive Networks, Inc. (“Aerohive”) filed a request with the United States Patent and Trademark Office (“PTO”) for reexamination of the original ‘377 patent,¹ seeking *ex parte* reexamination of all the claims of the original ‘377 patent.

11. Some of the claims of the original ‘377 patent were amended in the course of the reexamination process and certain claims of the original ‘377 patent were canceled. On August 12, 2014, the PTO issued U.S. Patent No. 6,493,377 C1 (Ex Parte Reexamination Certificate), attached hereto as **Exhibit B** (“the amended ‘377 patent”). The PTO determined that all existing claims are either patentable or patentable-as-amended. *See id.*²

12. The claims described in the amended ‘377 patent are identical to their counterparts in the original ‘377 patent. The claims of the amended ‘377 patent do not constitute substantive changes to the claims of the original ‘377 patent. The original ‘377 patent and the amended ‘377 patent are collectively referred to as “the ‘377 Patents.”

13. The amended ‘377 patent is presumed valid under 35 U.S.C. § 282.

14. Linex has the exclusive right to enforce and license the amended ‘377 patent.

The ‘503 patent

15. Linex owns United States Patent No. 7,167,503 entitled “Distributed Network,

¹ As described more fully below, Aerohive filed reexamination requests for both the original ‘377 and original ‘503 patents. Aerohive is Defendant in a separate action filed by Linex in this District alleging similar infringement. *See Linex Techs., Inc. v. Aerohive Networks, Inc.*, No. 9:13-CV-80281-KMM.

² On September 26, 2014, the PTO entered its decision denying institution of a separate *inter partes* review of the original ‘377 patent, attached hereto as **Exhibit C**.

Spread-Spectrum System,” which was issued on January 23, 2007 (“the original ‘503 patent”). See **Exhibit D**. Like the original ‘377 patent, the original ‘503 patent encompassed an invention for distributed networks having a plurality of remote stations and plurality of nodes commonly referred to as a “mesh” network.

16. On September 20, 2013, third party Aerohive filed a request with the United States Patent and Trademark Office (“PTO”) for reexamination of the original ‘503 patent, seeking *ex parte* reexamination of all the claims of the original ‘503 patent.

17. Some of the claims of the original ‘503 patent were amended in the course of the reexamination process and certain new claims were added to the original ‘503 patent, and, on September 8, 2014, the PTO issued U.S. Patent No. 7,167,503 C1 (Ex Parte Reexamination Certificate), attached hereto as **Exhibit E** (“the amended ‘503 patent”). The PTO determined that all existing claims are either patentable or patentable-as-amended. See *id.*³

18. The claims described in the amended ‘503 patent are identical to their counterparts in the original ‘503 patent. The claims of the amended ‘503 patent do not constitute substantive changes to the claims of the original ‘503 patent. The original ‘503 patent and the amended ‘503 patent are collectively referred to as “the ‘503 Patents.”

19. The amended ‘503 patent is presumed valid under 35 U.S.C. § 282.

20. Linex has the exclusive right to enforce and license the amended ‘503 patent.

Count I – Direct Infringement (‘377 patent)

21. Linex re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 14 of this Amended Complaint as if fully set forth herein and further alleges as follows:

³ On September 26, 2014, the PTO entered its decision denying institution of a separate *inter partes* review of the original ‘503 patent, attached hereto as **Exhibit F**.

22. Silver Spring manufactures and sells mesh networks and mesh network components, including, but not limited to, the following: Silver Spring Access Point, Silver Spring Relay, and Silver Spring Bridge Family. These systems and components made and/or sold by Silver Spring perform the requisite steps to infringe on claims of the '377 Patents either literally or under the doctrine of equivalents, making Silver Spring liable for direct patent infringement. Silver Spring's infringing components lack substantial non-infringing uses.

23. Silver Spring is aware of the '377 Patents and Linex's exclusive right to enforce and license the '377 Patents. Upon information and belief, Silver Spring was and is aware that the products it manufactures and sells infringe the '377 Patents. Linex wrote to Silver Spring on April 12, 2012 to explain its patented technology and to offer Silver Spring the opportunity to discuss a licensing arrangement.

24. Silver Spring's unlicensed manufacture and sale of the products listed above infringe the '377 Patents causing injury to Linex. As a result of this infringement, Linex is entitled to recover compensatory damages that at a minimum are equal to a reasonable royalty.

25. Silver Spring's infringement of the '377 Patents has been and continues to be willful.

Count II – Induced Infringement ('377 patent)

26. Linex re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 14 of this Amended Complaint as if fully set forth herein and further alleges as follows:

27. Silver Spring manufactures and sells mesh networks and mesh network components, including, but not limited to, the following: Silver Spring Access Point, Silver Spring Relay, and Silver Spring Bridge Family. These systems and products when used by others

infringe on claims of the '377 Patents, either literally or under the doctrine of equivalents, resulting in others committing direct infringement of the '377 Patents. Silver Spring's infringing components lack substantial non-infringing uses.

28. As alleged above, Silver Spring has knowledge of the '377 Patents, and through Silver Spring's manufacture and sale of its infringing products, it directly infringes on claims of the '377 Patents.

29. By manufacturing and injecting its unlicensed, infringing products into the stream of commerce with the intention of customers implementing and using these products, Silver Spring induces infringement of the '377 Patents causing injury to Linex. As a result of this infringement, Linex is entitled to recover compensatory damages that at a minimum are equal to a reasonable royalty.

30. There are no substantial non-infringing uses for Silver Spring's products directly infringing the '377 Patents, and Silver Spring's induced infringement of the '377 Patents has been and continues to be willful.

Count III – Contributory Infringement ('377 patent)

31. Linex re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 14 of this Amended Complaint as if fully set forth herein and further alleges as follows:

32. Silver Spring manufactures and sells mesh networks and mesh network components, including, but not limited to, the following: Silver Spring Access Point, Silver Spring Relay, and Silver Spring Bridge Family. These systems and products infringe claims of the '377 Patents either literally or under the doctrine of equivalents resulting in Silver Spring committing direct infringement. Silver Spring's infringing components lack substantial non-

infringing uses.

33. As alleged above, Silver Spring has knowledge of the '377 Patents, and through Silver Spring's manufacture, incorporation of infringing components, and sale of its infringing products, it directly infringes on claims of the '377 Patents.

34. On information and belief, Silver Spring has sold, and continues to sell, its infringing products to consumers in the United States. These infringing products directly infringe on claims of the '377 Patents, are especially made or adapted for the infringing use, and have no substantial non-infringing uses, as evidenced, for example, by the instructions given to consumers alongside its products.

35. By manufacturing and injecting its unlicensed, infringing products into the stream of commerce with the intention of customers implementing and using these products, where customers ultimately do implement and use these products, Silver Spring commits contributory infringement of the '377 Patents causing injury to Linex. As a result of this infringement, Linex is entitled to recover compensatory damages that at a minimum are equal to a reasonable royalty.

36. Silver Spring's contributory infringement of the '377 Patents has been and continues to be willful.

Count IV – Direct Infringement ('503 patent)

37. Linex re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 8 and 15 through 20 of this Amended Complaint as if fully set forth herein and further alleges as follows:

38. Silver Spring manufactures and sells mesh networks and mesh network components, including, but not limited to, the following: Silver Spring Access Point, Silver Spring Relay, and Silver Spring Bridge Family. These systems and components made and/or

sold by Silver Spring perform the requisite steps to infringe on claims of the '503 Patents either literally or under the doctrine of equivalents, making Silver Spring liable for direct patent infringement. Silver Spring's infringing components lack substantial non-infringing uses.

39. Silver Spring is aware of the '503 Patents and Linex's exclusive right to enforce and license the original and amended patent. Upon information and belief, Silver Spring was and is aware that the products it manufactures and sells infringe the '503 Patents. Linex wrote to Silver Spring on April 12, 2012 to explain its patented technology and to offer Silver Spring the opportunity to discuss a licensing arrangement.

40. Silver Spring's unlicensed manufacture and sale of the products listed above infringe the '503 Patents causing injury to Linex. As a result of this infringement, Linex is entitled to recover compensatory damages that at a minimum are equal to a reasonable royalty.

41. Silver Spring's infringement of the '503 Patents has been and continues to be willful.

Count V – Induced Infringement ('503 patent)

42. Linex re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 8 and 15 through 20 of this Amended Complaint as if fully set forth herein and further alleges as follows:

43. Silver Spring manufactures and sells mesh networks and mesh network components, including, but not limited to, the following: Silver Spring Access Point, Silver Spring Relay, and Silver Spring Bridge Family. These systems and products when used by others infringe on claims of the '503 Patents either literally or under the doctrine of equivalents resulting in others committing direct infringement of the '503 Patents. Silver Spring's infringing components lack substantial non-infringing uses.

44. As alleged above, Silver Spring has knowledge of the '503 Patents, and through Silver Spring's manufacture and sale of its infringing products, it directly infringes on claims of the '503 Patents.

45. By manufacturing and injecting its unlicensed, infringing products into the stream of commerce with the intention of customers implementing and using these products, Silver Spring induces infringement of the '503 Patents causing injury to Linex. As a result of this infringement, Linex is entitled to recover compensatory damages that at a minimum are equal to a reasonable royalty.

46. There are no substantial non-infringing uses for Silver Spring's products directly infringing the '503 Patents, and Silver Spring's induced infringement of the '503 Patents has been and continues to be willful.

Count VI – Contributory Infringement ('503 patent)

47. Linex re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 8 and 15 through 20 of this Amended Complaint as if fully set forth herein and further alleges as follows:

48. Silver Spring manufactures and sells mesh networks and mesh network components, including, but not limited to, the following: Silver Spring Access Point, Silver Spring Relay, and Silver Spring Bridge Family. These systems and products infringe claims of the '503 Patents either literally or under the doctrine of equivalents resulting in Silver Spring committing direct infringement. Silver Spring's infringing components lack substantial non-infringing uses.

49. As alleged above, Silver Spring has knowledge of the '503 Patents, and through Silver Spring's manufacture, incorporation of infringing components, and sale of its infringing

products, it directly infringes the '503 Patents.

50. On information and belief, Silver Spring has sold, and continues to sell, its infringing products to consumers in the United States. These infringing products directly infringe on claims of the '503 Patents, are especially made or adapted for the infringing use, and have no substantial non-infringing uses, as evidenced, for example, by the instructions given to consumers alongside its product.

51. By manufacturing and injecting its unlicensed, infringing products into the stream of commerce with the intention of customers implementing and using these products, where customers ultimately do implement and use these products, Silver Spring commits contributory infringement of the '503 Patents causing injury to Linex. As a result of this infringement, Linex is entitled to recover compensatory damages that at a minimum are equal to a reasonable royalty.

52. Silver Spring's contributory infringement of '503 Patents has been and continues to be willful.

Demand for Jury Trial

Linex is entitled to and demands a jury trial on all claims and issues.

Prayer for Relief

WHEREFORE, Linex seeks entry of judgment:

- a) that Silver Spring has infringed or has induced or contributed to infringement of one or more of the asserted claims of the '377 Patents by making, using, importing, offering for sale, and/or selling products that are used to implement a mesh network;
- b) that Silver Spring has infringed or has induced or contributed to infringement of one or more of the asserted claims of the '503 Patents by making, using, importing, offering for sale, and/or selling products that are used to implement a mesh network;

- c) that Silver Spring's infringement of the Linex patents is willful;
- d) that Silver Spring account for and pay to Linex all damages caused by its infringement of the '377 Patents and the '503 Patents that are at a minimum equal to a reasonable royalty;
- e) that Linex be granted pre-judgment and post-judgment interest on the damages caused by Silver Spring's infringement of the '377 Patents and the '503 Patents;
- f) that attorneys' fees and costs be awarded to Linex under 35 U.S.C. § 285;
- g) that Linex be awarded treble damages for Silver Spring's willful infringement; and
- h) that Linex be granted such other and further relief that is just and proper.

Respectfully submitted this 7th day of January, 2015.

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court using CM/ECF and served via transmission of Notices of Electronic Filing generated by CM/ECF this 7th day of January, 2015.

/s/ Kenneth R. Hartmann
Kenneth R. Hartmann