

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

|   |   |  |
|---|---|--|
| ACOUSTIC TECHNOLOGY, INC.                 | ) |  |
|   | ) |  |
| Plaintiff,                                | ) | Civil Action No. 2:16-CV-00831-JRG-RSP |
| v.  | ) |  |
|   | ) |  |
| SILVER SPRINGS NETWORKS, INC.,            | ) |  |
|   | ) | <b>JURY TRIAL DEMANDED</b>             |
| Defendant.                                | ) |  |
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**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, Acoustic Technology, Inc. (“ATI”), by and through undersigned counsel, brings this First Amended Complaint against Silver Spring Networks, Inc. (“Silver Spring”), and in support thereof alleges as follows:

**THE PARTIES**

1. ATI is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and maintains its principal place of business at 30 Jeffries Street, East Boston, Massachusetts.

2. ATI is a systems integrator and hardware and communications systems designer. It designs, manufactures and supplies, *inter alia*, devices that route or relay data over communications networks, synonymously referred to as concentrators, relays or routers, as well as sirens and complex warning and notification systems.

3. Silver Spring is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 555 Broadway Street, Redwood City, California, 94063.

4. Upon information and belief, Silver Spring is in the business of creating, building, and deploying large-scale solutions enabling the Internet of Things for critical infrastructure, including the development of smart grids for utilities that encompass, *inter alia*, advanced metering capabilities. These metering capabilities enable two-way communications between a utility and its customers that facilitate the remote reading of meter usage, monitoring and adjustment of power usage and other functionality.

### **JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331 because ATI asserts claims for patent infringement. It also has subject matter jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.

6. The Court may exercise personal jurisdiction over Silver Spring in that it maintains a regular place of business in Texas and regularly conducts business in this State, including the sale, deployment, installation and maintenance of smart grid networks. Additionally, transactions and occurrences out of which ATI's causes of action arise occurred in Texas.

7. Venue is proper under 28 U.S.C. §§ 1391 and 1400 in that, upon information and belief, Silver Spring is deemed to reside in the Eastern District of Texas and has committed acts of infringement in this District of the patents at issue by, *inter alia*, entering into a contract for the sale of a system to be installed in areas within the Eastern District of Texas and offering for

sale to utilities located in or servicing territories within the Eastern District of Texas systems that infringe at least one of the claims of the Patents-in-Suit.

**FACTS COMMON TO ALL COUNTS**

8. Public utilities charge their customers based on the amount of energy, water or other products they utilize. They generally measure consumption through meters installed at their customers' homes or businesses.

9. Billing customers was labor intensive because utilities were required to employ meter readers to visit each customer's home or business periodically to read the meters and then report the meter readings to the utility's billing department.

10. Utilities sought means of remotely reading customer meters and transmitting these readings to their billing system.

11. Utilities also became interested in automated meter reading systems to provide additional services to customers, such as communicating time of use information and outage/restoral monitoring, and even expanding their services to include transmission of voice and data communications in competition with telephone, cable, cellular and satellite companies.

12. For many years, however, utilities and other interested parties were unable to overcome the technical and other barriers to developing automated meter reading systems.

13. On November 16, 1999, the United States Patent and Trademark Office ("PTO") lawfully and properly issued Patent No. 5,986,574 (the "'574 Patent") covering "A System and Method for Communication between Remote Locations." A true and correct copy of the '574 Patent is attached hereto, made a part hereof and marked Exhibit "A."

14. The inventions claimed in the ‘574 Patent solved the technical and other barriers that had previously frustrated the development of automated metering reading systems and could be utilized for other kinds of remote automated communications, such as transmission of voice and data communications.

15. The ‘574 Patent claims upon a system and method for providing automated meter reading: (i) consisting of a control means, a plurality of metering devices arranged into a defined number of metering groups each of which includes a meter that also performs the synonymous functionality of concentrating, relaying or routing data (“concentrator meters”); and (ii) in which the concentrator meter functions as a meter and also automatically communicates data both within each meter group and with the control means.

16. For example, independent claim 23 claims upon:

A communication system for transmitting data between a plurality of locations comprising:

Control means for receiving and transmitting data;

A concentrator comprising, a meter and means for monitoring an amount of usage of a medium, having a relay means in communication with said control means; and a plurality of serving means, comprising at least one meter, in communication with said relay means for transmitting data to and receiving data from said control means via said relay.

17. In claim 16, the ‘574 Patent also claims upon the concentrator meter.

18. The PTO subsequently lawfully and properly granted Patent 6,509,841 (the “‘841 Patent”).

19. As a general matter, the ‘841 Patent claims upon a remote two-way communication system between a control (including a central computer) and a service device,

including a meter, for measuring a local parameter through a code-division multiple access (“CDMA”) communication link. A true and correct copy of the ‘841 Patent is attached hereto, made a part hereof and marked Exhibit “B.”

20. In Claim 8, the ‘841 Patent claims upon: “A system for remote two-way meter reading comprising: a metering device comprising means for measuring usage and for transmitting data associated with said measured usage in response to receiving a read command; a control for transmitting said read command to said metering device and for receiving said data associated with said measured usage transmitted from said metering device; and a relay for code-division multiple access (CDMA) communication between said metering device and said control, wherein said data associated with said measured usage and said read command is relayed between said control and metering device by being passed through said relay.”

21. ATI has obtained all ownership rights, including through contracts and assignments, in the ‘574 and ‘841 Patents.

22. Silver Spring has developed and markets in the United States smart-grid systems, including its SilverLink Networking Platform and SilverLink Data Platform (“SilverLink System”), which offer a variety of applications, including advanced metering, distribution automation and demand side management.

23. For example, the SilverLink System’s “advanced metering solution provides utilities with two-way communications from [Silver Spring’s] communications module integrated into a third-party meter to their back office, enabling utilities to remotely perform such functions as reading meter usage, capturing time-of-use consumption data, connecting and

disconnecting service, and detecting power outages.” (Silver Spring Securities and Exchange Commission Form 10-K, for the fiscal year ended December 31, 2015, p. 3).

24. The functionality of the SilverLink System depends upon a system and method for communicating data between meters and central computers controlling the applications (the “SilverLink Communication System”).

25. The architecture of the SilverLink Communication System and method of the SilverLink System includes: (i) meters containing a means of measuring and communicating the amount of usage of a utility are grouped together; (ii) each of the meters within a group transmits to and receives data and instructions from a relay; and (iii) the relays transmit data between the groups of meters and a central computer or control device through a wide area network.

26. Control devices within the SilverLink Communication System have the capability to and do issue a read command to the meters and the meters respond by transmitting the usage data they read in response to this command through the relay.

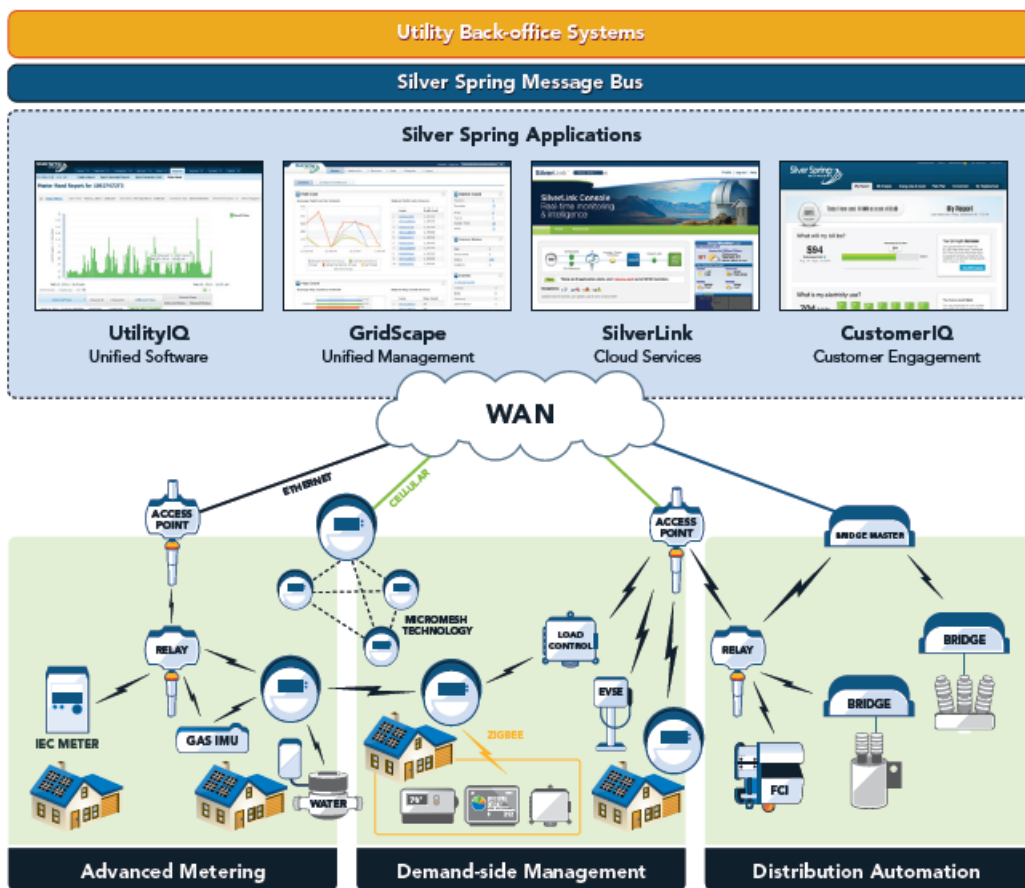
27. The SilverLink Communication System is capable of communicating data over a wide-area network through various technologies, including code-division multiple access (“CDMA”).

28. The SilverLink Communication System also contains MicroAP and SocketAP devices, which consist of a metering device that measures utility usage and a device performing the synonymous function of concentrating, relaying, routing or otherwise aggregating data from multiple meters and transmitting it to a control means and receiving data from a control means and distributing it among multiple meters.

29. The MicroAP consists of an electric meter into which the concentrator, relay, router or other such device are integrated within the same housing of the MicroAP.

30. Meters in the SilverLink Communication System are arranged into defined groups containing a MicroAP or Socket AP.

31. A representative schematic of the SilverLink Communication System is set forth below:



32. Utilities in the United States, including Entergy Services, Inc., have acquired various applications of the SilverLink System from Silver Spring, which has designed, deployed,

installed and tested those systems. Each of the Systems that were acquired utilize the SilverLink Communication System architecture.

33. Silver Spring also has designed and manufactures, produces, markets and/or sells components of the SilverLink Communication System in the United States, including the communications modules that are integrated into the third-party meters and for the MicroAP and SocketAP.

**COUNT I**  
**PATENT INFRINGEMENT**

34. ATI incorporates by reference, as if fully set forth herein, paragraphs 1 through 33 of this Amended Complaint.

35. The SilverLink Communication Systems incorporating MicroAP and/or Socket AP infringe at least one of the independent and several of the dependent claims of the '574 Patent.

36. MicroAP and SocketAP consist of devices having a meter for monitoring utility usage and concentrating, routing, relaying or aggregating data from meters and transmitting it to the control means and receiving data from the control means and distributing among the meters.

37. All SilverLink Communication Systems containing MicroAP and SocketAP: (i) contain a control means for receiving and transmitting data and defined groups of a plurality of meters having a means for measuring utility usage communicating with the MicroAP or Socket AP; and (ii) the MicroAP and SocketAP transmit data between the control means and the defined groups of a plurality of meters.



38. The communication between MicroAP and SocketAP and the plurality of meters within each such device's metering group is over a local area network and the communication between MicroAP and/or SocketAP and the control means is over a wide area network, through CDMA or other cellular technologies.

39. Silver Spring continues to infringe and/or contribute to the infringement of the '574 Patent by designing, marketing, selling, licensing the use of, installing and/or deploying SilverLink Systems with the SilverLink Communication System in the United States.

40. In or about 2008, Silver Spring conducted a patent review and during which, it learned of the '574 Patent. Nevertheless, Silver Spring designed, marketed and sold the SilverLink Communication System without a license from the patent holders. Further, Silver Spring had access to the inventions disclosed in the '574 Patent in developing the SilverLink System and MicroAP. Silver Spring's infringement and/or contributory infringement of the '574 Patent has been willful and deliberate, and in disregard of ATI's lawful rights, rendering this case "exceptional" under 35 U.S.C. § 285.

41. As a direct and proximate result of Silver Spring's infringement and contributory infringement of the '574 Patent, ATI has suffered monetary damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.

WHEREFORE, plaintiff, Acoustic Technology, Inc., demands judgment in its favor and against defendant, Silver Spring Networks, Inc., for compensatory damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), an award of attorneys' fees and costs, permanent injunctive relief and such other relief as this Court deems just and proper.

**COUNT II**  
**PATENT INFRINGEMENT**

42. ATI incorporates by reference, as if fully set forth herein, paragraphs 1 through 41 of this Amended Complaint.

43. The MicroAP infringes claim 16 of the '574 Patent.

44. Silver Spring has infringed and/or contributed to the infringement of the '574 Patent by designing, manufacturing, marketing, licensing the use of and/or selling the communication module for the MicroAP and installing those modules in the MicroAP devices. There is no purpose for those communication modules other than for use within the MicroAP and SocketAP.

45. Silver Spring has also infringed claim 16 of the '574 Patent by designing, marketing, selling, licensing the use of, deploying and /or implementing the SilverLink Communication System with MicroAP devices.

46. Silver Spring continues to infringe and/or contribute to the infringement of the '574 Patent.

47. Silver Spring's infringement and contributory infringement of the '574 Patent has been willful and deliberate, and in disregard of ATI's lawful rights, rendering this case "exceptional" under 35 U.S.C. § 285.

48. As a direct and proximate result of Silver Spring's infringement and contributory infringement of the '574 Patent, ATI has suffered monetary damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000) exclusive of interest and costs.

WHEREFORE, plaintiff, Acoustic Technology, Inc., demands judgment in its favor and against defendant, Silver Spring Networks, Inc., for compensatory damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), an award of attorneys' fees and costs, permanent injunctive relief and such other relief as this Court deems just and proper.

**COUNT III**  
**INDUCEMENT TO PATENT INFRINGEMENT**

49. ATI incorporates by reference, as if fully set forth herein, paragraphs 1 through 48 of this Amended Complaint.

50. Silver Spring actively induced others to infringe the '574 Patent by designing, manufacturing, selling, licensing the use of, supplying and/or distributing the components for automated meter reading and/or smart grid systems, including MicroAP and SocketAP, that utilities have installed or deployed, or caused to be installed or deployed, in their territories in the United States, which are covered by, and/or contain devices claimed in, that Patent.

51. Upon information and belief, Silver Spring continues to induce infringement of the '574 Patent by manufacturing, selling, licensing the use of and/or supplying the components for automated meter reading or smart grid systems that utilities have installed or deployed, or caused to be installed or deployed, in their territories in the United States, which are covered by, and/or contain devices claimed in, that Patent.

52. Silver Spring's inducement of the infringement of the '574 Patent has been willful and deliberate, and in disregard of ATI's lawful rights, rendering this case "exceptional" under 35 U.S.C. § 285.

53. As a direct and proximate result of Silver Spring's inducement of the infringement of the '574 Patent, ATI has suffered monetary damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.

WHEREFORE, plaintiff, Acoustic Technology, Inc., demands judgment in its favor and against defendant, Silver Spring Networks, Inc., for compensatory damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), an award of attorneys' fees and costs, permanent injunctive relief and such other relief as this Court deems just and proper.

**COUNT IV**  
**PATENT INFRINGEMENT**

54. ATI incorporates by reference, as if fully set forth herein, paragraphs 1 through 53 of this Amended Complaint.

55. Silver Spring has infringed and/or contributed to the infringement of the '841 Patent by designing, marketing, selling, licensing the use of, installing and/or deploying in the United States the SilverLink Communications System.

56. The meters in the SilverLink Communication System measure meter usage and transmit this data through relays to utility computers hosting SilverLink System and, in some cases other, applications in response to read commands from the computers that are transmitted by the relays. In at least some systems, the relays transmit data received from the meters to the computer and receive the read commands from the computer through CDMA communication and, upon information and belief, all SilverLink Systems are capable of CDMA communication.

57. Silver Spring continues to infringe and/or contribute to the infringement of the '841 Patent by designing, marketing, selling, licensing the use of, installing and/or deploying the SilverLink Communication System.

58. In or about 2009, Silver Spring conducted a patent review and during which, it learned of the '841 Patent. Nevertheless, Silver Spring designed, marketed and sold the SilverLink Communication System without a license from the patent holders. Silver Spring had access to the inventions claimed in the '841 Patent in developing the SilverLink System. Silver Spring's infringement and/or contributory infringement of the '841 Patent has been willful and deliberate, and in disregard of ATI's lawful rights, rendering this case "exceptional" under 35 U.S.C. § 285.

59. As a direct and proximate result of Silver Spring's infringement and contributory infringement of the '841 Patent, ATI has suffered monetary damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.

WHEREFORE, plaintiff, Acoustic Technology, Inc., demands judgment in its favor and against defendant, Silver Spring Networks, Inc. for compensatory damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), an award of attorneys' fees and costs, permanent injunctive relief and such other relief as this Court deems just and proper.

**COUNT V**  
**INDUCEMENT TO PATENT INFRINGEMENT**

60. ATI incorporates by reference, as if fully set forth herein, paragraphs 1 through 59 of this Complaint.

61. Silver Spring actively induced others to infringe the '841 Patent by manufacturing, selling and/or supplying the components for automated meter reading systems or smart grid networks, that utilities have installed or deployed or caused to be installed or deployed in their territories in the United States, which are covered by, and/or contain devices claimed in, that Patent.

62. Upon information and belief, Silver Spring continues to induce infringement of the '841 Patent by manufacturing, selling and/or supplying the components for automated meter reading systems or smart grid networks that utilities have installed, or caused to be installed, in their territories in the United States, which are covered by, and/or contain devices claimed in, the '841 Patent.

63. Silver Spring's inducement of the infringement of the '841 Patent has been willful and deliberate, and in disregard of ATI's lawful rights, rendering this case "exceptional" under 35 U.S.C. § 285.

64. As a direct and proximate result of Silver Spring's inducement of the infringement of the '841 Patent, ATI has suffered monetary damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.

WHEREFORE, plaintiff, Acoustic Technology, Inc., demands judgment in its favor and against defendant, Silver Spring Networks, Inc., for compensatory damages in an amount in excess of Seventy-Five Thousand Dollars (\$75,000), an award of attorneys' fees and costs, permanent injunctive relief and such other relief as this Court deems just and proper.

Respectfully submitted,

THE DAVIS FIRM, PC

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*Of Counsel*

Dated: February 7, 2017

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedures 38(b), Acoustic Technology, Inc. requests a jury trial of all issues triable of right by a jury.

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document is being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served on all counsel who is deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), any counsel of record not deemed to have consented to electronic service will be served with a true and correct copy of the foregoing by email on this 7th day of February, 2017.

/s/ William E. Davis, III  
William E. Davis, III