

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

ENDEAVOR MESHTECH, INC.,

Plaintiff,

v.

ZENNER PERFORMANCE METERS, INC.

d/b/a ZENNER USA

Defendant.

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CIVIL ACTION NO. 2:15-cv-1155

**JURY TRIAL DEMANDED**

**PLAINTIFF’S ORIGINAL COMPLAINT**

Plaintiff Endeavor MeshTech, Inc. (“Plaintiff” or “Endeavor”), by and through its undersigned counsel, files this Original Complaint for Patent Infringement against Defendant Zenner Performance Meters, Inc. d/b/a Zenner USA (“Defendant” or “Zenner”) as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action to stop Defendant’s infringement of Plaintiff’s United States Patent No. 8,700,749 (hereinafter, the “’749 Patent”) and United States Patent No. 8,855,019 (hereinafter, “’019 Patent”) (collectively, the “Patents-in-Suit”), copies of which are attached hereto as **Exhibits A, and B**, respectively). Plaintiff is the owner of the Patents-in-Suit. Plaintiff seeks injunctive relief and monetary damages.

**PARTIES**

2. Endeavor is a corporation organized and existing under the laws of the State of Delaware. Plaintiff maintains its principal place of business at 3140 Broadway, 46<sup>th</sup> Floor, New York, New York, 10005 (New York County).

3. Upon information and belief, Zenner is a corporation duly organized and existing under the laws of the State of California since January 2, 2012, and having its principal place of

business located at 15280 Addison Road, Suite 100, Addison, Texas 75001 (Dallas County). Zenner has been registered with the Texas Secretary of State since August 18, 2014 as a foreign corporation and serves as its own registered agent for purposes of service of process in this District.

4. Upon information and belief, Zenner ships, distributes, makes, uses, offers for sale, sells, and/or advertises its products under the brand names of “Stealth®” and “MeshPlus.”

#### **JURISDICTION AND VENUE**

5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

6. The Court has personal jurisdiction over Zenner because: Defendant has minimum contacts within the State of Texas and in the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas, and Plaintiff’s causes of action arise directly from Defendant’s business contacts and other activities in the State of Texas and in the Eastern District of Texas.

7. More specifically, Defendant, directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its products and affiliated services in the United States, the State of Texas, and the Eastern District of Texas. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Defendant has many paying customers who are residents of the

State of Texas and the Eastern District of Texas and who use Defendant's products in the State of Texas and in the Eastern District of Texas.

8. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### **BACKGROUND INFORMATION**

9. The Patents-in-Suit were duly and legally issued by the United States Patent and Trademark Office on April 15, 2014 (the '749 Patent) and October 7, 2014 (the '019 Patent) after full and fair examinations. Plaintiff is the owner of the Patents-in-Suit, and possesses all right, title and interest in the Patent-in-Suit including the right to enforce the Patents-in-Suit, the right to license the Patents-in-Suit, and the right to sue Defendant for infringement and recover past damages.

10. On information and belief, Zenner owns, operates, advertises, and/or controls the website www.zennerusa.com, through which Defendant advertises, sells, offers to sell, provides and/or educates customers about its products and services, including but not limited to the "Stealth Reader®," "Stealth Collector®," "Stealth Repeater®," "Stealth Network Manager®" and "MeshPlus", sells, advertises, offers for sale, uses, or otherwise provides a self-configuring wireless network (collectively, the "Accused Products and Services").

### **COUNT I** **INFRINGEMENT OF U.S. PATENT NO. 8,700,749**

11. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-10 above.

12. Plaintiff is informed and believes that Zenner has infringed and continues to infringe the '749 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products under the Stealth®" and "MeshPlus" brand names. Upon information and belief, Defendant has infringed and continues to infringe one or more

claims of the '749 Patent because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises devices that comprise a self-configuring wireless network that incorporates a group of virtual network nodes coupled to a gateway to provide a communication access point between the nodes and an external network, including at least the Accused Products and Services. Specifically, Defendant's Accused Products and Services infringe one or more of the claims of the '749 Patent by providing to its customers a mesh network that is a "[f]ixed mesh network is self-forming and self-healing" where "[e]very meter is also a repeater" and "[m]eters automatically discover and join the network." See, e.g., Exhibit C; Exhibits D-F. Upon information and belief, Defendant's Accused Products and Services are available for sale on its website and through various retailers located in this district and throughout the United States. See, e.g., Exhibit G.

13. Upon information and belief, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '749 Patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products and Services in an infringing manner. Despite knowledge of the '749 Patent as early as the date of service of the Original Complaint in this action, Defendant, upon information and belief, continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the '749 Patent. Based upon information and belief, Defendant's source of revenue and business focus is the provision of and sale of the Accused Products and Services. Upon information and belief, Defendant has specifically intended its customers to use its systems and methods in such a way that infringes the '749 Patent by, at a minimum, providing and supporting the Accused Products and Services and

instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. See Exhibits C-G. Upon information and belief, Defendant knew that its actions, including, but not limited to any of the aforementioned systems and methods, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products and Services. *Id.*

14. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

15. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

16. Defendant's infringement of Plaintiff's rights under the '749 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

**COUNT II**  
**INFRINGEMENT OF U.S. PATENT NO. 8,855,019**

17. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-10 above.

18. Plaintiff is informed and believes that Zenner has infringed and continues to infringe the '019 Patent either literally or under the doctrine of equivalents through the manufacture and sale of infringing products under the Stealth® and "MeshPlus" brand names. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the '019 Patent because it ships distributes, makes, uses, imports, offers for sale, sells,

and/or advertises a wireless network that incorporates a group of virtual network nodes coupled to one or more gateways to provide a communication access point between the nodes and an external network, including at least the Accused Products and Services. Specifically, Defendant's Accused Products and Services infringe one or more of the claims of the '019 Patent by providing to its customers a mesh network that is a "[f]ixed mesh network is self-forming and self-healing" where "[e]very meter is also a repeater" and "[m]eters automatically discover and join the network." See, e.g., Exhibit C; Exhibits D-F. Upon information and belief, Defendant's Accused Products and Services are available for sale on its website and through various retailers located in this district and throughout the United States. See, e.g., Exhibit G.

19. Upon information and belief, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '019 Patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled, and otherwise caused Defendant's customers to use the Accused Products and Services in an infringing manner. Despite knowledge of the '019 Patent as early as the date of service of the Original Complaint in this action, Defendant, upon information and belief, continues to encourage, instruct, enable, and otherwise cause its customers to use its systems and methods, in a manner which infringes the '019 Patent. Based upon information and belief, Defendant's source of revenue and business focus is the provision of and sale of the Accused Products and Services. Upon information and belief, Defendant has specifically intended its customers to use its systems and methods in such a way that infringes the '019 Patent by, at a minimum, providing and supporting the Accused Products and Services and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional

material, and contact information. See Exhibits D-G. Upon information and belief, Defendant knew that its actions, including, but not limited to any of the aforementioned systems and methods, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Accused Products and Services.

20. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

21. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

22. Defendant's infringement of Plaintiff's rights under the '019 Patent will continue to damage Plaintiff, causing irreparable harm to Plaintiff for which there is no adequate remedy at law, unless enjoined by this Court.

#### **JURY DEMAND**

23. Plaintiff demands a trial by jury on all issues.

#### **PRAYER FOR RELIEF**

24. Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the Patents-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant;

- B. An adjudication that Defendant has induced infringement of one or more claims of the Patents-in-Suit;
- C. An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Plaintiff for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;
- D. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from further acts of infringement with respect to any one or more of the claims of the Patents-in-Suit;
- E. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,
- F. Any further relief that this Court deems just and proper.

Dated: June 23, 2015

Respectfully submitted,

By: /s/ William E. Davis, III  
William E. Davis, III  
Texas State Bar No. 24047416  
**THE DAVIS FIRM P.C**  
213 North Fredonia, Suite 230  
Longview, Texas 75601  
Telephone: (903) 230-9090  
Facsimile: (903) 230-9661  
E-mail: bdavis@bdavisfirm.com

Of Counsel:

Jacqueline K. Burt (Bar No. 425322, GA)  
Jonathan R. Miller (Bar No. 507179, GA)  
James F. McDonough, III (Bar No. 117088, GA)  
**HENINGER GARRISON DAVIS, LLC**  
3621 Vinings Slope, Suite 4320  
Atlanta, Georgia 30339  
Telephone: (404) 996-0861, 0869, 0863  
Facsimile: (205) 547-5502, 5504, 5506  
Email: jburt@hgdlawfirm.com  
Email: jmcdonough@hgdlawfirm.com  
Email: jmiller@hgdlawfirm.com

*Attorneys for Plaintiff*  
*Endeavor MeshTech, Inc.*