

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

ENDEAVOR MESHTECH, INC.,

Plaintiff,

v.

ATMEL CORPORATION,

Defendant.

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Plaintiff Endeavor MeshTech, Inc. (hereinafter, “Plaintiff” or “Endeavor”), by and through its undersigned counsel, files this Original Complaint for Patent Infringement against Defendant Atmel Corporation (hereinafter, “Defendant” or “Atmel”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of Plaintiff’s United States Patent Nos. 7,379,981 (hereinafter, the “’981 Patent”), 8,700,749 (hereinafter, the “’749 Patent”), and 8,855,019 (hereinafter, “’019 Patent”) (collectively, the “Patents-in-Suit”), copies of which are attached hereto as **Exhibits A, B and C**, 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 and maintains its principal place of business at 3140 Broadway, 46th Floor, New York, New York, 10005 (New York County).

3. Upon information and belief, Defendant is a corporation duly organized and existing under the laws of the State of Delaware since March 4, 1999 and has its principal place of business located at 1600 Technology Drive, San Jose, California 95110 (Santa Clara County).

4. Upon information and belief, Defendant is registered with the Colorado Secretary of State as a foreign corporation since May 24, 2002 and may be served through its registered agent, The Corporation Company, which is located at 1675 Broadway, Suite 1200, Denver, Colorado, 80202.

5. Upon information and belief, Defendant maintains a facility for the “Design, Manufacture and Testing of Semiconductors and Related Activities” located at 1150 E. Cheyenne Mountain Blvd. Colorado Springs, Colorado, 80906. **Exhibit H.**

6. Upon information and belief, Defendant ships, distributes, makes, uses, offers for sale, sells, and/or advertises its products under the brand names of, among others, ZigBit®, SmartConnect®, BitCloud®, and SMART®.

JURISDICTION AND VENUE

7. 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).

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

9. 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 Colorado, and the District of Colorado. Upon information and belief, Defendant has committed patent infringement in the State of Colorado and in the District of Colorado. Defendant solicits customers in the State of Colorado and in the District of Colorado. Defendant has many paying customers who are residents of the State of Colorado and the District of Colorado and who use Defendant's products in the State of Colorado and in the District of Colorado.

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

BACKGROUND INFORMATION

11. The Patents-in-Suit were duly and legally issued by the United States Patent and Trademark Office on May 27, 2008 (the '981 Patent), 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.

12. On information and belief, Defendant owns, operates, advertises, and/or controls the website www.atmel.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 following products (collectively, the “Accused Products and Services”): Atmel Zigbit modules/SMART modules (utilizing ZigBee, Bluetooth, and Wifi, including transceivers, single-chip solutions, mega AVR, and microcontrollers), including but not limited to: ATZBxx Series, AT86RFxx Series, ATREBxx Series, ATmegaxx Series, ATxmegaxx Series, ATSAMRxx Series, WINCxx Series, WILCxx Series, SAMxx Series, BTLCxx Series, RF4Control - ZigBee RF4CE product line, SmartConnect 6LoWPAN product line, SAM R21xx series (together, the “Atmel Nodes”) and BitCloud - ZigBee PRO development platform; Atmel Zigbit/Zigbee Gateways, including but not limited to: AT01030, AT2200, AT2242, AT11412, AT02447, and AT02744 (“Atmel Gateways”); and Atmel SMART portfolio (to the extent not covered in the foregoing Atmel Node and Atmel Gateways), including its metering products, ARM-based microprocessors, AVR Microcontrollers; Atmel Lightweight Mesh software stack, and Atmel Studio, along with services related to the foregoing, (collectively, the “Accused Products and Services”). Evidence obtained from Defendant’s website regarding these products is provided in **Exhibits D through G.**

FIRST CLAIM FOR RELIEF
(INFRINGEMENT OF U.S. PATENT NO. 7,379,981)

13. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-12 above.

14. Plaintiff is informed and believes that Defendant has infringed and continues to infringe the '981 Patent, either literally or under the doctrine of equivalents, through the manufacture and sale of infringing products under the brand names of ZigBit®, SmartConnect®, BitCloud®, and SMART®. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the '981 Patent because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises devices that form a self-configuring wireless network that incorporates a group of virtual network nodes (e.g., Atmel Nodes) coupled to a gateway (e.g., Atmel Gateways) to provide a communication access point between the nodes and an external network, including at least the Accused Products and Services. For example, the Accused Products and Services infringe one or more of the claims of the '981 Patent by providing to Defendant's customers a "complete line of IEEE 802.15.4-compliant, IPv6/6LoWPAN based, ZigBee certified wireless solutions." See, e.g., Exhibit D at p.6. 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., Exhibits E and F.

15. Upon information and belief, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '981 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 '981 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 products and services, in a manner which infringes the '981 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 products and services in such a way that infringes the '981 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, e.g., Exhibits D through F. Specifically, Defendant offers design services to select, deploy and integrate Defendant's products to assist its customers in establishing and using mesh systems. See, e.g., Exhibit G, and the entirety of Defendant's website at www.atmel.com, which is incorporated herein by reference. Upon information and belief, Defendant knew that its actions, including, but not limited to any of the aforementioned products and services, 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.

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

17. 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.

18. Defendant's infringement of Plaintiff's rights under the '981 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.

SECOND CLAIM FOR RELIEF
(INFRINGEMENT OF U.S. PATENT NO. 8,700,749)

19. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-18 above.

20. Plaintiff is informed and believes that Defendant 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 brand names of ZigBit®, SmartConnect®, BitCloud®, and SMART®. 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 form a self-configuring wireless network that incorporates a group of virtual network nodes (e.g., Atmel Nodes) coupled to a gateway (e.g., Atmel Gateways) to provide a communication access point between the nodes and an external network, including at least the Accused Products and Services. For example, the Accused Products and Services infringe one or more of the claims of the '749 Patent by providing to Defendant's customers "complete line of IEEE 802.15.4-compliant, IPv6/6LoWPAN based, ZigBee certified wireless solutions." See, e.g., Exhibit D at p.6. 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., Exhibits E and F.

21. 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 products and services, 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 products and services 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, e.g., Exhibits D through F. Specifically, Defendant offers design services to select, deploy and integrate Defendant's products to assist its customers in establishing and using mesh systems. See, e.g., Exhibit G, and the entirety of Defendant's website at www.atmel.com, which is incorporated herein by reference. Upon information and belief, Defendant knew that its actions, including, but not limited to any of the aforementioned products and services, 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.

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

23. 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.

24. 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.

THIRD CLAIM FOR RELIEF
(INFRINGEMENT OF U.S. PATENT NO. 8,855,019)

25. Plaintiff re-alleges and incorporates by reference each of Paragraphs 1-25 above.

26. Plaintiff is informed and believes that Defendant 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 brand names of ZigBit®, SmartConnect®, BitCloud®, and SMART®. 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 devices that form a self-configuring wireless network that incorporates a group of virtual network nodes (e.g., Atmel Nodes) coupled to a gateway (e.g., Atmel Gateways) to provide a communication

access point between the nodes and an external network, including at least the Accused Products and Services. For example, the Accused Products and Services infringe one or more of the claims of the '019 Patent by providing to Defendant's customers "complete line of IEEE 802.15.4-compliant, IPv6/6LoWPAN based, ZigBee certified wireless solutions." See, e.g., Exhibit D at p.6. 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., Exhibits E and F.

27. 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 products and services, 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 products and services 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, e.g., Exhibits D through F. Specifically, Defendant offers design services to select, deploy and integrate Defendant's

products to assist its customers in establishing and using mesh systems. See, e.g., Exhibit G, and the entirety of Defendant's website at www.atmel.com, which is incorporated herein by reference. Upon information and belief, Defendant knew that its actions, including, but not limited to any of the aforementioned products and services, 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.

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

29. 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.

30. 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

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

PRAYER FOR RELIEF

Plaintiff respectfully requests 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.

Respectfully submitted this 6th day of July, 2015.

HENINGER GARRISON DAVIS, LLC

/s/James F. McDonough, III

James F. McDonough, III
3621 Vinings Slope, Suite 4320
Atlanta, Georgia 30339
Telephone: (404) 996-0869
Email: jmcdonough@hgdllawfirm.com

*Lead Counsel for Plaintiff and a Member of the
Bar of this Court*

RYLEY CARLOCK & APPLEWHITE

/s/ F. Brittin Clayton III

F. Brittin Clayton III
1700 Lincoln Street, Suite 3500
Denver, Colorado 80203
Telephone: (303) 813-6713
Email: bclayton@rcalaw.com

*Local Counsel for Plaintiff and a Member of the
Bar of this Court*

HENINGER GARRISON DAVIS, LLC

/s/ Jacqueline K. Burt

3621 Vinings Slope, Suite 4320
Atlanta, Georgia 30339
Telephone: (404) 996-0861, 0863
Email: jburt@hgdllawfirm.com

*Of Counsel for Plaintiff and a Member of the Bar
of this Court*