

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

FatPipe, Inc.,

Plaintiff/Counter-Defendant,

v.

Talari Networks, Inc.,

Defendant/Counterclaimant.

Civil Action No.: 6:15-cv-0458-RWS

JURY TRIAL DEMANDED

**PLAINTIFF FATPIPE, INC.'S PATENT RULE 3-1 DISCLOSURE OF  
ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS**

In accordance with the Court's Order and P.R. 3-1, Plaintiff FatPipe, Inc. ("FatPipe") is serving on Defendant Talari Networks, Inc.. ("Talari") its 3-1 Disclosure of Asserted Claims and Infringement Contentions ("Infringement Contentions"). FatPipe's Infringement Contentions are based upon information available to FatPipe as of the date hereof without the benefit of discovery in this litigation. Because FatPipe has not yet received documents, source code, deposition testimony or other discovery relevant to its Infringement Contentions from Defendant, and because FatPipe's investigation is ongoing, FatPipe reserves the right to supplement and/or modify its Infringement Contentions to the full extent permitted under Patent Rule 3-6 and this Court's Orders.

**I. Patent Rule 3-1(a) - Identification of Asserted Claims**

With respect to U.S. Patent No. 6,775,235 ("235 Patent"), FatPipe asserts that Talari infringes the following claims of the asserted patent directly, contributorily and/or by inducement: Claims 4, 5, 7-15 and 19.

With respect to U.S. Patent No. 7,406,048 ("048 Patent"), FatPipe asserts that Talari infringes the following claims of the asserted patent directly, contributorily and/or by inducement: Claims 1-24.

## **II. Patent Rule 3-1(b) - Identification of Accused Instrumentalities**

For the purposes of Patent Rule 3-1(b), FatPipe asserts that each of the asserted claims for the '235 and '048 patents is infringed by the Talari Mercury family of appliances including, without limitation, at least the T510, T730, T750, T860, T3010, T5000 and T5200 appliances and the VT500 virtual appliance. FatPipe reserves the right to amend this identification to the full extent permitted under Patent Rule 3-6 and this Court's Orders.

## **III. Patent Rule 3-1(c) - Claim Charts**

Appendix I, attached hereto and incorporated herein in its entirety, provides preliminary charts identifying specifically where each element of the asserted claims is found in the Talari's accused instrumentalities. FatPipe's investigation and analysis of the accused instrumentalities is based upon information made publicly available by Talari and FatPipe's own investigations. As such, the charts appended and incorporated as Appendix I set forth FatPipe's current contentions with respect to where each element of the asserted claims is found in the accused instrumentalities. All citations to evidence in FatPipe's Infringement Contentions are illustrative only and shall in no way limit FatPipe's reliance on additional evidence obtained in discovery in support of its Infringement Contentions. To the fullest extent permitted under Patent Rule 3-6 and this Court's Orders, FatPipe reserves the right to amend and/or supplement its Infringement Contentions for any of the following reasons:

(i) FatPipe's positions regarding infringement of specific claims will depend on how those claims are construed by the Court. Because claim construction in this case has not yet occurred, FatPipe cannot take a final position on the bases for infringement of the asserted claims.

(ii) While FatPipe's investigation and analysis of Talari's infringement is based upon information made publicly available by Talari and FatPipe's own investigations, additional discovery from Defendant is necessary before FatPipe can take final positions on the bases for infringement of the asserted claims.

(iii) Many of the claim elements in the claims of the asserted patents are performed by Talari's software. Accordingly, pursuant to Paragraph 3 of the Court's Discovery Order, FatPipe reserves the right to amend and/or supplement its Infringement Contention after Talari produces its software code.

#### **IV. Patent Rule 3-1(d) - Literal Infringement/Doctrine of Equivalents**

For purposes of Patent Rule 3-1(d), each element of each asserted claim for the '235 and '048 Patents is considered to be literally present and present under the Doctrine of Equivalents within each of the accused instrumentalities. To the fullest extent permitted under patent Rule 3-6 and this Court's Orders, FatPipe reserves the right to amend and/or supplement this disclosure for any of the following reasons:

(i) FatPipe's positions regarding infringement of specific claims will depend on how those claims are construed by the Court. Because claim construction in this case has not yet occurred, FatPipe cannot take a final position on the bases for infringement of the asserted claims under the Doctrine of Equivalents.

(ii) While FatPipe's investigation and analysis of Defendant's infringement is based upon information made publicly available by Defendant and FatPipe's own investigations, additional

discovery from Defendant is necessary before FatPipe can take final positions on the bases for infringement of the asserted claims under the Doctrine of Equivalents.

(iii) Talari has not taken a position regarding whether any elements of the asserted claims are not literally present, as well as the basis for such a position. As such FatPipe reserves the right to amend and/or supplement this disclosure after Talari discloses the basis for its contention that it does not infringe the asserted patents.

(iv) Many of the claim elements in the claims of the asserted patents are performed by Talari's software. Accordingly, pursuant to Paragraph 3 of the Court's Discovery Order, FatPipe reserves the right to amend and/or supplement its Infringement Contention after Talari produces its software code.

#### **V. Patent Rule 3-1(e) - Priority Dates**

For purposes of Patent Rule 3-1(e), claims 4 and 19 of the '235 Patent are believed to be entitled to a priority date of December 29, 2000. Claims 5 and 7-15 of the '235 patent and all the asserted claims of the '048 Patent are believed to be entitled to a priority date of February 8, 2002. However, FatPipe's positions regarding the priority date of specific claims will depend on how those claims are construed by the Court. Accordingly, FatPipe reserves the right to amend and/or supplement its positions regarding the priority date of the asserted claims to the fullest extent permitted under Patent Rule 3-6 and this Court's Orders

#### **VI. Patent Rule 3-1(f)**

For purposes of Patent Rule 3-1(f), the following FatPipe products are believed to practice the inventions claimed in the asserted claims: FatPipe WARP, FatPipe MPVPN, and FatPipe IPVPN.

Dated: October 15, 2015

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