

1 Jennifer Ishimoto (SBN 211845)
Banie & Ishimoto LLP
2100 Geng Road, Suite 210
2 Palo Alto, California 94303
Telephone: 408-981-9472
3 Email: ishimoto@banishlaw.com

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5 *Attorneys for Plaintiff*
WirelessWerx IP, LLC

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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9 WIRELESSWERX IP, LLC,
10
11 Plaintiff,
v.
12 ZIPLINE INTERNATIONAL INC.,
13 Defendant.

Case No.: _____

**PLAINTIFF’S ORIGINAL COMPLAINT
FOR PATENT INFRINGEMENT**

(35 U.S.C. § 271)

JURY TRIAL DEMANDED

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16 TO THE HONORABLE JUDGE OF SAID COURT:

17 Plaintiff WirelessWerx IP LLC (“WirelessWerx” or “Plaintiff”), files this Original Complaint
18 for Patent Infringement against ZIPLINE INTERNATIONAL INC., (“Zipline” or “Defendant”), and
19 would respectfully show the Court as follows:

20 **PARTIES**

21 1. Plaintiff is a Texas limited liability company having an address located at 5900
22 Balcones Dr., Suite 100, Austin, Texas 78731.

23 2. On information and belief, Defendant is a Delaware corporation with a principal
24 address of 333 Corey Way, San Francisco CA 94080. Defendant is registered to do business in
25 California and may be served via its registered agent: Resident Agents Inc., 8 The Green, Ste R,
26 Dover, Delaware 19901, at its place of business, or wherever else Defendant may be found.
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1 3. On information and belief, Defendant directly and/or indirectly develops, designs,
2 manufactures, distributes, markets, offers to sell and/or sells infringing products and services in the
3 United States, including in the Northern District of California, and otherwise directs infringing
4 activities to this District in connection with its products and services.

5 **JURISDICTION**

6 4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*,
7 including without limitation 35 U.S.C. §§ 271, 281, 283, 284, and 285 based on Defendant's
8 unauthorized commercial manufacture, practice, use, importation, offer for sale, and sale of the
9 Accused Products in the United States. This is a patent infringement lawsuit over which this Court
10 has subject matter jurisdiction under, *inter alia*, 28 U.S.C. §§ 1331, 1332, and 1338(a).

11 5. This United States District Court for the Northern District of California has general
12 and specific personal jurisdiction over Defendant because, directly or through intermediaries,
13 Defendant has committed acts within the District, giving rise to this action and is present in and
14 transacts and conducts business in and with residents of this District and the State of California.

15 6. Plaintiff's causes of action arise, at least in part, from Defendant's contacts with and
16 activities in this District and the State of California.

17 7. Defendant has committed acts of infringing the Patent-in-Suit within this District and
18 the State of California by making, using, selling, offering for sale, and/or importing in or into this
19 District and elsewhere in the State of California, products claimed by the Patent-in-Suit, including
20 without limitation products made by practicing the claimed methods of the Patent-in-Suit.
21 Defendant, directly and through intermediaries, makes, uses, sells, offers for sale, imports, ships,
22 distributes, advertises, promotes, and/or otherwise commercializes such infringing products into this
23 District and the State of California. Defendant regularly conducts and solicits business in, engages
24 in other persistent courses of conduct in, and/or derives substantial revenue from goods and services
25 provided to residents of this District and the State of California.

26 8. This Court has personal jurisdiction over Defendant because Defendant has
27 minimum contacts with this forum as a result of business regularly conducted within the State of
28 California and within this district, and, on information and belief, specifically as a result of, at least,

1 committing the tort of patent infringement within California and this District. This Court has
2 personal jurisdiction over Defendant, in part, because Defendant does continuous and systematic
3 business in this District, including by providing infringing products and services to the residents of
4 the Northern District of California that Defendant knew would be used within this District, and by
5 soliciting business from the residents of the Northern District of California. For example, Defendant
6 is subject to personal jurisdiction in this Court because, *inter alia*, Defendant has regular and
7 established places of business throughout this District, including at least at 333 Corey Way, San
8 Francisco, CA 94080, and directly and through agents regularly does, solicits, and transacts business
9 in the Northern District of California. Also, Defendant has hired and is hiring within this District for
10 positions that, on information and belief, relate to infringement of the Patent-in-Suit. Accordingly,
11 this Court’s jurisdiction over the Defendant comports with the constitutional standards of fair play
12 and substantial justice and arises directly from the Defendant’s purposeful minimum contacts with
13 the State of California.

14 9. This Court also has personal jurisdiction over Defendant, because in addition to
15 Defendant’s online website (<https://www.flyzipline.com/>) and advertising within this District,
16 Defendant has also made its products available within this judicial district and advertised to residents
17 within the District to hire employees to be located in this District.

18 10. The amount in controversy exceeds \$75,000 exclusive of interests and costs.

19 11. Venue is proper in this Court under 28 U.S.C. § 1400(b) based on information set
20 forth herein, which is hereby repeated and incorporated by reference. Further, upon information
21 and belief, Defendant has committed or induced acts of infringement, and/or advertise, market, sell,
22 and/or offer to sell products, including infringing products, in this District. In addition, and without
23 limitation, Defendant has regular and established places of business throughout this District,
24 including at least at 333 Corey Way, San Francisco CA 94080.

25 **THE PATENT-IN-SUIT**

26 12. On January 8, 2008, United States Patent No. 7,323,982 (“the ’982 Patent”), entitled
27 “Method and System to Control Movable Entities” was duly and legally issued by the United States
28 Patent and Trademark Office (“USPTO”). The ’982 Patent claims patent-eligible subject matter and

1 is valid and enforceable. WirelessWerx is the exclusive owner by assignment of all rights, title, and
2 interest in the '982 Patent, including the right to bring this suit for damages, and including the right
3 to sue and recover all past, present, and future damages for infringement of the '982 Patent.
4 Defendant is not licensed to the '982 Patent, either expressly or implicitly, nor do they enjoy or
5 benefit from any rights in or to the '982 patent whatsoever. A true and correct copy of the '982 patent
6 is attached hereto as **Exhibit A**.

7 13. The '982 Patent is referred to herein as the "Patent-in-Suit."

8 14. Plaintiff WirelessWerx is the owner of the entire right, title, and interest in and to the
9 Patent-in-Suit. The Patent-in-Suit is presumed valid under 35 U.S.C. § 282.

10 **ACCUSED INSTRUMENTALITIES**

11 15. The term "Accused Instrumentalities" or "Accused Products" refers to, by way of
12 example and without limitation, Zipline's products (*e.g.* <https://www.flyzipline.com/>).

13 **COUNT I**

14 **PATENT INFRINGEMENT OF THE '982 PATENT**

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16 16. Plaintiff restates and realleges the preceding paragraphs of this Complaint as if fully
17 set forth herein.

18 17. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly
19 infringe, literally and/or under the doctrine of equivalents, one or more claims, including without
20 limitation at least claim 1 of the '982 Patent, by making, using, testing, selling, offering for sale
21 and/or importing into the United States Defendant's Accused Products.

22 18. On information and belief, Defendant has made no attempt to design around the
23 claims of the '982 Patent.

24 19. On information and belief, Defendant did not have a reasonable basis for believing
25 that the claims of the '982 Patent were invalid.

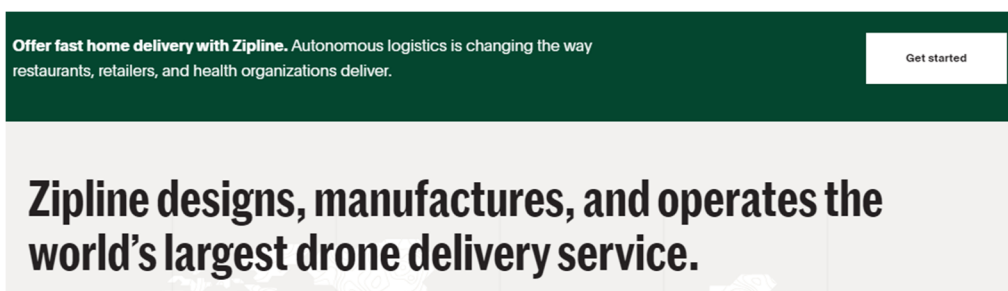
26 20. On information and belief, Defendant's Accused Products are available to businesses
27 and individuals throughout the United States and in the State of California, including in this District.

28 21. WirelessWerx has been damaged as the result of Defendant's infringement.

1 22. The claim chart attached hereto as **Exhibit B** describes how the elements of an
2 exemplary claim 1 from the '982 Patent are infringed by the Accused Products. This provides details
3 regarding only one example of Defendant's infringement, and only as to a single patent claim.
4 Plaintiff reserves its right to amend and fully provide its infringement arguments and evidence
5 thereof until its Preliminary and Final Infringement Contentions are later produced according to the
6 Court's scheduling order.

7 23. On information and belief, Defendant makes, uses, offers for sale, and sells products
8 and services through its website and other sources that infringe one or more of claims of the '982
9 patent, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the
10 '982 patent into service (i.e., used them); but for Defendant's actions, the claimed-inventions
11 embodiments involving Defendant's products and services would never have been put into service.
12 Defendant's acts complained of herein caused those claimed-invention embodiments as a whole to
13 perform, and caused Defendant's procurement of monetary and commercial benefit from therefrom.

14 24. The charted method claim is directed towards the elements of Defendant's products
15 and services that are used by Defendant's customers or in testing. Direct infringement of the method
16 claims by Defendant is established at least through Defendant's vicarious infringement by profiting
17 from its customers use of the various Zipline services [Ziplinehttps://www.flyzipline.com/ Drone](https://www.flyzipline.com/Drone)
18 [Delivery & Logistics](https://www.flyzipline.com/Drone), as illustrated below:



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24 Stated another way, Defendant controls both the manner and timing of infringement. Defendant
25 benefits from its customer's use by selling delivery services that allow its customers access to its
26 location-based services, such as:
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Payment

Product & Delivery Fees. You are responsible for paying all fees and costs for your purchase and delivery of the Product. You will be required to provide a valid payment method prior to placing an order.

Payment Processing. Zipline may use a third-party payment processor (the "Payment Processor") in connection with your payment for the Service, in which case your use of the Service will also be subject to the terms, conditions, and privacy policies of the Payment Processor. Your access to the Service may be suspended or you may incur additional charges from the Payment Processor or Zipline if your billing contact information is incorrect or not updated in our records. Zipline is not responsible for any damages arising out of (i) any account suspensions resulting from your incorrect billing contact information, or (ii) any errors or omissions by the Payment Processor or by your credit card issuer.

from <https://www.flyzipline.com/terms-of-service>.

25. Defendant has and continues to induce infringement. Defendant has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continue to do so, on how to use its products and services (e.g., use its location based services: <https://www.flyzipline.com/instant-delivery>) and related products and services such as to cause infringement of one or more of claims of the '982 patent, literally or under the doctrine of equivalents. Moreover, Defendant has known of the '982 patent and the technology underlying it from at least the filing date of the lawsuit.¹ For clarity, direct infringement is previously alleged in this complaint.

26. Defendant has and continues to contributorily infringe. Defendant has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., instructing customers and others on the use of Defendant's products and related systems through its website and product instruction manuals) such as to cause infringement of one or more of claims 1-61 of the '982 patent, literally or under the doctrine of equivalents. Moreover, Defendant has known of the '982 patent

¹ Plaintiff reserves the right to amend if discovery reveals an earlier date of knowledge.

1 and the technology underlying it from at least the filing date of the lawsuit.² For clarity, direct
2 infringement is previously alleged in this complaint. The products' and services' only reasonable
3 use is an infringing use and there is no evidence to the contrary. The product and service are not a
4 staple commercial product and Defendant had reason to believe that the customer's use of the
5 product and/or service would be an infringing use. As shown on Defendant's website,
6 <https://www.flyzipline.com/#>, Defendant offers the products and/or service with instruction or
7 advertisement that suggests an infringing use.

8 27. Defendant has caused and will continue to cause Plaintiff damage by direct and
9 indirect infringement of (including inducing infringement and contributory infringement) the claims
10 of the '982 patent.

11 **CONDITIONS PRECEDENT**

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13 28. Plaintiff has never sold a product. Upon information and belief, Plaintiff predecessor-
14 in-interest has never sold a product. Plaintiff is a non-practicing entity, with no products to mark.
15 Plaintiff has pled all statutory requirements to obtain pre-suit damages. Further, all conditions
16 precedent to recovery are met. Under the rule of reason analysis, Plaintiff has taken reasonable steps
17 to ensure marking by any licensee producing a patented article.

18 29. Plaintiff and its predecessors-in-interest have entered into settlement licenses with
19 several defendant entities, but none of the settlement licenses were to produce a patented article, for
20 or under the Plaintiff's patents. Duties of confidentiality prevent disclosure of settlement licenses
21 and their terms in this pleading but discovery will show that Plaintiff and its predecessors-in-interest
22 have substantially complied with Section 287(a). Furthermore, each of the defendant entities in the
23 settlement licenses did not agree that they were infringing any of Plaintiff's patents, including the
24 Patents-in-Suit, and thus were not entering into the settlement license to produce a patented article
25 for Plaintiff or under its patents. Further, to the extent necessary, Plaintiff will limit its claims of
26 infringement to method claims and thereby remove any requirement for marking.

27
28 ² Plaintiff reserves the right to amend if discovery reveals an earlier date of knowledge.

1 30. To the extent Defendant identifies an alleged unmarked product produced for
2 Plaintiff or under Plaintiff's patents, Plaintiff will develop evidence in discovery to either show that
3 the alleged unmarked product does not practice the Patent-in-Suit or that Plaintiff has substantially
4 complied with the marking statute. Defendant has failed to identify any alleged patented article for
5 which Section 287(a) would apply. Further, Defendant has failed to allege any defendant entity
6 produce a patented article.

7 31. The policy of § 287 serves three related purposes: (1) helping to avoid innocent
8 infringement; (2) encouraging patentees to give public notice that the article is patented; and (3)
9 aiding the public to identify whether an article is patented. These policy considerations are advanced
10 when parties are allowed to freely settle cases without admitting infringement and thus not require
11 marking. All settlement licenses were to end litigation and thus the policies of §287 are not violated.
12 Such a result is further warranted by 35 U.S.C. §286 which allows for the recovery of damages for
13 six years prior to the filing of the complaint.

14 32. For each previous settlement license, Plaintiff understood that (1) the settlement
15 license was the end of litigation between the defendant entity and Plaintiff and was not a license
16 where the defendant entity was looking to sell a product under any of Plaintiff's patents; (2) the
17 settlement license was entered into to terminate litigation and prevent future litigation between
18 Plaintiff and defendant entity for patent infringement; (3) defendant entity did not believe it
19 produced any product that could be considered a patentable article under 35 U.S.C. §287; and, (4)
20 Plaintiff believes it has taken reasonable steps to ensure compliance with 35 U.S.C. §287 for each
21 prior settlement license.

22 33. Each settlement license that was entered into between the defendant entity and
23 Plaintiff was negotiated in the face of continued litigation and while Plaintiff believes there was
24 infringement, no defendant entity agreed that it was infringing. Thus, each prior settlement license
25 reflected a desire to end litigation and as such the policies of §287 are not violated.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff WirelessWerx respectfully requests the following relief:

28 A. A judgment that Defendant has directly infringed either literally and/or under the

1 doctrine of equivalents and continue to directly infringe the Patent-in-Suit;

2 B. A judgment and order requiring Defendant to pay Plaintiff damages under 35 U.S.C.
3 § 284 including past damages based on, *inter alia*, any necessary compliance with 35 U.S.C. §287,
4 and supplemental damages for any continuing post-verdict infringement through entry of the final
5 judgment with an accounting as needed;

6 C. A judgment that this is an exceptional case within the meaning of 35 U.S.C. § 285
7 and Plaintiff is therefore entitled to reasonable attorneys' fees;

8 D. A judgment and order requiring Defendant to pay Plaintiff pre-judgment and post-
9 judgment interest on the damages awarded;

10 E. A judgment and order awarding a compulsory ongoing royalty;

11 F. A judgment and order awarding Plaintiff costs associated with bringing this action;

12 G. Such other and further relief as the Court deems just and equitable.

13 **JURY TRIAL DEMANDED**

14 Pursuant to FED. R. CIV. P. 38, Plaintiff WirelessWerx hereby demands a trial by jury on all
15 issues so triable.

16 DATED: November 26, 2024

Respectfully submitted,

BANIE & ISHIMOTO LLP

By: /s/Jennifer Ishimoto

Jennifer Ishimoto

Attorneys for Plaintiff
WirelessWerx IP, LLC

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DEMAND FOR JURY TRIAL

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Plaintiff hereby requests a trial by jury on issues so triable by right.

DATED: November 26, 2024

Respectfully submitted,

BANIE & ISHIMOTO LLP

By: /s/Jennifer Ishimoto

Jennifer Ishimoto

Attorneys for Plaintiff
WirelessWerx IP, LLC