# CH \$440.00 200426

# TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1 Stylesheet Version v1.2 ETAS ID: TM332795

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY INTEREST

#### **CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
FREEWAVE TECHNOLOGIES, INC.		02/17/2015	CORPORATION: DELAWARE

#### **RECEIVING PARTY DATA**

Name:	Wells Fargo Bank, National Association
Street Address:	1740 Broadway
Internal Address:	MAC C7300-210
City:	Denver
State/Country:	COLORADO
Postal Code:	80274
Entity Type:	National Association: UNITED STATES

#### **PROPERTY NUMBERS Total: 17**

Property Type	Number	Word Mark
Registration Number:	2004263	FREEWAVE
Registration Number:	3394928	FREEWAVE
Registration Number:	4569359	WAVEPOINT
Registration Number:	4569405	WAVELINE
Serial Number:	86003285	WAVELP
Serial Number:	86003248	WAVEBEAM
Serial Number:	86003239	WAVETURBO
Serial Number:	86003274	WAVEHD
Serial Number:	86003229	WAVEADAPT
Serial Number:	86003222	WAVEMESH
Serial Number:	85962062	WAVEPORT
Serial Number:	85962621	WAVECOMPACT
Serial Number:	85962256	WAVECONTACT
Serial Number:	85962142	WAVEKEY
Serial Number:	85962132	WAVEMAX
Serial Number:	85962123	WAVESPAN
Serial Number:	85962110	WAVEEDGE

TRADEMARK REEL: 005463 FRAME: 0377

900316394

#### **CORRESPONDENCE DATA**

**Fax Number:** 4352143811

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent

using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

**Phone:** 435-214-3807

Email: mjones@markuswilliams.com

Correspondent Name: Melinda Jones

Address Line 1: 2750 Rasmussen Road, Suite H-104

Address Line 4: Park City, UTAH 84098

ATTORNEY DOCKET NUMBER:	10918.580
NAME OF SUBMITTER:	Melinda Jones
SIGNATURE:	/mej/
DATE SIGNED:	02/18/2015

#### **Total Attachments: 12**

source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page1.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page3.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page3.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page4.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page5.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page6.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page7.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page8.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page9.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page10.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page11.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page11.tif source=Patent and Trademark Security Agreement - FreeWave Technologies, Inc#page11.tif

#### PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (this "Agreement"), dated as of February 17, 2015, is made by and between FREEWAVE TECHNOLOGIES, INC., a Delaware corporation having a business location at the address set forth below next to its signature ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender"), having a business location at the address set forth below next to its signature.

#### Recitals

- A. Borrower and Lender are parties to a Credit Agreement (as amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement") dated the same date as this Agreement, setting forth the terms on which Lender may now or hereafter extend credit to or for the account of Borrower.
- B. As a condition to extending credit to or for the account of Borrower, Lender has required the execution and delivery of this Agreement by Borrower.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. <u>Definitions</u>. All terms defined in the Recitals hereto or in the Credit Agreement that are not otherwise defined herein shall have the meanings given to them in the Credit Agreement. In addition, the following terms have the meanings set forth below:

"Patents" means all of Borrower's right, title and interest in patents and patent applications, including (a) the patents and patent applications listed on Exhibit A, (b) all continuations, divisionals, continuations-in-part, reexaminations, reissues, and renewals thereof and improvements thereon, (c) all licenses with respect thereto and all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (d) the right to sue for past, present, and future infringements thereof, and (e) all of Borrower's rights corresponding thereto throughout the world.

"Security Agreement" has the meaning given in Section 2.

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all of Borrower's right, title and interest in and to its United States trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including (a) the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Exhibit B, (b) all renewals thereof, (c) all licenses with respect thereto and al income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in

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connection therewith and damages and payments for past or future infringements or dilutions thereof, (d) the right to sue for past, present and future infringements and dilutions thereof, (e) the goodwill of Borrower's business symbolized by the foregoing or connected therewith, and (f) all of Borrower's rights corresponding thereto throughout the world.

- 2. <u>Security Interest</u>. Borrower hereby irrevocably pledges and assigns to, and grants Lender a security interest (the "Security Interest") with power of sale to the extent permitted by law in, the Patents and in the Trademarks to secure payment of the Obligations. As set forth in the Security Agreement by and between Borrower and Lender, dated of even date herewith (the "Security Agreement"), the Security Interest is coupled with a security interest in substantially all of the personal property of Borrower. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.
- 3. <u>Representations, Warranties and Agreements</u>. Borrower represents, warrants and agrees as follows:
  - (a) *Existence; Authority*. Borrower is duly organized and existing and in good standing under the laws of the jurisdiction of its organization. The execution, delivery, and performance by Borrower of this Agreement have been duly authorized by all necessary action on the part of Borrower.
  - (b) **Patents**. Exhibit A accurately lists all Patents owned or controlled by Borrower as of the date hereof, or to which Borrower has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, Borrower owns, controls or has a right to have assigned to it any Patents not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then Borrower shall within 60 days provide written notice to Lender with a replacement Exhibit A, which upon acceptance by Lender shall become part of this Agreement.
  - (c) *Trademarks*. Exhibit B accurately lists all United States Trademarks owned or controlled by Borrower as of the date hereof and accurately reflects the existence and status of such Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to Borrower's or any Affiliate's business(es). If after the date hereof, Borrower owns or controls any United States Trademarks not listed on Exhibit B (other than common law marks which are not material to Borrower's or any Affiliate's business(es)), or if Exhibit B ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then Borrower shall promptly provide written notice to Lender with a replacement Exhibit B, which upon acceptance by Lender shall become part of this Agreement.

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- (d) Affiliates. As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by Borrower, constitute Patents or Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then Borrower shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to Borrower; or (ii) notify Lender of such item(s) and cause such Affiliate to execute and deliver to Lender a patent and trademark security agreement substantially in the form of this Agreement.
- (e) *Title; Validity*. Borrower has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. Borrower (i) will have, at the time Borrower acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens. To Borrower's knowledge after reasonable inquiry, all registered Trademarks and issued Patents that are owned by Borrower and necessary in the conduct of its or any of its Affiliates' business are valid, subsisting and enforceable and in compliance with all legal requirements, filings, and payments and other actions that are required to maintain such registered Trademarks and issued Patents in full force and effect.
- (f) **No Sale**. Borrower will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without Lender's prior written consent.
- Trademarks necessary in the conduct of Borrower's or any of its Affiliates' business, to protect and diligently enforce and defend at such Borrower's expense the Patents and Trademarks, including (i) to diligently enforce and defend, including promptly suing for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and filing for opposition, interference, and cancellation against conflicting intellectual property rights of any Person, (ii) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement, (iii) to prosecute diligently any patent application that is part of the Patents pending as of the date hereof or hereafter until the termination of this Agreement, and (iv) to take all reasonable and necessary action to preserve and maintain all of Borrower's Trademarks and Patents and its rights therein, including paying all maintenance fees and filing of applications for renewal, affidavits of use, and affidavits of noncontestability.
- (h) *Maintenance*. Borrower will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. Borrower covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing Lender: (i) sufficient written notice, of at least 30 days, to allow Lender to

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timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

- (i) Lender's Right to Take Action. If Borrower fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after Lender gives Borrower written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if Borrower notifies Lender that it intends to abandon a Patent or Trademark, Lender may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of Borrower (or, at Lender's option, in Lender's own name) and may (but need not) take any and all other actions which Lender may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.
- (j) Costs and Expenses. Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Borrower shall pay Lender on demand the amount of all moneys expended and all costs and expenses (including Lender Expenses) incurred by Lender in connection with or as a result of Lender's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by Lender at the Default Rate.
- **Power of Attorney.** To facilitate Lender's taking action under subsection (i) and exercising its rights under Section 6, Borrower hereby irrevocably appoints (which appointment is coupled with an interest) Lender, or its delegate, as the attorney-in-fact of Borrower with full authority (but not the duty) in the place and stead of Borrower, and in the name of Borrower or otherwise, from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Borrower, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Borrower under this Section 3, or necessary for Lender, upon the occurrence of an Event of Default and during the continuation thereof, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Credit Agreement as provided therein and the payment and performance of all Obligations.
- 4. <u>Borrower's Use of the Patents and Trademarks</u>. Borrower shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses

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thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

- 5. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Credit Agreement, shall occur; or (b) Borrower shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained herein shall prove to have been incorrect in any material respect when made.
- 6. <u>Remedies</u>. Upon the occurrence of an Event of Default and during the continuation thereof, and at any time thereafter, Lender may, at its option, take any or all of the following actions:
  - (a) Lender may exercise any or all remedies available under the Credit Agreement and Security Agreement.
  - (b) Lender may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.
  - (c) Lender may enforce the Patents and Trademarks and any licenses thereunder, and if Lender shall commence any suit for such enforcement, Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement.
- Miscellaneous. No amendment or modification of this Agreement shall be 7. effective unless it has been agreed to by Lender in a writing that specifically states that it is intended to amend or modify this Agreement. The Security Interest can be released, only explicitly in a writing signed by Lender. No delay, failure or discontinuance of Lender in exercising any right, power or remedy under this Agreement will affect or operate as a waiver of such right, power or remedy; nor will any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by Lender of any breach of or default (including any Default or Event of Default) under this Agreement must be in writing and will be effective only to the extent set forth in such writing. All notices to be given to Borrower or Lender under this Agreement shall be given in the manner and with the effect provided in the Credit Agreement. Lender shall not be obligated to preserve any rights Borrower may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure

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to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without Lender's prior written consent, which consent may be withheld by Lender in Lender's sole and absolute discretion. Lender may assign this Agreement in whole or in part and its rights and duties hereunder and no consent or approval by Borrower is required in connection with any such assignment. If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any remaining provisions of this Agreement. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations. This Agreement shall take effect when signed by Borrower and delivered to Lender, and Borrower waives notice of Lender's acceptance hereof or reliance hereon. Lender may execute this Agreement if appropriate for the purpose of filing, but the failure of Lender to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by Borrower shall have the same force and effect as the original for all purposes of a financing statement.

- 8. JURISDICTION. All actions or proceedings arising in connection with this Agreement may be tried and litigated in the State of Colorado and, to the extent permitted by applicable law, federal courts located in the City and County of Denver, State of Colorado; provided that any suit seeking enforcement against any Collateral or other property may be brought, at Lender's option, in the courts of any jurisdiction where Lender elects to bring such action or where such Collateral or other property may be found. Borrower and Lender waive, to the extent permitted under applicable law, any right they may have to assert the doctrine of forum non conveniens or to object to venue to the extent any proceeding is brought in accordance with this Section 8.
- 9. WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWER AND LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

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IN WITNESS WHEREOF, the partie Agreement as of the date written above.	s have executed this Patent and Trademark Security
FreeWave Technologies, Inc. 5395 Pearl Parkway, Suite 100 Boulder, CO 80301	By: Name: Karl Kunz Its: Chief Financial Officer
Wells Fargo Bank, National Association MAC C7300-210 1740 Broadway Denver, Colorado 80274	WELLS FARGO BANK, NATIONAL ASSOCIATION
	By:
	Name: Kimberly Leppanen
	Its: Authorized Signatory
	eledged before me this 13 day of February, 2015, by eWave Technologies, Inc., a Delaware corporation, Notary Public TERRI L. ALBEE NOTARY PUBLIC
STATE OF MINNESOTA )	STATE OF COLORADO
) ss.	My commission expires 3112 4 2016
COUNTY OF HENNEPIN )	
	fore me on February, 2015, by Kimberly is Fargo Bank, National Association, on behalf of (Stamp)
	(Smirp)
Signature of notarial officer Title or Rank My commission expires:	
My commission expires:	

Signature Page of Patent and Trademark Security Agreement

Agreement as of the date written above.	
FreeWave Technologies, Inc. 5395 Pearl Parkway, Suite 100 Boulder, CO 80301	By:Name: Karl Kunz Its: Chief Financial Officer
Wells Fargo Bank, National Association MAC C7300-210 1740 Broadway Denver, Colorado 80274	WELLS FARGO BANK, NATIONAL ASSOCIATION  By: Limitedy Leppaner  Name: Kimberly Leppaner  Its: Authorized Signatory
	dged before me this day of February, 2015, by Vave Technologies, Inc., a Delaware corporation,
	Notary Public
STATE OF MINNESOTA ) ) ss. COUNTY OF HENNEPIN )	
This instrument was acknowledged before Leppanen, as an Authorized Signatory of Wells the national association.	re me on February 2, 2015, by Kimberly Fargo Bank, National Association, on behalf of
	(Stamp)
Signature of notarial officer Title or Rank <u>lkec</u> last. My commission expires: Jan. 31, 2016	KATHLEEN S. GUZY-MANNIN X NOTARY PUBLIC-MINNESOTA My Commission Expires January 31, 2016

IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security

Signature Page of Patent and Trademark Security Agreement

# **EXHIBIT A**

#### UNITED STATES ISSUED PATENTS

Patent	Registration	Registration	Expiration
Description	Number	Date	Date
NONE			

### UNITED STATES PATENT APPLICATIONS

Patent Application	Application/Serial Number	Application/Filing Date
BROADBAND SUPERHETRODYNE RECEIVER WITH AGILE INTERMEDIATE FREQUENCY FOR INTERFERENCE MITIGATION	62/072,244	October 29, 2014
SINGLE CARRIER FREQUENCY DOMAIN EQUALIZER TIME SYNCHRONIZATION IN A BROADBAND TRANSCEIVER	62/072,253	October 29, 2014
SYNCHRONIZATION OF CO-LOCATED RADIOS IN A DYNAMIC TIME DIVISION DUPLEX SYSTEM FOR INTERFERENCE MITIGATION	62/072,267	October 29, 2014
PRE-DISTORTION OF RECEIVE SIGNAL FOR INTERFERENCE MITIGATION IN BROADBAND TRANSCEIVERS	62/072,277	October 29, 2014

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DYNAMIC AND FLEXIBLE CHANNEL	62/072,285	October 29, 2014
SELECTION IN A WIRELESS		
COMMUNICATION SYSTEM		

#### FOREIGN ISSUED PATENTS

Patent	Country	Registration	Registration	Expiration
Description		Number	Date	Date
NONE				

### FOREIGN PATENT APPLICATIONS

Patent	Country	Application/Serial	Application/Filing
Description		Number	Date
NONE			

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### **EXHIBIT B**

# UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS AND COLLECTIVE MEMBERSHIP MARKS

# **REGISTRATIONS**

Trademark	Registration Number	Registration Date
FREEWAVE	2,004,263	October 1, 1996
	3,394,928	March 11, 2008
WAVEPOINT	4,569,359	July 15, 2014
WAVELINE	4,569,405	July 15, 2014

#### **APPLICATIONS**

Trademark Application	Application/Serial Number	Application Date
WAVELP	86/003,285	July 5, 2013
WAVEBEAM	86/003,248	July 5, 2013
WAVETURBO	86/003,239	July 5, 2013

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WAVEHD	86/003,274	July 5, 2013
WAVEADAPT	86/003,229	July 5, 2013
WAVEMESH	86/003,222	July 5, 2013
WAVEPORT	85/962,062	June 17, 2013
WAVECOMPACT	85/962,621	June 18, 2013
WAVECONTACT	85/962,256	June 17, 2013
WAVEKEY	85/962,142	June 17, 2013
WAVEMAX	85/962,132	June 17, 2013
WAVESPAN	85/962,123	June 17, 2013
WAVEEDGE	85/962,110	June 17, 2013

# **TRADENAMES**

FreeWave

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**RECORDED: 02/20/2015**