RUSS, AUGUST & KABAT
Alexander C. Giza, SBN 212327
agiza@raklaw.com
Andrew D. Weiss, SBN 232974
aweiss@raklaw.com
Jeffrey Z.Y. Liao, SBN 288994
jliao@raklaw.com
12424 Wilshire Boulevard, 12th Floor
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

Attorneys for Plaintiff
Modern Telecom Systems LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

MODERN TELECOM SYSTEMS LLC, a California limited liability company, Plaintiff, vs. ASUSTEK COMPUTER INC., a Taiwan corporation, and ASUS COMPUTER INTERNATIONAL, a California corporation, Defendants.	Case No. 8:14-CV-00916 **COMPLAINT FOR PATENT INFRINGEMENT** **JURY TRIAL DEMANDED**

This is an action for patent infringement in which Plaintiff Modern Telecom Systems LLC ("MTS") makes the following allegations against ASUSTeK Computer Inc. and ASUS Computer International (collectively, "ASUS"):

THE PARTIES

1. MTS is a California limited liability company.

2. On information and belief, ASUSTeK Computer Inc. is a Taiwan corporation with its principal place of business at 15, Li-Te Road, Beitou District,

Taipei City, Taiwan. On information and belief, ASUSTeK Computer Inc. does business in the United States, including in this state and in this district, through its subsidiary, ASUS Computer International, which is also named as a Defendant in this action.

3. On information and belief, ASUS Computer International is a California corporation with its principal place of business at 800 Corporate Way, Fremont, California 94539. On information and belief, ASUS Computer International can be served through its registered agent, C T Corporation System, 818 W Seventh St, Los Angeles, CA 90017.

JURISDICTION

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1, et seq., including § 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over ASUS because, on information and belief, ASUS has done business in this District, has committed and continues to commit acts of patent infringement in this District, and/or has harmed and continues to harm MTS in this District, by, among other things, using, selling, offering for sale, and/or importing infringing products and services in this District. In addition, ASUS Computer International is incorporated under the laws of California, and has its principal place of business in California.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(d) and 1400(b) because, among other reasons, ASUS is subject to personal jurisdiction in this District, and has committed and continues to commit acts of patent infringement in this District. On information and belief, for example, ASUS has used, sold, offered for sale, and/or imported infringing products in this District.

FACTUAL BACKGROUND

7. The technology claimed in the patents asserted in this action was invented during the research and development activities of the Rockwell,

Conexant, and Mindspeed family of companies. In 1999, Rockwell International spun off Rockwell Semiconductor group as Conexant Systems Inc. Conexant inherited Rockwell's mixed signal semiconductor expertise and intellectual property portfolio, and was focused on developing semiconductor products for a broad range of communications applications. These applications included wireline and wireless voice and data communication networks. Conexant's Internet Infrastructure group was incorporated as Mindspeed Technologies (as a wholly-owned subsidiary) in 2001 and spun-off as an independent entity in 2003. Mindspeed's focus is on semiconductor and software solutions for Internet access devices, switching fabric, and network processors.

8. MTS is the owner of the patents asserted in this action and has the exclusive right to sue for past, present, and future infringement of these patents. MTS assumed all the rights and obligations related to these patents from Glocom Patents Licensing, LLC, which in turn assumed all the rights and obligations related to these patents from V-Dot Technologies, LLC (formerly V-Dot Technologies, Limited) ("VDOT"), which in turn assumed all the rights and obligations related to these patents from Telecom Technology Licensing, LLC ("TTL"), which in turn assumed all the rights and obligations related to these patents from Mindspeed Technologies, Inc.

9. MTS does not make, offer for sale, or sell within the United States any article covered by the patents asserted in this action, nor does MTS import any article covered by the patents asserted in this action into the United States. Accordingly, MTS has complied with 35 USC § 287.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,504,886

10. United States Patent No. 6,504,886 ("the '886 patent"), entitled "Communication of an impairment learning sequence according to an impairment learning sequence descriptor," issued on January 7, 2003 from United States Patent

Application No. 09/956,207 filed on September 19, 2001. Application No. 09/956,207 is a Continuation of U.S. Patent Application Ser. No. 08/969,971, entitled Method and Apparatus for Generating a Line Impairment Learning Signal for a Data Communication System, filed Nov. 13, 1997 now U.S. Pat. No. 6,332,009, which is a Continuation-In-Part of U.S. Patent Application Ser. No. 08/922,851, entitled Method and Apparatus for Generating a Programmable Synchronization Signal for a Data Communication System, filed Sep. 3, 1997, now U.S. Pat. No. 6,212,247. A true and correct copy of the '886 patent is attached as Exhibit A.

11. ASUS infringes the '886 patent in at least two ways – first, with respect to its V.90 modem products, and second, with respect to its 802.11n or 802.11ac compatible devices.

12. ASUS has been and now is directly infringing one or more claims of the '886 Patent, in this judicial District and elsewhere in the United States, by, among other things, practicing a method of communicating a learning sequence descriptor for use in constructing a learning sequence, said method comprising: transmitting a first parameter specifying a number of segments in said learning sequence; transmitting a second parameter specifying a sign pattern of each of said segments; and transmitting a third parameter specifying a training pattern of each of said segments, wherein said training pattern is indicative of an ordering of a reference symbol and a training symbol in each of said segments. Upon information and belief, ASUS practices or practiced the claimed method during its internal testing and while servicing or repairing, through its Authorized Service Centers acting at ASUS' direction and control (http://www.service.asus.com/#!service-centers/c1tqs), ASUS laptop computers containing dial-up modems that operate according to the International Telecommunications Union ("ITU") V.90 (56Kbps) specification, including the

ASUS G50V containing the Agere Delphi D40 Modem AM5 supporting V.90 (56K).

13. ASUS also infringes the '886 patent through its 802.11n and 802.11ac compatible products. For example, upon information and belief, ASUS sells and offers for sale, in the United States and in this District, RT-AC68U, RT-AC66U, and RT-AC56U routers, PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi adapters, and the ASUS ROG G750JH laptop.

14. ASUS has been and now is directly infringing one or more claims of the '886 Patent, in this judicial District and elsewhere in the United States, by, among other things, practicing a method of communicating a learning sequence descriptor for use in constructing a learning sequence, said method comprising: transmitting a first parameter specifying a number of segments in said learning sequence; transmitting a second parameter specifying a sign pattern of each of said segments; and transmitting a third parameter specifying a training pattern of each of said segments, wherein said training pattern is indicative of an ordering of a reference symbol and a training symbol in each of said segments. Upon information and belief, ASUS practices the claimed method during its internal testing and while servicing or repairing, through its Authorized Service Centers acting at ASUS' direction and control (http://www.service.asus.com/#!service-centers/c1tqs), its RT-AC68U, RT-AC66U, and RT-AC56U routers, PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi adapters, and the ASUS ROG G750JH laptop.

15. ASUS has had knowledge of the '886 patent since at least the filing of the Complaint for Patent Infringement or shortly thereafter, and ASUS has induced its customers, users of RT-AC68U, RT-AC66U, and RT-AC56U routers, PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi adapters, and the ASUS ROG G750JH laptop, to practice a method of communicating a learning sequence descriptor for use in constructing a learning sequence, said method comprising:

transmitting a first parameter specifying a number of segments in said learning sequence; transmitting a second parameter specifying a sign pattern of each of said segments; and transmitting a third parameter specifying a training pattern of each of said segments, wherein said training pattern is indicative of an ordering of a reference symbol and a training symbol in each of said segments.

16. For example, ASUS instructs its customers, users of RT-AC68U routers, that "The ASUS RT-AC68U is the world's fastest Wi-Fi router, with combined dual-band data rates of up to 1900 Mbps. 1300 Mbps 802.11ac at 5 GHz gives Gigabit wireless data rates, while Broadcom® TurboQAM™ technology super-charges 2.4 GHz 802.11n performance from 450 Mbps to 600 Mbps with compatible devices." (see http://www.asus.com/Networking/RTAC68U/). ASUS also instructs its customers to "Select any of these wireless mode options to determine the types of wireless devices that can connect to your wireless router:

• Auto: Select Auto to allow 802.11AC, 802.11n, 802.11g, and 802.11b devices to connect to the wireless router.

• Legacy: Select Legacy to allow 802.11b/g/n devices to connect to the wireless router. Hardware that supports 802.11n natively, however, will only run at a maximum speed of 54Mbps.

• N only: Select N only to maximize wireless N performance. This setting prevents 802.11g and 802.11b devices from connecting to the wireless router." (see http://support.asus.com/Download.aspx?SLanguage=en&m=RT-AC68U&p=11&os=8, E9183_RT_AC68U_Manual.pdf, page 49)

17. ASUS also instructs its customers, users of RT-AC66U routers, that their "5th generation 802.11ac chipset gives you concurrent dual-band 2.4GHz/5GHz for up to super-fast 1.75Gbps" (see http://www.asus.com/Networking/RTAC66U/). ASUS also instructs its customers

to "Select any of these wireless mode options to determine the types of wireless devices that can connect to your wireless router:

• Auto: Select Auto to allow 802.11AC, 802.11n, 802.11g, and 802.11b devices to connect to the wireless router.

• Legacy: Select Legacy to allow 802.11b/g/n devices to connect to the wireless router. Hardware that supports 802.11n natively, however, will only run at a maximum speed of 54Mbps.

• N only: Select N only to maximize wireless N performance. This setting prevents 802.11g and 802.11b devices from connecting to the wireless router." (see http://dlcdnet.asus.com/pub/ASUS/wireless/RT-AC66U/E7891_RT_AC66U_Manual.pdf, page 53)

18. ASUS also instructs its customers, users of RT-AC56U routers, that their "5th generation 802.11ac chipset gives you concurrent dual-band 2.4GHz/5GHz at up to super-fast 1167Mbps" (see http://www.asus.com/Networking/RTAC56U/). ASUS also instructs its customers to "Select any of these wireless mode options to determine the types of wireless devices that can connect to your wireless router:

• Auto: Select Auto to allow 802.11AC, 802.11n, 802.11g, and 802.11b devices to connect to the wireless router.

• Legacy: Select Legacy to allow 802.11b/g/n devices to connect to the wireless router. Hardware that supports 802.11n natively, however, will only run at a maximum speed of 54Mbps.

• N only: Select N only to maximize wireless N performance. This setting prevents 802.11g and 802.11b devices from connecting to the wireless router." (see http://support.asus.com/download.aspx?SLanguage=en&p=11&s=2&m=RT-AC56U&os=8, E8556_RT-AC56U_Manual.pdf, page 49).

19. ASUS also instructs its customers, users of PCE-AC68 Wi-Fi adapters, that its "5th generation 802.11ac chipset gives you dual-band, 2.4GHz/5GHz for up to super-fast 1.30Gbps" (see http://www.asus.com/Networking/PCEAC68/).

20. ASUS also instructs its customers, users of PCE-AC56 Wi-Fi adapters, that it contains a "Next-generation 802.11ac chipset for super-fast connections up to 867 Mbps" (see http://www.asus.com/Networking/PCEAC56/).

21. ASUS also instructs its customers, users of USB-AC56 Wi-Fi adapters, that it supports "Next-generation 802.11ac Wi-Fi — up to three times faster than 2x2 802.11n adapters" (see http://www.asus.com/Networking/USBAC56/).

22. ASUS also instructs its customers, users of USB-AC53 Wi-Fi adapters, that this "Dual-band Wireless-AC1200 USB Adapter" has the following features: "Extra-fast 5th Generation Wi-Fi at up to 867Mbps/300Mbps", "Selectable 5GHz/2.4GHz dual bands increase signal clarity for better HD multimedia", and "Powerful 2x2 embedded patch antennas (PIFA type) improve signal range while integrating into the attractive design" (see http://www.asus.com/Networking/USBAC53/).

23. ASUS also instructs its customers, users of the ASUS ROG G750JH laptop, that "ASUS G750JH includes exclusive wireless technology in the form of Killer™ Wireless-N 1202. Wireless-N 1202 is a dual-band (2.4 and 5GHz), dual-stream MIMO, 802.11a/b/g/n adapter that delivers fasts data-transfer speeds of up to 300Mbits/s. With built-in Bluetooth, Wi-Fi Direct™ technology for direct (peer-to-peer) connections and Advanced Stream Detect™ technology that intelligently prioritizes game-related traffic, Killer Wireless-N 1202 keeps you ahead of the game." (see http://www.asus.com/Notebooks_Ultrabooks/ASUS_ROG_G750JH/).

24. In instructing its customers that RT-AC68U, RT-AC66U, and RT-AC56U routers and PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi

adapters support Wi-Fi connections made using the 802.11ac protocol, in instructing its customers when to enable and disable support for the 802.11n protocol, and in touting the benefits of using the 802.11ac protocol to enjoy "super-fast" speeds, ASUS specifically intended to encourage its customers to use RT-AC68U, RT-AC66U, and RT-AC56U routers and PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi adapters to use the 802.11ac protocol in an infringing manner, knowing that the use of such protocol constituted infringement of the '886 patent. In instructing its customers that the ASUS ROG G750JH laptop supports Wi-Fi connections made using the 802.11n protocol, and in touting the benefits of using the 802.11n protocol to enjoy "fast[] data-transfer speeds of up to 300Mbits/s … [to] keep[] you ahead of the game", ASUS specifically intended to encourage its customers to use the ASUS ROG G750JH laptop to use the 802.11n protocol in an infringing manner, knowing that the use of such protocol constituted infringement of the '886 patent. Thus, ASUS has induced its customers to infringe the '886 Patent literally and/or under the doctrine of equivalents. Upon information and belief, ASUS acted with the specific intent to induce its customers to use the method claimed by the '886 Patent by continuing the above-mentioned activities with knowledge of the '886 Patent.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 6,332,009

25. United States Patent No. 6,332,009 ("the '009 patent"), entitled "Method and apparatus for generating a line impairment learning signal for a data communication system," issued on December 18, 2001 from United States Patent Application No. 08/969,971 filed on November 13, 1997. Application No. 08/969,971 is a Continuation-In-Part of U.S. Patent Application Ser. No. 08/922,851, entitled Method and Apparatus for Generating a Programmable Synchronization Signal for a Data Communication System, filed Sep. 3, 1997. A true and correct copy of the '009 patent is attached as Exhibit B.

26. ASUS infringes the '009 patent in at least two ways – first, with respect to its V.90 modem products, and second, with respect to its 802.11n or 802.11ac compatible devices.

27. ASUS has been and now is directly infringing one or more claims of the '009 Patent, in this judicial District and elsewhere in the United States, by, among other things, practicing an impairment learning method for use over a communication channel, said method comprising: transmitting a learning sequence descriptor over said communication channel, said learning sequence descriptor having a training symbol order; receiving a learning signal over said communication channel, said learning signal having a member of segments, each of said segments being associated with a sequence of symbols configured in accordance with said learning sequence descriptor, wherein said training symbol order is indicative of an assignment of a plurality of training symbols to said number of segments; and learning an impairment of said communication channel according to said learning signal. Upon information and belief, ASUS practices or practiced the claimed method during its internal testing and while servicing or repairing, through its Authorized Service Centers acting at ASUS' direction and control (http://www.service.asus.com/#!service-centers/c1tqs), ASUS laptop computers containing dial-up modems that operate according to the International Telecommunications Union ("ITU") V.90 (56Kbps) specification, including the ASUS G50V containing the Agere Delphi D40 Modem AM5 supporting V.90 (56K).

28. ASUS also infringes the '009 patent through its 802.11n and 802.11ac compatible products. For example, upon information and belief, ASUS sells and offers for sale, in the United States and in this District, RT-AC68U, RT-AC66U, and RT-AC56U routers, PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi adapters, and the ASUS ROG G750JH laptop.

29. ASUS has been and now is directly infringing one or more claims of the '009 Patent, in this judicial District and elsewhere in the United States, by, among other things, practicing an impairment learning method for use over a communication channel, said method comprising: transmitting a learning sequence descriptor over said communication channel, said learning sequence descriptor having a training symbol order; receiving a learning signal over said communication channel, said learning signal having a member of segments, each of said segments being associated with a sequence of symbols configured in accordance with said learning sequence descriptor, wherein said training symbol order is indicative of an assignment of a plurality of training symbols to said number of segments; and learning an impairment of said communication channel according to said learning signal. Upon information and belief, ASUS practices the claimed method during its internal testing of its RT-AC68U, RT-AC66U, and RT-AC56U routers, PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi adapters, and the ASUS ROG G750JH laptop.

30. ASUS has had knowledge of the '009 patent since at least the filing of the Complaint for Patent Infringement or shortly thereafter, and ASUS has induced its customers, users of RT-AC68U, RT-AC66U, and RT-AC56U routers, PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi adapters, and the ASUS ROG G750JH laptop, to practice an impairment learning method for use over a communication channel, said method comprising: transmitting a learning sequence descriptor over said communication channel, said learning sequence descriptor having a training symbol order; receiving a learning signal over said communication channel, said learning signal having a member of segments, each of said segments being associated with a sequence of symbols configured in accordance with said learning sequence descriptor, wherein said training symbol order is indicative of an assignment of a plurality of training symbols to said

number of segments; and learning an impairment of said communication channel according to said learning signal.

31. For example, ASUS instructs its customers, users of RT-AC68U routers, that "The ASUS RT-AC68U is the world's fastest Wi-Fi router, with combined dual-band data rates of up to 1900 Mbps. 1300 Mbps 802.11ac at 5 GHz gives Gigabit wireless data rates, while Broadcom® TurboQAM™ technology super-charges 2.4 GHz 802.11n performance from 450 Mbps to 600 Mbps with compatible devices." (see http://www.asus.com/Networking/RTAC68U/). ASUS also instructs its customers to "Select any of these wireless mode options to determine the types of wireless devices that can connect to your wireless router:

• Auto: Select Auto to allow 802.11AC, 802.11n, 802.11g, and 802.11b devices to connect to the wireless router.

• Legacy: Select Legacy to allow 802.11b/g/n devices to connect to the wireless router. Hardware that supports 802.11n natively, however, will only run at a maximum speed of 54Mbps.

• N only: Select N only to maximize wireless N performance. This setting prevents 802.11g and 802.11b devices from connecting to the wireless router." (see http://support.asus.com/Download.aspx?SLanguage=en&m=RT-AC68U&p=11&os=8, E9183_RT_AC68U_Manual.pdf, page 49)

32. ASUS also instructs its customers, users of RT-AC66U routers, that their "5th generation 802.11ac chipset gives you concurrent dual-band 2.4GHz/5GHz for up to super-fast 1.75Gbps" (see http://www.asus.com/Networking/RTAC66U/). ASUS also instructs its customers to "Select any of these wireless mode options to determine the types of wireless devices that can connect to your wireless router:

• Auto: Select Auto to allow 802.11AC, 802.11n, 802.11g, and 802.11b devices to connect to the wireless router.

• Legacy: Select Legacy to allow 802.11b/g/n devices to connect to the wireless router. Hardware that supports 802.11n natively, however, will only run at a maximum speed of 54Mbps.

• N only: Select N only to maximize wireless N performance. This setting prevents 802.11g and 802.11b devices from connecting to the wireless router." (see http://dlcdnet.asus.com/pub/ASUS/wireless/RT-AC66U/E7891_RT_AC66U_Manual.pdf, page 53)

33. ASUS also instructs its customers, users of RT-AC56U routers, that their "5th generation 802.11ac chipset gives you concurrent dual-band 2.4GHz/5GHz at up to super-fast 1167Mbps" (see http://www.asus.com/Networking/RTAC56U/). ASUS also instructs its customers to "Select any of these wireless mode options to determine the types of wireless devices that can connect to your wireless router:

• Auto: Select Auto to allow 802.11AC, 802.11n, 802.11g, and 802.11b devices to connect to the wireless router.

• Legacy: Select Legacy to allow 802.11b/g/n devices to connect to the wireless router. Hardware that supports 802.11n natively, however, will only run at a maximum speed of 54Mbps.

• N only: Select N only to maximize wireless N performance. This setting prevents 802.11g and 802.11b devices from connecting to the wireless router." (see http://support.asus.com/download.aspx?SLanguage=en&p=11&s=2&m=RT-AC56U&os=8, E8556_RT-AC56U_Manual.pdf, page 49).

34. ASUS also instructs its customers, users of PCE-AC68 Wi-Fi adapters, that its "5th generation 802.11ac chipset gives you dual-band, 2.4GHz/5GHz for up to super-fast 1.30Gbps" (see http://www.asus.com/Networking/PCEAC68/).

35. ASUS also instructs its customers, users of PCE-AC56 Wi-Fi adapters, that it contains a "Next-generation 802.11ac chipset for super-fast connections up to 867 Mbps" (see http://www.asus.com/Networking/PCEAC56/).

36. ASUS also instructs its customers, users of USB-AC56 Wi-Fi adapters, that it supports "Next-generation 802.11ac Wi-Fi — up to three times faster than 2x2 802.11n adapters" (see http://www.asus.com/Networking/USBAC56/).

37. ASUS also instructs its customers, users of USB-AC53 Wi-Fi adapters, that this "Dual-band Wireless-AC1200 USB Adapter" has the following features: "Extra-fast 5th Generation Wi-Fi at up to 867Mbps/300Mbps", "Selectable 5GHz/2.4GHz dual bands increase signal clarity for better HD multimedia", and "Powerful 2x2 embedded patch antennas (PIFA type) improve signal range while integrating into the attractive design" (see http://www.asus.com/Networking/USBAC53/).

38. ASUS also instructs its customers, users of the ASUS ROG G750JH laptop, that "ASUS G750JH includes exclusive wireless technology in the form of Killer™ Wireless-N 1202. Wireless-N 1202 is a dual-band (2.4 and 5GHz), dual-stream MIMO, 802.11a/b/g/n adapter that delivers fasts data-transfer speeds of up to 300Mbits/s. With built-in Bluetooth, Wi-Fi Direct™ technology for direct (peer-to-peer) connections and Advanced Stream Detect™ technology that intelligently prioritizes game-related traffic, Killer Wireless-N 1202 keeps you ahead of the game." (see http://www.asus.com/Notebooks_Ultrabooks/ASUS_ROG_G750JH/).

39. In instructing its customers that RT-AC68U, RT-AC66U, and RT-AC56U routers and PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi adapters support Wi-Fi connections made using the 802.11ac protocol, in instructing its customers when to enable and disable support for the 802.11n protocol, and in touting the benefits of using the 802.11ac protocol to enjoy "super-fast" speeds, ASUS specifically intended to encourage its customers to use the RT-

AC68U, RT-AC66U, and RT-AC56U routers and PCE-AC68, PCE-AC56, USB-AC56, and USB-AC53 Wi-Fi adapters to use the 802.11ac protocol in an infringing manner, knowing that the use of such protocol constituted infringement of the '009 patent. In instructing its customers that the ASUS ROG G750JH laptop supports Wi-Fi connections made using the 802.11n protocol, and in touting the benefits of using the 802.11n protocol to enjoy "fast[] data-transfer speeds of up to 300Mbits/s … [to] keep[] you ahead of the game", ASUS specifically intended to encourage its customers to use the ASUS ROG G750JH laptop to use the 802.11n protocol in an infringing manner, knowing that the use of such protocol constituted infringement of the '009 patent. Thus, ASUS has induced its customers to infringe the '009 Patent literally and/or under the doctrine of equivalents. Upon information and belief, ASUS acted with the specific intent to induce its customers to use the method claimed by the '009 Patent by continuing the above-mentioned activities with knowledge of the '009 Patent.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 6,570,932

40. United States Patent No. 6,570,932 ("the '932 patent"), entitled "Calculation and verification of transmit power levels in a signal point transmission system," issued on May 27, 2003 from United States Patent Application No. 10/026,096 filed on December 21, 2001. Application No. 10/026,096 is a continuation of U.S. Patent Application Ser. No. 09/740,567, filed Dec. 18, 2000, now U.S. Pat. No. 6,359,932, which is a continuation of U.S. Patent Application Ser. No. 09/075,719, filed May 11, 1998, now U.S. Pat. No. 6,163,570. A true and correct copy of the '932 patent is attached as Exhibit C.

41. ASUS has been and now is directly infringing one or more claims of the '932 patent, in this judicial District and elsewhere in the United States, by, among other things, practicing a method of communicating over a communication channel using a constellation including a plurality of signal points, said method

comprising: determining a probability of transmission of each signal point of said constellation; calculating an average power of said signal points using a power formula based on said probability of transmission of each said signal point; and comparing said average power with a transmit power limit. Upon information and belief, ASUS practices or practiced the claimed method during its internal testing and while servicing or repairing, through its Authorized Service Centers acting at ASUS' direction and control (http://www.service.asus.com/#!service-centers/c1tqs), ASUS laptop computers containing dial-up modems that operate according to the International Telecommunications Union ("ITU") V.90 (56Kbps) specification, including the ASUS G50V containing the Agere Delphi D40 Modem AM5 supporting V.90 (56K).

****

42. By engaging in the conduct described herein, ASUS has injured MTS and is thus liable for infringement of the '886 patent, '009 patent, and '932 patent pursuant to 35 U.S.C. § 271.

43. ASUS has committed these acts of infringement without license or authorization.

44. As a result of ASUS's infringement of the '886 patent, '009 patent, and '932 patent, MTS has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for ASUS's infringement, but in no event less than a reasonable royalty for the use made of the invention by ASUS, together with interest and costs as fixed by the Court.

45. MTS has also suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting ASUS, its agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '886 patent, '009 patent, and '932 patent. In particular, ASUS's disregard for MTS's property rights threatens MTS's relationships with the actual and potential licensees of this intellectual property,

inasmuch as ASUS will derive a competitive advantage over any of MTS's current or future licensees by using MTS's patented technology without paying compensation for such use. Accordingly, unless and until ASUS's continued acts of infringement are enjoined, MTS will suffer further irreparable harm for which there is no adequate remedy at law.

46. ASUS's infringement of the '886 patent, '009 patent, and '932 patent has been willful and deliberate, entitling MTS to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. In particular, ASUS was informed of the '886 patent, '009 patent, '932 patent, and allegations of infringement no later than September 10, 2008 or shortly thereafter, when ASUS received a letter regarding same from VDOT, a former assignee of the '886 patent, '009 patent, and '932 patent. Despite awareness of the '886 patent, '009 patent, '932 patent, and the infringing nature of its conduct, ASUS has continued such conduct and thereby has willfully infringed the '886 patent, '009 patent, and '932 patent.

PRAYER FOR RELIEF

WHEREFORE, MTS prays that this Court grant it the following relief:

A. A judgment in favor of MTS that ASUS has infringed the '886 patent, '009 patent, and '932 patent;

B. A permanent injunction enjoining ASUS and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '886 patent, '009 patent, and '932 patent, or such other equitable relief the Court determines is warranted;

C. A judgment and order requiring ASUS to pay MTS its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '886 patent, '009 patent, and '932 patent, as provided under 35 U.S.C. § 284;

D. A judgment and order that ASUS has willfully infringed the '886 patent, '009 patent, and '932 patent, and assessing increased damages up to three times the amount found or assessed pursuant to 35 U.S.C. § 284;

E. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to MTS its reasonable attorneys' fees against ASUS;

F. A judgment and order requiring ASUS to provide an accounting and to pay supplemental damages to MTS, including without limitation, pre-judgment and post-judgment interest; and

G. Any and all other relief to which MTS may be entitled.

DEMAND FOR JURY TRIAL

MTS, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

DATED: June 13, 2014

RUSS, AUGUST & KABAT
Alexander C. Giza, SBN 212327
agiza@raklaw.com
Andrew D. Weiss, SBN 232974
aweiss@raklaw.com
Jeffrey Z.Y. Liao, SBN 288994
jliao@raklaw.com
12424 Wilshire Boulevard, 12th Floor
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

Attorneys for Plaintiff
Modern Telecom Systems LLC