

1 Randall J. Sunshine (SBN 137363)
rsunshine@linerlaw.com
2 Ted S. Ward (SBN 143810)
tward@linerlaw.com
3 Ryan E. Hatch (SBN 235577)
rhatch@linerlaw.com

4 LINER LLP
5 1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024.3503
6 Telephone: (310) 500-3500
Facsimile: (310) 500-3501

7 Attorneys for MYMEDICALRECORDS, INC.

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 MYMEDICALRECORDS, INC. a
12 Delaware Corporation,

13 Plaintiff,

14 vs.

15 JARDOGS, LLC an Illinois Limited
Liability Company; ALLSCRIPTS
16 HEALTHCARE SOLUTIONS INC., a
Delaware Corporation,

17 Defendant.

Case No. 2:13-cv-03560-ODW (SHx)

**SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

The Hon. Otis D. Wright

19 Plaintiff MyMedicalRecords, Inc. (“MMR” or “Plaintiff”) brings this
20 Complaint against Defendants Jardogs, LLC (“Jardogs”), and Allscripts Healthcare
21 Solutions Inc. (“Allscripts”) (Jardogs and Allscripts are collectively referred to as
22 “Defendants”), alleging as follows:

24 **PARTIES**

25 1. Plaintiff MMR is a Delaware corporation with its principal place of
26 business in Los Angeles, California.

Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024.3505

Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3505

1 market (“Health IT”), including MyMedicalRecords, MyMedicalRecordsMD,
2 MMRPatientView and MyEsafeDepositBox.

3 8. MMR’s product, known as MyMedicalRecords, is a personal health
4 records solution (“PHR”) that enables individuals and families to safely maintain
5 their medical records and other important documents in one central location and
6 instantly access them anytime from anywhere in the world. The MyMedicalRecords
7 PHR is built on proprietary, patented technologies that facilitate, among other
8 things, documents, images and voicemail messages to be transmitted and stored
9 using a variety of methods, including fax, e-mail, phone, or file upload, creating an
10 integrated telecommunications platform that does not rely on any specific electronic
11 medical record (“EMR”) system to populate a user’s account. The product is
12 “untethered” providing the patient with significant benefits. Further, in the event of
13 an emergency or disaster, medical personnel and first responders can retrieve
14 potentially lifesaving information via a separate emergency login to the patient’s
15 PHR.

16 9. MyMedicalRecordsMD (“MMRPro”) is MMR’s professional solution
17 for healthcare providers, designed to give physicians and hospitals an easy and cost-
18 effective solution to digitizing paper-based medical records and sharing them with
19 patients in real time through an integrated patient portal, MMRPatientView.

20 10. MMR’s MyEsafeDepositBox service provides secure online storage for
21 vital financial, legal and insurance documents in addition to medical records using
22 the same patented technologies that drive the MyMedicalRecords PHR service.

23 11. MMR is the owner of eight issued U.S. patents covering innovations
24 regarding PHRs and the electronic exchange of medical records. The patents
25 include US Patent Nos. 8,117,045; 8,117,646; 8,121,855; 8,301,466; 8,321,240;
26 8,352,287; 8,352,288, and 8,498,883. MMR’s patents are generally directed to
27 methods for providing a user with the ability to access and collect personal health
28 records associated with the user in a secure and private manner, among other things.

Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3505

1 These patents are relevant to the market for providing PHRs as required under
2 current law.

3 12. On information and belief, Jardogs provides or has provided health
4 information services to consumers and healthcare providers. One of Jardogs’
5 products is or has been FollowMyHealth Universal Health Record
6 (“FollowMyHealth”), a product Jardogs describes as the “next generation patient
7 portal, combining patient-provider communication with a patient managed personal
8 health record.”

9 13. On information and belief, Allscripts acquired substantially all the
10 assets of Jardogs on March 4, 2013. As a result, Allscripts maintains, produces and
11 sells the FollowMyHealth patient portal along with other health information services
12 for consumers and healthcare providers, including but not limited to the Allscripts
13 Patient Portal.

14
15 **FIRST CLAIM FOR RELIEF**
16 **(Patent Infringement as to the ‘466 Patent)**
17 **(Against Jardogs and Allscripts)**

18 14. Plaintiff incorporates paragraphs 1 through 13 of this complaint as if set
19 forth in full herein.

20 15. MMR is the owner of the entire right, title, and interest in and to U.S.
21 Patent No. 8,301,466 (the ‘466 Patent), entitled “Method and System for Providing
22 Online Records.” The ‘466 Patent was duly and legally issued on October 30, 2012
23 to MMR as assignee of inventor Robert H. Lorsch. A true and correct copy of the
24 ‘466 Patent is attached as Exhibit A.

25 16. Defendants have directly infringed and continue to infringe, either
26 literally and/or under the doctrine of equivalents, the ‘466 Patent by making, using,
27 offering for sale, and/or selling in the United States certain methods or systems
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Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3505

1 disclosed and claimed in the '466 Patent, including, but not limited to Defendants'
2 FollowMyHealth product and the Allscripts Patient Portal.

3 17. Before it was named in this lawsuit on November 5, 2013 (Docket 30),
4 Allscripts was aware of the '466 Patent by virtue of the existing Complaint that was
5 filed against Jardogs (Docket 1). That Complaint was filed on May 17, 2013,
6 approximately two months after Allscripts had purchased substantially all of the
7 assets of Jardogs on March 4, 2013, including the accused FollowMyHealth product.
8 On information and belief, subsequent to the acquisition of Jardogs, Allscripts
9 integrated FollowMyHealth with its Patient Portal product. In the Complaint against
10 Jardogs, MMR specifically identified the accused FollowMyHealth product as
11 infringing the '466 Patent (see Docket No. 1, p. 4). Since it had acquired Jardogs
12 when that Complaint was filed, and since the Complaint specifically named the
13 FollowMyHealth product that Allscripts had acquired and integrated with Patient
14 Portal, it is reasonable to infer that Allscripts was already aware that
15 FollowMyHealth and Patient Portal infringed the '466 Patent over five months
16 before it was named in this lawsuit on November 5, 2013.

17 18. Before it was named in this lawsuit, Allscripts was also aware that its
18 actions would induce infringement of the '466 Patent. Specifically, Allscripts has
19 provided instructions directing other entities specifically to use the FollowMyHealth
20 and Patient Portal products in a manner known to be infringing. For example,
21 Allscripts maintains a website at www.followmyhealth.com, which includes
22 instructions specifically directing users to access and collect their health records a
23 secure and private manner, in a manner that infringes one or more claims of the '466
24 Patent. Allscripts provides those instructions on its websites, including at
25 www.followmyhealth.com and support.followmyhealth.com. Allscripts knows its
26 actions induce infringement of the '466 Patent, because, for example, it knows that
27 use of the FollowMyHealth and Patient Portal products infringe the '466 Patent.

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Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3505

1 19. Allscripts was also aware that the FollowMyHealth and Patient Portal
2 products have no substantial non-infringing uses, and that these products are
3 especially made or adapted for use in infringement of the ‘466 Patent. Allscripts
4 states prominently on its website that FollowMyHealth is “an innovative health
5 engagement solution that empowers patients to take a more active role in managing
6 their care.”¹ It also states to users and prospective users that FollowMyHealth is an
7 “innovative tool that provides anywhere, anytime access to your personal health
8 records, and enables you to take a proactive role in managing your care.”² It further
9 states to users and prospective users that with FollowMyHealth, you can “Review
10 your medical records online in a safe, secure environment,” “Update your health
11 information (allergies, medications, conditions, etc.),” and “Request Rx refills,”
12 among other things. Since FollowMyHealth and Patient Portal are specifically
13 designed to empower patients to manage their care by providing access to their
14 personal health records, Allscripts knows that FollowMyHealth and Patient Portal
15 have no substantial uses other than in providing users with the ability to access and
16 collect their health records a secure and private manner, in a manner that infringes
17 one or more claims the ‘466 Patent. Allscripts also knows that FollowMyHealth and
18 Patient Portal are made and adapted for use in in providing users with the ability to
19 access and collect their health records (including drug prescriptions) in a secure and
20 private manner, in a manner that infringes one or more claims of the ‘466 Patent,
21 and therefore that they are especially made or adapted for use in infringement of the
22 ‘466 Patent.

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¹ <https://www.followmyhealth.com/Login/Home/Index?authproviders=0&returnArea=PatientAccess#/Index>, visited December 11, 2013.
² <http://support.followmyhealth.com/customer/portal/articles/1128766-what-is-followmyhealth%E2%84%A2-universal-health-record->, visited December 11, 2013.

Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3505

1 20. Before it was named in this lawsuit on November 5, 2013 (Docket 30),
2 Allscripts was aware of the ‘446 Patent by virtue of the existing Complaint that was
3 filed against it in the action styled *MyMedicalRecords Inc v. Allscripts Healthcare*
4 *Solutions Inc*, 2:13-cv-07052-ODW-SH (filed Sep. 23, 2013). The Complaint in
5 that action was filed on September 23, 2013, approximately six months after
6 Allscripts had purchased substantially all of the assets of Jardogs on March 4, 2013,
7 including the FollowMyHealth product. On information and belief, subsequent to
8 the acquisition Allscripts integrated FollowMyHealth with its Patient Portal product.
9 In the existing Complaint against Allscripts, MMR specifically identified the
10 accused FollowMyHealth and Patient Portal products as infringing the ‘466 Patent
11 (see Docket No. 1, p. 4). Thus, it is reasonable to infer that Allscripts was already
12 aware that FollowMyHealth and Patient Portal infringed the ‘466 Patent over six
13 weeks before it was named in this lawsuit on November 5, 2013.

14 21. Defendants have contributorily infringed and (in the case of Allscripts)
15 are contributorily infringing the ‘446 Patent by making, using, offering for sale,
16 and/or selling in the United States certain methods or systems disclosed and claimed
17 in the ‘446 Patent, including, but not limited to the FollowMyHealth and Patient
18 Portal products.

19 22. Defendants have infringed indirectly and (in the case of Allscripts)
20 continue to infringe indirectly the ‘466 Patent by active inducement under 35 U.S.C.
21 § 271(b), by making, using, offering for sale, and/or selling in the United States
22 certain methods or systems disclosed and claimed in the ‘446 Patent, including, but
23 not limited to the FollowMyHealth and Patient Portal products. Defendants have
24 induced and continue to induce others including distributors, agents, resellers and
25 users to directly infringe one or more claims of the ‘466 Patent.

26 23. The infringement by Defendants of the ‘466 Patent has been and
27 continues to be willful, rendering this case exceptional within the meaning of 35
28 U.S.C. § 285.

Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3505

1 24. Unless enjoined by this Court, Defendants will continue to infringe on
2 the '466 Patent.

3 25. As a direct and proximate result of the Defendants' conduct, Plaintiff
4 has suffered, and will continue to suffer, irreparable injury for which it has no
5 adequate remedy at law. Plaintiff also has been damaged and, until an injunction
6 issues, will continue to be damaged in an amount yet to be determined.

7 26. Plaintiff seeks enhanced damages pursuant to 35 U.S.C. § 284 and a
8 finding that this is an exceptional case within the meaning of 35 U.S.C. § 285,
9 entitling Plaintiff to its attorneys' fees and expenses.

10 27. Defendants' acts of infringement have caused damage to Plaintiff and
11 Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as
12 a result of Defendant's wrongful acts in an amount subject to proof at trial.

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14 **SECOND CLAIM FOR RELIEF**

15 **(Patent Infringement as to the '883 Patent)**

16 **(Against Allscripts)**

17 28. Plaintiff incorporates paragraphs 1 through 26 of this complaint as if set
18 forth in full herein.

19 29. MMR is the owner of the entire right, title, and interest in and to U.S.
20 Patent No. 8,498,883 (the '883 Patent), entitled "Method for Providing a User with a
21 Service for Accessing and Collecting Prescriptions." The '883 Patent was duly and
22 legally issued on July 30, 2013 to MMR as assignee of inventor Robert H. Lorsch.
23 A true and correct copy of the '883 Patent is attached as Exhibit B.

24 30. Allscripts has directly infringed and continues to infringe, either
25 literally and/or under the doctrine of equivalents, the '883 Patent by making, using,
26 offering for sale, and/or selling in the United States certain methods or systems
27 disclosed and claimed in the '883 Patent, including, but not limited to Defendant's
28 FollowMyHealth and Patient Portal products. For example, Defendant's

Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3505

1 FollowMyHealth and Patient Portal products implement a method for providing a
2 user with an ability to access, collect, and/or manage drug prescriptions associated
3 with the user in a secure and private manner, according to one or more claims of the
4 ‘883 Patent.

5 31. Before it was named in this lawsuit on November 5, 2013 (Docket 30),
6 Allscripts was aware of the ‘883 Patent by virtue of the existing Complaint that was
7 filed against it in the action styled *MyMedicalRecords Inc v. Allscripts Healthcare*
8 *Solutions Inc*, 2:13-cv-07052-ODW-SH (filed Sep. 23, 2013). The Complaint in
9 that action was filed on September 23, 2013, approximately six months after
10 Allscripts had purchased substantially all of the assets of Jardogs on March 4, 2013,
11 including the FollowMyHealth product. On information and belief, subsequent to
12 the acquisition Allscripts integrated FollowMyHealth with its Patient Portal product.
13 In the existing Complaint against Allscripts, MMR specifically identified the
14 accused FollowMyHealth and Patient Portal products as infringing the ‘883 and
15 ‘466 Patents (see Docket No. 1, p. 4). Thus, it is reasonable to infer that Allscripts
16 was already aware that FollowMyHealth and Patient Portal infringed the ‘883 Patent
17 over six weeks before it was named in this lawsuit on November 5, 2013.

18 32. Before it was named in this lawsuit, Allscripts was also aware that its
19 actions would induce infringement of the ‘883 Patent. Specifically, Allscripts has
20 provided instructions directing other entities specifically to use the FollowMyHealth
21 and Patient Portal products in a manner known to be infringing. For example,
22 Allscripts maintains a website at www.followmyhealth.com, which includes
23 instructions specifically directing users to access, collect, and/or manage drug
24 prescriptions associated with the user in a secure and private manner, in a manner
25 that infringes one or more claims of the ‘883 Patent. Allscripts provides those
26 instructions on its websites, including at www.followmyhealth.com and
27 support.followmyhealth.com. Allscripts knows its actions induce infringement of
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Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3505

1 the ‘883 Patent, because, for example, it knows that use of the FollowMyHealth and
2 Patient Portal products infringe the ‘883 Patent.

3 33. Allscripts was also aware that the FollowMyHealth and Patient Portal
4 products have no substantial non-infringing uses, and that these products are
5 especially made or adapted for use in infringement of the ‘883 Patent. Allscripts
6 states prominently on its website that FollowMyHealth is “an innovative health
7 engagement solution that empowers patients to take a more active role in managing
8 their care.”³ It also states to users and prospective users that FollowMyHealth is an
9 “innovative tool that provides anywhere, anytime access to your personal health
10 records, and enables you to take a proactive role in managing your care.”⁴ It further
11 states to users and prospective users that with FollowMyHealth, you can “Review
12 your medical records online in a safe, secure environment,” “Update your health
13 information (allergies, medications, conditions, etc.),” and “Request Rx refills,”
14 among other things. Since FollowMyHealth and Patient Portal are specifically
15 designed to empower patients to manage their care by providing access to their drug
16 prescriptions, Allscripts knows that FollowMyHealth and Patient Portal have no
17 substantial uses other than in providing users with the ability to access, collect,
18 and/or manage drug prescriptions associated with the user in a secure and private
19 manner, in a manner that infringes one or more claims of the ‘883 Patent. Allscripts
20 also knows that FollowMyHealth and Patient Portal are made and adapted for use in
21 in providing users with the ability to access, collect, and/or manage drug
22 prescriptions associated with the user in a secure and private manner, in a manner
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25 ³ <https://www.followmyhealth.com/Login/Home/Index?authproviders=0&returnArea=PatientAccess#/Index>, visited December 11, 2013.

26 ⁴ <http://support.followmyhealth.com/customer/portal/articles/1128766-what-is-followmyhealth%E2%84%A2-universal-health-record->, visited December 11,
27 2013.
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Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024-3505

1 that infringes one or more claims of the ‘883 Patent, and therefore that they are
2 especially made or adapted for use in infringement of the ‘883 Patent.

3 34. Allscripts has contributorily infringed and is currently contributorily
4 infringing the ‘883 Patent by making, using, offering for sale, and/or selling in the
5 United States certain methods or systems disclosed and claimed in the ‘883 Patent,
6 including, but not limited to Defendant’s FollowMyHealth and Patient Portal
7 products.

8 35. Allscripts has infringed indirectly and continue to infringe indirectly
9 the ‘883 Patent by active inducement under 35 U.S.C. § 271(b), by making, using,
10 offering for sale, and/or selling in the United States certain methods or systems
11 disclosed and claimed in the ‘883 Patent, including, but not limited to the
12 FollowMyHealth and Patient Portal products. Allscripts has induced and continues
13 to induce others including distributors, agents, resellers and users to directly infringe
14 one or more claims of the ‘883 Patent.

15 36. ““

16 37. The infringement by Defendant Allscripts of the ‘883 Patent has been
17 and continues to be willful, rendering this case exceptional within the meaning of 35
18 U.S.C. § 285.

19 38. Unless enjoined by this Court, Defendant Allscripts will continue to
20 infringe the ‘883 Patent.

21 39. As a direct and proximate result of the Defendant Allscripts’ conduct,
22 Plaintiff has suffered, and will continue to suffer, irreparable injury for which it has
23 no adequate remedy at law. Plaintiff also has been damaged and, until an injunction
24 issues, will continue to be damaged in an amount yet to be determined.

25 **PRAYER FOR RELIEF**

26 For the above reasons, Plaintiff respectfully requests that the Court grant the
27 following relief in favor of Plaintiff and against Defendants:

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Dated: January 8, 2014

Respectfully submitted,

LINER LLP

By: /s/ Randall J. Sunshine
Randall J. Sunshine
Attorneys for MYMEDICALRECORDS,
INC.

Liner Grode Stein Yankelevitz Sunshine
Regenstreif + Taylor LLP
1100 Clenden Avenue, 14th Floor
Los Angeles, California 90024-3505