

RUSS, AUGUST & KABAT

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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.

U.S. ROBOTICS CORPORATION, a
Delaware corporation,

Defendant.

Case No.

**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 U.S. Robotics Corporation ("USR"):

THE PARTIES

1. MTS is a California limited liability company.
2. On information and belief, U.S. Robotics Corporation is a Delaware corporation with its principal place of business at 1300 E. Woodfield Road, Suite

1 506, Schaumburg, IL 60173. On information and belief, U.S. Robotics
2 Corporation can be served through Corry S. Hong, UNICOM Global, Inc.,
3 UNICOM Plaza, Suite 310, 15535 San Fernando Mission Blvd, Mission Hills, CA
4 91345.

5 JURISDICTION

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

9 4. This Court has personal jurisdiction over USR because, on
10 information and belief, USR has done business in this District, has committed and
11 continues to commit acts of patent infringement in this District, and/or has harmed
12 and continues to harm MTS in this District, by, among other things, using, selling,
13 offering for sale, and/or importing infringing products and services in this District.

14 5. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(d) and
15 1400(b) because, among other reasons, USR is subject to personal jurisdiction in
16 this District, and has committed and continues to commit acts of patent
17 infringement in this District. On information and belief, for example, USR has
18 used, sold, offered for sale, and/or imported infringing products in this District.

19 FACTUAL BACKGROUND

20 6. The technology claimed in the patents asserted in this action was
21 invented during the research and development activities of the Rockwell,
22 Conexant, and Mindspeed family of companies. In 1999, Rockwell International
23 spun off Rockwell Semiconductor group as Conexant Systems Inc. Conexant
24 inherited Rockwell's mixed signal semiconductor expertise and intellectual
25 property portfolio, and was focused on developing semiconductor products for a
26 broad range of communications applications. These applications included wireline
27 and wireless voice and data communication networks. Conexant's Internet
28 Infrastructure group was incorporated as Mindspeed Technologies (as a wholly-

1 owned subsidiary) in 2001 and spun-off as an independent entity in 2003.
2 Mindspeed's focus is on semiconductor and software solutions for Internet access
3 devices, switching fabric, and network processors.

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

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

17 COUNT I

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

19 9. United States Patent No. 6,504,886 ("the '886 patent"), entitled
20 "Communication of an impairment learning sequence according to an impairment
21 learning sequence descriptor," issued on January 7, 2003 from United States Patent
22 Application No. 09/956,207 filed on September 19, 2001. Application No.
23 09/956,207 is a Continuation of U.S. Patent Application Ser. No. 08/969,971,
24 entitled Method and Apparatus for Generating a Line Impairment Learning Signal
25 for a Data Communication System, filed Nov. 13, 1997 now U.S. Pat. No.
26 6,332,009, which is a Continuation-In-Part of U.S. Patent Application Ser. No.
27 08/922,851, entitled Method and Apparatus for Generating a Programmable
28 Synchronization Signal for a Data Communication System, filed Sep. 3, 1997, now

1 U.S. Pat. No. 6,212,247. A true and correct copy of the '886 patent is attached as
2 Exhibit A.

3 10. USR has been and now is directly infringing one or more claims of
4 the '886 Patent, in this judicial District and elsewhere in the United States, by,
5 among other things, practicing a method of communicating a learning sequence
6 descriptor for use in constructing a learning sequence, said method comprising:
7 transmitting a first parameter specifying a number of segments in said learning
8 sequence; transmitting a second parameter specifying a sign pattern of each of said
9 segments; and transmitting a third parameter specifying a training pattern of each
10 of said segments, wherein said training pattern is indicative of an ordering of a
11 reference symbol and a training symbol in each of said segments. Upon
12 information and belief, USR practices the claimed method while testing USR dial-
13 up modems that operate according to the International Telecommunications Union
14 ("ITU") V.92 (56Kbps) specification, including the USR 56K* USB Controller
15 Dial-up External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI
16 Express Dial-up Faxmodem (PCIE) (USR5638).

17 11. USR has had knowledge of the '886 patent since at least October 17,
18 2008 or shortly thereafter, when USR received a letter regarding the '886 Patent
19 from VDOT, a former assignee of the '886 patent.

20 12. USR has induced its customers, users of USR dial-up modems that
21 operate according to the ITU V.92 (56Kbps) specification, including the USR
22 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the
23 USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIE) (USR5638), to practice a
24 method of communicating a learning sequence descriptor for use in constructing a
25 learning sequence, said method comprising: transmitting a first parameter
26 specifying a number of segments in said learning sequence; transmitting a second
27 parameter specifying a sign pattern of each of said segments; and transmitting a
28 third parameter specifying a training pattern of each of said segments, wherein said

1 training pattern is indicative of an ordering of a reference symbol and a training
2 symbol in each of said segments.

3 13. For example, on information and belief, the USB 56K* USB
4 Controller Dial-up External Faxmodem with Voice (USR5637) supports V.92
5 (56K), and USB has instructed its customers that it is a “High-performance V.92
6 modem” that supports “Data: V.92, V.90, V.34, V.32bis, V.32, V.22bis, V.22,
7 V.23, and V.21” (see [http://www.usr.com/en/products/56k-dialup-](http://www.usr.com/en/products/56k-dialup-modem/usr5637/)
8 [modem/usr5637/](http://www.usr.com/en/products/56k-dialup-modem/usr5637/)). USB has also instructed its customers that, “The V.92 standard
9 is an exciting advancement in 56K technology. Contact your service provider to
10 find if your ISP offers V.92 technology. The USRobotics 56K USB Modem offers
11 V.92 functions that enhance the V.90 standard.

- 12 • "V.PCM-Upstream" technology: This allows a modem's upstream
13 communication to reach speeds of 48,000 bps. The V.90 standard limits
14 upstream to V.34 speeds.
- 15 • Quick Connect: Quick Connect supports quicker dial-up connections by
16 allowing the modem to remember the line, eliminating the need for the
17 modem to go through the full training sequence every time you connect to
18 your service provider.
- 19 • "Modem On Hold" technology*: This allows your Internet connection to be
20 suspended when there is an inbound telephone call.” (see
21 <http://support.usr.com/support/5637/5637-ug/>)

22 14. USB has also instructed its customers that the USB 56K* V.92 PCI
23 Express Dial-up Faxmodem (PCIe) (USR5638) “is fully compatible with V.92”
24 and supports “Data: V.92, V.90, V.34, V.32bis, V.32” (see
25 <http://www.usr.com/en/products/56k-dialup-modem/usr5638/>). USB has also
26 instructed customers that they can use the USR5638 to, “Get the speed you need:

- 27 • Quick Connect (V.92) reduces the time it takes to establish your dial-up
28 Internet connection

- V.92 lets you send attachments up to 50% faster” (see <http://support.usr.com/products/modem/modem-product.asp?sku=USR5638>)

15. In touting the V.92 compatibility of the USR 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIE) (USR5638) and the benefits of using V.92, such as Quick Connect and V.PCM-Upstream, to its customers, USR specifically intended to encourage its customers to use the USR 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIE) (USR5638) to perform 56K V.92 transfers in an infringing manner, knowing that such use constituted infringement of the ‘886 patent.

16. Thus, USR has induced its customers to infringe the ‘886 Patent literally and/or under the doctrine of equivalents. Upon information and belief, USR acted with the specific intent to induce its customers to practice 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

17. 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.

18. USR 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,

1 among other things, practicing an impairment learning method for use over a
2 communication channel, said method comprising: transmitting a learning sequence
3 descriptor over said communication channel, said learning sequence descriptor
4 having a training symbol order; receiving a learning signal over said
5 communication channel, said learning signal having a member of segments, each
6 of said segments being associated with a sequence of symbols configured in
7 accordance with said learning sequence descriptor, wherein said training symbol
8 order is indicative of an assignment of a plurality of training symbols to said
9 number of segments; and learning an impairment of said communication channel
10 according to said learning signal. Upon information and belief, USR practices the
11 claimed method while testing USR dial-up modems that operate according to the
12 International Telecommunications Union (“ITU”) V.92 (56Kbps) specification,
13 including the USR 56K* USB Controller Dial-up External Faxmodem with Voice
14 (USR5637) and the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIE)
15 (USR5638).

16 19. USR has had knowledge of the ‘009 patent since at least October 17,
17 2008 or shortly thereafter, when USR received a letter regarding the ‘009 Patent
18 from VDOT, a former assignee of the ‘009 patent.

19 20. USR has induced its customers, users of USR dial-up modems that
20 operate according to the ITU V.92 (56Kbps) specification, including the USR
21 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the
22 USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIE) (USR5638), to practice
23 an impairment learning method for use over a communication channel, said
24 method comprising: transmitting a learning sequence descriptor over said
25 communication channel, said learning sequence descriptor having a training
26 symbol order; receiving a learning signal over said communication channel, said
27 learning signal having a member of segments, each of said segments being
28 associated with a sequence of symbols configured in accordance with said learning

1 sequence descriptor, wherein said training symbol order is indicative of an
2 assignment of a plurality of training symbols to said number of segments; and
3 learning an impairment of said communication channel according to said learning
4 signal.

5 21. For example, on information and belief, the USB 56K* USB
6 Controller Dial-up External Faxmodem with Voice (USR5637) supports V.92
7 (56K), and USB has instructed its customers that it is a “High-performance V.92
8 modem” that supports “Data: V.92, V.90, V.34, V.32bis, V.32, V.22bis, V.22,
9 V.23, and V.21” (see [http://www.usr.com/en/products/56k-dialup-](http://www.usr.com/en/products/56k-dialup-modem/usr5637/)
10 [modem/usr5637/](http://www.usr.com/en/products/56k-dialup-modem/usr5637/)). USB has also instructed its customers that, “The V.92 standard
11 is an exciting advancement in 56K technology. Contact your service provider to
12 find if your ISP offers V.92 technology. The USRobotics 56K USB Modem offers
13 V.92 functions that enhance the V.90 standard.

- 14 • "V.PCM-Upstream" technology: This allows a modem's upstream
15 communication to reach speeds of 48,000 bps. The V.90 standard limits
16 upstream to V.34 speeds.
- 17 • Quick Connect: Quick Connect supports quicker dial-up connections by
18 allowing the modem to remember the line, eliminating the need for the
19 modem to go through the full training sequence every time you connect to
20 your service provider.
- 21 • "Modem On Hold" technology*: This allows your Internet connection to be
22 suspended when there is an inbound telephone call.” (see
23 <http://support.usr.com/support/5637/5637-ug/>)

24 22. USB has also instructed its customers that the USB 56K* V.92 PCI
25 Express Dial-up Faxmodem (PCIe) (USR5638) “is fully compatible with V.92”
26 and supports “Data: V.92, V.90, V.34, V.32bis, V.32” (see
27 <http://www.usr.com/en/products/56k-dialup-modem/usr5638/>). USB has also
28 instructed customers that they can use the USR5638 to, “Get the speed you need:

- 1 • Quick Connect (V.92) reduces the time it takes to establish your dial-up
- 2 Internet connection
- 3 • V.92 lets you send attachments up to 50% faster” (see
- 4 <http://support.usr.com/products/modem/modem-product.asp?sku=USR5638>)

5 23. In touting the V.92 compatibility of the USR 56K* USB Controller
 6 Dial-up External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI
 7 Express Dial-up Faxmodem (PCIe) (USR5638) and the benefits of using V.92,
 8 such as Quick Connect and V.PCM-Upstream, to its customers, USR specifically
 9 intended to encourage its customers to use the USR 56K* USB Controller Dial-up
 10 External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI Express
 11 Dial-up Faxmodem (PCIe) (USR5638) to perform 56K V.92 transfers in an
 12 infringing manner, knowing that such use constituted infringement of the ‘009
 13 patent.

14 24. Thus, USR has induced its customers to infringe the ‘009 Patent
 15 literally and/or under the doctrine of equivalents. Upon information and belief,
 16 USR acted with the specific intent to induce its customers to practice the method
 17 claimed by the ‘009 Patent by continuing the above-mentioned activities with
 18 knowledge of the ‘009 Patent.

19 COUNT III

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

21 25. United States Patent No. 6,570,932 (“the ‘932 patent”), entitled
 22 “Calculation and verification of transmit power levels in a signal point
 23 transmission system,” issued on May 27, 2003 from United States Patent
 24 Application No. 10/026,096 filed on December 21, 2001. Application No.
 25 10/026,096 is a continuation of U.S. Patent Application Ser. No. 09/740,567, filed
 26 Dec. 18, 2000, now U.S. Pat. No. 6,359,932, which is a continuation of U.S. Patent
 27 Application Ser. No. 09/075,719, filed May 11, 1998, now U.S. Pat. No.
 28 6,163,570. A true and correct copy of the ‘932 patent is attached as Exhibit C.

1 26. USR has been and now is directly infringing one or more claims of
2 the ‘932 patent, in this judicial District and elsewhere in the United States, by,
3 among other things, practicing a method of communicating over a communication
4 channel using a constellation including a plurality of signal points, said method
5 comprising: determining a probability of transmission of each signal point of said
6 constellation; calculating an average power of said signal points using a power
7 formula based on said probability of transmission of each said signal point; and
8 comparing said average power with a transmit power limit. Upon information and
9 belief, USR practices the claimed method while testing USR dial-up modems that
10 operate according to the International Telecommunications Union (“ITU”) V.92
11 (56Kbps) specification, including the USR 56K* USB Controller Dial-up External
12 Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI Express Dial-up
13 Faxmodem (PCIE) (USR5638).

14 27. USR has had knowledge of the ‘932 patent since at least October 17,
15 2008 or shortly thereafter, when USR received a letter regarding the ‘932 Patent
16 from VDOT, a former assignee of the ‘932 patent.

17 28. USR has induced its customers, users of USR dial-up modems that
18 operate according to the ITU V.92 (56Kbps) specification, including the USR
19 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the
20 USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIE) (USR5638), to practice a
21 method of communicating over a communication channel using a constellation
22 including a plurality of signal points, said method comprising: determining a
23 probability of transmission of each signal point of said constellation; calculating an
24 average power of said signal points using a power formula based on said
25 probability of transmission of each said signal point; and comparing said average
26 power with a transmit power limit.

27 29. For example, on information and belief, the USR 56K* USB
28 Controller Dial-up External Faxmodem with Voice (USR5637) supports V.92

(56K), and USR has instructed its customers that it is a “High-performance V.92 modem” that supports “Data: V.92, V.90, V.34, V.32bis, V.32, V.22bis, V.22, V.23, and V.21” (see <http://www.usr.com/en/products/56k-dialup-modem/usr5637/>). USR has also instructed its customers that, “The V.92 standard is an exciting advancement in 56K technology. Contact your service provider to find if your ISP offers V.92 technology. The USRobotics 56K USB Modem offers V.92 functions that enhance the V.90 standard.

- "V.PCM-Upstream" technology: This allows a modem's upstream communication to reach speeds of 48,000 bps. The V.90 standard limits upstream to V.34 speeds.
- Quick Connect: Quick Connect supports quicker dial-up connections by allowing the modem to remember the line, eliminating the need for the modem to go through the full training sequence every time you connect to your service provider.
- "Modem On Hold" technology*: This allows your Internet connection to be suspended when there is an inbound telephone call.” (see <http://support.usr.com/support/5637/5637-ug/>)

30. USR has also instructed its customers that the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIe) (USR5638) “is fully compatible with V.92” and supports “Data: V.92, V.90, V.34, V.32bis, V.32” (see <http://www.usr.com/en/products/56k-dialup-modem/usr5638/>). USR has also instructed customers that they can use the USR5638 to, “Get the speed you need:

- Quick Connect (V.92) reduces the time it takes to establish your dial-up Internet connection
- V.92 lets you send attachments up to 50% faster” (see <http://support.usr.com/products/modem/modem-product.asp?sku=USR5638>)

31. In touting the V.92 compatibility of the USR 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI

Express Dial-up Faxmodem (PCIE) (USR5638) and the benefits of using V.92, such as Quick Connect and V.PCM-Upstream, to its customers, USR specifically intended to encourage its customers to use the USR 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIE) (USR5638) to perform 56K V.92 transfers in an infringing manner, knowing that such use constituted infringement of the '932 patent.

32. Thus, USR has induced its customers to infringe the '932 Patent literally and/or under the doctrine of equivalents. Upon information and belief, USR acted with the specific intent to induce its customers to practice the method claimed by the '932 Patent by continuing the above-mentioned activities with knowledge of the '932 Patent.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 7,062,022

33. United States Patent No. 7,062,022 ("the '022 patent"), entitled "Method and apparatus for fast V.90 modem startup," issued on June 13, 2006 from United States Patent Application No. 10/753,570 filed on January 8, 2004. Application No. 10/753,570 is a Continuation of U.S. Patent Application Ser. No. 09/361,842, filed Jul. 27, 1999 now U.S. Pat. No. 6,819,749, which claims the benefit of U.S. Provisional Application Ser. No. 60/128,874, filed Apr. 12, 1999. A true and correct copy of the '022 patent is attached as Exhibit D.

34. USR has been and now is directly infringing one or more claims of the '022 Patent, in this judicial District and elsewhere in the United States, by, among other things, practicing a method for reducing startup latency associated with a data transmission system having a first device configured to communicate with a second device over a communication channel, said method comprising the steps of: establishing a call between said first device and said second device; determining whether a characteristic of said communication channel is similar to a

1 corresponding characteristic associated with a previously established
2 communication channel; and initializing at least one of said first and second
3 devices using a number of stored parameters associated with said previously
4 established communication channel, said initializing step being performed if said
5 determining step determines that said characteristic is similar to said corresponding
6 characteristic. Upon information and belief, USR practices the claimed method
7 while testing USR dial-up modems that operate according to the International
8 Telecommunications Union (“ITU”) V.92 (56Kbps) specification, including the
9 USR 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637)
10 and the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIE) (USR5638).

11 35. USR has had knowledge of the ‘022 patent since at least October 17,
12 2008 or shortly thereafter, when USR received a letter regarding the ‘022 Patent
13 from VDOT, a former assignee of the ‘022 patent.

14 36. USR has induced its customers, users of USR dial-up modems that
15 operate according to the ITU V.92 (56Kbps) specification, including the USR
16 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the
17 USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIE) (USR5638), to practice a
18 method for reducing startup latency associated with a data transmission system
19 having a first device configured to communicate with a second device over a
20 communication channel, said method comprising the steps of: establishing a call
21 between said first device and said second device; determining whether a
22 characteristic of said communication channel is similar to a corresponding
23 characteristic associated with a previously established communication channel; and
24 initializing at least one of said first and second devices using a number of stored
25 parameters associated with said previously established communication channel,
26 said initializing step being performed if said determining step determines that said
27 characteristic is similar to said corresponding characteristic.

37. For example, on information and belief, the USR 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) supports V.92 (56K), and USR has instructed its customers that it is a “High-performance V.92 modem” that supports “Data: V.92, V.90, V.34, V.32bis, V.32, V.22bis, V.22, V.23, and V.21” (see <http://www.usr.com/en/products/56k-dialup-modem/usr5637/>). USR has also instructed its customers that, “The V.92 standard is an exciting advancement in 56K technology. Contact your service provider to find if your ISP offers V.92 technology. The USRobotics 56K USB Modem offers V.92 functions that enhance the V.90 standard.

- "V.PCM-Upstream" technology: This allows a modem's upstream communication to reach speeds of 48,000 bps. The V.90 standard limits upstream to V.34 speeds.
- Quick Connect: Quick Connect supports quicker dial-up connections by allowing the modem to remember the line, eliminating the need for the modem to go through the full training sequence every time you connect to your service provider.
- "Modem On Hold" technology*: This allows your Internet connection to be suspended when there is an inbound telephone call.” (see <http://support.usr.com/support/5637/5637-ug/>)

38. USR has also instructed its customers that the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIe) (USR5638) “is fully compatible with V.92” and supports “Data: V.92, V.90, V.34, V.32bis, V.32” (see <http://www.usr.com/en/products/56k-dialup-modem/usr5638/>). USR has also instructed customers that they can use the USR5638 to, “Get the speed you need:

- Quick Connect (V.92) reduces the time it takes to establish your dial-up Internet connection
- V.92 lets you send attachments up to 50% faster” (see <http://support.usr.com/products/modem/modem-product.asp?sku=USR5638>)

39. In touting the V.92 compatibility of the USB 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the USB 56K* V.92 PCI Express Dial-up Faxmodem (PCIe) (USR5638) and the benefits of using V.92, such as Quick Connect and V.PCM-Upstream, to its customers, USB specifically intended to encourage its customers to use the USB 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the USB 56K* V.92 PCI Express Dial-up Faxmodem (PCIe) (USR5638) to perform 56K V.92 transfers in an infringing manner, knowing that such use constituted infringement of the '022 patent.

40. Thus, USB has induced its customers to infringe the '022 Patent literally and/or under the doctrine of equivalents. Upon information and belief, USB acted with the specific intent to induce its customers to practice the method claimed by the '022 Patent by continuing the above-mentioned activities with knowledge of the '022 Patent.

COUNT V

INFRINGEMENT OF U.S. PATENT NO. RE42,661

41. United States Patent No. RE42,661 ("the '661 patent"), entitled "Method and apparatus for fast V.90 modem startup," issued on August 30, 2011 from United States Patent Application No. 12/586,907 filed on September 28, 2009. Application No. 12/586,907 is a reissue application of U.S. Patent Application Ser. No. 11/205,896, filed Aug. 16, 2005, now U.S. Pat. No. 7,277,531, which is a continuation of U.S. Patent Application Ser. No. 10/753,570, filed Jan. 8, 2004, now U.S. Pat. No. 7,062,022, which is a Continuation of U.S. Patent Application Ser. No. 09/361,842, filed Jul. 27, 1999, now U.S. Pat. No. 6,819,749, which claims the benefit of U.S. Provisional Application Ser. No. 60/128,874, filed Apr. 12, 1999. A true and correct copy of the '661 patent is attached as Exhibit E.

1 42. USR has been and now is directly infringing one or more claims of
2 the '661 Patent, in this judicial District and elsewhere in the United States, by,
3 among other things, practicing a training method for use by a first modem to
4 reduce a training time for training said first modem with a second modem, said
5 training method comprising the steps of: initiating a call from said first modem to
6 establish a communication channel; receiving from said second modem a portion
7 of a capabilities exchange phase of the V.90 modem protocol, wherein said
8 capabilities exchange phase of the V.90 modem protocol is indicative of a fast
9 connect capability; sending a fast connect capability identifier to said second
10 modem in response to said fast connect capability indication; receiving from said
11 second modem a fast connect capability acknowledgement; and skipping at least a
12 portion of the capabilities exchange phase of the V.90 modem protocol to reduce
13 said capabilities exchange phase time, said skipping step being performed in
14 response to receiving said fast connect capability acknowledgement. Upon
15 information and belief, USR practices the claimed method while testing USR dial-
16 up modems that operate according to the International Telecommunications Union
17 ("ITU") V.92 (56Kbps) specification, including the USR 56K* USB Controller
18 Dial-up External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI
19 Express Dial-up Faxmodem (PCIE) (USR5638).

20 43. USR has had knowledge of the '661 patent since at least the filing of
21 this Complaint or shortly thereafter, and USR has induced its customers, users of
22 USR dial-up modems that operate according to the ITU V.92 (56Kbps)
23 specification, including the USR 56K* USB Controller Dial-up External
24 Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI Express Dial-up
25 Faxmodem (PCIE) (USR5638), to practice a training method for use by a first
26 modem to reduce a training time for training said first modem with a second
27 modem, said training method comprising the steps of: initiating a call from said
28 first modem to establish a communication channel; receiving from said second

1 modem a portion of a capabilities exchange phase of the V.90 modem protocol,
 2 wherein said capabilities exchange phase of the V.90 modem protocol is indicative
 3 of a fast connect capability; sending a fast connect capability identifier to said
 4 second modem in response to said fast connect capability indication; receiving
 5 from said second modem a fast connect capability acknowledgement; and skipping
 6 at least a portion of the capabilities exchange phase of the V.90 modem protocol to
 7 reduce said capabilities exchange phase time, said skipping step being performed
 8 in response to receiving said fast connect capability acknowledgement.

9 44. For example, on information and belief, the USB 56K* USB
 10 Controller Dial-up External Faxmodem with Voice (USR5637) supports V.92
 11 (56K), and USB has instructed its customers that it is a “High-performance V.92
 12 modem” that supports “Data: V.92, V.90, V.34, V.32bis, V.32, V.22bis, V.22,
 13 V.23, and V.21” (see [http://www.usr.com/en/products/56k-dialup-](http://www.usr.com/en/products/56k-dialup-modem/usr5637/)
 14 [modem/usr5637/](http://www.usr.com/en/products/56k-dialup-modem/usr5637/)). USB has also instructed its customers that, “The V.92 standard
 15 is an exciting advancement in 56K technology. Contact your service provider to
 16 find if your ISP offers V.92 technology. The USRobotics 56K USB Modem offers
 17 V.92 functions that enhance the V.90 standard.

- 18 • "V.PCM-Upstream" technology: This allows a modem's upstream
 19 communication to reach speeds of 48,000 bps. The V.90 standard limits
 20 upstream to V.34 speeds.
- 21 • Quick Connect: Quick Connect supports quicker dial-up connections by
 22 allowing the modem to remember the line, eliminating the need for the
 23 modem to go through the full training sequence every time you connect to
 24 your service provider.
- 25 • "Modem On Hold" technology*: This allows your Internet connection to be
 26 suspended when there is an inbound telephone call.” (see
 27 <http://support.usr.com/support/5637/5637-ug/>)

45. USR has also instructed its customers that the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIe) (USR5638) “is fully compatible with V.92” and supports “Data: V.92, V.90, V.34, V.32bis, V.32” (see <http://www.usr.com/en/products/56k-dialup-modem/usr5638/>). USR has also instructed customers that they can use the USR5638 to, “Get the speed you need:

- Quick Connect (V.92) reduces the time it takes to establish your dial-up Internet connection
- V.92 lets you send attachments up to 50% faster” (see <http://support.usr.com/products/modem/modem-product.asp?sku=USR5638>)

46. In touting the V.92 compatibility of the USR 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIe) (USR5638) and the benefits of using V.92, such as Quick Connect and V.PCM-Upstream, to its customers, USR specifically intended to encourage its customers to use the USR 56K* USB Controller Dial-up External Faxmodem with Voice (USR5637) and the USR 56K* V.92 PCI Express Dial-up Faxmodem (PCIe) (USR5638) to perform 56K V.92 transfers in an infringing manner, knowing that such use constituted infringement of the ‘661 patent.

47. Thus, USR has induced its customers to infringe the ‘661 Patent literally and/or under the doctrine of equivalents. Upon information and belief, USR acted with the specific intent to induce its customers to practice the method claimed by the ‘661 Patent by continuing the above-mentioned activities with knowledge of the ‘661 Patent.

48. By engaging in the conduct described herein, USR has injured MTS and is thus liable for infringement of the ‘886 patent, ‘009 patent, ‘932 patent, ‘022 patent, and ‘661 patent pursuant to 35 U.S.C. § 271.

1 49. USR has committed these acts of infringement without license or
2 authorization.

3 50. As a result of USR's infringement of the '886 patent, '009 patent,
4 '932 patent, '022 patent, and '661 patent, MTS has suffered monetary damages and
5 is entitled to a money judgment in an amount adequate to compensate for USR's
6 infringement, but in no event less than a reasonable royalty for the use made of the
7 invention by USR, together with interest and costs as fixed by the Court.

8 51. MTS has also suffered and will continue to suffer severe and
9 irreparable harm unless this Court issues a permanent injunction prohibiting USR,
10 its agents, servants, employees, representatives, and all others acting in active
11 concert therewith from infringing the '886 patent, '009 patent, '932 patent, '022
12 patent, and '661 patent. In particular, USR's disregard for MTS's property rights
13 threatens MTS's relationships with the actual and potential licensees of this
14 intellectual property, inasmuch as USR will derive a competitive advantage over
15 any of MTS's current or future licensees by using MTS's patented technology
16 without paying compensation for such use. Accordingly, unless and until USR's
17 continued acts of infringement are enjoined, MTS will suffer further irreparable
18 harm for which there is no adequate remedy at law.

19 52. USR's infringement of the '886 patent, '009 patent, '932 patent, and
20 '022 patent has been willful and deliberate, entitling MTS to increased damages
21 under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this
22 action under 35 U.S.C. § 285. In particular, USR was informed of the '886 patent,
23 '009 patent, '932 patent, '022 patent, and allegations of infringement no later than
24 October 17, 2008 or shortly thereafter, when USR received a letter regarding same
25 from VDOT, a former assignee of the '886 patent, '009 patent, '932 patent, and
26 '022 patent. Despite awareness of the '886 patent, '009 patent, '932 patent, '022
27 patent, and the infringing nature of its conduct, USR has continued such conduct
28

1 and thereby has willfully infringed the '886 patent, '009 patent, '932 patent, and
2 '022 patent.

3 **PRAYER FOR RELIEF**

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

5 A. A judgment in favor of MTS that USR has infringed the '886 patent,
6 '009 patent, '932 patent, '022 patent, and '661 patent;

7 B. A permanent injunction enjoining USR and its officers, directors,
8 agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents,
9 and all others acting in active concert therewith from infringement of the '886
10 patent, '009 patent, '932 patent, '022 patent, and '661 patent or such other
11 equitable relief the Court determines is warranted;

12 C. A judgment and order requiring USR to pay MTS its damages, costs,
13 expenses, and prejudgment and post-judgment interest for Defendant's
14 infringement of the '886 patent, '009 patent, '932 patent, '022 patent, and '661
15 patent, as provided under 35 U.S.C. § 284;

16 D. A judgment and order that USR has willfully infringed the '886
17 patent, '009 patent, '932 patent, and '022 patent and assessing increased damages
18 up to three times the amount found or assessed pursuant to 35 U.S.C. § 284;

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

22 E. A judgment and order requiring USR to provide an accounting and to
23 pay supplemental damages to MTS, including without limitation, pre-judgment and
24 post-judgment interest; and

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

26 **DEMAND FOR JURY TRIAL**

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

RUSS, AUGUST & KABAT

1
2 DATED: July 21, 2014

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