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.

JUNO ONLINE SERVICES, INC., a Delaware corporation, and NETZERO, INC., a Delaware corporation,

Defendants.

Case No. SACV14-00348 AG (ANx)

SECOND AMENDED 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 Juno Online Services, Inc. ("Juno") and Netzero, Inc. ("Netzero") (collectively, "Defendants"):

THE PARTIES

1. MTS is a California limited liability company.

2. On information and belief, Juno Online Services, Inc. is a Delaware corporation with its principal place of business at 21301 Burbank Blvd, Woodland Hills, CA 91367. On information and belief, Juno Online Services, Inc. can be served through its registered agent, National Registered Agents, Inc., 818 W Seventh St, Los Angeles, CA 90017.

3. On information and belief, Netzero, Inc. is a Delaware corporation with its principal place of business at 21301 Burbank Blvd, Woodland Hills, CA 91367. On information and belief, Netzero, Inc. can be served through its registered agent, National Registered Agents, Inc., 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 Defendants because, on information and belief, Defendants have done business in this District, have committed and continue to commit acts of patent infringement in this District, and/or have harmed and continue 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, Defendants are registered to do business in California and have their principal places of business in this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(d) and 1400(b) because, among other reasons, Defendants are subject to personal jurisdiction in this District, and have committed and continue to commit acts of patent infringement in this District. On information and belief, for example, Defendants have used, sold, offered for sale, and/or imported infringing products or services 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. Defendants have been and now are 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, said method comprising: receiving a first parameter specifying a number of segments in said learning sequence; receiving a second parameter specifying a sign pattern of each of said segments; receiving 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; constructing said learning sequence based on said parameters; and transmitting said learning sequence. Upon information and belief, Defendants practice the claimed method during commercial operation of their dial-up internet services using the International Telecommunications Union ("ITU") V.90 or V.92 (56Kbps) connection protocol.

12. Defendants have had knowledge of the '886 patent no later than March 20, 2014 or shortly thereafter, when Defendants were provided with a copy of the original Complaint in this action (D.I. 1), and Defendants have induced their customers, users of Juno and Netzero dial-up internet services who connect using modems operating according to the ITU V.90 or V.92 (56Kbps) specifications, 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.

13. For example, Juno indicates on its website, "Juno Platinum members can access Juno's services at speeds up to 56k, using compression technology." *See* https://help.juno.com/support/modem/mo-speed.html. Juno also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to …Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually connect to the Internet. This shortens the time it takes for your modem and Juno to connect, so you can start surfing faster." *See* http://help.qa2.juno.com/support/modem/mo-v92.html. Juno also provides instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa4.juno.com/support/modem/mo-v92a.html.

14. Similarly, Netzero also indicates on its website, "NetZero Platinum members can access NetZero's services at speeds up to 56k, using compression technology." *See* http://help.netzero.net/support/modem/mo-speed.html. *See also* http://web.archive.org/web/20130109211930/http://help.netzero.net/support/mode

m/mo-speed.html ("NetZero Free and Platinum members can access NetZero's services at speeds up to 56k, using V.90 compression technology. … Does NetZero support V.92? On many of our access numbers, yes! You can identify V.92 numbers by looking for the V.92 label next to certain access numbers on the Access Number page on the NetZero Web site. Click here for detailed instructions on how to find and use our V.92 compatible access numbers."). Netzero also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to … Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually connect to the Internet. This shortens the time it takes for your modem and NetZero to connect, so you can start surfing faster." *See* http://help.qa5.netzero.net/support/modem/mo-v92.html. Netzero also provides instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa5.netzero.net/support/modem/mo-v92a.html.

15. In indicating that they support the use of 56K V.90 and V.92 modem connections, and promoting the use of V.92 in particular, Defendants specifically intended to encourage their customers to dial into these numbers using V.90 or V.92 modems to connect to the Juno and Netzero dial-up internet services using the 56K V.90 or V.92 protocols in an infringing manner, knowing that the use of such protocols constituted infringement of the '886 patent. Thus, Defendants have induced their customers to infringe the '886 Patent literally and/or under the doctrine of equivalents. Upon information and belief, Defendants acted with the specific intent to induce their customers to connect to their dial-up internet services using 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

16. 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.

17. Defendants have been and now are 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: receiving a learning sequence descriptor over said communication channel, said learning sequence descriptor having a training symbol order; and transmitting a learning signal over said communication channel capable of use by a device for learning an impairment of said communication channel; wherein said learning signal includes a number of segments, each of said segments being associated with a sequence of symbols configured in accordance with said learning sequence descriptor, and wherein said training symbol order is indicative of an assignment of a plurality of training symbols to said number of segments. Upon information and belief, Defendants practice the claimed method during commercial operation of their dial-up internet services using the International Telecommunications Union ("ITU") V.90 or V.92 (56Kbps) connection protocol.

18. Defendants have had knowledge of the '009 patent no later than March 20, 2014 or shortly thereafter, when Defendants were provided with a copy of the original Complaint in this action (D.I. 1), and Defendants have induced their customers, users of Juno and Netzero dial-up internet services who connect using

modems operating according to the ITU V.90 or V.92 (56Kbps) specifications, 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.

19. For example, Juno indicates on its website, "Juno Platinum members can access Juno's services at speeds up to 56k, using compression technology." *See* https://help.juno.com/support/modem/mo-speed.html. Juno also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to …Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually connect to the Internet. This shortens the time it takes for your modem and Juno to connect, so you can start surfing faster." *See* http://help.qa2.juno.com/support/modem/mo-v92.html. Juno also provides instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa4.juno.com/support/modem/mo-v92a.html.

20. Similarly, Netzero also indicates on its website, "NetZero Platinum members can access NetZero's services at speeds up to 56k, using compression technology." *See* http://help.netzero.net/support/modem/mo-speed.html. *See also* http://web.archive.org/web/20130109211930/http://help.netzero.net/support/modem/mo-speed.html ("NetZero Free and Platinum members can access NetZero's

services at speeds up to 56k, using V.90 compression technology. … Does NetZero support V.92? On many of our access numbers, yes! You can identify V.92 numbers by looking for the V.92 label next to certain access numbers on the Access Number page on the NetZero Web site. Click here for detailed instructions on how to find and use our V.92 compatible access numbers."). Netzero also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to … Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually connect to the Internet. This shortens the time it takes for your modem and NetZero to connect, so you can start surfing faster." *See* http://help.qa5.netzero.net/support/modem/mo-v92.html. Netzero also provides instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa5.netzero.net/support/modem/mo-v92a.html.

21. In indicating that they support the use of 56K V.90 and V.92 modem connections, and promoting the use of V.92 in particular, Defendants specifically intended to encourage their customers to dial into these numbers using V.90 or V.92 modems to connect to the Juno and Netzero dial-up internet services using the 56K V.90 or V.92 protocols in an infringing manner, knowing that the use of such protocols constituted infringement of the '009 patent. Thus, Defendants have induced their customers to infringe the '009 Patent literally and/or under the doctrine of equivalents. Upon information and belief, Defendants acted with the specific intent to induce their customers to connect to their dial-up internet services using 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

22. 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.

23. Defendants have been and now are 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, Defendants practice the claimed method while testing their dial-up internet services using the ITU V.90 or V.92 (56Kbps) connection protocol.

24. Defendants have had knowledge of the '932 patent no later than March 20, 2014 or shortly thereafter, when Defendants were provided with a copy of the original Complaint in this action (D.I. 1), and Defendants have induced their customers, users of Juno and Netzero dial-up internet services who connect using modems operating according to the ITU V.90 or V.92 (56Kbps) specifications, to practice 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.

25. For example, Juno indicates on its website, "Juno Platinum members can access Juno's services at speeds up to 56k, using compression technology." *See* https://help.juno.com/support/modem/mo-speed.html. Juno also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to …Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually connect to the Internet. This shortens the time it takes for your modem and Juno to connect, so you can start surfing faster." *See* http://help.qa2.juno.com/support/modem/mo-v92.html. Juno also provides instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa4.juno.com/support/modem/mo-v92a.html.

26. Similarly, Netzero also indicates on its website, "NetZero Platinum members can access NetZero's services at speeds up to 56k, using compression technology." *See* http://help.netzero.net/support/modem/mo-speed.html. *See also* http://web.archive.org/web/20130109211930/http://help.netzero.net/support/modem/mo-speed.html ("NetZero Free and Platinum members can access NetZero's services at speeds up to 56k, using V.90 compression technology. … Does NetZero support V.92? On many of our access numbers, yes! You can identify V.92 numbers by looking for the V.92 label next to certain access numbers on the Access Number page on the NetZero Web site. Click here for detailed instructions on how to find and use our V.92 compatible access numbers."). Netzero also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to … Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually

connect to the Internet. This shortens the time it takes for your modem and NetZero to connect, so you can start surfing faster." *See* http://help.qa5.netzero.net/support/modem/mo-v92.html. Netzero also provides instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa5.netzero.net/support/modem/mo-v92a.html.

27. In indicating that they support the use of 56K V.90 and V.92 modem connections, and promoting the use of V.92 in particular, Defendants specifically intended to encourage their customers to connect to the Juno and Netzero dial-up internet services using the 56K V.90 or V.92 protocols in an infringing manner, knowing that the use of such protocols constituted infringement of the '932 patent. Thus, Defendants have induced their customers to infringe the '932 Patent literally and/or under the doctrine of equivalents. Upon information and belief, Defendants acted with the specific intent to induce their customers to connect to their dial-up internet services using 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

28. 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 a 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.

29. Defendants have been and now are 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 corresponding characteristic associated with a previously established communication channel; and initializing at least one of said first and second devices using a number of stored parameters associated with said previously established communication channel, said initializing step being performed if said determining step determines that said characteristic is similar to said corresponding characteristic. Upon information and belief, Defendants practice the claimed method while testing their dial-up internet services using the ITU V.92 (56Kbps) connection protocol.

30. Defendants have had knowledge of the '022 patent no later than March 20, 2014 or shortly thereafter, when Defendants were provided with a copy of the original Complaint in this action (D.I. 1), and Defendants have induced their customers, users of Juno and Netzero dial-up internet service who connect using modems operating according to the ITU V.92 (56Kbps) specification, to practice 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 corresponding characteristic associated with a previously established communication channel; and initializing at least one of said first and second devices using a number of stored parameters associated with said previously established communication channel, said initializing step being performed if said determining step determines that said characteristic is similar to said corresponding characteristic.

31. For example, Juno indicates on its website, "Juno Platinum members can access Juno's services at speeds up to 56k, using compression technology." *See* https://help.juno.com/support/modem/mo-speed.html. Juno also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to …Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually connect to the Internet. This shortens the time it takes for your modem and Juno to connect, so you can start surfing faster." *See* http://help.qa2.juno.com/support/modem/mo-v92.html. Juno also provides instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa4.juno.com/support/modem/mo-v92a.html.

32. Similarly, Netzero also indicates on its website, "NetZero Platinum members can access NetZero's services at speeds up to 56k, using compression technology." *See* http://help.netzero.net/support/modem/mo-speed.html. *See also* http://web.archive.org/web/20130109211930/http://help.netzero.net/support/modem/mo-speed.html ("NetZero Free and Platinum members can access NetZero's services at speeds up to 56k, using V.90 compression technology. … Does NetZero support V.92? On many of our access numbers, yes! You can identify V.92 numbers by looking for the V.92 label next to certain access numbers on the Access Number page on the NetZero Web site. Click here for detailed instructions on how to find and use our V.92 compatible access numbers."). Netzero also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to … Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually connect to the Internet. This shortens the time it takes for your modem and NetZero to connect, so you can start surfing faster." *See* http://help.qa5.netzero.net/support/modem/mo-v92.html. Netzero also provides

instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa5.netzero.net/support/modem/mo-v92a.html.

33. In indicating that they support the use of 56K V.92 modem connections and promoting the use of V.92, Defendants specifically intended to encourage their customers to connect to the Juno and Netzero dial-up internet services using the 56K V.92 protocol in an infringing manner, knowing that the use of such protocol constituted infringement of the '022 patent. Thus, Defendants have induced their customers to infringe the '022 Patent literally and/or under the doctrine of equivalents. Upon information and belief, Defendants acted with the specific intent to induce their customers to connect to their dial-up internet services using 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. 5,970,100

34. United States Patent No. 5,970,100 ("the '100 patent"), entitled "System for controlling and shaping the spectrum and redundancy of signal-point limited transmission," issued on October 19, 1999 from United States Patent Application No. 09/047,802 filed on March 25, 1998. Application No. 09/047,802 is a continuation-in-part of U.S. Pat. Application Serial No. 08/756,383 filed on November 27, 1996. Application No. 08/756,383 is a continuation-in-part of U.S. Pat. Application Ser. No. 08/746,731, filed November 15, 1996. A true and correct copy of the '100 patent is attached as Exhibit E.

35. Defendants have been and now are directly infringing one or more claims of the '100 patent, in this judicial District and elsewhere in the United States, by practicing a method of spectrally shaping transmitted samples with a set of predetermined frequency characteristics and a predetermined set of allowable transmitted signal levels, wherein a transmitted sample is either of an unmodified

source sample or a dependent sample, the transmitted samples being transmitted in data frames, said method comprising the steps of: (a) calculating, for each of the transmitted samples, a Running Filter Sum of unwanted components up to the current sample, wherein said Running Filter Sum is based on a biquad filter; (b) computing an objective function in accordance with the Running Filter Sum obtained in Step (a); (c) selecting, for each data frame of transmitted samples, at least one redundant sample to be added or modified within the data frame such that the objective function of Step (b) is optimized. Upon information and belief, Defendants practice the claimed method during commercial operation of their dial-up internet services when Juno and Netzero customers connect using the ITU V.90 or V.92 (56Kbps) connection protocol. *See* https://help.juno.com/support/modem/mo-speed.html; http://help.qa2.juno.com/support/modem/mo-v92.html; http://help.qa4.juno.com/support/modem/mo-v92a.html; http://help.netzero.net/support/modem/mo-speed.html; http://web.archive.org/web/20130109211930/http://help.netzero.net/support/modem/mo-speed.html; http://help.qa5.netzero.net/support/modem/mo-v92.html; http://help.qa5.netzero.net/support/modem/mo-v92a.html.

COUNT VI

INFRINGEMENT OF U.S. PATENT NO. 6,163,570

36. United States Patent No. 6,163,570 (the '570 patent"), entitled "Methods and apparatus for verifying transmit power levels in a signal point limited transmission system," issued on December 19, 2000 from United States Patent Application No. 09/075,719 filed on May 11, 1998. A true and correct copy of the '570 patent is attached as Exhibit F.

37. Defendants have been and now are directly infringing one or more claims of the '570 patent, in this judicial District and elsewhere in the United States, by practicing a method for verifying transmit power levels in a signal point limited transmission system, wherein said system having: a first device configured to communicate with a second device over a communication channel; said method comprising the steps of: receiving at said first device, a plurality of signal points from said second device, said plurality of signal points having a first computed transmit power, as determined by said second device, less than or equal to a transmit power limit, said first computed transmit power being calculated in accordance with a transmit power calculation formula; calculating, at said first device, in accordance with said transmit power calculation formula, a second computed transmit power of said plurality of signal points; and comparing, at said first device, said second computed transmit power with said transmit power limit, to determine whether said second computed transmit power is less than or equal to said transmit power limit. Upon information and belief, Defendants practice the claimed method during commercial operation of their dial-up internet services using the International Telecommunications Union ("ITU") V.90 or V.92 (56Kbps) connection protocol.

38. Defendants have had knowledge of the '570 patent since at least the filing of this Amended Complaint for Patent Infringement or shortly thereafter, and Defendants have induced their customers, users of Defendants' dial-up internet services who connect using modems operating according to the ITU V.90 or V.92 (56Kbps) specification, to practice a method for verifying transmit power levels in a signal point limited transmission system having a first device configured to communicate with a second device over a communication channel, said method comprising the steps of: receiving, at said second device, a transmit power limit calculated in accordance with a predetermined power calculation formula;

selecting at least one signal point constellation such that said at least one signal point constellation has a first computed transmit power less than or equal to said transmit power limit, said first computed transmit power being calculated in accordance with said predetermined power calculation formula; transmitting said at least one signal point constellation from said second device to said first device; and prompting said first device to verity that the transmit power of said at least one signal point constellation is less than or equal to said transmit power limit.

39. For example, Juno indicates on its website, "Juno Platinum members can access Juno's services at speeds up to 56k, using compression technology." *See* https://help.juno.com/support/modem/mo-speed.html. Juno also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to …Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually connect to the Internet. This shortens the time it takes for your modem and Juno to connect, so you can start surfing faster." *See* http://help.qa2.juno.com/support/modem/mo-v92.html. Juno also provides instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa4.juno.com/support/modem/mo-v92a.html.

40. Similarly, Netzero also indicates on its website, "NetZero Platinum members can access NetZero's services at speeds up to 56k, using compression technology." *See* http://help.netzero.net/support/modem/mo-speed.html. *See also* http://web.archive.org/web/20130109211930/http://help.netzero.net/support/modem/mo-speed.html ("NetZero Free and Platinum members can access NetZero's services at speeds up to 56k, using V.90 compression technology. … Does NetZero support V.92? On many of our access numbers, yes! You can identify V.92 numbers by looking for the V.92 label next to certain access numbers on the Access Number page on the NetZero Web site. Click here for detailed instructions

on how to find and use our V.92 compatible access numbers."). Netzero also promotes the benefits of connecting using the V.92 protocol on its website, where it indicates, "With your V.92 modem, you will be able to … Get online faster! Using V.92 technology, your V.92 modem learns and remembers how you usually connect to the Internet. This shortens the time it takes for your modem and NetZero to connect, so you can start surfing faster." *See* http://help.qa5.netzero.net/support/modem/mo-v92.html. Netzero also provides instructions on its website as to "How to find and use our V.92 compatible access numbers". *See* http://help.qa5.netzero.net/support/modem/mo-v92a.html.

41. In indicating that they support the use of 56K V.90 and V.92 modem connections, and promoting the use of V.92 in particular, Defendants specifically intended to encourage their customers to connect to the Juno and Netzero dial-up internet services using the 56K V.90 or V.92 protocols in an infringing manner, knowing that the use of such protocols constituted infringement of the '570 patent. Thus, Defendants have induced their customers to infringe the '570 Patent literally and/or under the doctrine of equivalents. Upon information and belief, Defendants acted with the specific intent to induce their customers to connect to its dial-up internet service using the method claimed by the '570 Patent by continuing the above-mentioned activities with knowledge of the '570 Patent.

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42. By engaging in the conduct described herein, Defendants have injured MTS and are thus liable for infringement of the '886 patent, '009 patent, '932 patent, '022 patent, '100 patent, and '570 patent pursuant to 35 U.S.C. § 271.

43. Defendants have committed these acts of infringement without license or authorization.

44. As a result of Defendants' infringement of the '886 patent, '009 patent, '932 patent, '022 patent, '100 patent, and '570 patent, MTS has suffered

monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, 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 Defendants, their agents, servants, employees, representatives, and all others acting in active concert therewith from infringing the '886 patent, '009 patent, '932 patent, '022 patent, '100 patent, and '570 patent. In particular, Defendants' disregard for MTS's property rights threatens MTS's relationships with the actual and potential licensees of this intellectual property, inasmuch as Defendants 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 Defendants' continued acts of infringement are enjoined, MTS will suffer further irreparable harm for which there is no adequate remedy at law.

PRAYER FOR RELIEF

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

A. A judgment in favor of MTS that Defendants have infringed the '886 patent, '009 patent, '932 patent, '022 patent, '100 patent, and '570 patent;

B. A permanent injunction enjoining Defendants and their 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, '932 patent, '022 patent, '100 patent, and '570 patent, or such other equitable relief the Court determines is warranted;

C. A judgment and order requiring Defendants to pay MTS their damages, costs, expenses, and prejudgment and post-judgment interest for

Defendants' infringement of the '886 patent, '009 patent, '932 patent, '022 patent, '100 patent, and '570 patent, as provided under 35 U.S.C. § 284;

D. 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 Defendants;

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

F. 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.

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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