

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| NEOLOGY, INC.,                   | ) |                              |
|                                  | ) |                              |
| Plaintiff,                       | ) |                              |
|                                  | ) |                              |
| v.                               | ) | C.A. No. 13-2052 (LPS)       |
|                                  | ) |                              |
| KAPSCH TRAFFICCOM IVHS, INC.;    | ) | <b>DEMAND FOR JURY TRIAL</b> |
| KAPSCH TRAFFICCOM IVHS HOLDING   | ) |                              |
| CORP.; KAPSCH TRAFFICCOM IVHS    | ) |                              |
| TECHNOLOGIES HOLDING CORP.;      | ) |                              |
| KAPSCH TRAFFICCOM U.S. CORP.;    | ) |                              |
| KAPSCH TRAFFICCOM HOLDING CORP.; | ) |                              |
| and STAR SYSTEMS INTERNATIONAL   | ) |                              |
| LTD.,                            | ) |                              |
|                                  | ) |                              |
| Defendants.                      | ) |                              |

**SECOND AMENDED AND SUPPLEMENTAL  
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Neology, Inc. (“Neology”), a Delaware corporation, by and through its undersigned attorneys, alleges as follows:

**The Parties**

1. Neology is a corporation duly organized under the laws of the State of Delaware, with its principal place of business at 12760 Danielson Ct., Suite A, Poway, California 92064.

2. Neology designs, manufactures, supplies, offers for sale, exports, and sells radio frequency identification (“RFID”) products used in several applications, such as electronic vehicle registration (“EVR”), electronic toll collection (“ETC”), border control, retail item tracking/inventory, parking and access control, shipping container tracking, and supply chain management.

3. Neology’s headquarters and manufacturing operations are located in the city of Poway, California.

4. Neology's RFID products are sold and in use all over the world in different applications. Neology sells, *inter alia*, RFID readers and transponders (also known as "interrogators" and "tags," respectively) that operate pursuant to the International Standards Organization (ISO) 18000-6C communications protocol (the "6C Protocol," also known as EPCGlobal Class 1, Gen 2 Communications Standard ("Gen 2 Standard")).

5. The Gen 2 Standard and the 6C Protocol describe the identical operational standard available for use and incorporation by manufacturers of RFID transponders and readers.

6. RFID transponders and readers that operate pursuant to the 6C Protocol (and Gen 2 Standard) are hereafter referred to as "6C-compliant" transponders and readers, respectively.

7. Neology's 6C-compliant transponders and readers are used in a variety of different applications, including EVR, ETC, and border control applications.

8. Neology is informed and believes and thereon alleges that defendant Kapsch TrafficCom IVHS, Inc. is a corporation duly organized under the laws of the State of Delaware, with its principal place of business at 8201 Greensboro Drive, Suite 1002, McLean, Virginia 22102.

9. Neology is informed and believes and thereon alleges that defendant Kapsch TrafficCom IVHS Holding Corp. is a corporation duly organized under the laws of the State of Delaware, with its principal place of business at 8201 Greensboro Drive, Suite 1002, McLean, Virginia 22102.

10. Neology is informed and believes and thereon alleges that defendant Kapsch TrafficCom IVHS Technologies Holding Corp. is a corporation duly organized under the laws of the State of Delaware, with its principal place of business at 8201 Greensboro Drive, Suite 1002, McLean, Virginia 22102.

11. Neology is informed and believes and thereon alleges that defendant Kapsch TrafficCom U.S. Corp. is a corporation duly organized under the laws of the State of Delaware, with its principal place of business at 8201 Greensboro Drive, Suite 1002, McLean, Virginia 22102.

12. Neology is informed and believes and thereon alleges that defendant Kapsch TrafficCom Holding Corp. is a corporation duly organized under the laws of the State of Delaware, with its principal place of business at 8201 Greensboro Drive, Suite 1002, McLean, Virginia 22102.

13. Kapsch TrafficCom IVHS, Inc., Kapsch TrafficCom IVHS Holding Corp., Kapsch TrafficCom IVHS Technologies Holding Corp., Kapsch TrafficCom U.S. Corp., and Kapsch TrafficCom Holding Corp. are hereinafter referred to as “Kapsch.”

14. Neology is informed and believes and thereon alleges that defendant Star Systems International, Ltd. (“SSI”) is a company formed on or about July 3, 2013, by former employees of Sirit, Corp. (“Sirit”) and Federal Signal Technologies, LLC (“FSTech”), organized under the laws of Hong Kong, S.A.R., People’s Republic of China, with its principal place of business located at Unit A01, 24F Gold King Industrial Building, 35-41 Tai Lin Pai Road, Kwai Chung, Hong Kong.

15. Kapsch and SSI are hereinafter collectively referred to as “Defendants.”

**Nature of Claims, Jurisdiction, and Venue**

16. This action arises under the Patent Laws of the United States under 35 U.S.C. §§ 271 *et seq.*, and seeks damages, injunctive relief and attorneys’ fees under 35 U.S.C. §§ 283, 284, and 285. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

17. This Court has personal jurisdiction over Defendants because of incorporation in this district or under Federal Rule of Civil Procedure 4(k)(2) or otherwise.

18. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

19. Joinder of Kapsch and SSI in the instant litigation is proper under 35 U.S.C. § 299 because Neology is informed and believes and thereon alleges that SSI imports into the United States, sells, or offers to sell, 6C-compliant transponders and readers to Kapsch, which Kapsch offers to resell, or resells, to Kapsch's customers in the United States, such as toll-road and toll-bridge operators.

20. On information and belief, Kapsch also imports, sells, and offers to sell, its own 6C-compliant readers into, or in, the United States.

21. On information and belief, Kapsch also imports, sells, and offers to sell back-office and roadside systems in the United States that are designed to work in conjunction with 6C-compliant transponders and readers used in ETC and/or EVR applications.

22. As alleged in subsequent paragraphs, the 6C-compliant transponders and readers SSI imports, offers to sell, or sells to Kapsch directly infringe one or more of Neology's patents, either literally or under the doctrine of equivalents.

23. Kapsch's re-sale and offer to resell infringing 6C-compliant transponders and readers sourced from SSI present significant questions of fact common to all Defendants.

#### **General Allegations**

24. On at least one prior occasion, beginning on or about April 3, 2013, defendant Kapsch agreed to hold discussions with Neology and Neology's parent corporation, Smartrac, to explore potential business opportunities, including a joint venture between Kapsch and Neology or Kapsch's acquisition of certain Neology assets from Smartrac.

25. In furtherance of said discussions, Kapsch requested access to certain of Neology's business information, including information related to tangible and intangible intellectual property owned by Neology, such as issued patents and pending patent applications (hereinafter referred to as Kapsch's "Due Diligence").

26. It was one of Kapsch's stated intentions to obtain from Neology "a clear understanding on all IP matters," through its Due Diligence. So much so, that Kapsch formed what it termed "an IP-working group" consisting of at least Richard Turnock (Kapsch's Chief Technology Officer), William Loesch (lead outside counsel for Kapsch) and Pierre Yanney (outside lead IP counsel for Kapsch).

27. Specifically, as part of Kapsch's Due Diligence, Kapsch requested, *inter alia*, that Neology: 1) identify Neology's intellectual property (including patents and pending applications and their respective file histories), 2) disclose all patent litigation involving Neology or Neology's patents, and 3) provide any analyses regarding Neology's patent rights.

28. In response, Neology provided, *inter alia*, to Kapsch or Kapsch's agents and representatives the requested information relating to its intellectual property, as well as written and oral presentations detailing Neology's analysis and descriptions of its intellectual property portfolio (including identification of issued patents and pending patent applications and respective file histories) (the "IP Portfolio"). The memoranda and written and oral presentations demonstrated how the IP Portfolio covered any method, system, RFID transponder, or RFID reader that uses, or operates or is capable of operating pursuant to, the 6C Protocol.

29. For example, on or about November 4, 2013, Neology provided to Kapsch a presentation entitled "Neology ITS Patent Families" that included detailed disclosures of the patents asserted in this case (the "November 2013 IP Presentation").

30. The November 2013 IP Presentation was given, and explained orally, to several Kapsch employees or agents, including Dr. Gerhard R. Plaschka, William Loesch, and Pierre Yanney.

31. As more fully detailed in counts I through VI *infra*, the November 2013 IP Presentation provided to Kapsch detailed how any 6C-complaint transponder, 6C-complaint reader, and/or 6C-compliant system or service, regardless of manufacturer, infringed the following Neology-owned U.S. Patents: 8,325,044 (“‘044 Patent”), 8,237,568 (“‘568 Patent”), 8,587,436 (“‘436 Patent”), 6,690,264 (“‘264 Patent”), 6,229,443 (“‘443 Patent”), and 7,119,664 (“‘664 Patent”) (collectively, the “Asserted Patents”).

32. Further, in or about October 2010 Neology, in response to an earlier expression of interest by Kapsch in exploring a business relationship or combination with Neology, had set up an electronic data room (the “Neology Data Room”) for the purpose of sharing Neology’s business information with Kapsch, including information about Neology’s patents and pending patent applications, prosecution file histories, analysis of Neology’s patents, and previous patent infringement lawsuits involving Neology or Neology’s patents. Neology uploaded documents and materials related to, *inter alia*, its patents into the Neology Data Room and gave access to those documents and materials to Kapsch and its representatives.

33. In or about October of 2013, Neology expanded the Neology Data Room by uploading additional Neology business and patent information that was made available to Kapsch and its representatives.

34. A number of Kapsch employees or agents were given access to, and accessed, the Neology Data Room beginning in or about October of 2010 and again in October of 2013. Kapsch employees and representatives who were given access to, and accessed, the Neology

Data Room in 2010 and/or 2013 included, but were not limited to, William Loesch, Gerhard Palschka, Richard Turnock, Peter Schuchlenz, Michael Hofer, John Freund, Joe Bianchini, Jerome Cachau, Japjeev Kohli, Janet Eichers, Marcus Handl, Chris Murray, Adele Burns, Pierre Yanney, Mansi Shah, Jonathan Retsky, and Brian Strout.

35. Previously, on July 29, 2011, Neology filed a patent infringement suit in this Court against Sirit, FSTech, and others alleging infringement of several patents (the “First Neology Action”).

36. Neology asserted infringement of, *inter alia*, U.S. Patent No. 7,081,819 (“‘819 Patent”), U.S. Patent No. 7,671,746 (“‘746 Patent”), the ‘264 Patent, and the ‘443 Patent in the First Neology Action.

37. The ‘264 and ‘443 Patents are also asserted in the instant case, while the ‘044 ‘568 and ‘436 Patents which are asserted in this case all claim priority to the ‘819 and ‘746 Patents.

38. The Neology Data Room was organized into several folders each containing distinct business information regarding, *inter alia*, Neology, Neology’s patents, and prior lawsuits involving Neology or its patents.

39. One of the Neology Data Room folders, named “Response Documents,” included an expert report and declaration by Neology’s infringement expert (the “Expert Report”) retained in connection with the First Neology Action that described how the claims of the ‘819, ‘746, and ‘264 Patents read on 6C-compliant transponders and readers sold or offered for sale by Sirit and FSTech.

40. As part of its Due Diligence, in or about November 2013, prior to the filing of the First Amended Complaint, Kapsch asked the following written question to Neology: “Which patents owned or controlled by Neology are required to implement a 6C compliant product?”

41. Shortly thereafter, Neology responded, in writing, as follows: “6,690,264; 7,064,653; and 7,119,664.”

42. In or about November 2013, Kapsch further asked: “For all such patents, please identify the specific claims of each such patent which are required for implementing a 6C compliant product.”

43. Shortly thereafter, Neology further responded as follows: “We have uploaded [to the Neology Data Room] a claim chart for claims 1 and 10 of the ‘264 Patent as well as expert reports from our expert Jack Goldberg and Preliminary Injunction briefing [from the First Neology Action] that address the issue of infringement of the ‘264 Patent. Other specific claims by patent include at least the following: ‘264 – 1, 2, 4-11, and 13-24; ‘653 – 1, 3, 5-7, and 9-17; and ‘664 – 1, 9, 16, 17, 26, and 27. \*NOTE: The claims of the Security Patents [e.g., the ‘044, ‘568, and ‘436 Patents] mostly read on the 6C [Protocol] as explained in the infringement charts, expert reports, and preliminary injunction briefing. Although they include a step of comparing the identification information read out of the transponder to, e.g., second identification information. This step is not necessarily covered by the [6C] standard. Although, clearly it is implied.”

44. In or about November 2013, Kapsch further asked Neology to “[p]lease identify any patent owned or controlled by Neology which Neology believes is infringed by another party.”



45. Shortly thereafter, Neology responded as follows: “As noted, Neology asserts that the Cloaking Patents [e.g., the ‘264 Patent], Deep Sleep Patents [e.g., the ‘664 Patent], and Security Patents [e.g., the ‘044, ‘568, and ‘436 Patents] are infringed, either directly or indirectly, by any party offering a 6C systems and services [sic] or 6C components.”

46. In or about November 2013, Kapsch further asked Neology to “[p]lease identify any patents of any other party which Neology believes are required for implementing a 6C compliant product” and to “[p]lease identify any patents of any other party which Neology believes are required to implement an optional feature in a 6C compliant product.”

47. Shortly thereafter, Neology responded as follows: “Intermec has claimed in the past, and may still be claiming that a license to their [sic] patents is required to implement 6C; however, to our knowledge no one has signed up for an Intermec license for several years.” Neology further responded that “[t]he RFID Consortium claims to have patents that cover optional features.”

48. Further demonstrating how Kapsch disregarded the obvious risks of infringing the Asserted Patents, on information and belief, prior to the filing of the First Amended Complaint, Kapsch submitted the following query to the Ohio River Bridges Project Joint Board during pre-bidding communications between qualified bidders and the Indiana Department of Transportation (“INDOT”), acting on behalf of the Ohio River Bridges Project Joint Board:

“21. Q: *Reference General Bidding Information; Patents (page 14 #9) and Appendix C; Future System Capacity (page 21)* – 6c products are currently subject to intellectual property claims by at least 3 companies or organizations — specifically Intermec, Neology, and the RFID Consortium. The Vendor providing readers and transponders will have no control over how the System Integrator will use these products.

Will INDOT provide licenses or indemnify the Vendor from any claims which may arise from the equipment supplied under this Bid?”

49. Kapsch knew to ask specifically about indemnity against intellectual property claims from Neology, Intermec, and the RFID Consortium based on information provided by Neology to Kapsch during Kapsch’s Due Diligence.

50. On information and belief, in or about December of 2013, Kapsch, as a participating bidder to supply 6C-compliant readers and transponders to the Ohio River Bridges Project Joint Board, received from INDOT the following response to the above-quoted query in a Notice of Revision/Clarification relating to Bid Number 800-14-045 (the “December 2013 Bid Clarification”):

“INDOT Response: No indemnity will be provided by INDOT or the Joint Board. Vendor is required to provide and pay for all licenses or permits required for use of the products, materials, equipment, tools, software and/or other facilities and services required by the Contract, and such licenses and/or permits shall be obtained by the Vendor in the name of the Joint Board or as otherwise directed by the Joint Board. (Refer to Appendix A #10F).”

51. In or about December 2013, discussions between Kapsch and Neology broke down. On January 30, 2014, Kapsch wrote to Neology’s parent company about the breakdown in the discussions, stating:

“Dear Rick . . . [y]ou might have already learned from Francisco about our failed discussions with respect to an acquisition of Neology. . . . Given the inability to find a compromise with Neology’s shareholder representatives and the pressure from our customers to offer interoperability solutions, we executed our alternative strategy. Our

technology solution was instantly embraced by our customers and we have been awarded already the first project (Ohio River Bridges). Despite the successful institution of our initial strategy, we expect that Neology moves forward with a litigation [sic] to prevent the industry's supplier to overcome the interoperability chasm."

52. Despite gaining access to, and with full understanding of, Neology's IP Portfolio (which includes the patents at issue) and Neology's stated position that competing 6C-compliant products, systems or services infringe its patents, Kapsch consciously put into action its "alternative strategy"—to compete with Neology by offering to sell, and selling, unlicensed or otherwise unauthorized 6C-compliant products, systems and/or services, including the products accused of infringement in this case (as more fully described, *infra*).

53. Kapsch thus knew and acknowledged to Neology's parent, prior to the filing of Neology's First Amended Complaint, that Neology would file suit for patent infringement based on one or more patents (including the '044, '568, '436, '264, '664, and '443 Patents) if Kapsch sold, or offered for sale, any 6C-compliant product, system, or service in the United States.

**COUNT I**  
**(DIRECT INFRINGEMENT OF U.S. PAT. NO. 8,325,044 AGAINST DEFENDANTS AND WILLFUL INFRINGEMENT OF U.S. PAT. NO. 8,325,044 AGAINST KAPSCH)**

54. Plaintiff Neology incorporates and alleges paragraphs 1-53 above as if fully set forth herein.

55. On December 4, 2012, the '044 Patent was duly and properly issued for an invention entitled "System and Method for Providing Secure Identification Solutions." The '044 Patent was duly and legally issued to BNC, assignee of inventors Francisco Martinez de Velasco Cortina and Manfred Rietzler. BNC duly assigned the '044 Patent to Neology. A copy of the '044 Patent is attached hereto as Exhibit "A."

56. Neology is the owner of the '044 Patent and has all legal and equitable rights to enforce the '044 Patent, to bring and maintain this action, and to make, have made, use, import, offer or sell products or services covered by the '044 Patent.

57. The '044 Patent is now, and at all relevant times since its date of issuance has been, valid and enforceable.

58. Despite the fact that Neology has exclusive rights in the inventions of the '044 Patent, Defendants have directly infringed, literally or under the doctrine of equivalents, the '044 Patent by, *inter alia*, importing, offering to sell, and/or selling 6C-compliant transponders and/or readers.

59. SSI has committed acts of direct infringement, literally or under the doctrine of equivalents, by, *inter alia*, importing and/or offering for sale at least the following 6C-compliant transponder products: (1) SSI's Venus Windshield Decal ("Venus Tag"), (2) SSI's ARIES Headlamp Decal, (3) SSI's SCORPIO Decal, (4) SSI's ASTRIA Decal, (5) SSI's METALICA II Label, (6) SSI's METALICA JUNIOR Label, (7) SSI's METALICA MINI Label, (8) SSI's JEWELRY Tag, (9) SSI's TOPAZ Inlay, (10) SSI's SAPPHIRE Inlay, and (11) SSI's RFID PALLET Label.

60. Kapsch has committed acts of direct infringement, literally or under the doctrine of equivalents, by, *inter alia*, offering for sale at least the following 6C-compliant transponder products sourced from Confidex, Inc. ("Confidex"): (12) Confidex License Plate Tag, and (13) Confidex Windshield Label. Kapsch has further committed acts of direct infringement, literally or under the doctrine of equivalents, by, *inter alia*, offering for sale at least the following 6C-compliant transponder products sourced from SSI: SSI's Venus Tag.

61. The accused RFID transponder products are collectively referred to as the “Accused Transponder Products.”

62. Kapsch has committed further acts of direct infringement, literally or under the doctrine of equivalents, by, *inter alia*, offering for sale at least the following 6C-compliant reader products: (14) Kapsch’s JANUS Multiprotocol Reader (“Janus Reader”), (15) SSI’s Vela High Performance USB RIFD Desktop Reader (“Vela Reader”), and (16) SSI’s Dorado Handheld Data Collector/Reader (“Dorado Reader”).

63. SSI has committed further acts of direct infringement, literally or under the doctrine of equivalents, by, *inter alia*, importing at least the following 6C-compliant reader products: (17) SSI’s REGOR-XHD Integrated Reader (Major and Minor models), and (18) SSI’s PROCYON Integrated Reader (12dBi and 8dBi models)

64. The accused RFID reader products are collectively referred to as the “Accused Reader Products.”

65. The Accused Transponder Products and Accused Reader Products are hereinafter referred to as the “Accused Products.” On information and belief, all of the Accused Products are 6C-compliant, and the Defendants hold them out as such to the public.

66. Neology is further informed and believes that SSI offers to sell or sells at least its Venus Tag, Vela Desktop Reader, and Dorado Reader to Kapsch, who then offers to resell or resells the Venus Windshield Decal, Vela Readers and Dorado Readers to its customers, such as the Louisville-Southern Indiana Ohio River Bridges Project Joint Board (the “Ohio River Bridges Project Joint Board”).

67. Neology is further informed and believes that Kapsch has offered to sell or sold its Janus Reader to the Ohio River Bridges Project Joint Board.

68. Defendants will continue to directly infringe the '044 Patent unless enjoined by this Court. Defendants' infringement has caused substantial injury to Neology.

69. Infringement by Kapsch has been and continues to be willful for at least the following reasons.

70. As result of, *inter alia*, the exchanges, meetings and presentations between Neology employees or agents and Kapsch employees or agents in response to Kapsch's requests for information recited above, Kapsch has had knowledge of the '044 Patent at least as of November of 2013.

71. Further, the November 2013 IP Presentation Neology provided to Kapsch disclosed how any 6C-compliant transponder or RFID reader, or any method or system designed to work with RFID transponders and/or readers that operate, or are capable of operating, pursuant to the 6C Protocol (e.g., configured to grant access to a memory residing in an RFID transponder based on a security key) would infringe the '044 Patent or any other patent in the '044 patent family.

72. The November 2013 IP Presentation quoted a preliminary claim construction by Judge Thyng issued in the First Neology Action that construed the term "security key" favorably for Neology.

73. The November 2013 IP Presentation also quoted an excerpt taken directly from the 6C Protocol documentation that depicts the initial communications sequence between an RFID transponder and RFID reader that must be adhered to for any RFID transponder or reader to qualify as being 6C-compliant and explaining why such communications sequence performed, or capable of being performed, by any 6C-compliant transponder, reader, system would infringe the '044 Patent, or any patent in the '044 patent family.

74. Accordingly, Kapsch knew at least by November 2013 that Neology considered any 6C-compliant transponder, 6C-compliant reader, or system using 6C-compliant transponders and/or readers that were made, sold, imported, or offered for sale in the United States (regardless of manufacturer) as infringing the '044 Patent or any patent in the '044 patent family.

75. The November 2013 IP Presentation showed Kapsch the objectively high risk it was taking in making, selling, importing, or offering for sale the Accused Products.

76. On information and belief, Kapsch's indemnification query to INDOT prior to submission of its bid to the Ohio River Bridges Project Joint Board demonstrates that Kapsch knew it would infringe the '044 Patent if it offered for sale, or sold, 6C-compliant readers or transponders to potential customers.

77. On information and belief, Kapsch received a copy of INDOT's response refusing to indemnify any vendor that supplied infringing 6C-compliant products prior to submitting a bid to the Ohio River Bridges Project Joint Board, and knew that its competitors were seriously concerned over Neology's IP Portfolio covering 6C-compliant readers and transponders. This information further put Kapsch on actual notice of the objectively high risk of its infringement of the '044 Patent. Yet Kapsch acted anyway by selling, or offering for sale, 6C-compliant readers or transponders.

78. Nevertheless, despite knowing about the '044 Patent and knowing that it risked infringement of the '044 Patent by making, selling, importing, or offering for sale 6C-compliant readers, transponders, methods, or systems, Kapsch proceeded despite said risks and submitted, and ultimately won, a bid for the sale and supply of 6C-compliant readers and transponders to the Ohio River Bridges Project Joint Board. This submission by Kapsch evidences a reckless disregard by Kapsch regarding its infringement risks.

79. Accordingly, Kapsch's infringement has been and continues to be willful.

80. The amount of money damages that plaintiff Neology has suffered due to Defendants' acts of infringement has not been calculated but is subject to proof at trial.

**COUNT II**

**(DIRECT INFRINGEMENT OF U.S. PAT. NO. 6,690,264 AGAINST DEFENDANTS WILLFUL  
INFRINGEMENT OF U.S. PAT. NO. 6,690,264 AGAINST KAPSCH)**

81. Plaintiff Neology incorporates and alleges paragraphs 1-80 above as if fully set forth herein.

82. On February 10, 2004, the '264 Patent was duly and properly issued for an invention entitled "Selective Cloaking Circuit for use in a Radiofrequency Identification and Method of Cloaking RFID Tags." The '264 Patent was duly and legally issued to SCS, assignee of inventor Dave Dalglish. SCS duly assigned the '264 Patent to Neology. A copy of the '264 Patent is attached hereto as Exhibit "B."

83. Neology is the owner of the '264 Patent and has all legal and equitable rights to enforce the '264 Patent, to bring and maintain this action, and to make, have made, use, import, offer or sell products or services covered by the '264 Patent.

84. The '264 Patent is now, and at all relevant times since its date of issuance has been, valid and enforceable.

85. Despite the fact that Neology has exclusive rights in the inventions of the '264 Patent, Defendants have directly infringed, literally or under the doctrine of equivalents, the '264 Patent by importing, making, using, offering to sell, and/or selling at least the Accused Transponder Products identified in paragraphs 59 through 61.

86. Defendants will continue to directly infringe the '264 Patent unless enjoined by this Court. Defendants' infringement has caused substantial injury to Neology.



87. Infringement by Kapsch has been and continues to be willful for at least the following reasons.

88. On or about October 21, 2012, John Freund, former President of Sirit and FSTech, joined Kapsch as its Senior V.P. of Sales. As an executive of Sirit and FSTech, Mr. Freund knew of Neology's infringement allegations against Sirit and FSTech involving the '264 Patent in the First Neology Action due to Sirit's and FSTech's manufacture and sale of 6C-compliant transponders. Accordingly, Kapsch had further knowledge of the '264 Patent and Neology's infringement allegations as of October 21, 2012.

89. Further, the November 2013 IP Presentation given to Kapsch included a disclosure of the '264 Patent.

90. The November 2013 IP Presentation was given, and explained orally, to several Kapsch employees or agents, including Dr. Gerhard R. Plaschka, William Loesch, and Pierre Yanney.

91. The November 2013 IP Presentation disclosed how any RFID transponder that operates, or is capable of operating, pursuant to the 6C Protocol (e.g., "cloaking" an already identified transponder among a population of transponders within range of a reader so other transponders can be identified) would infringe the '264 Patent.

92. The November 2013 IP Presentation quoted a preliminary claim construction by Judge Thyng issued in the First Neology Action that construed the term "cloaked RFID tag" favorably for Neology.

93. During the November 2013 IP Presentation Kapsch representatives were told how the 6C Protocol's use of "inventory sessions" and the 6C Protocol's inversion of a transponder's

“flag” value to “single out” and inventory a population of 6C-compliant transponders (i.e., identify each transponder) would infringe the ‘264 Patent.

94. Accordingly, Kapsch knew at least by November 2013 that Neology considered any 6C-compliant transponder that was made, sold, imported, or offered for sale in the United States (regardless of origin or manufacturer) as infringing the ‘264 Patent.

95. The November 2013 IP Presentation showed Kapsch the objectively high risk it was taking in making, selling, importing, or offering for sale the Accused Transponder Products.

96. Further, on information and belief, Kapsch’s indemnification query to INDOT as recited in paragraph 48 demonstrates that Kapsch knew it would infringe the ‘264 Patent if it offered for sale, or sold, 6C-compliant transponders to potential customers.

97. On information and belief, Kapsch received a copy of INDOT’s response refusing to indemnify any vendor that supplied infringing 6C-compliant products prior to submitting a bid to the Ohio River Bridges Project Joint Board, and knew that its competitors were seriously concerned over Neology’s IP Portfolio covering 6C-compliant readers and transponders. This information further put Kapsch on actual notice of the objectively high risk of its infringement of the ‘264 Patent. Yet Kapsch acted anyway by selling, or offering for sale, 6C-compliant transponders.

98. Nevertheless, despite knowing about the ‘264 Patent and knowing that it risked infringement of the ‘264 Patent by making, selling, importing, or offering for sale 6C-compliant transponders, Kapsch proceeded despite said risks and submitted, and ultimately won, a bid for the sale and supply of 6C-compliant transponders to the Ohio River Bridges Project Joint Board. The submission by Kapsch evidences a reckless disregard by Kapsch regarding its infringement risks.

99. Accordingly, Kapsch's infringement has been and continues to be willful.

100. The amount of money damages that plaintiff Neology has suffered due to Defendants' acts of infringement has not been calculated but is subject to proof at trial.

**COUNT III**  
**(DIRECT INFRINGEMENT OF U.S. PAT. NO. 8,237,568 BY KAPSCH AND WILLFUL  
INFRINGEMENT OF U.S. PAT. NO. 8,237,568 BY KAPSCH)**

101. Plaintiff Neology incorporates and alleges paragraphs 1-100 above as if fully set forth herein.

102. On August 7, 2012, the '568 Patent was duly and properly issued for an invention entitled "System and Method for Providing Secure Identification Solutions." The '568 Patent was duly and legally issued to BNC IP Switzerland GmbH ("BNC"), assignee of inventors Francisco Martinez de Velasco Cortina and Manfred Rietzler. BNC duly assigned the '568 Patent to Neology. A copy of the '568 Patent is attached hereto as Exhibit "C."

103. Neology is the owner of the '568 Patent and has all legal and equitable rights to enforce the '568 Patent, to bring and maintain this action, and to make, have made, use, import, offer or sell products or services covered by the '568 Patent.

104. The '568 Patent is now, and at all relevant times since its date of issuance has been, valid and enforceable.

105. Despite the fact that Neology has exclusive rights in the inventions of the '568 Patent, Kapsch has directly infringed, literally or under the doctrine of equivalents, the '568 Patent by, *inter alia*, offering to sell and/or selling at least the following products: (1) Confidex License Plate Tag, (2) Confidex Windshield Label, (3) SSI's Venus Tag, (4) SSI's Vela Reader, (5) SSI's Dorado Reader, (6) Kapsch's Janus Reader, and (7) Kapsch's back-office/roadside system.

106. Kapsch will continue to directly infringe the ‘568 Patent unless enjoined by this Court. Kapsch’s infringement has caused substantial injury to Neology.

107. Infringement by Kapsch has been and continues to be willful for at least the following reasons.

108. Since at least November of 2013, Kapsch has had knowledge of the ‘568 Patent as a result of, *inter alia*, several meetings between Neology employees or agents and Kapsch employees or agents.

109. The November 2013 IP Presentation to Kapsch included a disclosure of the ‘568 Patent.

110. The November 2013 IP Presentation was given, and explained orally, to several Kapsch employees or agents, including Dr. Gerhard R. Plaschka, William Loesch, and Pierre Yanney.

111. Further, the November 2013 IP Presentation Neology provided to Kapsch, orally and in writing, disclosed how any 6C-compliant transponder, RFID reader, or system designed to work with RFID transponders and/or readers that operate, or is capable of operating, pursuant to the 6C Protocol (e.g., is configured to grant access to a memory residing in an RFID transponder based on a security key and verify registered vehicle information) would infringe the ‘568 Patent or any other patent in the ‘568 patent family.

112. The November 2013 IP Presentation quoted a preliminary claim construction by Judge Thyne issued in the First Neology Action that construed the term “security key” favorably for Neology.

113. The November 2013 IP Presentation also quoted an excerpt taken directly from the 6C Protocol documentation that depicts the initial communications sequence between an

RFID transponder and RFID reader that must be adhered to for any RFID transponder or reader to qualify as being 6C-compliant.

114. During the November 2013 IP Presentation Neology explained to Kapsch why such communications sequence performed, or capable of being performed, by any 6C-compliant transponder, reader, or system would infringe the '568 Patent, or any patent in the '568 patent family.

115. Accordingly, Kapsch knew at least by November 2013 that Neology considered any 6C-compliant transponder, 6C-compliant reader, or system designed to work with 6C-compliant transponders and readers that were made, sold, imported, or offered for sale in the United States (regardless of origin or manufacturer) as infringing the '568 Patent or any patent in the '568 patent family.

116. The November 2013 IP Presentation showed Kapsch the objectively high risk it was taking in making, selling, importing, or offering for sale the accused products identified in paragraph 105.

117. Further, on information and belief, Kapsch's indemnification query to INDOT as recited in paragraph 48 demonstrates that Kapsch knew it would infringe the '568 Patent if it offered for sale, or sold, systems incorporating 6C-compliant readers and transponders to potential customers.

118. On information and belief, Kapsch received a copy of INDOT's response refusing to indemnify any vendor that supplied infringing 6C-compliant products prior to submitting the bid to the Ohio River Bridges Project Joint Board, and knew that its competitors were seriously concerned over Neology's IP Portfolio covering 6C-compliant readers and transponders. This information, further put Kapsch on actual notice of the objectively high risk of its infringement

of the '568 Patent. Yet Kapsch acted anyway by selling, or offering for sale, systems utilizing 6C-compliant readers and transponders.

119. Nevertheless, despite knowing about the '568 Patent and knowing that it risked infringement of the '568 Patent by making, selling, importing, or offering for sale systems utilizing 6C-compliant readers and transponders, Kapsch proceeded despite said risks and submitted bids for the sale and supply of 6C-compliant readers and transponders and the back-office/roadside systems designed to work with said 6C-compliant readers and transponders to the Ohio River Bridges Project Joint Board. These submissions by Kapsch evidence a reckless disregard by Kapsch regarding its infringement risks.

120. Accordingly, Kapsch's infringement has been and continues to be willful.

121. The amount of money damages that plaintiff Neology has suffered due to Defendants' acts of infringement has not been calculated but is subject to proof at trial.

**COUNT IV**  
**(INFRINGEMENT OF U.S. PAT. NO. 6,229,443 PATENT AGAINST DEFENDANTS AND WILLFUL  
INFRINGEMENT OF U.S. PAT. NO. 6,229,443 AGAINST KAPSCH)**

122. Plaintiff Neology incorporates and alleges paragraphs 1-121 above as if fully set forth herein.

123. On May 8, 2001, the '443 Patent was duly and properly issued for an invention entitled "Apparatus and Method for Detuning of RFID Tag to Regulate Voltage." The '443 Patent was duly and legally issued to Single Chip Systems, Inc. ("SCS"), assignee of inventor Bruce Roesner. SCS assigned the '443 Patent to Neology. A copy of the '443 Patent is attached hereto as Exhibit "D."

124. Neology is the owner of the '443 Patent and has all legal and equitable rights to enforce the '443 Patent, to bring and maintain this action, and to make, have made, use, import, offer or sell products or services covered by the '443 Patent.

125. The '443 Patent is now, and at all relevant times since its date of issuance has been, valid and enforceable.

126. Despite the fact that Neology has exclusive rights in the inventions of the '443 Patent, Defendants have directly infringed, literally or under the doctrine of equivalents, the '443 Patent by, *inter alia*, importing, offering to sell, and/or selling at least the Accused Transponder Products identified in paragraphs 59 through 61.

127. Defendants will continue to directly infringe the '443 Patent unless enjoined by this Court. Defendants' direct infringement has caused substantial injury to Neology.

128. Infringement by Kapsch has been and continues to be willful for at least the following reasons.

129. Since at least June of 2010, Kapsch has had knowledge of the '443 Patent as a result of several meetings between Neology employees or agents and Kapsch employees or agents.

130. In addition, on July 29, 2011, Neology filed the First Neology Action in this Court against Sirit, FSTech, and others alleging infringement of the '443 Patent.

131. On or about October 21, 2012, John Freund, former President of Sirit and FSTech, joined Kapsch as its Senior V.P. of Sales.

132. As an executive of Sirit and FSTech, Mr. Freund knew of Neology's infringement allegations in the First Neology Action against Sirit and FSTech involving the '443 Patent. Accordingly, Kapsch had further knowledge of the '443 Patent and Neology's infringement allegations regarding the '443 Patent as of October 21, 2012.

133. Kapsch executives were also informed of the First Neology Action at least as early as November of 2013, and were thus aware of Neology's allegations of infringement based

on the '443 Patent against Sirit and FSTech involving the same RFID technology that is accused of infringement in this case.

134. Further, the November 2013 IP Presentation given to Kapsch included a disclosure of the '443 Patent.

135. The November 2013 IP Presentation was given, and explained orally, to several Kapsch employees or agents, including Dr. Gerhard R. Plaschka William Loesch, and Pierre Yanney.

136. The November 2013 IP Presentation Neology provided to Kapsch, orally and in writing, disclosed how a 6C-compliant transponder that harnesses its power from the radio frequency energy emitted by an RFID reader includes "overload" protection (e.g., is configured to selectively or controllably "detune" the transponder's tuned receiving circuit in a high energy field) and would thus infringe the '443 Patent or any other patent in the '443 patent family.

137. During the November 2013 IP Presentation, Neology communicated to Kapsch that commercially available integrated circuits incorporated into 6C-compliant transponders necessarily made the transponders capable of providing overload protection by selectively detuning the transponders' tuned receiving circuit and why said transponders would infringe the '443 Patent, or any patent in the '443 patent family.

138. Accordingly, Kapsch knew at least on November 2013 that Neology considered any 6C-compliant transponders that were made, sold, imported, or offered for sale in the United States (regardless of origin or manufacturer) as infringing the '443 Patent or any patent in the '443 patent family.

139. The November 2013 IP Presentation showed Kapsch the objectively high risk it was taking in making, selling, importing, or offering for sale the Accused Transponder Products.



140. Further, on information and belief, Kapsch's indemnification query to INDOT as recited in paragraph 48 demonstrates that Kapsch knew it would infringe the '443 Patent if it offered for sale, or sold, 6C-compliant transponders to potential customers.

141. On information and belief, Kapsch received a copy of INDOT's response refusing to indemnify any vendor that supplied infringing 6C compliant products prior to submitting a bid to the Ohio River Bridges Project Joint Board, and knew that its competitors were seriously concerned over Neology's IP Portfolio covering 6C-compliant readers and transponders. This information further put Kapsch on actual notice of the objectively high risk of its infringement of the '443 Patent. Yet, Kapsch acted anyway by selling, or offering for sale, 6C-compliant transponders.

142. Nevertheless, despite knowing about the '443 Patent and knowing that it risked infringement of the '443 Patent by making, selling, importing, or offering for sale 6C-compliant transponders, Kapsch proceeded despite said risks and submitted, and ultimately won, bids for the sale and supply of 6C-compliant transponders to the Ohio River Bridges Project Joint Board. This submission by Kapsch evidences a reckless disregard by Kapsch regarding its infringement risks.

143. Accordingly, Kapsch's infringement has been and continues to be willful.

144. The amount of money damages that plaintiff Neology has suffered due to Defendants' acts of infringement has not been calculated but is subject to proof at trial.

**COUNT V**  
**(INFRINGEMENT OF U.S. PAT. NO. 8,587,436 AGAINST DEFENDANTS AND WILLFUL**  
**INFRINGEMENT OF U.S. PAT. NO. 8,587,436 AGAINST KAPSCH)**

145. Plaintiff Neology incorporates and alleges paragraphs 1-144 above as if fully set forth herein.

146. On November 19, 2013, the ‘436 Patent was duly and properly issued for an invention entitled “System and Method for Providing Secure Identification Solutions.” The ‘436 Patent was duly and legally issued to Neology, assignee of inventors Francisco Martinez de Velasco Cortina and Manfred Rietzler. A copy of the ‘436 Patent is attached hereto as Exhibit “E.”

147. Neology is the owner of the ‘436 Patent and has all legal and equitable rights to enforce the ‘436 Patent, to bring and maintain this action, and to make, have made, use, import, offer or sell products or services covered by the ‘436 Patent.

148. The ‘436 Patent is now, and at all relevant times since its date of issuance has been, valid and enforceable.

149. Despite the fact that Neology has exclusive rights in the inventions of the ‘436 Patent, Defendants have directly infringed, literally or under the doctrine of equivalents, the ‘436 Patent by, *inter alia*, importing, offering to sell, and/or selling the Accused Reader Products identified in paragraphs 62 through 64.

150. Kapsh has further infringed the ‘436 Patent by, *inter alia*, selling or offering for sale 6C-compliant readers and transponders such as the Janus Reader and Venus Tag, and back office/roadside toll systems designed to work with said 6C-compliant readers and transponders to, for example, the Ohio River Bridges Project Joint Board.

151. It is believed that Defendants will continue to directly infringe the ‘436 Patent unless enjoined by this Court. Defendants’ direct infringement and other actions have caused substantial injury to Neology.

152. Infringement by Kapsch has been and continues to be willful for at least the following reasons.

153. Since at least November of 2013, Kapsch has had knowledge of the ‘436 Patent as a result of several meetings between Neology employees or agents and Kapsch employees or agents.

154. The November 2013 IP Presentation given to Kapsch included a disclosure of U.S. Patent Application No. 13/350,665, the precursor to the ‘436 Patent.

155. The November 2013 IP Presentation was given, and explained orally, to several Kapsch employees or agents, including Dr. Gerhard R. Plaschka, William Loesch, and Pierre Yanney.

156. Further, the November 2013 IP Presentation Neology provided to Kapsch disclosed how any 6C-compliant transponder or RFID reader, or any method or system designed to work with RFID transponders and/or readers that operate, or are capable of operating, pursuant to the 6C Protocol (e.g., configured to grant access to a memory residing in an RFID transponder based on a security key) would infringe the ‘436 Patent or any other patent in the ‘436 patent family.

157. The November 2013 IP Presentation quoted a preliminary claim construction by Judge Thyng issued in the First Neology Action that construed the term “security key” favorably for Neology.

158. The November 2013 IP Presentation also quoted an excerpt taken directly from the 6C Protocol documentation that depicts the initial communications sequence between an RFID transponder and RFID reader that must be adhered to for any RFID transponder or reader to qualify as being 6C-compliant and explaining why such communications sequence performed, or capable of being performed, by any 6C-compliant transponder, reader, and system would infringe the ‘436 Patent, or any patent in the ‘436 patent family.

159. Accordingly, Kapsch knew at least on November 2013 that Neology considered any 6C-compliant reader or system designed to work with 6C-compliant transponders and readers that were made, sold, imported, or offered for sale in the United States (regardless of origin or manufacturer) as infringing the '436 Patent or any patent in the '436 patent family.

160. The November 2013 IP Presentation showed Kapsch the objectively high risk it was taking in making, selling, importing, or offering for sale the accused products identified in paragraph 150.

161. Further, on information and belief, Kapsch's indemnification query to INDOT as recited in paragraph 48 demonstrates that Kapsch knew it would infringe the '436 Patent if it offered for sale, or sold, 6C-compliant readers or transponders, or toll systems designed to work with 6C-compliant readers and transponders to potential customers.

162. On information and belief, Kapsch received a copy of INDOT's response refusing to indemnify any vendor that supplied infringing 6C-compliant products prior to submitting a bid to the Ohio River Bridges Project Joint Board, and knew that its competitors were seriously concerned over Neology's IP Portfolio covering 6C-compliant readers, 6C-compliant transponders, and systems designed to work with 6C-compliant readers and transponders. This information further put Kapsch on actual notice of the objectively high risk of its infringement of the '436 Patent. Yet Kapsch acted anyway by selling, or offering for sale, 6C-compliant readers and back-office/roadside systems designed to work with 6C-compliant readers and transponders.

163. Nevertheless, despite knowing about the '436 Patent and knowing that it risked infringement of the '436 Patent by making, selling, importing, or offering for sale 6C-compliant readers, transponders, methods, or systems, Kapsch proceeded despite said risks and submitted bids for the sale and supply of 6C-compliant readers, 6C-compliant transponders, and the back-

office/roadside system designed to work with said readers and transponders to the Ohio River Bridges Project Joint Board. This submission by Kapsch evidences a reckless disregard by Kapsch regarding its infringement risks.

164. Accordingly, Kapsch's infringement has been and continues to be willful.

165. The amount of money damages that plaintiff Neology has suffered due to Defendants' acts of infringement has not been calculated but is subject to proof at trial.

**COUNT VI**  
**(INFRINGEMENT OF THE U.S. PAT. NO. 7,119,664 AGAINST DEFENDANTS AND WILLFUL**  
**INFRINGEMENT OF U.S. PAT. NO. 7,119,664 AGAINST KAPSCH)**

166. Plaintiff Neology incorporates and alleges paragraphs 1-165 above as if fully set forth herein.

167. On October 10, 2006, the '664 Patent was duly and properly issued for an invention entitled "Deep Sleep in an RFID Tag."

168. The '664 Patent was duly and legally issued to Bella ID Solutions, Inc. ("Bella"), assignee of inventor Bruce Roesner. Bella duly assigned the '664 Patent to ID Solutions, Inc., which duly assigned it to Neology. A copy of the '664 Patent is attached hereto as Exhibit "F."

169. Neology is the owner of the '664 Patent and has all legal and equitable rights to enforce the '664 Patent, to bring and maintain this action, and to make, have made, use, import, offer or sell products or services covered by the '664 Patent.

170. The '664 Patent is now, and at all relevant times since its date of issuance has been, valid and enforceable.

171. Despite the fact that Neology has exclusive rights in the inventions of the '664 Patent, Defendants have directly infringed, literally or under the doctrine of equivalents, the '664 Patent by, *inter alia*, importing, offering to sell, and/or selling Accused Transponder Products identified in paragraphs 59 through 61.

172. Kapsch has further infringed the '664 Patent by, *inter alia*, offering for sale and/or selling its own Janus Reader, SSI's Vela Reader, SSI's Dorado Reader, and back-office/roadside systems designed to work with 6C-compliant readers and transponders.

173. It is believed that Defendants will continue to directly infringe the '664 Patent unless enjoined by this Court. Defendants' direct infringement has caused substantial injury to Neology.

174. Infringement by Kapsch has been and continues to be willful for at least the following reasons.

175. On May 21, 2012, Neology filed a patent infringement suit in the U.S. District Court for Central District of California against Sirit, FSTech, and others alleging infringement of the '664 Patent (the "California Action"). The California Action was subsequently transferred on October 19, 2012, and consolidated with the First Neology Action on November 2, 2012.

176. On or about October 21, 2012, John Freund, former President of Sirit and FSTech, joined Kapsch as its Senior V.P. of Sales. As an executive of Sirit and FSTech, Mr. Freund was aware of and knew of Neology's infringement allegations against Sirit and FSTech involving the '664 Patent. Accordingly, Kapsch had further knowledge of the '664 Patent as of May 21, 2012.

177. Kapsch executives were also given a copy of the California Action and the First Neology Action on October, 2013, through the Neology Data Room and were thus aware of Neology's allegations of infringement based on the '664 Patent against Sirit and FSTech involving the same RFID technology that is accused of infringement in this case.

178. Further, the November 2013 IP Presentation Neology provided to Kapsch included a disclosure of the '664 Patent.

179. The November 2013 IP Presentation was given, and explained orally, to several Kapsch employees or agents, including Dr. Gerhard R. Plaschka, William Loesch, and Pierre Yanney.

180. The November 2013 IP Presentation Neology provided Kapsch disclosed how any 6C-compliant transponder or RFID reader, or any method or system designed to work with RFID transponders and/or readers that operate, or are capable of operating, pursuant to the 6C Protocol (e.g., configured to use a deep sleep state that is independent of power) would infringe the ‘664 Patent or any other patent in the ‘664 patent family.

181. The November 2013 IP Presentation quoted an excerpt taken directly from the 6C Protocol documentation that depicts a block diagram of an RFID transponder’s different “states” as it receives commands from an RFID reader that must be adhered to for any RFID transponder or reader to qualify as being 6C-compliant and explaining why a transponder that is capable of being set to a “Ready” state when a transponder is inventoried and its “inventory flag” is switched from “A” to “B” or vice versa, or a system designed work with a 6C-compliant reader to set a 6C-compliant transponder to a “Ready” state during an inventory session and switch the transponder’s “inventory flag” from “A” to “B” or vice versa would infringe the ‘664 Patent, or any patent in the ‘664 patent family.

182. Accordingly, Kapsch knew at least by November 2013 that Neology considered any 6C-compliant transponder or system designed to work with 6C-compliant transponders and readers that were made, sold, imported, or offered for sale in the United States (regardless of origin or manufacturer) as infringing the ‘664 Patent or any patent in the ‘664 patent family.

183. The November 2013 IP Presentation showed Kapsch the objective high risk it was taking in making, selling, importing, or offering for sale the accused products identified in paragraphs 171 and 172.

184. Further, on information and belief, Kapsch's indemnification query to INDOT as recited in paragraph 48 demonstrates that Kapsch knew it would infringe the '664 Patent if it offered for sale, or sold, 6C-compliant readers or transponders, or systems designed to work with 6C-compliant readers and transponders to potential customers.

185. On information and belief, Kapsch received a copy of INDOT's response refusing to indemnify any vendor that supplied infringing 6C-compliant products prior to submitting a bid, and knew that its competitors were seriously concerned over Neology's IP Portfolio covering 6C-compliant readers, 6C-compliant transponders, and systems designed to work with 6C-compliant readers and transponders. This information further put Kapsch on actual notice of its objectively high risk of infringement of the '664 Patent. Yet Kapsch acted anyway by selling, or offering for sale, 6C-complaint transponders, 6C-compliant readers, and back-office/roadside systems designed to work with 6C-compliant readers and transponders.

186. Nevertheless, despite knowing about the '664 Patent and knowing that it risked infringement of the '664 Patent by making, selling, importing, or offering for sale 6C-compliant transponders, readers, methods, or systems, Kapsch proceeded despite said risks and submitted bids for the sale and supply of 6C-compliant readers, 6C-compliant transponders, and the back-office/roadside system designed to work with said readers and transponders to the Ohio River Bridges Project Joint Board. These submissions by Kapsch evidences a reckless disregard by Kapsch regarding its infringement risks.

187. Accordingly, Kapsch's infringement has been and continues to be willful.



188. The amount of money damages that plaintiff Neology has suffered due to Defendants' acts of infringement has not been calculated but is subject to proof at trial.

**REQUESTED RELIEF**

WHEREFORE, plaintiff Neology respectfully requests the following relief:

- a. judgment that Defendants infringe the '044 Patent;
- b. judgment that Defendants infringe the '264 Patent;
- c. judgment that Kapsch infringes the '568 Patent;
- d. judgment that Defendants infringe the '443 Patent;
- e. judgment that Defendants infringe the '436 Patent;
- f. judgment that Defendants infringe the '664 Patent;
- g. the entry of a preliminary and permanent injunction, requiring Defendants and their respective officers, directors, agents, servants, employees, attorneys, licensees, successors, assigns, and customers, and those in active concert or participation with any of them, to stop making, using, offering to sell, or selling in the United States or importing into the United States any devices that infringe any claim of the '044, '264, '443, '436, and '664 Patents;
- h. the entry of a preliminary and permanent injunction, requiring Kapsch and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, assigns, and customers, and those in active concert or participation with any of them, to stop making, using, offering to sell, or selling in the United States or importing into the United States any devices that infringe any claim of the '568 Patent;
- i. judgment against the Defendants for money damages to Neology for Defendants' infringement of the '044, '264, '443, '436, and '664 Patents, including but not limited to reasonable royalties and/or lost profits;

- j. judgment against the Kapsch for money damages to Neology for its infringement of the '568 Patent, including but not limited to reasonable royalties and/or lost profits;
- k. that any such money judgment against Kapsch be trebled in view of the willful and deliberate nature of the Kapsch's infringement;
- l. an award to Neology of prejudgment and postjudgment interest;
- m. an accounting by Defendants sufficient to determine damages;
- n. judgment that this is an exceptional case under 35 U.S.C. § 285, and an award to Neology of its costs and expenses of suit, including reasonable attorneys' fees for bringing and prosecuting this action; and
- o. such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Neology respectfully requests a jury trial on all issues triable to a jury.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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