

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA**

**BLUE SKY NETWORKS, LLC,**

**Plaintiff**

**v.**

**ROCHE DIABETES CARE, INC.,  
Defendants**

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**CASE NO. 1:18-cv-368**

**PLAINTIFF’S FIRST AMENDED COMPLAINT AND JURY DEMAND**

Plaintiff Blue Sky Networks, LLC (“Blue Sky”) files this Original Complaint against Roche Diabetes Care, Inc. for infringement of U.S. Patents Nos. 6,484,027; 6,865,372; 8,265,691; 8,346,169; and 8,792,828 (collectively, the “Asserted Patents”).

**THE PARTIES**

1. Plaintiff and patent owner Blue Sky is a Texas limited liability company with its headquarters and principal place of business at 1400 Preston Road, Suite 475, Plano, Texas 75093.
2. Roche Diabetes Care, Inc. (“RDC”) is a Delaware corporation with a principal place of business at 9115 Hague Rd, Indianapolis, IN, 46250, USA.
3. RDC is registered to do business in Indiana and has appeared.

## **JURISDICTION AND VENUE**

4. Blue Sky brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. RDC is subject to personal jurisdiction of this Court based upon its regularly conducted business in Indiana and in this judicial district.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1400(b). RDC's headquarters and principal executive offices are located in this judicial district, and RDC conducts business and has committed acts of infringement in this judicial district.

## **BLUE SKY PATENTS**

7. Blue Sky is the owner by assignment of all right, title, and interest in and to the following United States Patents infringed by RDC:

- U.S. Patent No. 6,484,027 (the "'027 Patent," Exhibit A);
- U.S. Patent No. 6,865,372 (the "'372 Patent," Exhibit B);
- U.S. Patent No. 8,265,691 (the "'691 Patent," Exhibit C);
- U.S. Patent No. 8,346,169 (the "'169 Patent," Exhibit D); and
- U.S. Patent No. 8,792,828 (the "'828 Patent," Exhibit E).

8. Exhibit A through E are true and correct copies of the Asserted Patents.

9. Blue Sky possesses all rights of recovery under the Asserted Patents.

**The Asserted Patents**

10. Dan Mauney, Marc Sullivan, Charles Green, and Steve Harbin invented the claimed subject matter of the Asserted Patents while working for SBC Technology Resources, Inc. in Austin, Texas.

11. SBC Technology Resources, later renamed SBC Laboratories in 2003, was the research and development arm of SBC Communications Inc., which acquired AT&T in 2005.

12. The Asserted Patents, titled “Enhanced Wireless Handset, Including Direct Handset-to-Handset Communication Mode,” were duly and legally issued by the United States Patent and Trademark Office after full and complete examinations of each.

13. The Patent Examiner found each set of allowed claims to recite patentable subject matter and each respective application meeting all requirements for patentability.

14. The Asserted Patents are directed to wireless mobile devices, such as handsets, peripherals, and computing devices, that operate via wireless short-range direct communication with other wireless devices. Such devices may also be enabled for simultaneous operation on a wireless network (*e.g.*, a cellular, PCS, or WiFi network) and wireless short-range direct communication with other wireless

devices. Wireless devices within the scope of the claims include paging devices, handsets, peripherals, computing devices, and other objects enabled for direct handset-to-handset communication.

15. To facilitate set-up, the Asserted Patents describe find features (e.g., features that assist a device operator in determining what objects, including other wireless devices and users, are located within the wireless network's operating range), memory for maintaining a list of available devices for communicating via the short-range wireless network, and short-range messaging.

16. In operation, devices and objects described in the Asserted Patents scan for, find, register, and communicate with available devices and may present to a user a list from which the user may select devices to pair with a device to enable two-way communication via the short-range wireless network, independent of a cellular or other wireless network.

17. The Asserted Patents further describe how embodying devices such as wireless smartphones, tablets, computers, and other communication devices may simultaneously communicate on short range wireless network(s) and wide-area wireless network(s), such as cellular or PCS systems, WiFi, or satellite radio networks.

**United States Patent No. 6,484,027**

18. The United States Patent and Trademark Office issued the '027 Patent

on November 19, 2002, after a complete examination and upon finding the claimed subject matter novel and the application meeting all requirements for patentability.

19. The '027 Patent is valid and enforceable.

**United States Patent No. 6,865,372**

20. The United States Patent and Trademark Office issued the '372 Patent on March 8, 2005, after a complete examination and upon finding the claimed subject matter novel and the application meeting all requirements for patentability.

21. The '372 Patent issued from a division of application No. 09/094,600 from which the '027 Patent issued.

22. The '372 Patent is valid and enforceable.

**United States Patent No. 8,265,691**

23. The United States Patent and Trademark Office issued the '691 Patent on September 11, 2012, after a complete examination and upon finding the claimed subject matter novel and the application meeting all requirements for patentability.

24. The '691 Patent issued from a continuation of the application related to the '372 and '027 Patents.

25. The '691 Patent is valid and enforceable.

**United States Patent No. 8,346,169**

26. The United States Patent and Trademark Office issued the '169 Patent on January 1, 2013, after a complete examination and upon finding the claimed

subject matter novel and the application meeting all requirements for patentability.

27. The '169 Patent is valid and enforceable.

**United States Patent No. 8,792,828**

28. The United States Patent and Trademark Office issued the '828 Patent on July 29, 2014, after a complete examination and upon finding the claimed subject matter novel and the application meeting all requirements for patentability.

29. The '828 Patent issued from a continuation of the application from which the '169 Patent issued.

30. The '828 Patent is valid and enforceable.

31. As the owner of the Asserted Patents, Blue Sky, holds all substantial rights in and under the Asserted Patents, including the right to grant sublicenses, exclude others, and to enforce, sue, and recover damages for past and future infringement.

**RDC Products**

32. RDC makes, uses, sells, offers for sale, distributes, imports, licenses, makes, and/or supports Bluetooth-enabled electronic medical devices and application software for communicating with them via laptop, smartphone, tablet, or other mobile device.

33. RDC Bluetooth-enabled devices include the Accu-Chek Guide meter shown below at left.



34. RDC owns and licenses to end users software applications that enable end users to connect RDC-Bluetooth-enabled devices to peripherals such as smartphones, tablets, computers, and other communication devices.

35. RDC software applications include Accu-Chek Connect app, the Accu-Chek 360° diabetes management app, and the mySugr App (the “RDC Software”).

36. RDC Bluetooth-enabled devices and RDC Software are designed and intended to function together as an integrated system.

37. For example, RDC’s Accu-Chek integrated system enables Bluetooth

connectivity between an RDC wireless meter, RDC Software, and the RDC online portal.

URGENT MEDICAL DEVICE CORRECTION: Accu-Chek Connect diabetes management app

# Accu-Chek<sup>®</sup> Connect system

Getting a snapshot of your diabetes just became a lot easier.

Connect with a wireless meter, smartphone app and online portal.

[OPEN ONLINE PORTAL >](#)

The advertisement features a purple background. At the top, a warning icon and text state: 'URGENT MEDICAL DEVICE CORRECTION: Accu-Chek Connect diabetes management app'. Below this, the product name 'Accu-Chek<sup>®</sup> Connect system' is displayed in large white font. A sub-headline reads: 'Getting a snapshot of your diabetes just became a lot easier.' Below that, it says: 'Connect with a wireless meter, smartphone app and online portal.' A button with a right-pointing arrow is labeled 'OPEN ONLINE PORTAL'. On the right side, there is an image of a smartphone displaying the 'ACCU-CHEK Connect' app interface, showing a 'LATEST ENTRY - BREAKFAST' with a '106 mg/dL' result and '50 g Meal'. In front of the phone are two Accu-Chek wireless meters: one labeled 'Accu-Chek Aviva Connect' and the other 'Accu-Chek Guide'. Both meters show a reading of '106 mg/dL' on their screens.

38. RDC focuses on ensuring that the RDC Software is compatible with a broad range of mobile devices and operating systems.

39. RDC wireless medical devices wirelessly sync with RDC's Accu-Chek Connect online portal and RDC Software using Bluetooth low-energy wireless communication technology.

40. RDC devices sync automatically with RDC Software to provide users with real-time feedback and notifications.

41. RDC cites Bluetooth-enabled wireless connectivity as a product differentiator and advantage that sets the RDC products and integrated systems apart from products from RDC's competitors.

42. RDC Software is published by RDC and made available for download



by end users.

43. To use RDC Software, RDC requires end users to agree to the terms of RDC's License Agreement.

44. RDC's License Agreement states that RDC Software is licensed to end users and is owned by RDC:

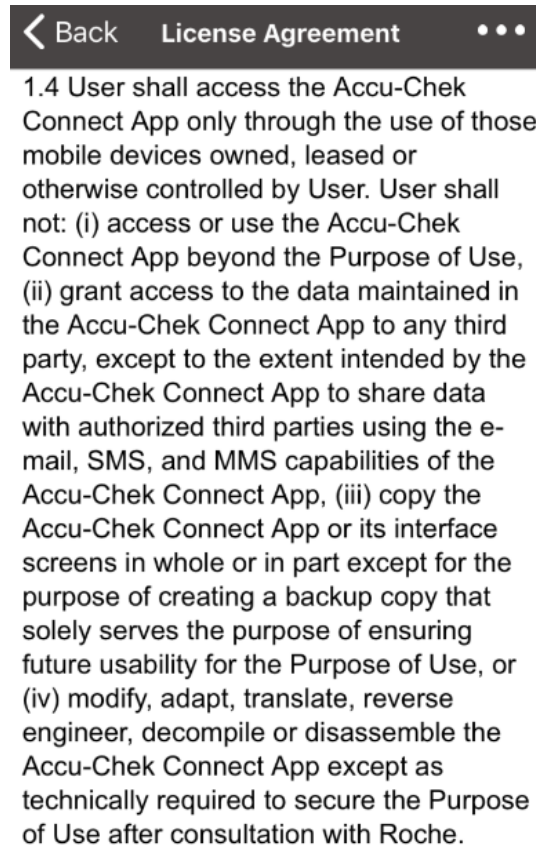
**Accu-Chek® Connect Diabetes Management  
App End User License Agreement**

Roche grants User a non-exclusive, non-transferable and non-sub-licensable right, solely for the purpose to personally use the Accu-Chek Connect App to (i) connect the Accu-Chek Connect App and exchange data with compatible blood glucose meters, (ii) manually enter, manage, export and store User's own blood glucose and/or insulin data, and the additional health or personal information that is in scope of the Accu-Chek Connect App, (iii) receive computed insulin advice, and (iv) create, administrate and use the online functionality of an Accu-Chek Connect web account (the "Purpose of Use"). User understands that this Accu-Chek Connect App may be used for management of User's individual data.

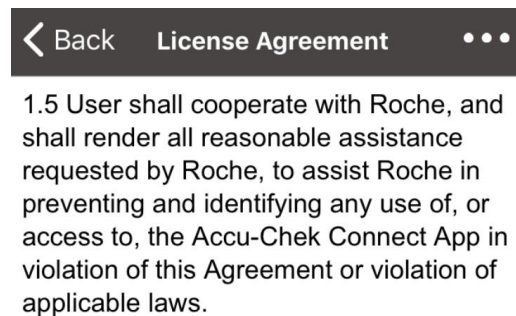
45. RDC controls and directs the operation and use of RDC Software by end users.

46. RDC limits use by end users of the RDC Software to specific mobile devices and prohibits end users from use of the RDC Software in any non-approved

manner.



47. RDC requires agreement by end users to assist RDC in preventing and identifying any unauthorized use of, or access to, RDC Software.



48. RDC reserves and retains all proprietary rights in the RDC Software.

< Back License Agreement ...

## 2 PROPRIETARY RIGHTS

All rights, title and interest including, but not limited to, copyright, trademarks and other intellectual property rights in and to the Accu-Chek Connect App are owned by Roche and its licensors. Roche retains all rights not expressly granted herein and User's rights to use the Accu-Chek Connect App are limited to the terms and conditions of this Agreement. User shall not remove any product identification, trademark, copyright, confidentiality, proprietary or other notices contained on or within the Accu-Chek Connect App.

49. RDC devices employ a syncing process to transfer data.

50. The following instructional video on RDC's website describes how RDC devices use Bluetooth connectivity:



51. Accu-Chek devices are Bluetooth-enabled and feature a Bluetooth radio transceiver.

52. RDC provides instructions for operating the Bluetooth functionality.

53. RDC provides instructions encouraging users to carry out the pairing process.

54. RDC's video tutorial explains and shows the Bluetooth functionality

55. RDC wireless devices are designed and intended to be used in conjunction with RDC Software installed on wireless communication devices (e.g., a mobile phone, laptop, or computer running the RDC application) to configure and pair via Bluetooth.

56. RDC instructs and encourages end users to wirelessly connect RDC wireless devices via Bluetooth.

### **Item Description**



Once linked with your *Accu-Chek Guide* or *Accu-Chek Aviva Connect* meter, the *Accu-Chek Connect* app receives data wirelessly via *Bluetooth®* technology. You can then log results automatically, chart your data, send results to caregivers, calculate insulin doses and more.

57. RDC Software provides an interactive pairing menu for users to enable and connect to RDC wireless devices.

### START MY METER: Pairing the meter and app

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On your meter: Select **Settings » Wireless » Yes**.

A pairing code will appear. Each pairing code is valid for 90 seconds, but you can always generate a new one.

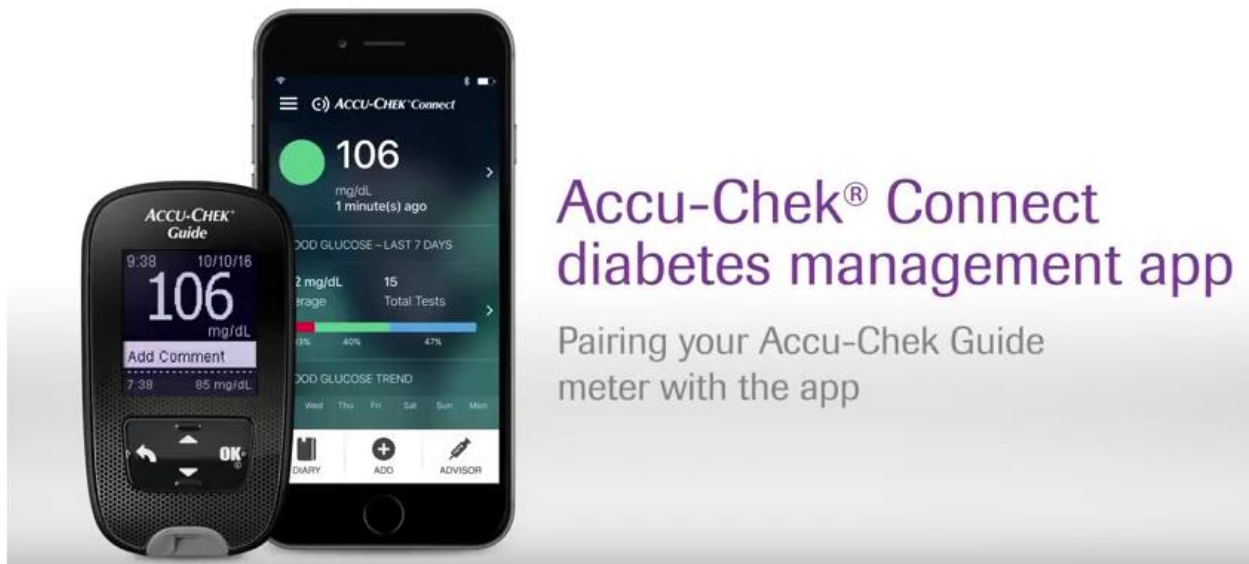


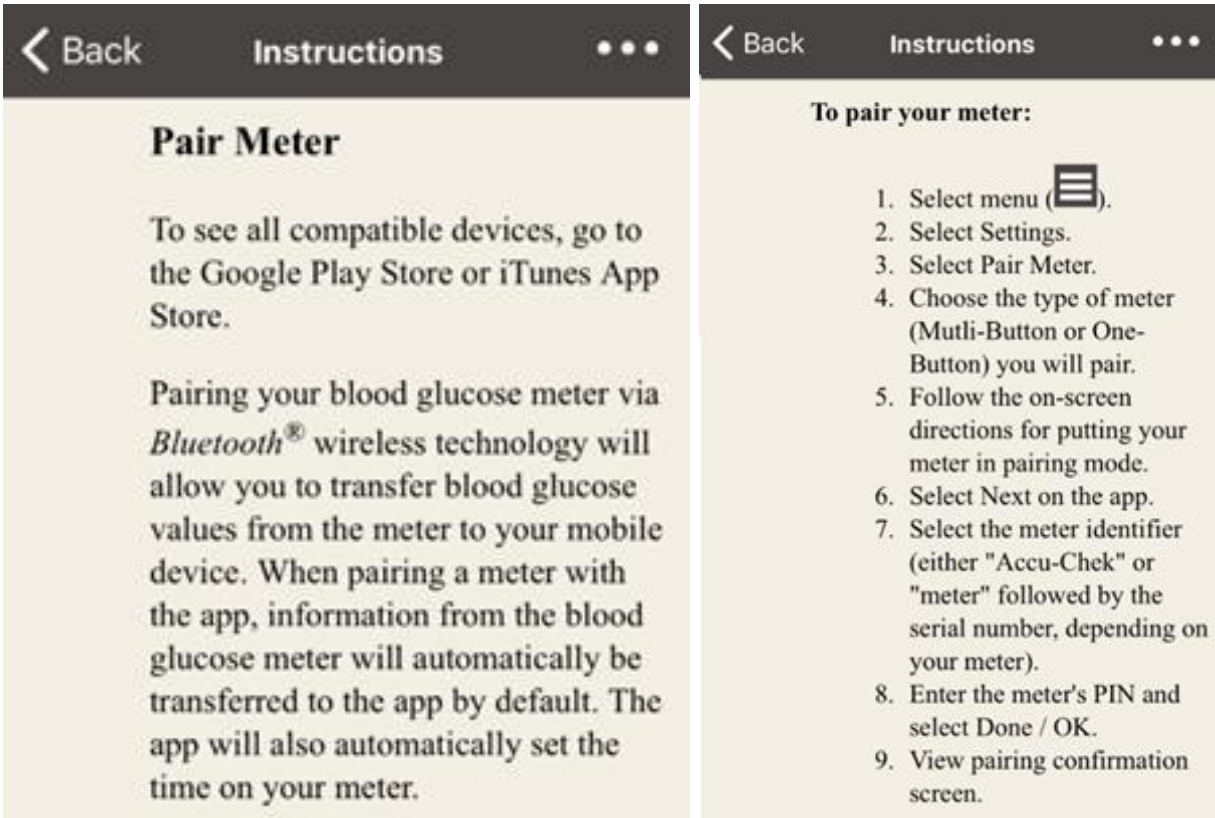
← Back      Pair Meter      Next

1. Ensure the meter is off.  
2. With the meter off, press and hold the power button until the Bluetooth symbol appears.



58. RDC directs, encourages, and instructs end users to use the RDC Software to pair and communicate with RDC wireless devices to practice the Asserted Patents.





59. RDC Software is installed on Bluetooth-enabled peripheral devices (such as wireless smartphones, tablets, computers, and other communication devices) and operates to control and direct the Bluetooth functionality on the peripheral device to pair and communicate with RDC wireless devices to practice the Asserted Patents.

60. RDC Software and RDC Bluetooth-enabled wireless devices initiate, conduct, and manage Bluetooth connection procedures to pair and communicate via Bluetooth connectivity.

61. The RDC products covered by the allegations outlined herein include those specifically identified in this complaint and unnamed products having

substantially similar functions and hardware, software, radios, and associated communication hardware for performing identification, pairing, and communication via short-range wireless networking protocols (collectively, the “Accused Products”). The Accused Products do not include any RDC products that are based upon Bluetooth chipsets that are licensed under the Blue Sky Patents.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 6,484,027**

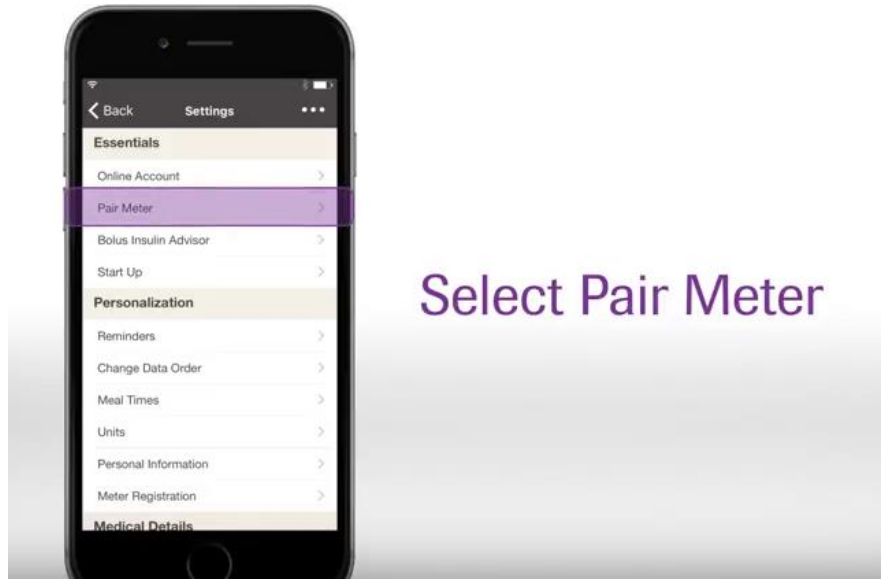
62. Blue Sky incorporates by reference paragraphs 1-61 and re-alleges them as if stated here.

63. RDC directly infringes at least claims 5, 6, 7, and 8 of the '027 Patent.

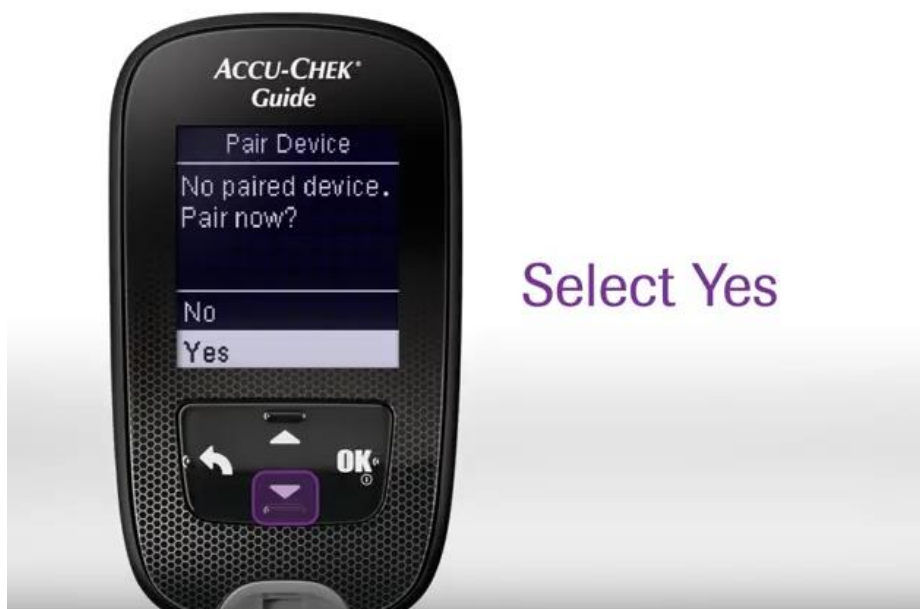
64. RDC makes, uses, sells, offers for sale, and/or imports Bluetooth-enabled devices that embody the asserted claims of the '027 Patent.

65. The Accused Products are wireless devices with enhanced operating features including the ability to locate other devices within range and pair or communicate with at least two distinct Bluetooth devices using two frequency channels.





66. In normal operation, the Accused Products initiate a find feature to discover any Bluetooth enabled devices (e.g., peripherals, phones, computers, etc.) within range.



67. The Accused Products enter a page sub-state to determine whether available devices are within range and may transmit a train of page messages until a response is received from a potential target device.

68. The Accused Products, in turn, detect any response messages from available Bluetooth devices (e.g., a Bluetooth headset or speaker) and collect and store information received within the inquiry response messages for use in compiling a list of discovered or available Bluetooth devices.

69. When a connectable device receives a page request on its page scan channel from the handset, it enters into a sequence of exchanges and the handset enters into a master response routine.

70. A link key is created and exchanged during the pairing process. Once a handset is paired with a connectable device, higher level initialization procedures

are invoked to update a stored list of paired devices.

71. The Accused Products are Bluetooth-enabled devices that can list “available” devices that are detected to be within range.

72. A user selects an “available” device for connection.

73. Once a connectable device is connected to an Accused Product, it is designated as a “paired” device.

74. Through online technical support and publication of instructional information, RDC encourages, aids, and directs end users of the Bluetooth-enabled Accused Products to use and operate them, consistent with RDC’s instructions, to perform the asserted method claims.

75. By the Original Complaint in this case, RDC is on notice of the infringing products, features, and how end users of the Accused Products operate them to perform the claimed methods and use the claimed apparatuses.

76. In normal operation of the Accused Products, end users carry out functions and operate the Accused Products consistent with RDC’s instructions and direction.

77. RDC’s infringing conduct has damaged Blue Sky.

78. RDC is liable to Blue Sky in an amount that adequately compensates it for RDC’s infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**COUNT II**  
**INFRINGEMENT OF U.S. PATENT NO. 6,865,372**

79. Blue Sky incorporates by reference paragraphs 1-78 and re-alleges them as if stated here.

80. RDC infringes at least claims 1, 2, 4, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 19 and 20 of the '372 Patent.

81. RDC uses, makes, sells, offers for sale, and/or imports Bluetooth-enabled devices that practice and are used to practice the '372 Patent.

82. RDC infringes at least claims 3, 8, 13 and 18 of the '372 Patent with respect to the Accused Products that include a display, such as the Accu-Chek meters.

83. The Accused Products communicate with peripherals using Bluetooth short-range technologies.

84. In accordance exemplary claim 1 of the '372 Patent, the Accused Products pair or communicate with at least two distinct Bluetooth peripherals using two frequency channels and receive an identifier (e.g., name) from each paired (or available) peripheral. The Accused Products then prompt the end user to select the specific meter to add.

85. Accused Products with screens display the identifier in a list of paired or available devices.

86. The Accused Products contain short-range wireless transmitters for

short-range communications.

87. The Accused Products enter into the inquiry substate and transmit inquiry messages (e.g., inquiry data packets) as part of the discovery and pairing process with nearby compatible Bluetooth devices (e.g., wireless headsets, Bluetooth speakers, smartphones, etc.).

88. The Accused Products consecutively transmit, to two Bluetooth peripherals, inquiry messages over at least two frequency channels. Based on Bluetooth protocols, the Accused Products may determine the frequency channels by an inquiry hopping sequence.

89. If discoverable, an object may receive the inquiry messages from the Accused Products in the page substate and, in turn, generate responses. Accordingly, the Accused Products contain receivers to receive the inquiry response messages from Bluetooth peripherals within range.

90. According to Bluetooth protocols, a peripheral's response message may contain information including device address, clock, class of device, and device name.

91. After receiving the response messages, the Accused Products dynamically create and update a list of detected objects within range. The list may include identifiers (e.g., names) for detected (e.g., available or paired) objects. The list may include the first object identifier and the second object identifier (e.g., two

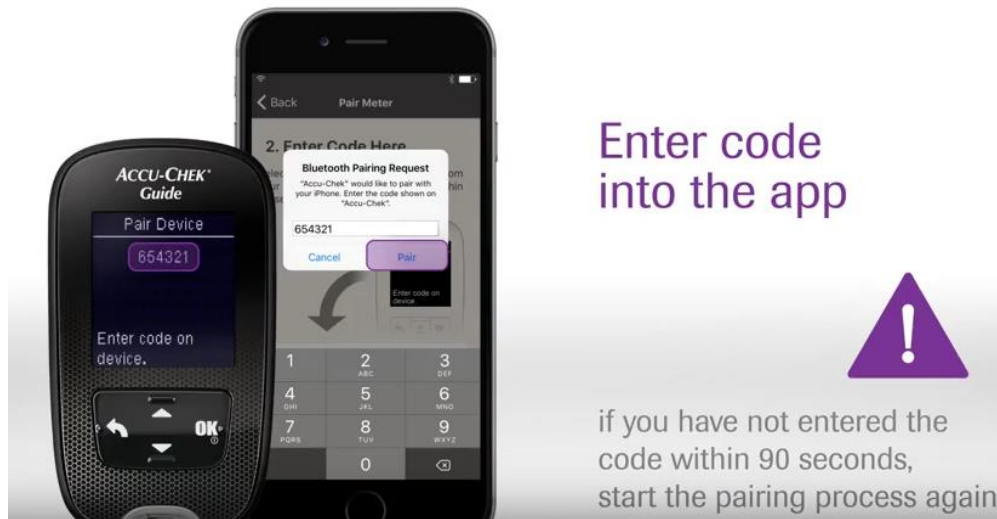
device names) for cases in which inquiry packets are sent over two frequency channels to two separate objects, and the two objects send response data packets including corresponding object identifiers (e.g., a device name).

92. The Accused Products, such as the Accu-Chek meters, practice and are used to practice claim 16 of the '372 Patent.

93. The Accused Products include Bluetooth radios for transmitting inquiry data packets according to the Bluetooth wireless protocol and technical specification. *See, e.g.,* Bluetooth 4.0 Core Specification at <https://www.bluetooth.com/specifications/bluetooth-core-specification>.

94. In the paging substate, according to the Bluetooth specification, peripherals transmit inquiry data packets using a first and second channel of a frequency channel sequence and receive response packets identifying proximate objects.

95. During the pairing and bonding process, peripherals store object identifiers associated with the proximally located object.



96. The bonding process creates a relation between the peripheral and the object to which it is connecting (e.g., a smartphone or computer). The relation is based on a common link key that is created and exchanged during the bonding process. The common link key is stored by the peripheral to be used for future authentication.

97. Through online technical support and publication of instructional information, RDC encourages, aids, and directs end users of the Accused Products to use and operate them, consistent with RDC's instructions, to perform the asserted method claims.

98. By the Original Complaint in this case, RDC is on notice of the infringing products, features, and how end users of the Accused Products operate them to perform the claimed methods and use the claimed apparatuses.

99. In normal operation of the Accused Products, end users carry out

functions and operate the Accused Products consistent with RDC's instructions and direction.

100. RDC's infringing conduct has damaged Blue Sky.

101. RDC is liable to Blue Sky in an amount that adequately compensates it for RDC's infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**COUNT III**  
**INFRINGEMENT OF U.S. PATENT NO. 8,265,691**

102. Blue Sky incorporates by reference paragraphs 1-101 and re-alleges them as if stated here.

103. RDC directly infringes at least claims 1, 3, 7, 8, 11, 13, 17, and 18 of the '691 Patent.

104. RDC makes, uses, sells, offers for sale, and imports electronic devices that embody the asserted claims of the '691 Patent including representative claim 11.

105. The Accused Products communicate with peripherals using relevant short-range technologies including but not limited to Bluetooth BR/EDR using transceivers.

106. In normal operation, the Accused Products transmit an inquiry message (e.g., an inquiry data packet) to a Bluetooth peripheral to determine whether the



peripheral is within range.

107. If the peripheral is in a discoverable mode (e.g., general discoverable mode), the Accused Products receive a response (e.g., inquiry response message) from the Bluetooth peripheral.

108. After receiving a response from a peripheral, the Accused Products generate and display a list of discovered or available devices.

109. Once paired, the Accused Products operate in the connected state and exchange messages over one of two channels reserved for communication between them.

110. The physical channel is subdivided into time units known as slots, and data is transmitted between Bluetooth devices in packets positioned in these slots.

111. Other BR/EDR physical channels are used for discovering other Bluetooth devices.

112. RDC encourages, aids, and directs end users of the Accused Products to use and operate them, consistent with RDC's instructions, to perform the asserted method claims.

113. RDC instructs end users to use Bluetooth capability to infringe the asserted claims.

114. The Accused Products provide a user a list of available devices.

115. By the Original Complaint in this case, RDC is on notice of the

infringing products, features, and how end users of the Accused Products operate them to perform the claimed methods and use the claimed apparatuses of the '691 Patent.

116. In normal operation of the Accused Products, end users carry out functions and operate the Accused Products consistent with RDC's instructions and direction.

117. RDC's infringing conduct has damaged Blue Sky.

118. RDC is liable to Blue Sky in an amount that adequately compensates it for RDC's infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**COUNT IV**  
**INFRINGEMENT OF U.S. PATENT NO. 8,346,169**

119. Blue Sky incorporates by reference paragraphs 1-118 and re-alleges them as if stated here.

120. RDC infringes at least claims 1, 2, 3, 5, 6, 8, 9, 10, 12, 13, and 15 of the '169 Patent.

121. RDC makes, uses, sells, offers for sale, and/or imports Bluetooth-enabled devices that practice or are used to practice the '169 Patent.

122. The Accused Products communicate with objects using Bluetooth short-range technologies embodying the asserted claims of the '169 Patent.

123. The Accused Products communicate using relevant short-range technologies, including but not limited to Bluetooth Basic Rate/Enhanced Data Rate (BR/EDR), and pair with peripherals and add selected peripherals to a list of paired devices stored in the Accused Products.

124. RDC provides instructions to end users of the Accused Products directing how to practice the '169 Patent.

125. By way of example, in a typical scenario a user presses and temporarily holds a button to initiate pairing with the Accused Products while the Accused Products or other Bluetooth capable devices scan for available nearby devices.

126. In response, the device receives a pair request message (e.g., a paging message request) over a channel shared with other Bluetooth devices (e.g., a time-division multiplexed channel). In response to the pair request, the Accused Products prompt users to add the Bluetooth peripheral to a list of authorized devices. If a user approves pairing the device with the peripheral, the user accepts the pair request and adds the peripheral to a list of authorized devices on the Accused Products. In some instances, the user is required to enter a PIN or code to authorize pairing.

127. Through online technical support and publication of instructional information, RDC encourages, aids, and directs end users of the Accused Products to use and operate them, consistent with RDC's instructions, to perform the asserted method claims.

128. By the Original Complaint in this case, RDC is on notice of the infringing products, features, and how end users of the Accused Products operate them to perform the claimed methods and use the claimed apparatuses.

129. In normal operation of the Accused Products, end users carry out functions and operate the Accused Products consistent with RDC's instructions and direction.

130. RDC's infringing conduct has damaged Blue Sky.

131. RDC is liable to Blue Sky in an amount that adequately compensates it for RDC's infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**COUNT V**  
**INFRINGEMENT OF U.S. PATENT NO. 8,792,828**

132. Blue Sky incorporates by reference paragraphs 1-131 and re-alleges them as if stated here.

133. RDC infringes at least claims 3, 4, 12, 13, and 17 of the '828 Patent.

134. RDC makes, uses, sells, offers for sale, and/or imports Bluetooth-enabled devices that practice or are used to practice the '828 Patent.

135. The Accused Products communicate with a second apparatus using Bluetooth short-range technologies embodying the '828 Patent.

136. In normal operation, for example during the Bluetooth discovery

process, the Accused Products detect other Bluetooth-enabled objects in close proximity and may display the objects that are available for pairing.

137. When a user provides input directing the Accused Products to send or receive information (e.g., MAC address, identifying information, etc.) to/from the second apparatus, the pairing or bonding process continues, and the objects exchange data.

138. Such information exchanged between the Accused Products and a Bluetooth-enabled object includes identifying information about each device that is used to create and exchange link keys to “bond” the devices. *See* Bluetooth Core Specification v.4.0.

139. Through online technical support and publication of instructional information, RDC encourages, aids, and directs end users of the Accused Products to use and operate them, consistent with RDC’s instructions, to perform the asserted method claims.

140. By the Original Complaint in this case, RDC is on notice of the infringing products, features, and how end users of the Accused Products operate them to perform the claimed methods and use the claimed apparatuses.

141. In normal operation of the Accused Products, end users carry out functions and operate the Accused Products consistent with RDC’s instructions and direction.

142. RDC's infringing conduct has damaged Blue Sky.

143. RDC is liable to Blue Sky in an amount that adequately compensates it for RDC's infringement, which, by law, can be no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

#### **NOTICE**

144. Blue Sky has complied with the notice requirement of 35 U.S.C. § 287 and does not currently distribute, sell, offer for sale, or make products embodying the asserted Blue Sky Patents.

#### **NOTICE OF REQUIREMENT OF LITIGATION HOLD**

145. RDC is hereby notified it is legally obligated to locate, preserve, and maintain all records, notes, drawings, documents, data, communications, materials, electronic recordings, audio/video/photographic recordings, and digital files, including edited and unedited or "raw" source material, and other information and tangible things that RDC knows, or reasonably should know, may be relevant to actual or potential claims, counterclaims, defenses, and/or damages by any party or potential party in this lawsuit, whether created or residing in hard copy form or in the form of electronically stored information (hereafter collectively referred to as "Potential Evidence").

146. As used above, the phrase "electronically stored information" includes without limitation: computer files (and file fragments), e-mail (both sent and received, whether internally or externally), information concerning e-mail

(including but not limited to logs of e-mail history and usage, header information, and deleted but recoverable e-mails), text files (including drafts, revisions, and active or deleted word processing documents), instant messages, audio recordings and files, video footage and files, audio files, photographic footage and files, spreadsheets, databases, calendars, telephone logs, contact manager information, internet usage files, and all other information created, received, or maintained on any and all electronic and/or digital forms, sources and media, including, without limitation, any and all hard disks, removable media, peripheral computer or electronic storage devices, laptop computers, mobile phones, personal data assistant devices, Blackberry devices, iPhones, video cameras and still cameras, and any and all other locations where electronic data is stored. These sources may also include any personal electronic, digital, and storage devices of any and all of RDC's agents, resellers, or employees if RDC's electronically stored information resides there.

147. RDC is hereby further notified and forewarned that any alteration, destruction, negligent loss, or unavailability, by act or omission, of any Potential Evidence may result in damages or a legal presumption by the Court and/or jury that the Potential Evidence is not favorable to RDC's claims and/or defenses. To avoid such a result, RDC's preservation duties include, but are not limited to, the requirement that RDC immediately notifies its agents and employees to halt and/or supervise the auto-delete functions of RDC's electronic systems and refrains from

deleting Potential Evidence, either manually or through a policy of periodic deletion.

### **JURY DEMAND**

Blue Sky hereby demands a trial by jury on all claims, issues, and damages so triable.

### **PRAYER FOR RELIEF**

Blue Sky prays for the following relief:

- a. A judgment be entered that RDC has infringed one or more claims of the Asserted Patents;
- b. A judgment be entered that the Asserted Patents are valid and enforceable;
- c. Blue Sky be awarded damages adequate to compensate for RDC's infringement up until the date such judgment is entered, including prejudgment and post-judgment interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Blue Sky for RDC's infringement, an accounting;
- d. A judgment that Blue Sky be awarded attorneys' fees, costs, and expenses incurred in prosecuting this action; and
- e. A judgment that Blue Sky be awarded such further relief at law or in equity as the Court deems just and proper.



Filed: May 15, 2018

By /s/ Bradley M. Stohry

Bradley M. Stohry

Bradley M. Stohry (Atty. No. 25820-49)

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**ATTORNEYS FOR PLAINTIFF**

**BLUE SKY NETWORKS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record below who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system this 15th day of May, 2018.

*/s/ Bradley M. Stohry*