

1 JAMES C. OTTESON, State Bar No. 157781
jim@agilityiplaw.com

2 MICHELLE G. BREIT, State Bar No. 133143
mbreit@agilityiplaw.com

3 AGILITY IP LAW, LLP
149 Commonwealth Drive
4 Menlo Park, CA 94025
Telephone: (650) 227-4800
5 Facsimile: (650) 318-3483

6 Attorneys for Plaintiffs
TECHNOLOGY PROPERTIES LIMITED LLC
7 and PHOENIX DIGITAL SOLUTIONS LLC

8 CHARLES T. HOGE, State Bar No. 110696
choge@knlh.com

9 Kirby Noonan Lance & Hoge LLP
350 Tenth Avenue, Suite 1300
10 San Diego, CA 92101
Telephone: (619) 231-8666

11 Attorneys for Plaintiff
12 PATRIOT SCIENTIFIC CORPORATION

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 TECHNOLOGY PROPERTIES LIMITED
16 LLC, PHOENIX DIGITAL SOLUTIONS
17 LLC, and PATRIOT SCIENTIFIC
CORPORATION,

18 Plaintiffs,

19 vs.

20 NOVATEL WIRELESS, INC.,

21 Defendant.

22
23 Technology Properties Limited LLC ("TPL"), Phoenix Digital Solutions LLC ("PDS")
24 and Patriot Scientific Corporation ("PTSC") (collectively "Plaintiffs") hereby allege for their
25 Complaint for Patent Infringement ("Complaint") against Defendant Novatel Wireless, Inc.
26 ("Defendant") on personal knowledge as to their own actions and on information and belief as to
27 the actions of Defendant, as follows:

E-FILING

FILED

JUL 24 2012

RICHARD W. WILKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADR

JCS

Case No.

CV 12-03879

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

PARTIES

1
2 1. Plaintiff Technology Properties Limited LLC is a California limited liability
3 company with its principal place of business at 20883 Stevens Creek Blvd., Suite 100, Cupertino,
4 California 95014.

5 2. Plaintiff Phoenix Digital Solutions LLC is a Delaware limited liability company
6 with its principal place of business at 20883 Stevens Creek Blvd., Suite 100, Cupertino,
7 California 95014.

8 3. Plaintiff Patriot Scientific Corporation is a Delaware limited liability company
9 with its principal place of business at 701 Palomar Airport Road, Suite 170, Carlsbad, California
10 92011.

11 4. On information and belief, Defendant Novatel Wireless, Inc. is a Delaware
12 corporation with a principal place of business at 9645 Scranton Road, Suite #205, San Diego,
13 California 92121.

14 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

15 5. This is an action for damages and injunctive relief based on patent infringement
16 arising under the patent laws of the United States, Title 35 of the United States Code.

17 6. This Court has jurisdiction over the subject matter of this action pursuant to 28
18 U.S.C. § 1331 and 28 U.S.C. § 1338.

19 7. On information and belief, Defendant has transacted business in this District,
20 contracted to supply goods or services in this District directly or through its agents, has offered
21 for sale, sold and/or advertised its products and services in the this District, and has otherwise
22 purposely availed itself of the privileges and benefits of the laws of the State of California. This
23 Court has jurisdiction over Defendant because Defendant has committed acts of patent
24 infringement during the course of its business in this District.

25 8. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a) and (b) and 28
26 U.S.C. § 1391.

1 9. This matter is an intellectual property action and is not subject to intradistrict
2 assignment under Civil L.R. 3-2(c).

3 **THE ASSERTED PATENTS**

4 **The '749 Patent**

5 10. United States Patent No. 5,440,749 ("the '749 Patent), entitled "High
6 Performance, Low Cost Microprocessor Architecture," issued on August 8, 1995 to Charles H.
7 Moore and Russell H. Fish, III. A true and correct copy of the '749 Patent is attached as Exhibit
8 A to this Complaint.

9 11. The '749 Patent teaches a processor that fetches multiple instructions at a time,
10 and then supplies them to the CPU's instruction register in parallel during the same memory
11 cycle they are fetched. Since memory is generally slower than the CPU, being able to fetch and
12 supply more than one instruction at a time increases the number of instructions the CPU can
13 receive in a given time, and thus increases instruction bandwidth.

14 12. Plaintiffs TPL, PDS and PTSC collectively hold all substantial rights to the '749
15 Patent.

16 **The '890 Patent**

17 13. United States Patent No. 5,530,890 ("the '890 Patent"), entitled "High
18 Performance, Low Cost Microprocessor," issued on June 25, 1996 to Charles H. Moore and
19 Russell H. Fish, III. A true and correct copy of the '890 Patent is attached as Exhibit B to this
20 Complaint.

21 14. The '890 Patent teaches a dual stack architecture and the use of stack pointers that
22 can reference memory in any location to provide more architectural flexibility and faster access
23 to data elements. A stack architecture is sometimes analogized to a spring-loaded stack of plates
24 of the kind used in a restaurant. The last plate placed (or "pushed") on the top of the stack is the
25 first plate removed (or "popped") off the stack when needed. Like plates, data elements can be
26 "pushed" onto or "popped" off the stack. However, by using a "stack pointer," the CPU does not
27 need to be an actual top-to-bottom "spring-loaded" stack. Instead, the stack pointer keeps track

1 of where the “top of stack” item is in a “virtual stack,” so it can be accessed directly as if it were
2 on the “top.” Combining this with other features, such as a memory controller and direct
3 memory access, the ’890 Patent allows the CPU to off-load memory transfer of data to achieve
4 further efficiencies and higher performance.

5 15. Plaintiffs TPL, PDS and PTSC collectively hold all substantial rights to the ’890
6 Patent.

7 **The ’336 Patent**

8 16. United States Patent No. 5,809,336 (“the ’336 Patent”), entitled “High
9 Performance Microprocessor Having Variable Speed System Clock,” was duly and legally issued
10 on September 15, 1998 to Charles H. Moore and Russell H. Fish, III. A true and correct copy of
11 the ’336 Patent is attached as Exhibit C to this Complaint.

12 17. The ’336 Patent teaches the use of two independent clocks in a microprocessor
13 system: (1) an on-chip clock to time the CPU; and (2) a second independent clock to time the
14 input/output (I/O) interface. This innovation was widely adopted by the industry and became
15 fundamental to the increased speed and efficiency of modern microprocessors. Decoupling the
16 system clock from the I/O clock allows the clocks to run independently (or “asynchronously”).

17 18. Plaintiffs TPL, PDS and PTSC collectively hold all substantial rights to the ’336
18 Patent.

19 **COUNT I**

20 **INFRINGEMENT OF THE ’749 PATENT**

21 19. Plaintiffs reallege and incorporate herein by reference the allegations contained in
22 paragraphs 1-18.

23 20. On information and belief, without a license or permission from Plaintiffs,
24 Defendant has infringed and continues to infringe at least claim 1 of the ’749 Patent.
25 Defendant’s infringing activities in the United States and in this District include importing,
26 making, using, offering to sell, and/or selling products and devices that embody and/or practice
27 the patented invention, including but not limited to MiFi 2372.

22. On information and belief, Defendant's direct infringement of the '749 Patent has been and continues to be willful and deliberate, entitling Plaintiffs to enhanced damages and attorneys' fees.

COUNT II

COUNT II

INFRINGEMENT OF THE '890 PATENT

23. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1-22.

24. On information and belief, without a license or permission from Plaintiffs, Defendant has infringed and continues to infringe at least claim 7 of the '890 Patent. Defendant's infringing activities in the United States and in this District include importing, making, using, offering to sell, and/or selling products and devices that embody and/or practice the patented invention, including but not limited to the MiFi 2372.

25. On information and belief, Defendant's direct infringement of the '890 Patent has caused and continues to cause substantial damage to Plaintiffs.

26. On information and belief, Defendant's direct infringement of the '890 Patent has been and continues to be willful and deliberate, entitling Plaintiffs to enhanced damages and attorneys' fees.

COUNT III

INFRINGEMENT OF THE '336 PATENT

27. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1-26.

28. On information and belief, without a license or permission from Plaintiffs, Defendant has infringed and continues to infringe, induced others to infringe and continues to induce others to infringe, and/or has committed and continues to commit acts of contributory infringement, literally or under the doctrine of equivalents, at least claim 1 of the '336 Patent.

1 Defendant's infringing activities in the United States and in this District include importing,
2 making, using, offering to sell, and/or selling products and devices that embody and/or practice
3 the patented invention, including but not limited to the MiFi 2372, and contributing to, and
4 inducing consumers and users to make and use the patented invention and to practice the claimed
5 methods.

6 29. On information and belief, Novatel Wireless induces others to infringe at least
7 claim 1 of the '336 Patent by encouraging and facilitating others to perform actions known by
8 Novatel Wireless to infringe and with the intent that performance of the actions will infringe.
9 TPL provided Novatel Wireless notice of the '336 Patent by letter (with an enclosed disk
10 identifying the MMP patents) dated March 17, 2008.

11 30. On information and belief, Novatel Wireless induces consumers to make and use
12 the claimed inventions and to practice the claimed methods by (i) providing the MiFi 2372 with a
13 USB input/output interface for connecting the accused devices to a peripheral device, the
14 peripheral device having a clock independent of the CPU clock (*e.g.*, ring oscillator) connected
15 to the central processing unit on the microprocessors of the MiFi 2372, and (ii) instructing
16 consumers to connect the accused products to a peripheral device such that the combination
17 includes each element of the asserted apparatus claims of the '336 Patent and use of the
18 combination, as intended, practices each of the elements of at least claim 1 of the '336 Patent.

19 31. On information and belief, consumers make and use the claimed inventions and
20 practice the claimed methods by using the MiFi 2372 in combination with a peripheral device
21 having a clock that originates clock signals from a source other than the clock connected to the
22 central processing unit on the microprocessors of the MiFi 2372, thereby directly infringing at
23 least claim 1 of the '336 Patent.

24 32. On information and belief, Defendant's direct, induced and/or contributory
25 infringement of the '336 Patent has caused and continues to cause substantial damage to
26 Plaintiffs.
27

1 33. On information and belief, Defendant's direct, induced and/or contributory
2 infringement of the '336 Patent has been and continues to be willful, entitling Plaintiffs to
3 enhanced damages and attorneys' fees.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs Technology Properties Limited, Phoenix Digital Solutions
6 LLC, and Patriot Scientific Corporation pray for judgment and relief as follows:

7 A. A judgment that Defendant has infringed one or more claims of the Asserted
8 Patents;

9 B. An award of damages in an amount adequate to compensate Plaintiffs for
10 Defendant's infringement of the Asserted Patents;

11 C. A declaration that Defendant's infringement of the Asserted Patents was willful
12 and that this case is exceptional pursuant to 35 U.S.C. § 285;

13 D. An award of Plaintiffs' costs, expenses and attorneys' fees incurred in bringing
14 and prosecuting this action;

15 E. An award of enhanced damages resulting from Defendant's willful infringement,
16 and all other categories of damages allowed by 35 U.S.C. § 284;

17 F. An award of pre-judgment interest; and

18 G. Such other and further relief as this Court may deem just and appropriate.

19 **DEMAND FOR JURY TRIAL**

20 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury
21 trial as to all issues so triable.

22 Dated: July 24, 2012

Respectfully submitted,

23 AGILITY IP LAW, LLP

24 

25 James C. Otteson

26 Attorneys for Plaintiffs
27 TECHNOLOGY PROPERTIES LIMITED LLC
and PHOENIX DIGITAL SOLUTIONS LLC

KIRBY NOONAN LANCE & HOGE LLP

/s/ Charles T. Hoge
Charles T. Hoge

Attorneys for Plaintiff
PATRIOT SCIENTIFIC CORPORATION