IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

VIA VADIS, LLC, Plaintiff, v. SKYPE, INC.; SKYPE COMMUNICATIONS SARL; SKYPE GLOBAL SARL; SKYPE SOFTWARE SARL; SKYPE TECHNOLOGIES, SA, and MICROSOFT CORP. Defendants.	)	Civil Action No.11-507-RGA **JURY TRIAL DEMANDED**

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Via Vadis, LLC ("Via Vadis"), by its undersigned attorneys, demands a trial by jury of all claims and issues so triable, and, as and for its Second Amended Complaint for Patent Infringement against Defendants, Skype, Inc. ("Skype"), Skype Communications S.à r.l. ("SkypeC"), Skype Global S.à r.l. ("SkypeG"), Skype Software S.à r.l. ("SkypeS") Skype Technologies, SA (SkypeT"), and Microsoft Corporation ("Microsoft") (collectively, "Defendants"), hereby alleges the following:

NATURE OF THE ACTION

1. This is a civil action for patent infringement. Plaintiff's claims are based on the unauthorized, infringing manufacture, use, sale and/or offer for sale in the United States and/or importation into the United States by Defendants of their SKYPE peer-to-peer voice over internet

protocol ("VOIP") communications systems, methods, products and services, as explained in detail below.

THE PARTIES

2. Plaintiff Via Vadis is a limited liability company organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business at MAISON 2, Leithum, 9970 Luxembourg.

3. Defendant Skype is a corporation organized and existing under the laws of the State of Delaware. On information and belief, Skype has its principal place of business at 3210 Porter Drive, Palo Alto, CA 94304, and is doing business in this judicial district.

4. Defendant SkypeC is a limited liability company organized and existing under the laws of Luxembourg. On information and belief, SkypeC has its principal place of business at Rives de Clausen 23-29, L-2165 Luxembourg, and is doing business in this judicial district.

5. Defendant SkypeS is a limited liability company organized and existing under the laws of Luxembourg. On information and belief, SkypeS has its principal place of business at 15 rue Notre Dame, L-2240 Luxembourg, and is doing business in this judicial district.

6. Defendant SkypeT is a limited liability company organized and existing under the laws of Luxembourg. On information and belief, SkypeT has its principal place of business at Rives de Clausen 23-29, L-2165 Luxembourg, and is doing business in this judicial district.

7. Defendant SkypeG is a limited liability company organized and existing under the laws of Luxembourg. On information and belief, SkypeG has its principal place of business at 22/24 Boulevard Royal, 6e, étage, L-2449 Luxembourg, and is doing business in this judicial district. On information and belief, Skype, SkypeC, SkypeS and SkypeT are each wholly owned subsidiaries or

otherwise affiliated with SkypeG. Collectively, Skype, SkypeC, SkypeS, SkypeT and SkypeG shall be referred to as "Skype" or the "Skype Defendants".

8. Defendant Microsoft is a corporation organized and existing under the laws of the State of Washington, USA. On information and belief, Microsoft has its principal place of business at One Microsoft Way, Redmond, Washington, and is doing business in this judicial district. On October 13, 2011, Microsoft acquired all of the issued and outstanding shares of SkypeG. On information and belief, SkypeG was consolidated into Microsoft's operation starting on October 13, 2011. Accordingly, on information and belief, each of the Skype Defendants has been consolidated into Microsoft's operations.

JURISDICTION AND VENUE

9. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States, 35 U.S.C. §§ 271, 281, and 283-285. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. On information and belief, the Defendants have solicited business in the State of Delaware, transacted business within the State of Delaware and attempted to derive financial benefit from residents of the State of Delaware, including benefits directly related to the instant patent infringement cause of action set forth herein.

11. On information and belief, the Defendants have placed their infringing systems and products into the stream of commerce, and practiced their infringing methods and services, throughout the United States with the expectation that they will be offered for sale, sold and used in this judicial district, which systems, methods, products and services have been offered for sale, sold and used in this judicial district, as explained in detail below.

12. Each defendant is subject to personal jurisdiction in this judicial district.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b).

PATENTS-IN-SUIT

14. On September 23, 2008, U.S. Reissue Patent No. RE40,521 ("the '521 patent"), entitled "Data Access and Management System as well as a Method for Data Access and Data Management for a Computer System," was duly and legally issued by the United States Patent and Trademark Office. Via Vadis is the exclusive licensee of the '521 patent, with the right to sue for and recover all past, present and future damages and to seek and obtain injunctive relief for infringement of the '521 patent. A true and correct copy of the '521 patent is attached hereto as **Exhibit A**.

15. On March 8, 2011, U.S. Patent No. 7,904,680 ("the '680 patent"), entitled "Data Access and Management System as well as a Method for Data Access and Data Management for a Computer System," was duly and legally issued by the United States Patent and Trademark Office. Via Vadis is the exclusive licensee of the '680 patent, with the right to sue for and recover all past, present and future damages and to seek and obtain injunctive relief for infringement of the '680 patent. A true and correct copy of the '680 patent is attached hereto as **Exhibit B**. The '521 and '680 patents shall collectively be referred to as the "Asserted Patents".

16. Thomas Binzinger ("Mr. Binzinger") is the sole inventor of the inventions claimed in the Asserted Patents. Mr. Binzinger is a computer software professional having received a computer science degree from one of the top institutions in Germany, RWTH Aachen University. Mr. Binzinger sold his first commercial software application at age fourteen and is the author of several

books on computer programming. Mr. Binzinger has extensive experience developing software systems and applications in multiple computer languages, in a wide variety of industries, including cybersecurity, business to business web applications, systems-programming, and gaming.

17. In the late 1990's, Mr. Binzinger became increasingly frustrated by the then existing state of the technology in data transmission. Transmitting data at that time had significant problems both in speed and quality resulting in significant limitations with an application's ability to provide certain functionality. This was particularly problematic in the communications and gaming industries, which at that time were a significant focus of Mr. Binzinger's work.

18. Traditional data transmission systems in the late 1990's were generally provided by a central computer system, a so-called server, or an accumulation of central computer systems, a so-called server cluster. In this context, various problems often occurred which would limit the supply of data and/or functionality to clients. In particular, if a central computer system was being accessed by many clients in a short period of time (a common occurrence in the gaming and communications industries), the system could be overwhelmed resulting in increased transmission times or even total system failure. The failure of network areas, too, which connect the server with clients, could also lead to a failure of the entire system. Moreover, transmission times from servers to individual clients often differ greatly due to various distances between servers and clients as well as different transmission performances in different areas of the network. Such an inadequate transmission characteristic would often lead to an unsatisfactory supply of data and functionality to individual clients, and ultimately, a poor user experience.

19. Mr. Binzinger's inventions claimed in the Asserted Patents resolve these problems by permitting improved data access and management in a computer system by dividing data into

portions and storing those portions of divided data in cells of computers (often referred to as "nodes" or "super nodes") in such a way that the portions of divided data are stored, accessed and managed in a redundant manner. The redundant storage, access and management of data depends on prespecified parameters of the data transmission between computers (i.e., "nodes" and "super nodes"). In addition, control units are provided for controlling data access and management, enabling the computers to copy or shift the redundantly stored data independent of other aspects of the system.

20. The inventions claimed in the Asserted Patents allow data providers to operate at significant scale and to more effectively manage the integrity and quality of data communications, even at peak times. When utilizing the inventions claimed in the Asserted Patents, a user is simultaneously both a supplier and consumer of data, in contrast to the traditional client-server architecture where only servers supply and users use. As a result, a data provider need not have its own physical network; rather, a user need only launch software incorporating the invention on a network-connected device. Their device is then automatically connected to other devices in the network using the software with each device becoming a consumer and supplier of data. This novel concept allows the total capacity of the communication network to actually increase as the number of users of the network increases, while also increasing transmission quality and integrity.

21. The inventions claimed by the Asserted Patents provided additional benefit over the state of the technology existing at the time of their conception in that the transmission of data and functionality improves as demand for such data and functionality increases. In this regard, traditional client-server architectures, where the data is stored in a central repository, can slow or fail as demand increases. Because portions of data, and thus corresponding functionality, are redundantly stored in

multiple computers across the network, and clients demanding data can simultaneously provide other data to other users, the speed and efficiency of data transmission actually increases as demand increases. This benefit of the inventions claimed in the Asserted Patents is critical for many of today's gaming and communications applications that demand the near instantaneous transmission of data and functionality.

22. The inventions claimed by the Asserted Patents provided other benefits over the state of technology existing at the time of their conception. In particular, the inventions optimize the transmission quality between clients and data storage units. The inventions further provide a near instantaneous supply of data and functionality to clients accessing the system. The inventions further secure the operability of the system in the case of the failure of the computer structure or individual areas of the networks through which the data storage computers and clients are connected. The inventions further ensure that clients are only provided with current data.

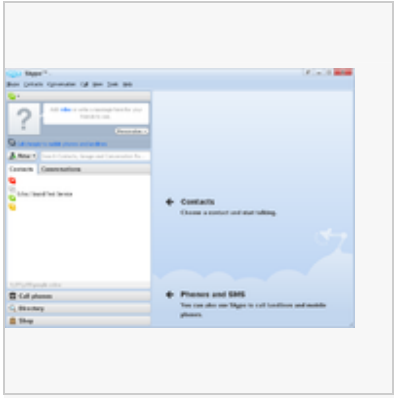
23. The inventions greatly enhance the speed and quality of data transmission; significantly enhancing the experience for users of gaming and communications applications, among others.

DEFENDANTS' INFRINGING ACTS

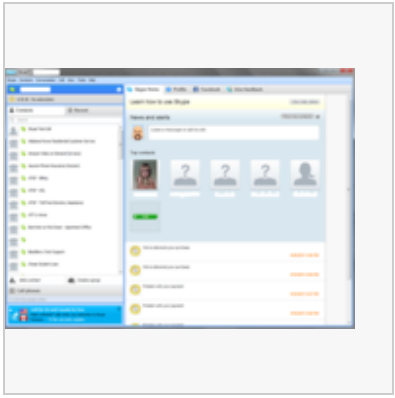
24. Defendants own, operate and are otherwise responsible for SKYPE peer-to-peer voice over internet protocol ("VOIP") communications systems, methods, products and services, which are available through computers, such as desktop and laptop computers, communications devices, such as telephones and mobile devices, and other devices, such as gaming systems and television systems. More specifically, Skype has provided and/or continues to provide at least the SKYPE software products identified below which are made available to users over computers, communications

devices and other devices. SKYPE provides users with instructions, assistance and guidance in order to access, download and/or use these software products to make video and voice calls, send instant messages and share files with other SKYPE users. These same SKYPE software products are also distributed to manufacturers that produce and sell computers, communications devices and other devices with embedded SKYPE software, which are distributed directly to SKYPE users that use the SKYPE software to make video and voice calls, send instant messages and share files with other SKYPE users. Such software products include:

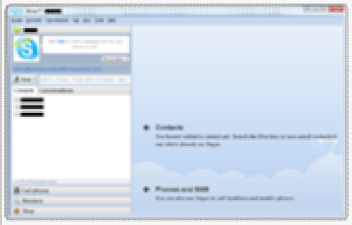
a. SKYPE for Microsoft Windows (2000, XP, Vista, 7, Mobile):



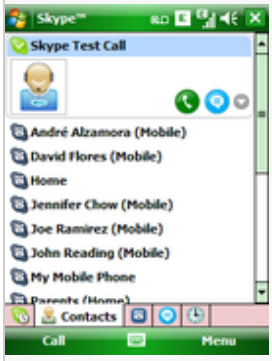
Skype 4 in Default View running on Windows XP



Skype 5.3.0.111 in Default View on Windows 7



Skype 4 in Default View running on Windows Vista



Skype 2.2, running on a Windows Mobile 6 device

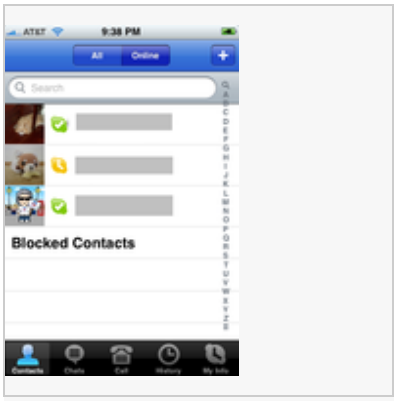
b. SKYPE for Mac OS X (Intel, PPC):

Skype 2.7, running on Mac OS X Leopard

Skype 5.1, running on Mac OS X Snow Leopard

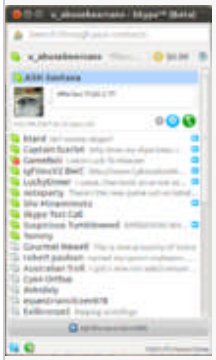
Skype 5.1.0.935, running on Mac OS X Snow Leopard

c. SKYPE for iOS (iPad, iPhone, iPod Touch):

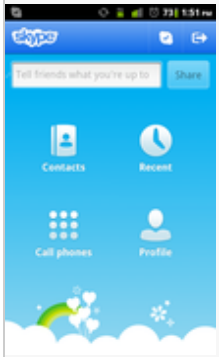


Skype 1.0.2 running on iPhone

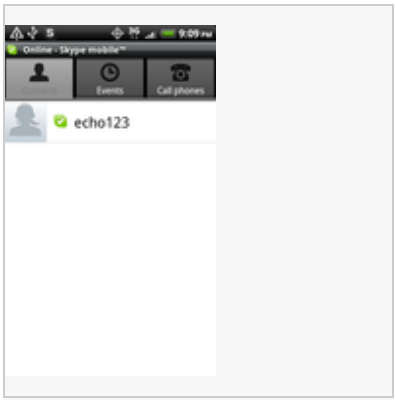
d. SKYPE for Linux (includes Android, Maemo):



Skype 2.2 beta, running on a Linux desktop



Skype 2.6 running on an Android device



Skype Mobile on Verizon 1.6 running on an Android 2.2 device

e. SKYPE for Symbian S60;

f. SKYPE for Sony PlayStation Portable (PSP);

g. SKYPE for SKYPE with telyHD;

h. SKYPE for SKYPE-ready Blu-ray players from Panasonic and Sony; and

i. SKYPE for SKYPE-ready TVs from Panasonic, Samsung, Sony and LG.

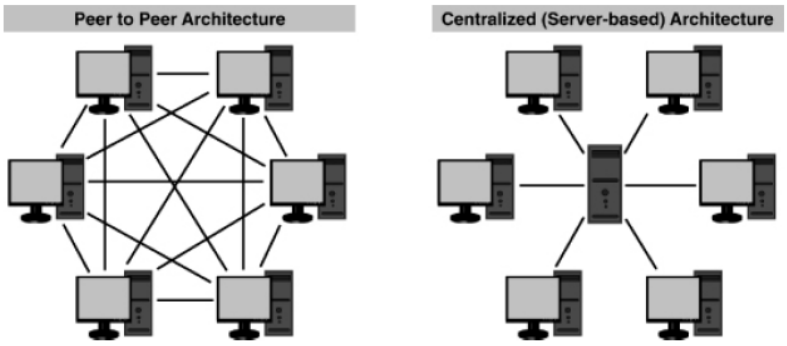
Collectively, these software applications shall be referred to as the "Accused Systems, Methods, Products and Services."

25. These Skype software products, also sometimes referred to as "Skype software clients," connect to one another forming a network of nodes. This network of nodes constitutes SKYPE's peer-to-peer VOIP communications systems, and those systems, in operation, practice SKYPE's peer-to-peer VOIP methods and provide SKYPE's peer-to-peer VOIP services, including making video and voice calls, sending instant messages and sharing files.

26. In SKYPE's Amendment No. 3 to FORM S-1 Registration Statement filed with the United States Securities and Exchange Commission on April 13, 2011, SKYPE explained the

following regarding the SKYPE software clients (*i.e.*, SKYPE's peer-to-peer VOIP software products, as identified above and referred to herein as the Accused Systems, Methods, Products and Services) and how the SKYPE software clients that make up the nodes and super nodes, along with "Skype-hosted nodes," that form SKYPE's peer-to-peer VOIP communications systems, practice SKYPE's peer-to-peer VOIP methods and provide SKYPE's peer-to-peer VOIP services:

> Peer-to-Peer Architecture
>
> Skype's media streams (and the data communications necessary to locate, connect and communicate between Skype software clients) are made across a peer-to-peer network established between Skype software clients. This technology allows Skype to operate at significant scale and to manage the integrity of a network that at peak times can include approximately 30 million concurrent users, each of which is considered a "node" in the network. In this peer-to-peer model, peers can be both suppliers and consumers of resources, in contrast to the traditional client-server or web model where only servers supply and clients consume.
>
> This peer-to-peer architecture means that in order to participate in the network, a Skype software client need only locate and identify another node. In order to communicate (for example, make a voice or video call), the peer-to-peer network is used to locate and identify the recipient's client and a peer-to-peer connection is made directly (or with the assistance of another peer) to that computer. This is a contrast to server-based architecture, where adequate server capacity and connectivity must be available and the relevant software client must connect to the server and be connected with another client in order to complete a call. The graphic below illustrates the fundamental difference between a peer-to-peer architecture and a centralized server-based architecture.



> As a result of utilizing existing Internet infrastructure and self-regulating network technology, Skype does not require its own physical network to make and route calls.

> When users launch our software client on a network-connected device, their device becomes a peer node on the peer-to-peer network. Their device then automatically connects to the computers of other Skype users who are also connected to the network. In some cases, such as with some mobile phones, a device does not have the resources (such as CPU, memory and network) necessary to participate as a peer node. In these cases, those devices connect via an installed application "thin client" over a proprietary protocol to Skype-hosted nodes that make up a gateway to other peer to peer Skype nodes. Certain nodes may also become connection relays to support calls between users who would otherwise be unable to communication. In addition to connection relays, connections between users depend on certain computers functioning as "super-nodes" that maintain information regarding the location of other nodes. Our software client designates connection relays and super-nodes on a dynamic basis based on the computing resources of a user's device. All calls sent via the peer-to-peer network are encrypted from end to end to help ensure that they are secure.
>
> As new user nodes are added to the peer-to-peer network, the total capacity of the peer-to-peer network also increases. This is not true of traditional client-server architectures, which are often bound to fixed ratios, such as a specific number of users, or "clients," for each server, which is not the case with a peer-to-peer architecture. As a result, in traditional architectures, adding more clients generally means having to add server capacity or suffering service degradation or outages, which is not the case with peer-to-peer architecture. Other advantages inherent in peer-to-peer architecture compared to traditional client-server architecture include:
>
> Relatively low capital and operating costs and limited central infrastructure;
>
> Less likely to experience network bandwidth bottlenecks; and
>
> Large number of nodes limits the impact of any single node failing, which helps improve reliability. Unlike server-based architecture, which is reliant on the continuing operation of its servers, the peer-to-peer architecture will typically continue to function even if there is a single or several points of failure.

SKYPE's Amendment No. 3 to FORM S-1 Registration Statement filed with the U.S. Securities and Exchange Commission on April 13, 2011, at pp. 158-160.

27. According to Defendants, as of December 31, 2010, there were approximately 663 million registered users that made approximately 207 billion minutes of voice and video calls using SKYPE's peer-to-peer VOIP software products that, along with the Skype-hosted nodes, form

SKYPE's peer-to-peer VOIP communications systems, practice SKYPE's peer-to-peer VOIP methods and provide SKYPE's peer-to-peer VOIP services.

28. Defendants have used and continue to use Via Vadis' patented technology by making, using, importing, offering for sale and/or selling SKYPE's peer-to-peer VOIP software products that, along with the Skype-hosted nodes, form SKYPE's peer-to-peer VOIP communications systems, practicing SKYPE's peer-to-peer VOIP methods and providing SKYPE's peer-to-peer VOIP services, which are all available to residents in this judicial district, as well as throughout the world.

29. Prior to the filing of the present patent infringement action (the "Action"), Defendants were advised of Via Vadis' patented technology and that the SKYPE peer-to-peer VOIP communications systems, methods, products and services infringe Via Vadis' patent rights. On January 21, 2011, Via Vadis Controlling GmbH, an owner of the rights in European Patent EP 1 151 591 (the "EP '591 patent"), which corresponds to and is in the same patent family as the Asserted Patents, filed a lawsuit with the District Court of Dusseldorf in Germany against SkypeS based on infringement of the EP '591 patent. AC Technologies S.A. and Via Vadis Controlling GmbH ("Via Vadis Claimants") also filed a motion based on infringement of the EP '591 patent in Luxembourg with the Président du Tribunal d'arrondissement de et à Luxembourg.

30. In conjunction with that European litigation, Via Vadis Controlling GmbH retained the services of Dr. Thomas Fuhrmann of the Technical University Munich (Technische Universität München). In a report dated November 19, 2010, Dr. Fuhrmann concluded that SKYPE's peer-to-peer VOIP software products that, along with the Skype-hosted nodes, form SKYPE's peer-to-peer VOIP communications systems, practice SKYPE's peer-to-peer VOIP methods and provide SKYPE's peer-to-peer VOIP services, utilize Via Vadis' patented technology:

The features of the claim [of the European patent that is the foreign equivalent of the Asserted Patents] can be detected in Skype Ltd services. They are initially described in short based on claim 1 [of the European patent]:

a) Skype uses multiple data storage means – so called supernodes – that store information on the participating terminals.

b) A terminal – meaning a computer unit – accesses at least one supernode in order to use Skype services.

c) The supernodes and the terminals communicate over the internet – a data transmission means. The supernodes store the participant-data in a redundant manner (see discussion below).

d) The Skype-System includes different parameters of the data transmission on an ongoing basis (see discussion below); and it uses these parameters to determine which computer – specifically supernodes, but also Relay Nodes – a terminal accesses when it is participating in a Skype-Service.

e) The supernodes include the said parameters of data transmission.

f) The supernodes distribute their stored data to each other in order to achieve the mentioned redundancy.

So, the Skype system uses all features described in claim 1. The features in claim 30 should be seen as analogous.

In particular, the claims l e/f (and analogously the claims 30 g/h) describe two specific features for peer-to-peer systems, namely the acquisition of parameters that describe the connection between the computers operating as peers, as well as the use of these parameters in deciding between which peers the data should be transmitted over. This feature is of particular importance, since it can improve the efficiency of the system.

In general, the connections between different computers within a network, such as the internet, [have] varying quality. The quality of the connection is measured through characteristics such as bandwidth, loss rate, and delay ("latency"). Contrary to client-server systems…peer-to-peer systems predominantly have the opportunity to choose between multiple peers that can all provide the same service. If a peer is selected so that the quality of the respective connection is particularly good, then the quality of the rendered service increases.

Furthermore, the said claims [of the European patent] describe the feature that data can also be transmitted between the peers without an immediate request. As a result,

the redundancy of [this] data increases, meaning that the system protects itself from possible outages.

This feature can…in connection with the above mentioned detection of connection parameters, improve the choices for peers and can thereby further increase the quality of the service. If the data necessary for service provision is transmitted to alternative peers independent of a request, then there is a greater likelihood that a well-suited peer can be found for this service for a later request.

Skype Ltd.'s service, according to a statement from the company, uses a peer-to-peer process [Skype10a, Skype10b]. This statement is confirmed by different scientific examinations [Baset06, Guha06, Suh06]. It can be taken from these examinations that the company uses the above mentioned features to improve its service.

[Skype10a] IT Administrators Guide – Skype for Windows version 4.2, Version 2.0, 2010

[Skype10b] Website http://www.skype.com/intl/en-us/support/users-guides/p.2pexplained/ Accessed 26 October 2010

[Baset06] S.A. Baset and H. Schulzrinne, "An analysis of the skype peer-to-peer internet telephony protocol," Proceedings of the 25th IEEE International Conference on Computer Communications (INFOCOM'06), 2006.

[Suh06] K. Suh, D. Figueiredo, J. Kurose, and D. Towsley, "Characterizing and detecting skype-relayed traffic", Proceedings of the 25th IEEE International Conference on Computer Communications (INFOCOM'06), 2006.

[Guha06] S. Guha, N. Daswani, and R. Jain, "An experimental study of the skype peer-to-peer voip system," Proceedings of the 5th International Workshop on Peer-to-Peer Systems (IPTPS'06), 2006.

According to this information, the Skype system is comprised of so-called supernodes that store information on participating peers, independent of the number of accesses, exchange this information with each other, and use it during peer requests in order to build a connection:

"The Global Index technology is a multi-tiered network where supernodes communicate in such a way that every node in the network has full knowledge of all available users and resources with minimal latency." [Skype10b]

Particularly registering the latency between the participating computers, meaning registering the delay that the data experiences during the transmission, is an important criterion for the selection of the connection used for the service. Additionally, it is decided through parameters, for instance the available bandwidth

> or the characteristic of having a public internet address, whether a peer becomes a supernode. These supernodes then store the information on the available peers, but also on which peer is classified as a supernode.
>
> Since the supernodes are not owned [by] Skype Ltd., the Skype system must protect itself from the sudden and unforeseeable loss of individual supernodes by storing information stored in a supernode redundantly on at least one other supernode…
>
> This process, in a general way, is described by the claims le and lf: The peers participating in the Skype system establish "parameters for the data transmission" between the peers (latency, bandwidth, etc.) and use these parameters to shift data independent of an access [….] between the data storage means." The claims 30f and 30g also describe this process.
>
> Pursuant to the above examination, I, as an expert, came to the conclusion that Skype uses all features of claim 1 and 30 of the patent EP 1151591B1. A final statement on the exact mechanism used by Skype would require an examination of the source code of the Skype software.

Expert Opinion of Dr. Fuhrmann of the Technical University Munich (Technische Universität München) dated November 19, 2010, at pp. 3-6.

31. As a result of the proceedings initiated in Luxembourg, the Court President issued an Ordonnance (functionally equivalent to a search order in the United States), permitting the Via Vadis Claimants to inspect the business premises of SkypeS in Luxembourg in order to gain access to, and inspect, the computer source code underlying the SKYPE software products and peer-to-peer network. The Ordonnance was issued by the Court based, at least in part, on Dr. Fuhrmann's report dated November 19, 2010 (referenced above) finding a reasonable suspicion of infringement of the EP '591 patent. Based on the Ordonnance of January 21, 2011 two court appointed experts, Dr. Hoppen and Mr. Douxchamps, made arrangements to inspect the source code at SkypeS's offices in Luxembourg. Despite issuance of the Ordonnance, the court appointed experts were prevented by SkypeS from reviewing the source code. Instead, they were provided with only limited information regarding the functionality and capabilities of the Skype software products. Skype's actions

preventing the court appointed experts from accessing the Skype source code was not in compliance with the Ordonnance. Nonetheless, the court appointed experts rendered an expert opinion on March 22, 2011 based on the limited information they were provided. This report indicated that evidence exists that SkypeS is using software for which supernodes are an essential component of the peer-to-peer network, and that the supernodes are required for the establishment of the connection between the Skype-clients. This evidence further establishes that the components of the inventions claimed in the Asserted Patents are present in Skype's software. Further proceedings remain pending in the Luxembourg Court regarding the issuance of the Ordonnance and Skype's failure to comply with its requirements.

32. Prior to the filing of the Luxembourg patent infringement lawsuit, on February 11, 2011, representatives of SkypeS and the Via Vadis Claimants met. At that meeting, SkypeS was informed of, among other things, the existence of the Asserted Patents and Via Vadis' allegations of their infringement by the Skype Defendants. Notwithstanding that knowledge, the Skype Defendants continue to practice the inventions claimed in the Asserted Patents.

33. On May 10, 2011, Via Vadis filed a complaint in the Eastern District of Virginia ("Virginia Action") against the Skype Defendants alleging, *inter alia*, that they have infringed, and continue to infringe, one or more claims of the Asserted Patents. The Virginia Action was voluntarily dismissed without prejudice on June 9, 2011, the same day the original Complaint in this Action was filed.

COUNT I
(INFRINGEMENT OF U.S. REISSUE PATENT NO. RE40,521)

34. Via Vadis incorporates by reference each of the allegations in the paragraphs above as if fully set forth herein.

35. Defendants, either alone or in conjunction with others, have infringed and are still infringing (literally and/or under the doctrine of equivalents) the '521 patent in this judicial district and throughout the United States by, among other things, making, using, importing, offering for sale and/or selling the systems, methods, products and services identified above, and which include the features and perform the functions and operations explained above (collectively the "Accused Systems, Methods, Products and Services") that are covered by one or more claims of the '521 patent.

36. Users of the Accused Systems, Methods, Products and Services, either alone or in conjunction with others, also have infringed and are still infringing (literally and/or under the doctrine of equivalents) the '521 patent in this judicial district and throughout the United States by, at the least, their use of the Accused Systems, Methods, Products and Services, as explained above.

37. Manufacturers of products utilizing the Accused Systems, Methods, Products and Services, either alone or in conjunction with others, also have infringed and are still infringing (literally and/or under the doctrine of equivalents) the '521 patent in this judicial district and throughout the United States by, at the least, their manufacture, offer for sale, sale and importation into the United States of products with embedded SKYPE software enabling operation of those products using the Accused Systems, Methods, Products and Services, as explained in above.

38. Defendants had knowledge of the '521 patent and knowledge of the infringement of the '521 patent prior to the filing of this lawsuit. Defendants gained knowledge of the '521 patent and the infringement of the '521 patent at least on or around the time the patent infringement lawsuits referenced above were filed concerning infringement of the EP '591 patent, the SkypeS facility in Luxembourg was inspected and Plaintiff's meeting with Defendants' representatives,

which occurred in the January to March 2011 time period, prior to the filing of this Action. Defendants also had knowledge of the '521 patent and the infringement of the '521 patent at least at the time the Virginia Action was filed on May 10, 2011.

39. Defendants induced SKYPE users to, at the least, acquire and use the Accused Systems, Methods, Products and Services in an infringement of the '521 patent with knowledge of the '521 patent and knowledge of the infringement of the '521 patent. This inducement was carried out through, at the least, Defendants' instructions to SKYPE users regarding the acquisition, download and use of the Accused Systems, Methods, Products and Services. Defendants market to both individuals and businesses to use Skype's peer-to-peer network to make video and voice calls, send instant messages and share files with other SKYPE users. Defendants further provide these individuals and businesses instructions on how to download and use the Skype software applications, as well as "tips and tricks" on how to more effectively use these applications to make video and voice calls, send instant messages and share files with other SKYPE users. These actions show an intent by the Defendants to cause users of the applications to engage in the infringing activity.

40. Defendants induced manufacturers of products utilizing the Accused Systems, Methods, Products and Services to, at the least, manufacture, offer for sale, sell and import into the United States products with embedded SKYPE software enabling operation of those products using the Accused Systems, Methods, Products and Services in an infringement of the '521 patent with knowledge of the '521 patent and knowledge of the infringement of the '521 patent. On information and belief, the inducement was carried out through, at the least, Defendants' instructions to manufacturers of products utilizing the Accused Systems, Methods, Products and Services regarding

embedding SKYPE software enabling operation of those manufacturers' products using the Accused Systems, Methods, Products and/or Services.

41. The Accused Systems, Methods, Products and Services are especially designed to be used by SKYPE users and others in a manner that infringes the '521 patent, and the Accused Systems, Methods, Products and Services are not staple articles or commodities of commerce suitable for substantial non-infringing uses. Defendants possessed knowledge of the '521 patent and the infringement of the '521 patent during the time of infringement. Accordingly, Defendants' actions constitute contributory infringement.

42. Defendants' actions are without the consent of Via Vadis and violate 35 U.S.C. § 271.

43. Via Vadis has been seriously damaged and irreparably injured by Defendants' infringement of the '521 patent, and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined by this Court from continuing to infringe the '521 patent.

44. Via Vadis is entitled to recover damages from the Defendants to compensate it for the infringement.

COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 7,904,680)

45. Via Vadis incorporates by reference each of the allegations in the paragraphs above as if fully set forth herein.

46. Defendants, either alone or in conjunction with others, have infringed and are still infringing (literally and/or under the doctrine of equivalents) the '680 patent in this judicial district and throughout the United States by, among other things, making, using, importing, offering for sale

and/or selling the Accused Systems, Methods, Products and Services, as explained above, that are covered by one or more claims of the '680 patent.

47. Users of the Accused Systems, Methods, Products and Services, either alone or in conjunction with others, also have infringed and are still infringing (literally and/or under the doctrine of equivalents) the '680 patent in this judicial district and throughout the United States by, at the least, their use of the Accused Systems, Methods, Products and Services, as explained above.

48. Manufacturers of products utilizing the Accused Systems, Methods, Products and Services, either alone or in conjunction with others, also have infringed and are still infringing (literally and/or under the doctrine of equivalents) the '680 patent in this judicial district and throughout the United States by, at the least, their manufacture, offer for sale, sale and importation into the United States of products with embedded SKYPE software enabling operation of those products using the Accused Systems, Methods, Products and Services, as explained above.

49. Defendants had knowledge of the '680 patent and knowledge of the infringement of the '680 patent prior to the filing of this lawsuit. On information and belief, Defendants had knowledge of the '680 patent and the infringement of the '680 patent at least at the time the Virginia Action was filed on May 10, 2011.

50. Defendants induced SKYPE users to, at the least, acquire and use the Accused Systems, Methods, Products and Services in an infringement of the '680 patent with knowledge of the '680 patent and knowledge of the infringement of the '680 patent. The inducement was carried out through, at the least, Defendants' instructions to SKYPE users regarding the acquisition and use of the Accused Systems, Methods, Products and Services. Defendants market to both individuals and businesses to use Skype's peer-to-peer network to make video and voice calls, send instant

messages and share files with other SKYPE users. Defendants further provide these individuals and businesses instructions on how to download and use the Skype software applications, as well as "tips and tricks" on how to more effectively use these applications to make video and voice calls, send instant messages and share files with other SKYPE users. These actions show an intent by the Defendants to cause users of the applications to engage in the infringing activity.

51. Defendants induced manufacturers of products utilizing the Accused Systems, Methods, Products and Services to, at the least, manufacture, offer for sale, sell and import into the United States products with embedded SKYPE software enabling operation of those products using the Accused Systems, Methods, Products and Services in an infringement of the '680 patent with knowledge of the '680 patent and knowledge of the infringement of the '680 patent. On information and belief, the inducement was carried out through, at the least, Defendants' instructions to manufacturers of products utilizing the Accused Systems, Methods, Products and Services regarding embedding SKYPE software enabling operation of those manufacturers' products using the Accused Systems, Methods, Products and/or Services.

52. The Accused Systems, Methods, Products and Services are especially designed to be used by SKYPE users and others in a manner that infringes the '680 patent, and the Accused Systems, Methods, Products and Services are not staple articles or commodities of commerce suitable for substantial non-infringing uses. Defendants possessed knowledge of the '680 patent and the infringement of the '680 patent during the time of infringement. Accordingly, Defendants' actions constitute contributory infringement.

53. Defendants' actions are without the consent of Via Vadis and violate 35 U.S.C. § 271.

54. Via Vadis has been seriously damaged and irreparably injured by Defendants' infringement of the '680 patent, and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined by this Court from continuing to infringe the '680 patent.

55. Via Vadis is entitled to recover damages from the Defendants to compensate it for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Via Vadis prays for the entry of a judgment from this Court:

(a) Declaring that the '521 patent was duly and legally issued, is valid and is enforceable;

(b) Declaring that Defendants have directly infringed, contributorily infringed and/or induced the infringement of one or more claims of the '521 patent;

(c) Permanently enjoining Defendants, their officers, directors, employees, agents, attorneys, privies, successors, and assigns, and all persons and entities acting in concert or participation with Defendants, under their authority or control, or on their behalf, from committing further acts of infringement of the '521 patent;

(d) Declaring that the '680 patent was duly and legally issued, is valid and is enforceable;

(e) Declaring that Defendants have directly infringed, contributorily infringed and/or induced the infringement of one or more claims of the '680 patent;

(f) Permanently enjoining Defendants, their officers, directors, employees, agents, attorneys, privies, successors, and assigns, and all persons and entities acting in concert or participation with Defendants, under their authority or control, or on their behalf, from committing further acts of infringement of the '680 patent;

(g) Ordering Defendants to file with this Court and to serve upon Plaintiff Via Vadis within thirty (30) days after service upon Defendants of an injunction issued by the Court in this Action a report in writing under oath setting forth in detail the manner in which Defendants have complied with such injunction;

(h) Ordering an accounting for the damages to Plaintiff Via Vadis arising out of Defendants' infringing activities;

(i) Awarding Via Vadis damages in accordance with 35 U.S.C. § 284;

(j) Deeming this to be an "exceptional case" within the meaning of 35 U.S.C. § 285, entitling Via Vadis to an award of its reasonable attorney fees, expenses and costs in this Action;

(k) Awarding Via Vadis its reasonable attorney fees, expenses and costs in this Action in accordance with 35 U.S.C. § 285;

(l) Awarding Plaintiff Via Vadis pre-judgment and post-judgment interest; and

(m) Awarding Plaintiff Via Vadis such other and further relief as this Court may deem just and proper.

REQUEST FOR JURY TRIAL

Via Vadis respectfully requests that this matter be tried before a jury.

Respectfully submitted,

/s/ *Daniel A. Griffith*
Daniel A. Griffith
Whiteford, Taylor & Preston LLC
405 N. King Street
Suite 500
Wilmington, Delaware 19801
(302) 353-3254
dgriffith@wtplaw.com

Edward M. Buxbaum (*admitted pro hac*)
Steven E. Tiller (*admitted pro hac*)
Whiteford, Taylor & Preston L.L.P.
Seven Saint Paul Street
Baltimore, Maryland 21202-1636
(410) 347-8700
stiller@wtplaw.com
ebuxbaum@wtplaw.com

Robert J. Weltchek (*admitted pro hac*)
WELTCHEK MALLAHAN & WELTCHEK
2330 West Joppa Road, Suite 203
Lutherville, Maryland 21093
410-825-5287
rweltcheck@wmwlawfirm.com

Attorneys for Plaintiff,
VIA VADIS, LLC