

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

NimbeLink Corp.,

Plaintiff,

v.

Digi International Inc.

Defendant.

Civil Action No. \_\_\_\_\_-UNA

**COMPLAINT  
(PATENT INFRINGEMENT)**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff NimbeLink Corp. (“NimbeLink”), by and through its undersigned counsel Berger Harris LLP, for its Complaint against Defendant Digi International Inc. (“Digi”), states and alleges as follows:

**THE PARTIES**

1. NimbeLink is a Delaware corporation with its principal place of business at 3650 Annapolis Lane North, #110, Plymouth, Minnesota, 55447.
2. Digi is a Delaware corporation with its principal place of business at 9350 Excelsior Blvd., Suite 700, Hopkins, Minnesota, 55343.

**JURISDICTION AND VENUE**

3. This is an action for, among other claims, patent infringement arising under the Patent Act of the United States, 35 U.S.C. § 1 *et seq.*
4. This Court has original and exclusive subject matter jurisdiction of NimbeLink’s patent infringement claims under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has supplemental jurisdiction over NimbeLink’s breach of contract and unjust enrichment claims pursuant to 28 U.S.C. § 1367(a), as they are so related to NimbeLink’s federal claims that they form a part of the same case or controversy.

6. This Court has general personal jurisdiction over Digi because Digi is incorporated in this district and has specific personal jurisdiction over Digi because the cause of action arises out of acts that took place in this jurisdiction.

7. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 1400(b), because Digi resides in this district, has committed acts of infringement in this district, and has a regular and established place of business in this district.

### **FACTUAL ALLEGATIONS**

#### **I. NIMBELINK AND THE PATENTED TECHNOLOGY AT ISSUE**

8. NimbeLink is engaged in the business of designing, manufacturing, and selling communications products and services, including embedded cellular-based modems. NimbeLink’s products, including its cellular modems, can be used to connect devices and products to the Internet via a cellular network, especially smart devices and “Internet of Things” (“IoT”) devices. Cellular modems are particularly useful where Wi-Fi is unavailable.

9. NimbeLink’s co-founder, Kurt Larson, and his co-inventor, Christopher Elmquist, invented and designed a line of pluggable cellular modems—products designed to be plugged into existing devices to provide ready-made cellular access—called Skywire™ modems. One of the advantages of the Skywire™ product is its small size: it

is the smallest such pluggable cellular modem on the market. NimbeLink was able to make the Skywire™ product smaller by layering the printed circuit board to which the modem is attached. A photo of a Skywire™ modem appears below:



10. One feature of NimbeLink's design of the Skywire™ product is that it offers a high-powered cellular modem in a much smaller configuration than was previously possible. Prior pluggable cellular modems were approximately the size of a dollar bill.

11. NimbeLink's miniaturization of the cellular modem was not straightforward. Cellular devices, unlike other wireless devices, are designed to transmit across long distances and are relatively high-powered. NimbeLink had to design the components to meet the power requirements for cellular products and the certification requirements for cellular carriers and do so in a cost-effective manner. NimbeLink's resulting Skywire™ product is small enough to meet the requirements of IoT device manufacturers, yet has sufficient power to be able to transmit and receive signals over long distances.

12. To protect their intellectual property, the inventors filed U.S. Provisional Patent Application No. 61/936,615 (“the ‘615 Provisional”) on February 6, 2014, which described space-efficient cellular modems such as the Skywire™ product.

13. Subsequently, the inventors filed U.S. Patent Application No. 14/616,118, which claimed priority to the ‘615 Provisional. That application issued as U.S. Patent No. 9,497,570 B2 (“the ‘570 Patent”) on November 15, 2016. A true and correct copy of the ‘570 Patent is attached hereto as Exhibit A.

14. On November 14, 2016, the inventors filed a continuation application claiming priority to the ‘570 Patent, U.S. Patent Application No. 15/350,205. The ‘205 Application issued on December 5, 2017, as U.S. Patent No. 9,838,066 (“the ‘066 Patent”). A true and correct copy of the ‘066 Patent is attached hereto as Exhibit B.

15. NimbeLink holds all right, title, and interest in the ‘570 and ‘066 Patents pursuant to an assignment from the inventors.

## **II. NIMBELINK’S NEGOTIATIONS WITH DIGI AND DISCLOSURE TO DIGI OF CONFIDENTIAL INFORMATION PURSUANT TO NON-DISCLOSURE AGREEMENTS**

16. In the Spring of 2015, while the application for the ‘570 Patent was pending, Digi approached NimbeLink and requested NimbeLink’s assistance with the development of a product that would incorporate the Skywire™ product.

17. NimbeLink and Digi entered into a non-disclosure agreement on June 18, 2015 (the “2015 NDA”). A true and correct copy of the 2015 NDA is attached hereto as Exhibit C.

18. Digi subsequently expressed an interest in acquiring NimbeLink, and to that end asked NimbeLink to educate Digi regarding the Skywire™ product, NimbeLink's certification process, the market for the Skywire™ product, and NimbeLink's understanding of the market opportunities and basic business strategies.

19. The parties' discussions continued through January 2016. In December 2015, NimbeLink met twice in person with Digi executives and employees to discuss the Skywire™ product. In part, NimbeLink addressed Digi's skepticism regarding the viability of the Skywire™ product. In addition to providing Digi with technical information regarding its products, NimbeLink disclosed to Digi, pursuant to the 2015 NDA, detailed business and market strategy information that underlies the market success of the Skywire™ product. This information was confidential to NimbeLink and not publicly known, had value to NimbeLink as a result of its confidentiality, and NimbeLink took reasonable steps to protect the confidentiality of the information.

20. In January 2016, Digi informed NimbeLink that it no longer had interest in acquiring NimbeLink.

21. Digi and NimbeLink continued to discuss the potential licensing of the Skywire™ product and related intellectual property by Digi after January 2016. These discussions continued through July 2016, when the negotiations ended without any license agreement.

22. In late 2016, Digi again expressed interest in acquiring NimbeLink. In furtherance of that goal, Digi requested financial and market information from NimbeLink, including detailed financial information about the Skywire™ product and

information about the market for that product. The parties entered into a second non-disclosure agreement on November 28, 2016 (the “2016 NDA”). NimbeLink subsequently provided to Digi pursuant to the 2016 NDA the detailed market and financial information that it had requested.

23. Digi ultimately did not acquire NimbeLink.

### **III. DIGI’S BREACHES OF THE 2015 NDA AND THE 2016 NDA**

24. The 2015 NDA is valid and enforceable.

25. Under the terms of the 2015 NDA, Proprietary Information of the disclosing party could only be used by the receiving party for the purpose of exchanging information on product design.

26. Pursuant to the terms of the 2015 NDA, NimbeLink provided to Digi Proprietary Information regarding financial and marketing information.

27. During the term of the 2015 NDA, Digi used NimbeLink’s Proprietary Information for non-permitted uses, including for the purposes of developing its own cellular modem products and entering the market with those products.

28. Digi’s non-permitted uses of NimbeLink’s Proprietary Information constitute a breach of the 2015 NDA.

29. As a result of Digi’s breaches of the 2015 NDA, NimbeLink suffered foreseeable damages, including lost sales and profits on its Skywire™ product.

30. The 2016 NDA is valid and enforceable.

31. Under the terms of the 2016 NDA, Proprietary Information of the disclosing party could only be used by the receiving party for the purpose of evaluating the possibility of the acquisition by Digi of NimbeLink.

32. Pursuant to the terms of the 2016 NDA, NimbeLink provided to Digi confidential financial and marketing information.

33. During the term of the 2016 NDA, Digi used NimbeLink's confidential information for non-permitted uses, including for the purposes of developing its own cellular modem products and entering the market with those products.

34. Digi's non-permitted uses of NimbeLink's confidential information constitute a breach of the 2016 NDA.

35. As a result of Digi's breaches of the 2016 NDA, NimbeLink suffered foreseeable damages, including lost sales and profits on its Skywire™ product.

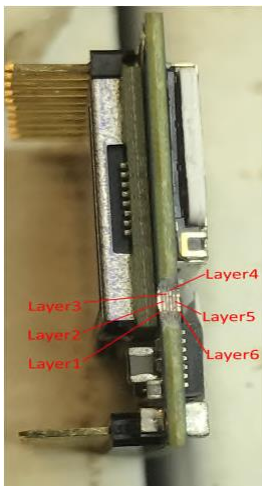
#### **IV. DIGI'S INFRINGEMENT OF NIMBELINK'S PATENTS**

36. In January 2017, Digi announced the introduction of its XBee® Cellular modem, a device that is nearly identical to NimbeLink's Skywire™ product. Over the next several years, Digi expanded its XBee® Cellular modem product line, offering several additional products that are compatible with various cellular communications standards. These products include the Digi XBee Cellular 3G, Digi XBee Cellular Cat 1 for Verizon, Digi XBee Cellular Cat 1 for AT&T, Digi XBee 3 Cellular LTE-M/NB-IoT, and Digi XBee 3 Cellular LTE Cat 1, and substantially similar products (the "Accused Products").

37. In deciding to develop, manufacture, and sell the Accused Products, and in formulating its market strategies for the Accused Products, Digi used, without authorization, the confidential information that NimbeLink had provided to Digi pursuant to the 2015 NDA and the 2016 NDA. These unauthorized uses of NimbeLink’s confidential information constituted breaches of the 2015 NDA and the 2016 NDA.

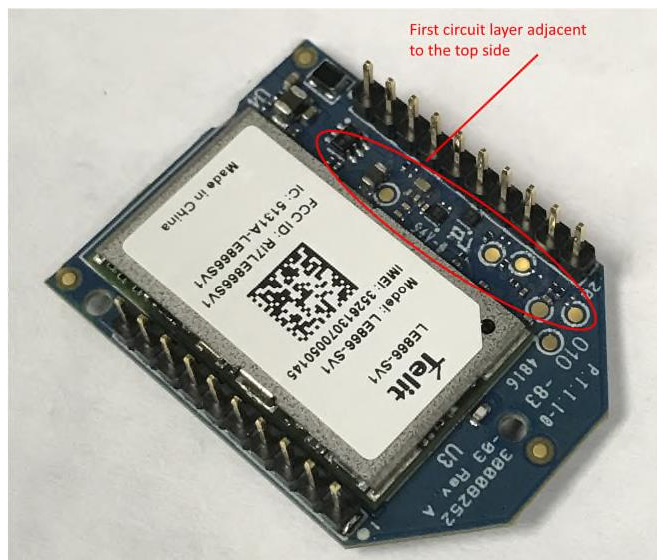
38. Each of the Accused Products meet every limitation of at least Claim 1 of the ‘570 Patent either literally or under the doctrine of equivalents in substantially the same way. One example of such infringement is provided in the chart below.

39. The following chart provides a non-limiting example of the infringement of Claim 1 of the ‘570 Patent by one of the Accused Products, a Digi XBee Cellular LTE Cat 1 Embedded Modem:

<p>1. A space-efficient cellular modem device for machine-to-machine communications, the modem device comprising:</p>	<p>The Digi XBee Cellular Modem is the “smallest end-device certified cellular modem.” <i>See</i> Digi website.</p>
<p>a multi-layer printed circuit board defining a top side and a bottom side and including a first circuit layer adjacent the top side, a second circuit layer adjacent the bottom side, a ground plane layer, and a power plane layer, the ground and power plane layers located between the first and second circuit layers;</p>	<p>The Digi XBee Cellular Modem is a multi-layer printed circuit board with a top side and a bottom side:</p> 



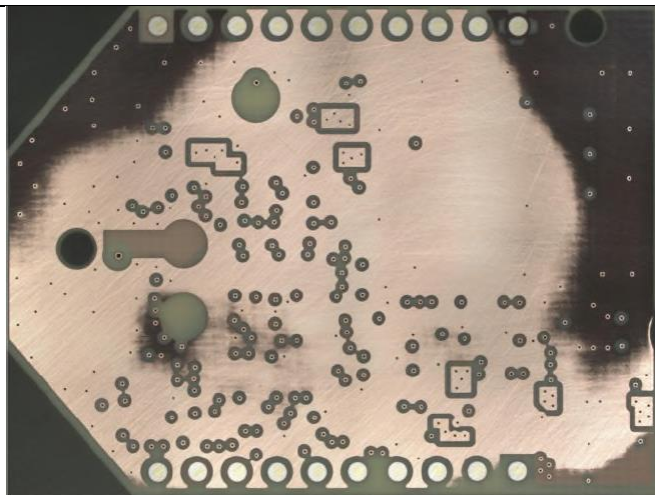
The first circuit layer is adjacent the top side:



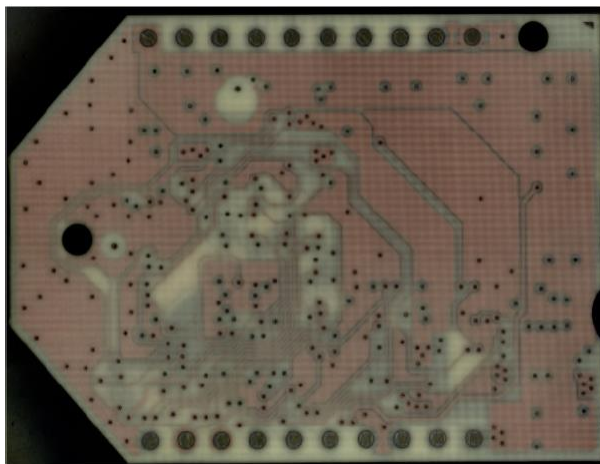
A second circuit layer is adjacent the bottom side:



A ground plane layer is between the first and second layers:

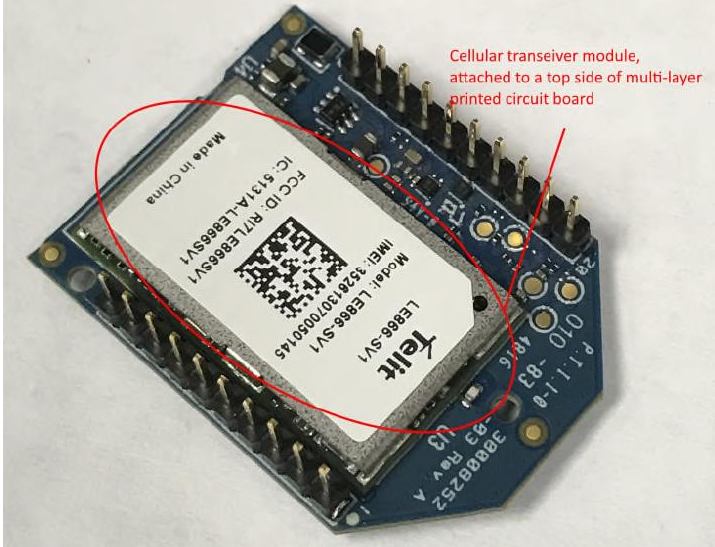
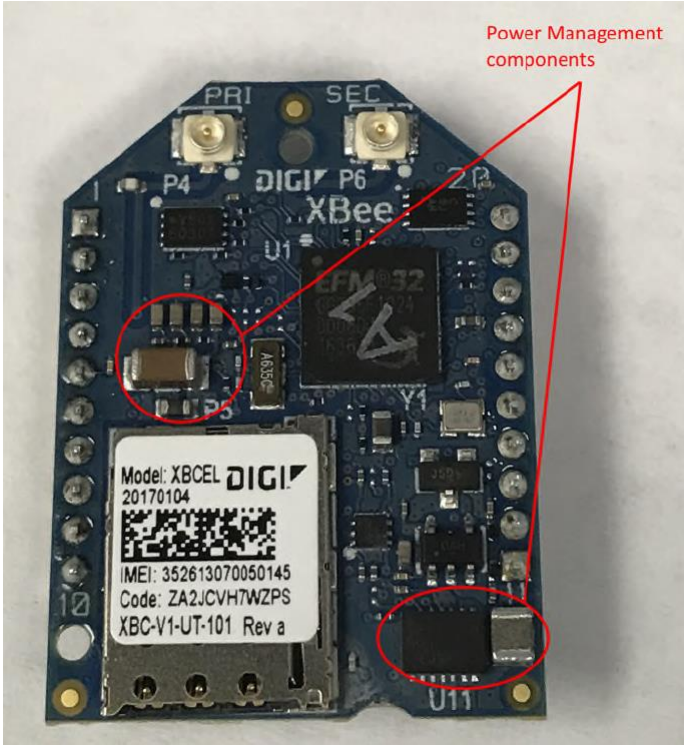


And a power plane layer is also located between the first and second circuit layers:



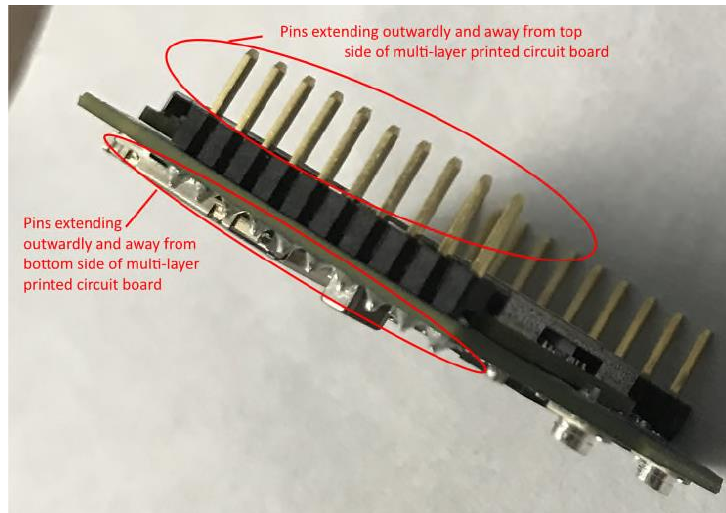
a cellular transceiver module configured to communicate over a cellular wireless cellular network, the cellular transceiver module comprising a processor and attached to a top side of the multi-layer printed circuit board;

The Digi XBee Cellular Modem has a cellular transceiver module with a processor attached to the top side of the multi-layer printed circuit board:

	 <p>Cellular transceiver module, attached to a top side of multi-layer printed circuit board</p>
<p>electrical power-management components attached to the multilayer printed circuit board, the power-management components in electrical communication with the cellular transceiver module;</p>	<p>The Digi XBee Cellular Modem has electrical power management components attached to the multi-layer printed circuit board and in electrical communication with the cellular transceiver module:</p>  <p>Power Management components</p>
<p>a first plurality of electrically conductive pins in electrical connection with the cellular</p>	<p>The Digi XBee Cellular Modem has a first plurality of electrically conductive pins in electrical connection with the cellular transceiver module and aligned</p>

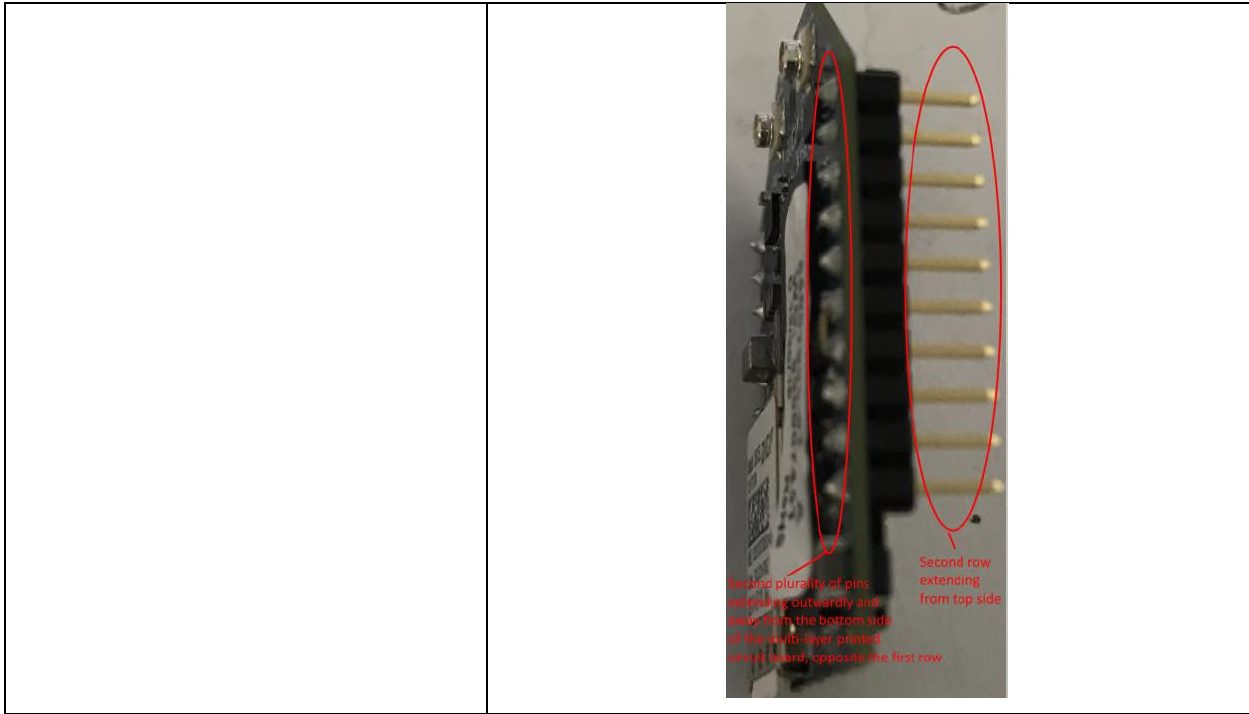
transceiver module and aligned along a first pin axis to form a first row of pins, each of the first plurality of pins extending outwardly and away from the bottom side of the multi-layer printed circuit board;

along a first pin axis to form a first row of pins, each of the first plurality of pins extending outwardly and away from the bottom side of the multi-layer printed circuit board:



a second plurality of electrically conductive pins in electrical connection with the cellular transceiver module and aligned along a second pin axis to form a second row of pins, each of the second row of pins extending outwardly and away from the bottom side of the multi-layer printed circuit board, the second row of pins located opposite the first row of pins; and

The Digi XBee Cellular Modem has a second plurality of electrically conductive pins in electrical connection with the cellular transceiver module and aligned along a second pin axis to form a second row of pins, each of the second row of pins extending outwardly and away from the bottom side of the multi-layer printed circuit board, the second row of pins located opposite the first row of pins:



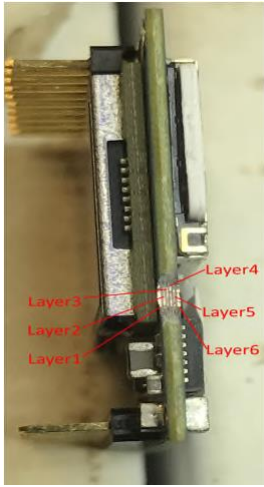
a communications port in electrical communication with the cellular transceiver module, the communications port configured to receive and transmit communication signals over the cellular wireless network.

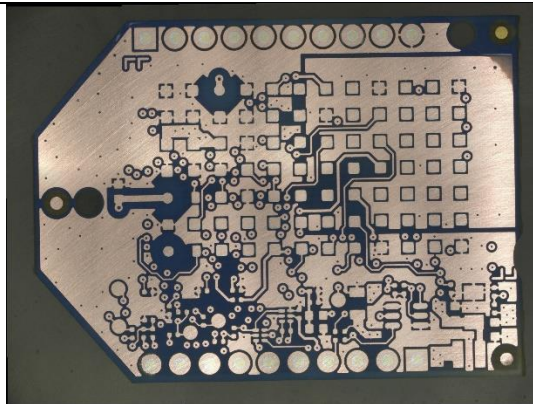
The Digi XBee Cellular Modem has a communications port in electrical communication with the cellular transceiver module, the communications port configured to receive and transmit communication signals over the cellular wireless network.



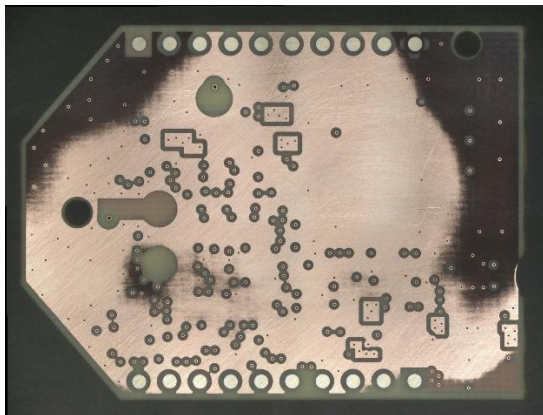
40. Each of the Accused Products meet every limitation of at least Claim 1 of the ‘066 Patent either literally or under the doctrine of equivalents in substantially the same way. One example of such infringement is provided in the chart below.

41. The following chart provides a non-limiting example of the infringement of Claim 1 of the ‘066 Patent by one of the Accused Products, a Digi XBee Cellular LTE Cat 1 Embedded Modem:

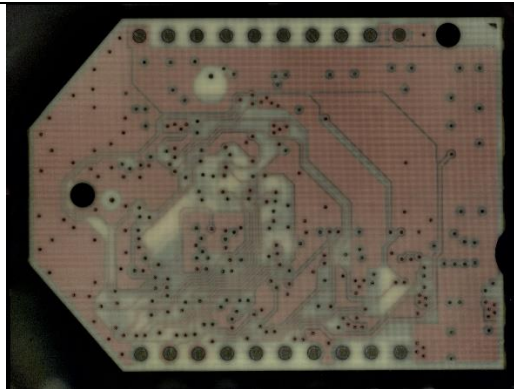
<p>1. A space-efficient cellular modem device for machine-to-machine communications, the modem device comprising:</p>	<p>The Digi XBee Cellular Modem is the “smallest end-device certified cellular modem.” <i>See</i> Digi website.</p>
<p>a multi-layer printed circuit board defining a first side and a second side and including at least four layers, the four layers including a first layer including one or more circuits, a second layer including a ground plane, a third layer including a power plane, and a fourth layer including one or more circuits, wherein the first layer is soldermasked to form the first side of the multi-layer printed circuit board, the second layer is between the first layer and the fourth layer, the third layer is between the first layer and the fourth layer, and the fourth layer is soldermasked to form the second side of the multi-layer printed circuit board;</p>	<p>The Digi XBee Cellular Modem is a multi-layer printed circuit board defining a first side and a second side and including at least four layers:</p>  <p>The Digi XBee Cellular Modem includes a first layer having one or more circuits. The first layer is labeled “Layer 1” in the side-view photo above and has one or more circuits:</p>



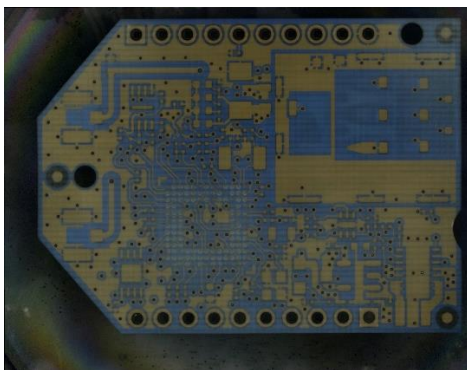
The Digi XBee Cellular Modem includes a second layer including a ground plane. The second layer is labeled “Layer 2” in the side-view photo above and is shown below:



The Digi XBee Cellular Modem includes a third layer including a power plane. The third layer is labeled “Layer 3” in the side-view photo above and is show below:



The Digi XBee Cellular Modem includes a fourth layer including one or more circuits. The fourth layer is labeled “Layer 6” in the side-view photo above and is shown below:

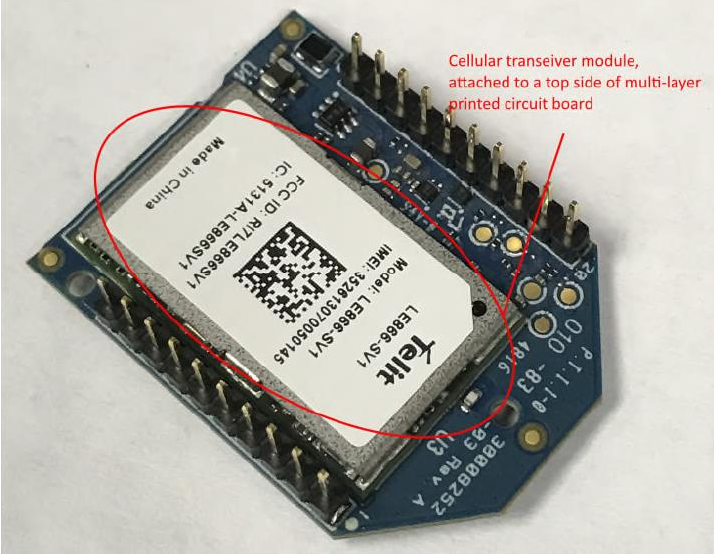


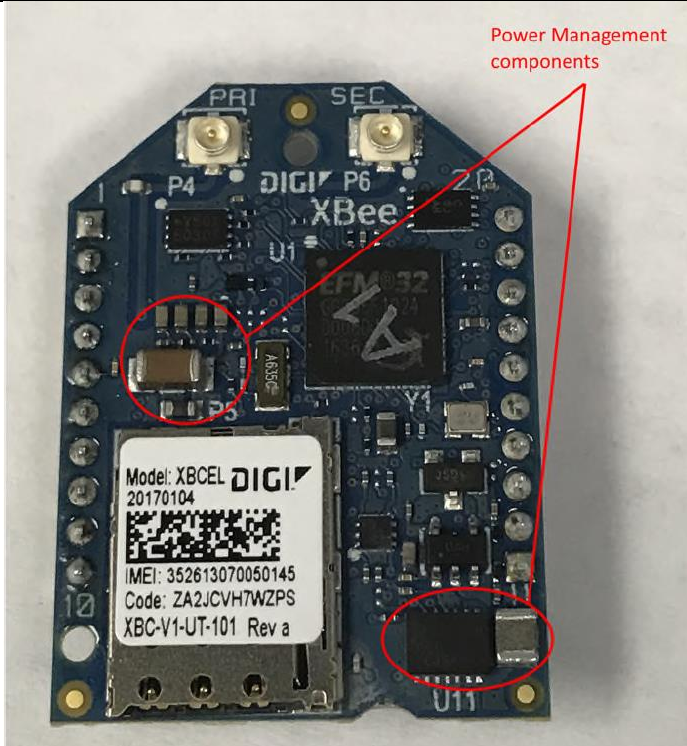
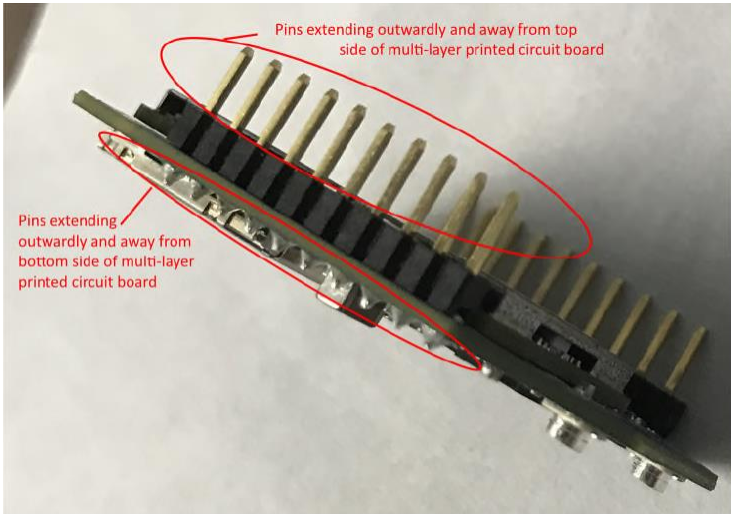
The first layer of the Digi XBee Cellular Modem is soldermasked to form the first side of the multi-layer printed circuit board. As shown above, the first layer is “Layer 1” and forms the first side of the PCB.

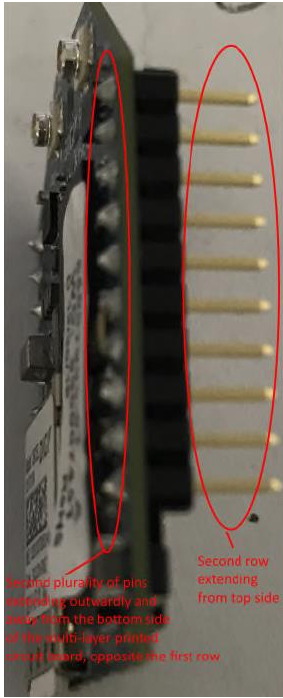
The second layer of the Digi XBee Cellular Modem is between the first layer and the fourth layer. As shown above, the second layer is “Layer 2” and is between the first layer and the fourth layer (Layer 6).

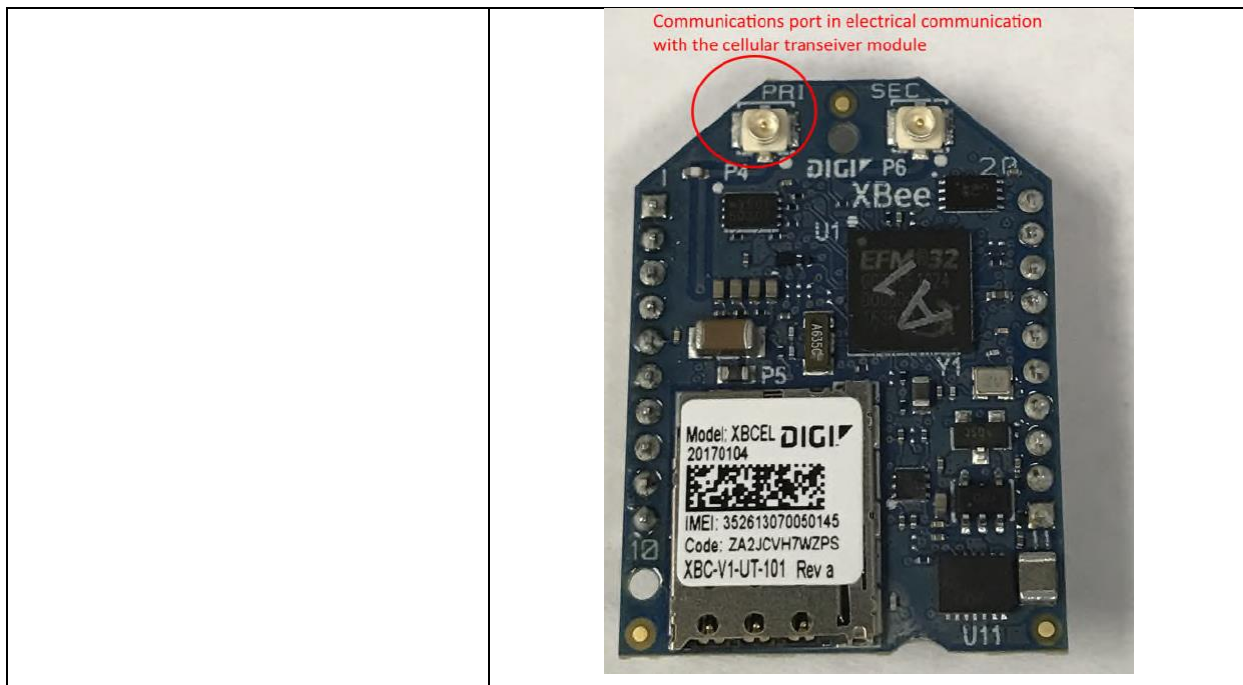
The third layer of the Digi XBee Cellular Modem is between the first layer and the fourth layer. As shown above, the third layer is “Layer 3” and is between the first layer and the fourth layer (Layer 6).



	<p>The fourth layer of the Digi XBee Cellular Modem is soldermasked to form the second side of the multi-layer printed circuit board. As shown above the fourth layer is “Layer 6” and forms the second side of the PCB.</p>
<p>a cellular transceiver module configured to communicate over a cellular wireless network, the cellular transceiver module comprising a processor and attached to the first side of the multi-layer printed circuit board;</p>	<p>The Digi XBee Cellular Modem has a cellular transceiver module that is configured to communicate over a cellular wireless network. It comprises a processor and is attached to the first side of the multi-layer PCB:</p> 
<p>electrical power-management components attached to the multi-layer printed circuit board, the power-management components in electrical communication with the cellular transceiver module;</p>	<p>The Digi XBee Cellular Modem has electrical power-management components attached to the multi-layer printed circuit board. The power-management components are in electrical communication with the cellular transceiver module:</p>

	 <p style="color: red; text-align: right;">Power Management components</p>
<p>a first plurality of electrically-conductive pins aligned along a first pin axis to form a first row of pins, each of the first plurality of pins extending outwardly and away from the multi-layer printed circuit board, one or more of the first plurality of electrically-conductive pins in electrical connection with the cellular transceiver module and one or more of the first plurality of electrically-conductive pins in electrical connection with the electrical power-management components;</p>	<p>The Digi XBee Cellular Modem has a first plurality of electrically-conductive pins aligned along a first pin axis to form a first row of pins, each of the first plurality of pins extending outwardly and away from the multi-layer printed circuit board. The pins are in electrical connection with the cellular transceiver module and with the electrical power-management components:</p>  <p style="color: red; text-align: center;">Pins extending outwardly and away from top side of multi-layer printed circuit board</p> <p style="color: red;">Pins extending outwardly and away from bottom side of multi-layer printed circuit board</p>

<p>a second plurality of electrically-conductive pins aligned along a second pin axis to form a second row of pins, each of the second plurality of pins extending outwardly and away from the multi-layer printed circuit board, the second row of pins located opposite the first row of pins; and</p>	<p>The Digi XBee Cellular Modem has a second plurality of electrically-conductive pins aligned along a second pin axis to form a second row of pins, each of the second plurality of pins extending outwardly and away from the multi-layer printed circuit board. The second row of pins is located opposite the first row of pins:</p> 
<p>a communications port in electrical communication with the cellular transceiver module, the communications port configured to receive and transmit communication signals over the cellular wireless network.</p>	<p>The Digi XBee Cellular Modem has a communications port in electrical communication with the cellular transceiver module, the communications port configured to receive and transmit communication signals over the cellular wireless network.</p>



42. Digi had actual knowledge of the Patents-in-Suit. Digi had actual knowledge of the ‘570 Patent at least as early as February 7, 2017, when counsel for NimbeLink sent a cease and desist letter to Digi and identified the ‘570 Patent. Digi had actual knowledge of the ‘066 Patent at least as early as July 19, 2022, when counsel for NimbeLink sent a cease and desist letter to Digi and identified the ‘066 Patent.

43. Despite its actual knowledge of the ‘570 and ‘066 Patents, Digi nonetheless made, and continues to make, use, sell, and/or offer to sell its infringing products.

44. As a result of Digi’s marketing and sales of its infringing products, NimbeLink lost customers, sales, and profits.

**COUNT I**

**Infringement of U.S. Patent No. 9,497,570**

45. NimbeLink realleges and incorporates by reference the allegations set forth in paragraphs 1-44 of this Complaint.

46. NimbeLink owns all right, title, and interest in U.S. Patent No. 9,497,570, entitled Embedded Wireless Modem, which issued on November 15, 2016.

47. The '570 Patent is valid, subsisting, and in full force and effect.

48. Digi has infringed, and is directly, knowingly and actively infringing at least one claim of the '570 Patent, including, without limitation, Claim 1, through its sale of its Accused Products. Digi continues to infringe at least claim 1 of the '570 Patent by making, using, selling, and/or importing the Accused Products.

49. Digi has induced infringement of at least one claim of the '570 Patent, including, without limitation, Claim 1. Digi's customers for its Accused Products directly infringe the '570 Patent by using the Accused Products; Digi knew of the '570 Patent, and nevertheless knowingly encouraged and induced its customers to infringe the '570 Patent.

50. Digi's infringing activities have caused and will continue to cause loss and injury to NimbeLink, for which NimbeLink is entitled to monetary damages and injunctive relief.

51. NimbeLink provided Digi with actual notice of its infringement of the '570 Patent.

52. Upon information and belief, Digi's infringement was and continues to be intentional, knowing, willful, deliberate, without license or justification, and with full knowledge of NimbeLink's patent rights.

53. Because of Digi's willful conduct, NimbeLink is entitled to recover three times its damages, as well as lost profits, costs, attorneys' fees and investigative fees.

54. By infringing NimbeLink's patents, Digi has caused, and will continued to cause, NimbeLink irreparable injury and damage for which NimbeLink has no adequate remedy at law, unless and until this Court enjoins Digi.

55. NimbeLink is entitled to preliminary and permanent injunctive relief to prevent further infringement of its Patents.

## **COUNT II**

### **Infringement of U.S. Patent No. 9,838,066**

56. NimbeLink realleges and incorporates by reference the allegations set forth in paragraphs 1-55 of this Complaint.

57. NimbeLink owns all right, title, and interest in U.S. Patent No. 9,838,066, entitled Embedded Wireless Modem, which issued on December 5, 2017.

58. The '066 Patent is valid, subsisting, and in full force and effect.

59. Digi has infringed, and is directly, knowingly and actively infringing at least one claim of the '066 Patent, including, without limitation, Claim 1, through its sale of its Accused Products. Digi continues to infringe at least claim 1 of the '066 Patent by making, using, selling, and/or importing the Accused Products.

60. Digi has induced infringement of at least one claim of the '570 Patent, including, without limitation, Claim 1. Digi's customers for its Accused Products directly infringe the '570 Patent by using the Accused Products; Digi knew of the '570 Patent, and nevertheless knowingly encouraged and induced its customers to infringe the '570 Patent.

61. Digi's infringing activities have caused and will continue to cause loss and injury to NimbeLink, for which NimbeLink is entitled to monetary damages and injunctive relief.

62. NimbeLink provided Digi with actual notice of its infringement of the '066 Patent.

63. Upon information and belief, Digi's infringement was and continues to be intentional, knowing, willful, deliberate, without license or justification, and with full knowledge of NimbeLink's patent rights.

64. Because of Digi's willful conduct, NimbeLink is entitled to recover three times its damages, as well as lost profits, costs, attorneys' fees and investigative fees.

65. By infringing NimbeLink's patents, Digi has caused, and will continued to cause, NimbeLink irreparable injury and damage for which NimbeLink has no adequate remedy at law, unless and until this Court enjoins Digi.

66. NimbeLink is entitled to preliminary and permanent injunctive relief to prevent further infringement of its Patents.

**COUNT III**

**Breach of Contract**

67. NimbeLink realleges and incorporates by reference the allegations set forth in paragraphs 1-66 of this Complaint.

68. The 2015 NDA and the 2016 NDA (collectively, the “Agreements”) are valid and binding contracts between NimbeLink and Digi.

69. The Agreements imposed a continuing duty of non-disclosure and non-use on Digi.

70. Digi breached the Agreements by using NimbeLink’s confidential information when it developed and introduced to the market its XBee Cellular modem products.

71. Digi concealed its use of NimbeLink’s confidential information before it introduced its XBee Cellular modem products to the market.

72. Digi’s concealment of its use of NimbeLink’s confidential information constitutes fraudulent concealment.

73. Digi’s breaches of the Agreements have harmed NimbeLink in an amount to be determined at trial.

**COUNT IV**

**Unjust Enrichment**

74. NimbeLink realleges and incorporates by reference the allegations set forth in paragraphs 1-73 of this Complaint.



75. Digi has been unjustly enriched by its unlawful and unauthorized use of NimbeLink's confidential information.

76. Allowing Digi to maintain the benefit it obtained through the unlawful and unauthorized use of NimbeLink's confidential information would be unjust and unwarranted.

**PRAYER FOR RELIEF**

WHEREFORE, NimbeLink respectfully requests that the Court:

1. Enter judgment in favor of NimbeLink that the '570 and '066 Patents are valid and enforceable and infringed by Digi;
2. Enter preliminary and permanent injunctions enjoining Digi from infringing the '570 and '066 Patents or, alternatively, awarding NimbeLink ongoing royalties;
3. Award NimbeLink monetary relief, including but not limited to that available under 35 U.S.C. § 284;
4. Award NimbeLink compensatory and exemplary damages, but not less than a reasonable royalty, including allowance of multiplied damages based on Digi's willful infringement;
5. Enter judgment in favor of NimbeLink that the 2015 NDA and the 2016 NDA are valid and enforceable and were breached by Digi;
6. Award NimbeLink compensatory damages for Digi's breaches of the 2015 NDA and the 2016 NDA;
7. Award NimbeLink its costs incurred herein, including attorneys' fees for an exceptional case pursuant to 35 U.S.C. § 285;

8. Enter judgment requiring Digi to make restitution to remedy Digi's unjust enrichment; and

9. Enter judgment awarding NimbeLink such other and further relief as the Court may deem just and equitable.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, NimbeLink hereby demands a jury trial as to all issues so triable.

OF COUNSEL

(*pro hac vice* applications to be filed):

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Erin O. Dungan

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