

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

FLEET CONNECT SOLUTIONS LLC,

Plaintiff,

v.

PENSKE AUTOMOTIVE GROUP, INC.,  
PENSKE TRUCK LEASING CO., L.P., and  
PENSKE LOGISTICS LLC,

Defendants.

Civil Action No. 2:23-cv-00210

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Fleet Connect Solutions LLC (“FCS” or “Plaintiff”) files this complaint against Penske Automotive Group, Inc., Penske Truck Leasing Co., L.P., and Penske Logistics LLC, (collectively, “Penske” or “Defendants”) alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action to stop Defendants’ infringement of the following United States Patents (the “Asserted Patents”) issued by the United States Patent and Trademark Office (“USPTO”), a copy of which are attached hereto as **Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, and Exhibit G:**

	<b>U.S. Patent No.</b>	<b>Title</b>
A.	6,429,810	Integrated Air Logistics System
B.	7,206,837	Intelligent Trip Status Notification
C.	6,549,583	Optimum Phase Error Metric For OFDM Pilot Tone Tracking In Wireless LAN
D.	7,058,040	Channel Interference Reduction
E.	7,742,388	Packet Generation Systems and Methods
F.	7,260,153	Multi Input Multi Output Wireless Communication Method and Apparatus Providing Extended Range and Extended Rate Across Imperfectly Estimated Channels
G.	6,647,270	Vehicle Talk

2. FCS seeks injunctive relief and monetary damages.

### **PARTIES**

3. Plaintiff is a limited liability company formed under the laws of Texas with its registered office address located in Austin, Texas (Travis County).

4. Penske Automotive Group, Inc., (“Penske Automotive”) is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 2555 S. Telegraph Road, Bloomfield, Michigan 48302-0974. Penske Automotive can be served at its registered agent for service C T Corporation System at 1999 Bryan St., Suite 900, Dallas, Texas 75201.

5. Penske Truck Leasing Co., L.P. (“Penske Truck Leasing”) is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 2675 Morgantown Road, Reading, Pennsylvania 19607. Penske Truck Leasing can be served at its registered agent for service Corporation Service Company d/b/a CSC - Lawyers Incorporated at 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

6. Penske Logistics LLC (“Penske Logistics”) is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 2675 Morgantown Road, Reading, Pennsylvania 19607. Penske Logistics can be served at its registered agent for service Corporation Service Company d/b/a CSC - Lawyers Incorporated at 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

### **JURISDICTION AND VENUE**

7. FCS repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

8. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–285, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a).

9. Venue is proper against Defendants in this District pursuant to 28 U.S.C. § 1400(b) because they have maintained established and regular places of business in this District and have committed acts of patent infringement in this District at Texas Locations.

10. Defendants are subject to this Court’s specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute due at least to Defendants’ substantial business in this judicial district, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

11. Specifically, Defendants intend to do and do business in, have committed acts of infringement in, and continue to commit acts of infringement in this District directly, and offers their services, including those accused of infringement here, to customers and potential customers located in Texas, including in this district.


12. Defendants maintain regular and established places of business in this District. For example, Defendants own, operate, manage, conduct business, and direct and control the operations and employees of facilities at several locations in this District, including, but not limited to, facilities at the following addresses: (1) 5001 K Ave., Plano, TX 75074; (2) 1224 N Central Expy., Plano, Texas 75074; and 4600 State Highway 121, Plano, Texas 75024. *See* <https://www.pensketruckrental.com/locations/us/texas/>.

13. Defendants commit acts of infringement in this District, including, but not limited to, use of the Accused Products identified below.

## THE ACCUSED PRODUCTS

14. FCS repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

15. Based upon public information, Defendants own, operate, advertise, and/or control products and services that provide and/or utilize infringing systems and/or methods manufactured by Zonar Systems, Inc. (“Zonar”).




Zonar and Penske, keeping your fleet moving.

**A partnership designed to outperform expectations.**

The name Penske is synonymous with unmatched full-service leasing and maintenance solutions, reliability and innovation. The name Zonar is synonymous with industry-leading fleet technology, including deep vehicle data.

For your fleet to run at its finest, each vehicle needs to be at its best, including the temporary ones. Through our partnership, renting or leasing Penske vehicles outfitted with Zonar technology can turn your fleet into an efficient, high-performing machine.

Penske vehicles equipped with a Zonar telematics control unit (TCU) (/solutions/v4-telematics-device/) pull rich diagnostic data directly from the vehicle and deliver it to Penske professionals, who use that information to keep each vehicle in top condition through better maintenance.



**Penske professionals put Zonar telematics data to good use.**

*See Exhibit H.*

16. Defendants use, cause to be used, sell, offer for sale, provide, supply, or distribute one or more fleet management and tracking solutions utilizing infringing systems and/or methods manufactured by Zonar, including, but not limited to, the Zonar telematics control unit and the Zonar Ground Traffic Control platform (the “Accused Products”).

## Request repairs for defects found during inspections.

We've integrated our patented electronic verified inspection reporting (EVIR<sup>®</sup>) (/solutions/evir-electronic-verified-inspection-reporting/) system through Penske's maintenance database to streamline defect identification and resolution. Using EVIR to conduct pre- and post-trip inspections uncover issues before they sideline your vehicle or incur a CSA violation. When defects are found, repair requests can automatically be sent from our EVIR system to Penske's maintenance system.

Through this integration, Penske professionals:

- prioritize critical issues and defects
- complete necessary repairs
- clear defects in near real time

Once the defects are resolved, the information automatically updates in your inspection records in Ground Traffic Control<sup>®</sup> (/solutions/ground-traffic-control/). Faster identification, faster resolution, less paperwork to shuffle. Plus, peace of mind knowing your Penske vehicles are well maintained and less vulnerable to CSA violations.

See **Ex. H** and **Exhibit I**.

17. Defendants use the Accused Products to perform wireless communications and methods associated with performing and/or implementing wireless communications including, but not limited to, wireless communications and methods pursuant to various communication

standards, protocols, and implementations, including, but not limited to, LTE, Bluetooth/IEEE 802.15, and IEEE 802.11 protocols and various subsections thereof (*e.g.*, 802.11ac and 802.11n).

18. Defendants also advertise that “Penske vehicles equipped with a Zonar telematics control unit (TCU) pull rich diagnostic data directly from the vehicle and deliver it to Penske professionals, who use that information to keep each vehicle in top condition through better maintenance.” **Ex. H.**

19. Defendants further advertise that “The Penske 24/7 Roadside Assistance team uses the near real-time diagnostic data pulled from Zonar TCUs to identify and prioritize issues. More insight for them, more uptime for you.” **Ex. H.**

20. The wireless communications perform and/or implemented by the Accused Products, among other things, transmit data over various media, evaluate channels of multiple-input-multiple output (MIMO) wireless communications systems, compute time slot channels, generate packets for network transmissions, perform or cause to be performed error estimation in orthogonal frequency division multiplexed (“OFDM”) receivers, and various methods of processing OFDM symbols.

#### **COUNT I: INFRINGEMENT OF U.S. PATENT NO. 6,429,810**

21. FCS repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

22. FCS owns all substantial rights, interest, and title in and to U.S. Patent No. 6,429,810 (the “’810 patent”), including the sole and exclusive right to prosecute this action and enforce the ’810 patent against infringers and to collect damages for all relevant times.

23. The USPTO duly issued the '810 patent on August 6, 2002, after full and fair examination of Application No. 09/774,547 which was filed January 31, 2001. A true and correct copy of the '810 patent is attached as **Ex. A**.

24. The claims of the '810 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of logistics and tracking systems.

25. The written description of the '810 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

26. FCS or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '810 patent.

27. Defendants have directly infringed one or more claims of the '810 patent by manufacturing, providing, supplying, using, distributing, selling, or offering to sell the Accused Products.

28. Defendants have directly infringed, either literally or under the doctrine of equivalents, at least claim 1 of the '810 patent. For example, Defendants perform a method of providing container status information to a user. The method includes attaching an electronic communications unit to a shipping container; generating a transaction identification code, wherein said transaction identification code is specific to said shipping container and specific to at least one user transaction; initiating a status inquiry utilizing said transaction identification code,

wherein said user performs said initiating step; receiving said status inquiry by a ground communications system; transmitting said status inquiry to said electronic communications unit by said ground communications system; obtaining a status information response by said electronic communications unit; transmitting said status information response to said ground communications system by said electronic communications unit; and forwarding said status information response to said user by said ground communications system.

29. FCS has been damaged as a result of the infringing conduct by Defendants alleged above. Defendants are liable to FCS in an amount that compensates it for such infringements, which by law cannot be 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. 7,206,837**

30. FCS repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

31. FCS owns all substantial rights, interest, and title in and to U.S. Patent No. 7,206,837 (the “’837 patent”), including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

32. The USPTO duly issued the ’837 patent on April 17, 2007, after full and fair examination of Application No. 10/287,151 which was filed November 4, 2002. A true and correct copy of the ’837 patent is attached as **Ex. B**.

33. The claims of the ’837 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of voice and data communications systems.



34. The written description of the '837 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

35. FCS or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '837 patent.

36. Defendants have directly infringed and continue to directly infringe one or more claims of the '837 patent by manufacturing, providing, supplying, using, distributing, selling, or offering to sell the Accused Products.

37. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claim 1 of the '837 patent. For example, Defendants provide a method comprising receiving a location of a mobile communications device that is in transit to a destination, estimating the time-of-arrival bounds for said mobile communications device at said destination for a confidence interval based on said location and at least one historical travel time statistic, and sending the time-of-arrival bounds to said mobile communications device.

38. Defendants have indirectly infringed and continue to indirectly infringe the '837 patent by inducing others to directly infringe the '837 patent. Defendants have induced and continue to induce customers and end-users, including, but not limited to, Defendants' customers, employees, partners, or contractors, to directly infringe, either literally or under the doctrine of equivalents, the '837 patent by providing or requiring use of the Accused Products. Defendants have taken active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Products in a manner that infringes one or more claims of the '837

patent, including, for example, claim 1. Such steps by Defendants have included, among other things, advising or directing customers, personnel, contractors, or end-users to use the Accused Products in an infringing manner; advertising and promoting the use of the Accused Products in an infringing manner; or distributing instructions that guide users to use the Accused Products in an infringing manner. Defendants have been performing these steps, which constitute induced infringement with the knowledge of the '837 patent and with the knowledge that the induced acts constitute infringement. Defendants have been aware that the normal and customary use of the Accused Products by others would infringe the '837 patent. Defendants' inducement is ongoing.

39. Defendants have indirectly infringed and continue to indirectly infringe by contributing to the infringement of the '837 patent. Defendants have contributed and continue to contribute to the direct infringement of the '837 patent by its customers, personnel, and contractors. The Accused Products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '837 patent, including, for example, claim 1. The special features constitute a material part of the invention of one or more of the claims of the '837 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

40. Defendants had knowledge of the '837 patent at least as of the date when it was notified of the filing of this action.

41. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of FCS's patent rights.

42. Defendants' actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendants.

43. Defendants' infringement of the '837 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of FCS's rights under the patent.

44. FCS has been damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to FCS in an amount that compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

45. FCS has suffered irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. FCS has and will continue to suffer this harm by virtue of Defendants' infringement of the '837 patent. Defendants' actions have interfered with and will interfere with FCS's ability to license technology. The balance of hardships favors FCS's ability to commercialize its own ideas and technology. The public interest in allowing FCS to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

### **COUNT III: INFRINGEMENT OF U.S. PATENT NO. 6,549,583**

46. FCS repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

47. FCS owns all substantial rights, interest, and title in and to U.S. Patent No. 6,549,583 (the "'583 patent"), including the sole and exclusive right to prosecute this action and enforce the '583 patent against infringers and to collect damages for all relevant times.

48. The USPTO duly issued the '583 patent on April 15, 2003, after full and fair examination of Application No. 09/790,429 which was filed February 21, 2001. A true and correct copy of the '583 patent is attached as **Ex. C**.

49. The claims of the '583 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include

inventive components that improve upon the function and operation of preexisting error estimation methods.

50. The written description of the '583 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

51. FCS or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '583 patent.

52. Defendants have directly infringed one or more claims of the '583 patent by manufacturing, providing, supplying, using, distributing, selling, or offering to sell the Accused Products.

53. Defendants have directly infringed, either literally or under the doctrine of equivalents, at least claim 1 of the '583 patent.

54. For example, Defendants, using the Accused Products, performs a method of pilot phase error estimation in an orthogonal frequency division multiplexed (OFDM) receiver. The method includes determining pilot reference points corresponding to a plurality of pilots of an OFDM preamble waveform; and estimating an aggregate phase error of a subsequent OFDM data symbol relative to the pilot reference points using complex signal measurements corresponding to each of the plurality of pilots of the subsequent OFDM data symbol and the pilot reference points; wherein the estimating step comprises performing a maximum likelihood-based estimation using the complex signal measurements corresponding to each of the plurality of pilots of the subsequent OFDM data symbol and the pilot reference points.

55. FCS has been damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to FCS in an amount that compensates it for such infringements, which by law cannot be 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. 7,058,040**

56. FCS repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

57. FCS owns all substantial rights, interest, and title in and to U.S. Patent No. 7,058,040 (the "'040 patent"), including the sole and exclusive right to prosecute this action and enforce the '040 patent against infringers and to collect damages for all relevant times.

58. The USPTO duly issued the '040 patent on June 6, 2006, after full and fair examination of Application No. 09/962,718 which was filed September 21, 2001. A true and correct copy of the '040 patent is attached as **Ex. D**.

59. The claims of the '040 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of preexisting data transmission methods.

60. The written description of the '040 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

61. FCS or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '040 patent.

62. Defendants have directly infringed and continue to directly infringe the '040 patent by manufacturing, providing, supplying, using, distributing, selling, or offering to sell the Accused Products.

63. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claim 1 of the '040 patent. For example, Defendants, using the Accused Products, performs a method for data transmission over first and second media that overlap in frequency. The method includes computing one or more time division multiple access (TDMA) time-slot channels to be shared between the first and second media for data transmission; allocating one or more time-slot channels to the first medium for data transmission; allocating one or more of the remaining time-slot channels to the second medium for data transmission; and dynamically adjusting a number of timeslot channels assigned to one of the first and second media during the data transmission to remain within limits of a desired level of service.

64. Defendants have indirectly infringed and continue to indirectly infringe the '040 patent by inducing others to directly infringe the '040 patent. Defendants have induced and continue to induce customers and end-users, including, but not limited to, Defendants' customers, employees, partners, or contractors, to directly infringe, either literally or under the doctrine of equivalents, the '040 patent by providing or requiring use of the Accused Products. Defendants have taken active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Products in a manner that infringes one or more claims of the '040 patent, including, for example, claim 1. Such steps by Defendants have included, among other things, advising or directing customers, personnel, contractors, or end-users to use the Accused

Products in an infringing manner; advertising and promoting the use of the Accused Products in an infringing manner; or distributing instructions that guide users to use the Accused Products in an infringing manner. Defendants have been performing these steps, which constitute induced infringement with the knowledge of the '040 patent and with the knowledge that the induced acts constitute infringement. Defendants have been aware that the normal and customary use of the Accused Products by others would infringe the '040 patent. Defendants' inducement is ongoing.

65. Defendants have indirectly infringed and continue to indirectly infringe by contributing to the infringement of the '040 patent. Defendants have contributed and continue to contribute to the direct infringement of the '040 patent by its customers, personnel, and contractors. The Accused Products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '040 patent, including, for example, claim 1. The special features constitute a material part of the invention of one or more of the claims of the '040 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

66. Defendants had knowledge of the '040 patent at least as of the date when it was notified of the filing of this action.

67. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of FCS's patent rights.

68. Defendants' actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendants.

69. Defendants' infringement of the '040 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of FCS's rights under the patent.

70. FCS has been damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to FCS in an amount that compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

71. FCS has suffered irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. FCS has and will continue to suffer this harm by virtue of Defendants' infringement of the '040 patent. Defendants' actions have interfered with and will interfere with FCS's ability to license technology. The balance of hardships favors FCS's ability to commercialize its own ideas and technology. The public interest in allowing FCS to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

**COUNT V: INFRINGEMENT OF U.S. PATENT NO. 7,742,388**

72. FCS repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

73. FCS owns all substantial rights, interest, and title in and to U.S. Patent No. 7,742,388 (the "'388 patent"), including the sole and exclusive right to prosecute this action and enforce the '388 patent against infringers and to collect damages for all relevant times.

74. The USPTO duly issued the '388 patent on June 22, 2010, after full and fair examination of Application No. 11/185,665 which was filed July 20, 2005. A true and correct copy of the '388 patent is attached as **Ex. E**.

75. The claims of the '388 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of preexisting systems and methods of generating packets in a digital communications system.



76. The written description of the '388 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

77. FCS or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '388 patent.

78. Defendants have directly infringed and continue to directly infringe one or more claims of the '388 patent by manufacturing, providing, supplying, using, distributing, selling, or offering to sell the Accused Products.

79. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claim 1 of the '388 patent. For example, Defendants performs a method including generating a packet with a size corresponding to a protocol used for a network transmission, wherein the packet comprises a preamble having a first training symbol and a second training symbol. The method further includes increasing the size of the packet by adding subcarriers to the second training symbol of the packet to produce an extended packet, wherein a quantity of subcarriers of the second training symbol is greater than a quantity of subcarriers of the first training symbol; and transmitting the extended packet from an antenna.

80. Defendants have indirectly infringed and continue to indirectly infringe the '388 patent by inducing others to directly infringe the '388 patent. Defendants have induced and continue to induce customers and end-users, including, but not limited to, Defendants' customers, employees, partners, or contractors, to directly infringe, either literally or under the doctrine of equivalents, the '388 patent by providing or requiring use of the Accused Products. Defendants have taken

active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Products in a manner that infringes one or more claims of the '388 patent, including, for example, claim 1. Such steps by Defendants have included, among other things, advising or directing customers, personnel, contractors, or end-users to use the Accused Products in an infringing manner; advertising and promoting the use of the Accused Products in an infringing manner; or distributing instructions that guide users to use the Accused Products in an infringing manner. Defendants have been performing these steps, which constitute induced infringement with the knowledge of the '388 patent and with the knowledge that the induced acts constitute infringement. Defendants have been aware that the normal and customary use of the Accused Products by others would infringe the '388 patent. Defendants' inducement is ongoing.

81. Defendants have indirectly infringed and continue to indirectly infringe by contributing to the infringement of the '388 patent. Defendants have contributed and continue to contribute to the direct infringement of the '388 patent by its customers, personnel, and contractors. The Accused Products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '388 patent, including, for example, claim 1. The special features constitute a material part of the invention of one or more of the claims of the '388 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

82. Defendants had knowledge of the '388 patent at least as of the date when it was notified of the filing of this action.

83. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of FCS's patent rights.

84. Defendants' actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendants.

85. Defendants' infringement of the '388 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of FCS's rights under the patent.

86. FCS has been damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to FCS in an amount that compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

87. FCS has suffered irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. FCS has and will continue to suffer this harm by virtue of Defendants' infringement of the '388 patent. Defendants' actions have interfered with and will interfere with FCS's ability to license technology. The balance of hardships favors FCS's ability to commercialize its own ideas and technology. The public interest in allowing FCS to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

#### **COUNT VI: INFRINGEMENT OF U.S. PATENT NO. 7,260,153**

88. FCS repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

89. FCS owns all substantial rights, interest, and title in and to U.S. Patent No. 7,260,153 (the "'153 patent"), including the sole and exclusive right to prosecute this action and enforce the '153 patent against infringers and to collect damages for all relevant times.

90. The USPTO duly issued the '153 patent on August 21, 2007, after full and fair examination of Application No. 10/423,447, which was filed on April 28, 2003. A true and correct copy of the '153 patent is attached as **Ex. F**.

91. The claims of the '153 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of voice and data communications systems.

92. The written description of the '153 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

93. FCS or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '153 patent.

94. Defendants have directly infringed and continue to directly infringe one or more claims of the '153 patent by manufacturing, providing, supplying, using, distributing, selling, or offering to sell the Accused Products.

95. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claim 1 of the '153 patent. For example, the Accused Products used by Defendants perform a method for evaluating a channel of a multiple-input multiple-output ("MIMO") wireless communication system allowing two or more communication devices with multiple radiating elements to transmit parallel data sub-streams which defines a channel matrix metric of cross-talk signal-to-noise ("SNR") for the sub-streams, estimates the channel matrix metric, performs a singular value decomposition ("SVD") of the channel matrix metric estimate to calculate estimated channel singular values, and using the channel matrix metric and estimated channel singular values to calculate a crosstalk measure for the sub-streams.

96. Defendants have also indirectly infringed and continue to indirectly infringe the '153 patent by inducing others to directly infringe the '153 patent. Defendants have induced and continue to induce customers and end-users, including, but not limited to, Defendants' customers, employees, partners, or contractors, to directly infringe, either literally or under the doctrine of equivalents, the '153 patent by providing or requiring use of the Accused Products. Defendants have taken active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Products in a manner that infringes one or more claims of the '153 patent, including, for example, claim 1. Such steps by Defendants included, among other things, advising or directing personnel, contractors, or end-users to use the Accused Products in an infringing manner; advertising and promoting the use of the Accused Products in an infringing manner; or distributing instructions that guide users to use the Accused Products in an infringing manner. Defendants have been performing these steps, which constitute induced infringement with the knowledge of the '153 patent and with the knowledge that the induced acts constitute infringement. Defendants are aware that the normal and customary use of the Accused Products by others would infringe the '153 patent. Defendants' inducement is ongoing.

97. Defendants have indirectly infringed and continue to indirectly infringe by contributing to the infringement of the '153 patent. Defendants have contributed and continue to contribute to the direct infringement of the '153 patent by their customers, personnel, and contractors. The Accused Products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '153 patent, including, for example, claim 1. The special features constitute a material part of the invention of one or more of the claims of the '153 patent and are not staple articles of

commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

98. Defendants had knowledge of the '153 patent at least as of the date when it was notified of the filing of this action.

99. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others, including instructing its employees to not review the patents of others, and thus have been willfully blind of FCS's patent rights.

100. Defendants' actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendants.

101. Defendants' infringement of the '153 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of FCS's rights under the patent.

102. FCS has been damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to FCS in an amount that compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

103. FCS has suffered irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. FCS has and will continue to suffer this harm by virtue of Defendants' infringement of the '153 patent. Defendants' actions have interfered with and will interfere with FCS's ability to license technology. The balance of hardships favors FCS's ability to commercialize its own ideas and technology. The public interest in allowing FCS to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

**COUNT VII: INFRINGEMENT OF U.S. PATENT NO. 6,647,270**

104. FCS repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

105. FCS owns all substantial rights, interest, and title in and to U.S. Patent No. 6,647,270 (the “’270 patent”), including the sole and exclusive right to prosecute this action and enforce the ’270 patent against infringers and to collect damages for all relevant times.

106. The USPTO duly issued the ’270 patent on November 11, 2003, after full and fair examination of Application No. 09/659,074 which was filed September 11, 2000. A true and correct copy of the ’270 patent is attached as **Ex. G**.

107. The claims of the ’270 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of voice and data communications systems.

108. The written description of the ’270 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

109. FCS or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the ’270 patent.

110. Defendants have directly infringed the ’270 patent by manufacturing, providing, supplying, using, distributing, selling, or offering to sell the Accused Products.

111. Defendants have directly infringed, either literally or under the doctrine of equivalents, at least claim 1 of the '270 patent. For example, Defendants provides a system for transmitting voice or data communications comprising a plurality of data packets between a plurality of remote units, each remote unit having a unique identifier; whereby each remote unit includes: a memory for storing a unique identifier; a transceiver for receiving a wireless communication and downconverting said received communication from RF to baseband, and for upconverting a baseband communication to RF for transmission as a transmit wireless communication; a GPS receiver, for outputting a position signal; a microprocessor, for receiving said position signal and said downconverted communication, and for generating said baseband communication; whereby said microprocessor generates said baseband communication by constructing said data packets from a plurality of data fields, including sender information and receiver information, whereby said sender information includes: the unique identifier of the sender, and information derived from said position signal; and whereby said receiver information includes: the address of the desired remote unit.

112. FCS has been damaged as a result of the infringing conduct by Defendants alleged above. Defendants are liable to FCS in an amount that compensates it for such infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

### **JURY DEMAND**

FCS hereby requests a trial by jury on all issues so triable by right.

### **PRAYER FOR RELIEF**

FCS requests that the Court find in its favor and against Defendants, and that the Court grant FCS the following relief:



- a. Judgment that one or more claims of each of the Asserted Patents has been infringed, either literally or under the doctrine of equivalents, by Defendants or others acting in concert therewith;
- b. A permanent injunction enjoining Defendants and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from infringement of the '837 patent; the '040 patent, the '388 patent, and the '153 patent or, in the alternative, an award of a reasonable ongoing royalty for future infringement of these patents by such entities;
- c. Judgment that Defendants account for and pay to FCS all damages to and costs incurred by FCS because of Defendants' infringing activities and other conduct complained of herein;
- d. Judgment that Defendants' infringements be found willful as to the '837 patent; the '040 patent, the '388 patent, and the '153 patent, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- e. Pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- f. That this Court declare this an exceptional case and award FCS its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- g. All other and further relief as the Court may deem just and proper under the circumstances.

Dated: May 9, 2023

Respectfully submitted,

By: */s/ James F. McDonough, III*

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\*Admitted to the Eastern District of Texas

**List Of Exhibits**

- A. U.S. Patent No. 6,429,810
- B. U.S. Patent No. 7,206,837
- C. U.S. Patent No. 6,549,583
- D. U.S. Patent No. 7,058,040
- E. U.S. Patent No. 7,742,388
- F. U.S. Patent No. 7,260,153
- G. U.S. Patent No. 6,647,270
- H. Zonar and Penske, Keeping your Fleet Moving
- I. Zonar Ground Traffic Control