

EXHIBIT 1

June 5, 2013

VIA ECF

The Honorable Rodney Gilstrap
Sam B. Hall, Jr. Federal Building & United States Courthouse
100 East Houston Street
Marshall, Texas 75670

Re: Lodsys Group, LLC v. Electronic Arts Inc., No. 2:11-cv-272-JRG (E.D. Tex.); Lodsys Group, LLC v. Brother Int'l Corp., et al., No. 2:11-cv-90 (E.D. Tex.) (Consolidated Case): Defendants Request for Permission to File a Motion for Partial Summary Judgment of Invalidity of Claims 1-5, 10, 11, 16, 22, 25, 30-32, 37, 38, 40, 46-48, 50-53, 69, and 71-74 of U.S. Patent No. 7,222,078

Dear Judge Gilstrap:

Defendants Electronic Arts Inc., Hewlett-Packard Company, Hoovers, Inc., Motorola Mobility LLC, Lenovo (United States) Inc., Novell, Inc., Quickoffice, Inc., Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, and Symantec Corporation (collectively, "Defendants") respectfully submit this letter brief seeking leave to file a motion for partial summary judgment of invalidity as to twenty-eight of the over sixty claims that Plaintiff asserts against these Defendants. As explained herein, claims 1-5, 10, 11, 16, 22, 25, 30-32, 37, 38, 40, 46-48, 50-53, 69, and 71-74 of U.S. Patent No. 7,222,078 (the "'078 patent") are invalid under 35 U.S.C. §§ 102 and 103 in view of the Kravette et al., U.S. Patent No. 5,077,582 ("Kravette") and Dworkin, U.S. Patent No. 4,992,940 ("Dworkin"), prior art references.

Defendants respectfully note that the Court's forthcoming claim construction order may affect the viability of one or more of these invalidity positions. Furthermore, Defendants' invalidity arguments are made in light of Lodsys's interpretation of the claims, as evidenced by Lodsys's claim construction and infringement positions. Defendants reserve their rights to revise these invalidity positions based on the Court's claim construction order.

I. Overview of Relevant Claims

Twenty-eight of the claims Lodsys asserts against Defendants are addressed in this brief. Independent system claim 1 is exemplary of the relevant claims and reads as follows:

1. A system comprising:
units of a commodity that can be used by respective users in different locations,

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a user interface, which is part of each of the units of the commodity, configured to provide a medium for two-way local interaction between one of the users and the corresponding unity of the commodity, and further configured to elicit, from a user, information about the user's perception of the commodity.

a memory within each of the units of the commodity capable of storing results of the two-way local interaction, the results including elicited information about the user's perception of the commodity.

a communication element associated with each of the units of the commodity capable of carrying results of the two-way local interaction from each of the units of the commodity to a central location, and

a component capable of managing the interactions of the users in different locations and collecting the results of the interactions at the central location.

Claim 69 claims a similar method, while the remaining claims depend on either claim 1 or claim 69, and add various minor limitations.

I. In Reexamination, the PTO Has Issued a Non-Final Action Closing Prosecution and Rejecting Claims 1-5, 10, 11, 16, 22, 25, 30-32, 38, 46-48, 50-53, 69, and 71-74 in View of Kravette and Dworkin

On August 12, 2011, Google Inc. filed a petition for *inter partes* reexamination of these, as well as other, claims of the '078 patent. See Request for *Inter Partes* Reexamination of U.S. Patent No. 7,222,078, Control No. 95/000,639. On September 25, 2012, the PTO issued a non-final action closing prosecution, finding that claims 1-3, 5, 16, 22, 25, 30-32, 38, 46-48, 50-53, 69, 71, 72, and 74 are anticipated by Kravette, that claims 1-5, 10, 11, 16, 22, 25, 30-32, 38, 46-48, 50-52, 69, 71, 72, and 74 are anticipated by Dworkin, and that claim 73 is rendered obvious by Dworkin in view of ordinary skill in the art. The patentee and Google have submitted their comments in response to this non-final action closing prosecution; therefore, the PTO could issue a final rejection of these claims at any time.

Asserted claims 37 and 40 were not part of the reexamination; however, they are invalidated by both Kravette and Dworkin for many of the same reasons expressed by the PTO.

II. Claims 1-3, 5, 16, 22, 25, 30-32, 37, 38, 40, 46-48, 50-53, 69, 71, 72, and 74 are Invalid over Kravette

The application leading to the Kravette patent was filed on April 20, 1989 and issued on December 31, 1991, qualifying Kravette as prior art to the '078 patent under at least 35 U.S.C. § 102(e). Kravette was not considered by the examiner during the initial examination of the '078 patent.

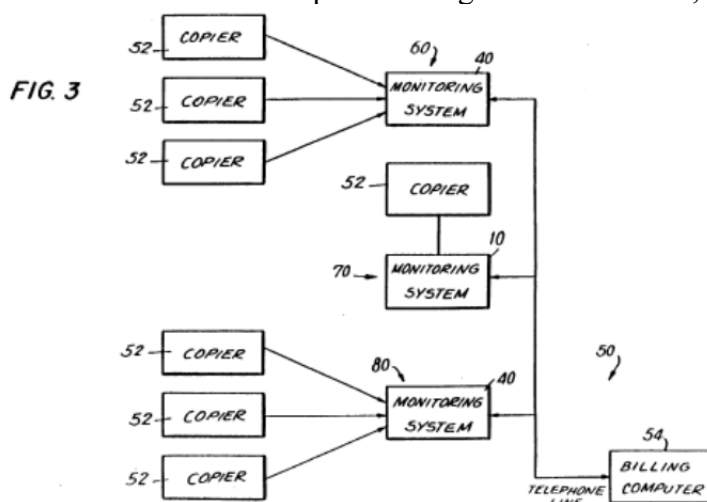
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Kravette discloses a system including a plurality of copiers and a copier monitoring system in connection with a central station where billing and other functions take place. Kravette at Abstract, Figs. 1-3, 11:1-9, 15:18-21. The local copier produces internal diagnostic signals to the user of the copier, including when a failure such as a paper jam occurs. *Id.*, at 8:29-33. This diagnostic data is stored in local RAM memory of the copier. *Id.*, at 9:14-22. The monitoring system also has a counter that counts the number of copies made by the user. *Id.*, at 2:56-58, 3:20-23. This architecture is depicted in Figure 3 of Kravette, as follows:



The system also contains a portable hand held input/output device with a keypad and a display used by service personnel, which becomes a part of the system when connected to the local copier through an auxiliary input. *Id.*, at 9:41-44. The portable hand held input/output device can be used to transfer information to and from the local copier's memory, and also can be used to communicate with the central station through a modem. *Id.*, at 9:49-52, 12:18-20. The central station contains a billing computer that receives messages and billing data from the local copiers, including service performed, parts replaced, and parts needed. *Id.*, at 3:30-33, 7:31-34, 9:52-55. The central station maintains a transaction log file and customer identification database and processes billing data, including preparing billing reports for each customer, based on services performed. *Id.*

Thus, consistent with the PTO's determination during reexamination, Kravette discloses each limitation of claims 1-3, 5, 16, 22, 25, 30-32, 37, 38, 40, 46-48, 50-53, 69, 71, 72, and 74 of the '078 patent. For example, Kravette discloses "units of a commodity" with "user interface[s]" by, for example, providing a photocopier monitoring system with a plurality of local copiers that can be connected to a portable hand held input/output device with a display. Likewise, Kravette discloses "provid[ing] a medium for two-way local interaction between one of the users and the corresponding unity of the commodity" and "elic[it]ing], from a user, information about the user's perception of the commodity" by, among other

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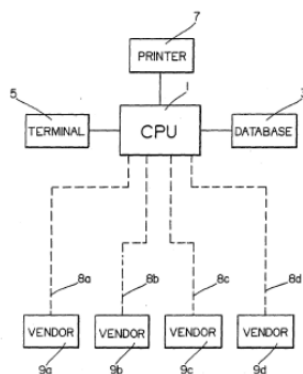
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things, allowing a service person to input service performed, parts replaced, and parts needed using the input/output device. Furthermore, Kravette discloses “a memory...capable of storing results of the two-way local interaction...” when, for example, the copier’s local RAM stores the service information. Lastly, Kravette discloses “a communication element...capable of carrying results of the two-way local interaction...to a central location” and “a component capable of managing the interactions of the users...at the central location” by, for example, transmitting the service information via a modem to a central station, where it is used to process billing data and maintain transaction log files and customer identification databases.

IV. Claims 1-5, 10, 11, 16, 22, 25, 30-32, 37, 38, 40, 46-48, 50-52, 69, and 71-74 are Invalid over Dworkin

The application leading to the Dworkin patent was filed on March 13, 1989 and issued on February 12, 1991, qualifying Dworkin as prior art to the '078 patent under 35 U.S.C. §§ 102(a), (b), and (e). Dworkin was listed in Information Disclosure Statements during the initial examination of the '078 patent; it was not, however, the basis for any rejection nor was there any discussion of its relevance to the patentability of the claims of the '078 patent. Thus, the PTO recently determined that this did *not* preclude reexamination of the claims of the '078 patent in view of Dworkin.

Dworkin discloses an automated system to assist users in locating and purchasing products and services from a variety of vendors. Dworkin at Abstract, Figs. 1-4. The system includes local, user-operated terminals with displays and keyboards, which are connected to a central computer. *Id.*, at Fig. 4, 2:16-18, 4:8-10, 5:59-6. This architecture is depicted in Figure 1 of Dworkin, as follows:



The local terminals display a Main Menu to the user with available selections. *Id.*, at 4:39-41. Item No. 8 on the Main Menu allows the user to communicate complaints about the system or a supplier, make suggestions for improvement of the system to management of the

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system, or receive help in using the system. *Id.*, at 2:42-46, 5:51-58, 10:9-17. The complaints or suggestions can also be sent in an electronic mail message to the central computer via telephone lines and modems, such that they are stored in the sent and inbox folders of electronic mailboxes. *Id.*, at 4:3-7, 10:9-12.

Thus, consistent with the PTO's determination during reexamination, Dworkin discloses or renders obvious each limitation of claims 1-5, 10, 11, 16, 22, 25, 30-32, 37, 38, 40, 46-48, 50-52, 69, and 71-74 of the '078 patent. For example, Dworkin discloses "units of a commodity" with "user interface[s]" by, for example, providing local terminals displaying a Main Menu. Likewise, Dworkin discloses "provid[ing] a medium for two-way local interaction between one of the users and the corresponding unity of the commodity" and "elicit[ing], from a user, information about the user's perception of the commodity" by, among other things, allowing a user to communicate complaints or suggestions for improvement via Item No. 8 on the Main Menu. Furthermore, Dworkin discloses "a memory...capable of storing results of the two-way local interaction..." when, for example, the user's complaints or suggestions are saved in the sent folder of an electronic mailbox. Lastly, Dworkin discloses "a communication element...capable of carrying results of the two-way local interaction...to a central location" and "a component capable of managing the interactions of the users...at the central location" when, for example, the user's complaints or suggestions are sent to the central computer via a modem and stored in the inbox of an electronic inbox.

V. Conclusion

For the foregoing reasons, Defendants respectfully request leave to file a motion for partial summary judgment of invalidity as to claims 1-5, 10, 11, 16, 22, 25, 30-32, 37, 38, 40, 46-48, 50-53, 69, and 71-74 of the '078 patent. If granted, Defendants' proposed motion will significantly streamline trial, reducing the burden on the Court, the jury, and the parties during trial.

Sincerely,



Wayne Barsky

WMB/mp