

EXHIBIT

A-1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

STATE OF VERMONT,)	
)	
Plaintiff,)	
)	
v.)	DOCKET NO. 2:13-CV-00170
)	
MPHJ TECHNOLOGY INVESTMENTS,)	
LLC,)	
)	
Defendant.)	

**DECLARATION OF J. MAC RUST IN SUPPORT OF DEFENDANT MPHJ
TECHNOLOGY INVESTMENTS, LLC’S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS MOTION TO DISMISS UNDER RULE 12(b)(2)**

I, J. Mac Rust, declare as follows:

1. I am the sole member and manager of MPHJ Technology Investments, LLC (“MPHJ”). I make this declaration on my own information, knowledge and belief.
2. I have personal knowledge of the following facts and, if called upon to do so, I could testify completely thereto.
3. MPHJ is the owner of the following U.S. Patents covering inventions by Mr. Laurence Klein. These are U.S. Patent Nos. 8,488,173; 7,477,410; 6,185,590; 6,771,381; and 7,986,426.
4. MPHJ has always been publicly identified as the owner of the Klein Patents, available at the U.S. PTO Website.
5. The United States Patent and Trademark Office issued U.S. Patent No. 8,488,173 on July 18, 2013, after a review of all the prior art cited by most of the major scanner and information technology companies in the world.

6. Prior to sending any patent related correspondence, MPHJ and its counsel conducted a thorough analysis of the patents, the patent claims, the file histories, and the prior art, to reach a conclusion as to the proper construction of the patent claims.

7. Prior to sending any patent related correspondence, MPHJ's counsel has reviewed multiple common LAN configurations and concluded that all, or essentially all, typical configurations would infringe at least one claim of the Klein Patents.

8. Prior to sending any patent related correspondence, MPHJ and its subsidiaries (collectively "MPHJ") worked with its counsel and experts to determine criteria to use to identify likely infringers of MPHJ's Patents.

9. Prior to sending any patent related correspondence, MPHJ and its team concluded that certain types of companies with less than twenty employees might use an infringing system, but could not reliably be said to do so in sufficient numbers to warrant an assumption of use.

10. The MPHJ team included an outside consultant, Donald DeBlasio, who was integral to the process of eliminating industries that were unlikely to use an infringing system, such as small restaurants or retail establishments. MPHJ limited the types of businesses with which it communicated to about 5% of all of the types of businesses recognized by the Standard Industrial Classification system.

11. In working with Mr. DeBlasio and other experts and counsel, MPHJ developed a list of companies that met the following criteria: had more than twenty employees; be in a specific industry segment that was highly likely to use networked scanning systems.

12. Using the above criteria, Mr. DeBlasio, in reliance upon Dunn & Bradstreet information, U.S. Census Bureau data, and other information, identified to MPHJ a number of likely infringers in Vermont. MPHJ asked Mr. DeBlasio to screen for non-profits and charities,

and MPHJ also took the list provided by Mr. DeBlasio and further screened it in an attempt to eliminate such entities from the list of likely infringers to be contacted.

13. Of the likely Vermont infringers identified, only a portion have been contacted by MPHJ and its licensing agents. Also, if MPHJ learned that any of the contacted entities did not meet the above criteria, licensing activity was immediately discontinued with respect to that entity.

14. MPHJ, its subsidiaries, or its counsel, were typically included as a nominal recipient, so that they could confirm receipt of the letter when mailed. To my knowledge, the test letters sent to infringers were always received.

15. By the time MPHJ had sent a recipient a third letter, that particular recipient had ignored two prior letters from MPHJ asking whether the recipient had an infringing system. Further, a number of recipients did respond to the third letter but did so well after the two week deadline.

16. In the instances where a recipient of a second or third letter contacted MPHJ or its counsel to indicate it did not have the prior letter(s), copies were promptly sent to the entity. Most of these recipients admitted that they had likely simply thrown away the prior letter(s).

17. The letters did not accuse any letter recipient of infringement, but merely inquired as to whether the recipient was infringing.

18. All of the few companies who identified themselves as not infringing did so by reference to the checklist provided in the first letter, and, in no instance, were they asked to provide supportive documentation, and all communications with them immediately ceased. Further, no company who satisfied the checklists contacted MPHJ and contended it did not infringe.

19. Any letter recipient who contacted MPHJ, its subsidiary, or its counsel, requesting additional time to review the letters it received, was consistently given more time to do so.

20. MPHJ used a number of exclusive licensees to assist it in organizing its licensing efforts. These licensees were exclusive in certain defined categories and subgroups and owned those respective defined exclusive licensing rights. To MPHJ's knowledge, all of the licensing subsidiaries acted consistent with their agreements with MPHJ regarding their respective licensing authority.

21. MPHJ implemented its patent enforcement licensing strategy by reference to the prior owner of the patents, Project Paperless LLC, and considered itself the successor-in-interest to the patents.

22. MPHJ relied upon legal authority, consultants and counsel to conclude that a reasonable royalty under the patent law for use of an infringing system could be as high as approximately \$2,000 per year per employee. MPHJ elected to make a substantially lower royalty proposal, approximately in the range of \$1,000 per employee per year, which was generally consistent with the licensing approach taken by Project Paperless.

23. Of the 996 categories of businesses recognized by the federal government and common commercial services, MPHJ carefully and narrowly identified only 54 such business categories as being highly likely to have infringing systems if they also had more than twenty employees. MPHJ understood from its counsel and consultants that proof of any potential infringers was not publicly available.

24. Mr. Steven Hill, the prior counsel for Project Paperless LLC, communicated that there had been a positive response to the Klein Patents to MPHJ. Mr. Hill further communicated

to MPHJ that most businesses, upon being informed that they are infringing someone's patent rights, were interested in operating lawfully and taking a license promptly.

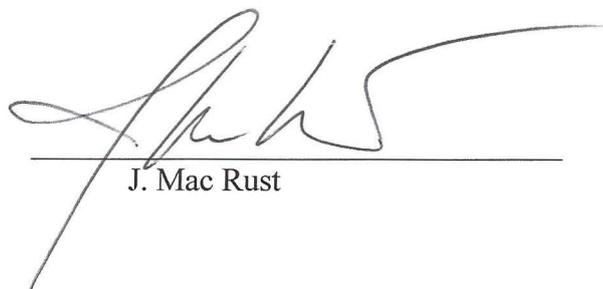
25. MPHJ received a Civil Investigative Demand from the Vermont Attorney General in February 2013.

26. Upon receipt of Vermont's Civil Investigative Demand, MPHJ, as a precaution, suspended all further activity in Vermont. MPHJ assumed the Vermont AG's investigation would conclude quickly and it could resume its lawful patent enforcement activities.

27. With respect to activity of MPHJ outside of Vermont, MPHJ was preparing to bring suit against a first set of recipients in other states when the Vermont AG unexpectedly filed its suit. At almost the same time, MPHJ reached an agreement with Canon that excused Canon customers from any liability on the patents, and a Petition for Inter Partes Review was filed with respect to certain of MPHJ's patents which further caused delay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: April 3, 2014



J. Mac Rust