

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CCP SYSTEMS AG,

Plaintiff,

v.

**SAMSUNG ELECTRONICS CORP., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC. and IBM CORPORATION,**

Defendants.

Civil Action No: 09-4354 (DMC)(JAD)

Jury Trial Demanded

**SECOND AMENDED COMPLAINT FOR COPYRIGHT, PATENT
AND TRADEMARK INFRINGEMENT, AND UNFAIR COMPETITION**

CCP Systems AG (“CCP”) for its Verified Complaint against Samsung Electronics Corp., Ltd. (“Samsung ECL”), Samsung Electronics America, Inc. (“Samsung America”), and IBM Corp. (“IBM”) (collectively, “Defendants”), states as follows:

PARTIES

1. CCP is a corporation organized and existing under the laws of Germany with its principal place of business at Stammheimer Str. 35, 70435 Stuttgart, Germany.
2. Upon information and belief, Defendant Samsung ECL is a corporation organized and existing under the laws of South Korea, with its registered office at 416, Maetan-dong, Yeongtongku, Suwon, Kyounggi-do, Korea.
3. Upon information and belief, Defendant Samsung America is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 105 Challenger Road, Ridgefield Park, New Jersey 07660.
4. Upon information and belief, Defendant IBM is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1 New

Orchard Road, Armonk, New York 10504.

JURISDICTION AND VENUE

5. This is an action for copyright infringement under the Copyright Act, 17 U.S.C. § 106, patent infringement under the Patent Act, 35 U.S.C. §§ 271 and 281-285, and trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. § 1051 et seq.

6. This Court has subject matter jurisdiction over the claims in this case pursuant to 28 U.S.C. §§ 1331 and 1338(a)-(b).

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400 because the Defendants may be found in this District, do substantial business in this District, and have engaged in acts of copyright, patent and trademark infringement, and unfair competition in this District.

8. This Court has personal jurisdiction over Defendant Samsung America because Ridgefield Park, New Jersey is Samsung America's principal place of business.

9. This Court has personal jurisdiction over Defendant IBM by virtue of IBM's transacting business within this State, and because of its systematic and continuous contacts with residents of this State.

10. This Court has personal jurisdiction over Defendant Samsung ECL by reason of that Defendant transacting business within this State and committing wrongful acts within this State, and by virtue of its systematic contacts with residents of this State.

FACTS COMMON TO ALL CLAIMS

A. CCP's Software Products

11. CCP designs, develops, manufactures, sells and distributes software for use in connection with computer printers and other computer-related devices.

12. In particular, and relevant to this action, CCP developed software called

“JScribe®,” which is an open application and communication platform for servers, workstations, multi-function printers, and standard printers, allowing those devices to exchange information proactively in every direction.

13. The JScribe® software has been the basis for many additional programs and variations. CCP has designed and developed those additional programs and variations into several applications, including the following:

- a. “JScribe® Core,” which is the version of JScribe® for embedding on individual printers, multi-function printers, and other devices.
- b. “JScribe® API,” which is the application programming interface code that serves as a connector for interfacing between JScribe® Core and the underlying firmware and facilitates their interaction. As a result of various underlying agreements between the parties, the JScribe® API always must be bundled together with JScribe® Core (this bundled software is referred to as “JAS Solution”). According to these agreements, the JAS Solution must be embedded in firmware, which in turn is distributed as part of printers and multi-function devices (“MFD”). Along with the JScribe® Core and JScribe® API, CCP delivers to customers, and delivered to Samsung ECL, the JScribe® System Integrators Guide (further described below) which includes JScribe® API documentation and detailed specifications required by the platform.
- c. “JScribe® Mobile Print Solution” (“JMPS”), which is a JScribe®-based client/server solution for mobile printing in company and public networks.
- d. “JScribe® Software Development Kit” (“JSDK”), which is a JScribe®-based integrated development environment for the development of JScribe® applications.
- e. “JISS OpenPower,” which stands for “JScribe® Intelligence Server

Solution OpenPower,” which is a server-based solution for tracking print and managing related costs, implemented on Linux/Unix platforms according to requirements defined by IBM.

f. “JTalk” is a JScribe®-based tool for deploying JScribe® applications to printers and other devices equipped with JAS Solution or the JScribe® Application Server Solution (“JASS”) embedded.

g. “KYAOC” is a custom derivative of JMPS developed by CCP for a specific client, the State of Kentucky Administrative Office of Courts.

(The JISS OpenPower, JMPS, JSDK, JAS Solution, JTalk and KYAOC software are referenced collectively throughout this Complaint as the “CCP Software.”)

B. The Limited Licenses Granted to Defendants by CCP

14. In 2004, CCP signed a contract with IBM Deutschland GmbH (“IBM Germany”) (the “IBM Germany Agreement”), under which, *inter alia*, (a) CCP would license and deliver copies of JAS Solution (and the JScribe® System Integrators Guide) to IBM Germany, and (b) IBM Germany then would sublicense and deliver copies of the JAS Solution (and the JScribe® System Integrators Guide) to its customers, solely to be bundled with other software in the customer’s “Firmware” and embedded into the customer’s device, such as printers or MFDs. (“Firmware” is the software installed on non-volatile storage in the device and used for controlling and/or enabling the functionality of the device.) Under the IBM Germany Agreement, no other uses of the JAS Solution by IBM Germany or its customers were permitted.

15. Upon information and belief, Samsung ECL, under a written sublicense agreement with IBM Korea (IBM Germany’s Korean sister company, which, upon information and belief, has a sublicense arrangement with IBM Germany), embedded the JAS Solution with other software of Samsung ECL, creating “Firmware,” which it would then in turn embed directly into Samsung-manufactured devices, such as printers or MFDs.

16. According to the IBM Germany Agreement, Samsung ECL, for itself and through its affiliates, such as Samsung America, could distribute devices containing the Firmware (which included the JAS Solution) to consumers in the United States and elsewhere. Samsung would then pay a royalty to IBM Germany (or its sister company in Korea), which would then in turn pay a royalty to CCP for each device with JAS Solution embedded.

17. The IBM Germany Agreement did not provide that an IBM customer, such as Samsung ECL, could distribute the JAS Solution apart from a device, or to make any CCP Software publicly available online.

C. The IBM Agreement Is Terminated

18. The IBM Germany Agreement, as amended, allowed CCP to terminate that agreement without further notice if certain events transpired. In particular, the IBM Germany Agreement allowed CCP to terminate the Agreement if CCP and IBM Germany could not reach agreement as to CCP's proposed business relationship with a competitor of IBM Germany. Since CCP and IBM Germany were not able to reach resolution on a proposed relationship between CCP and Samsung (a competitor of IBM Germany), CCP, on May 25, 2009 (the "Termination Date"), sent notice to IBM Germany that as of the Termination Date, CCP was terminating the IBM Germany Agreement and the license to the JAS Solution granted therein.

19. Samsung ECL acknowledged the termination of the IBM Germany Agreement in an email dated July 15, 2009. On information and belief, Mr. Chin Yoon, the Vice President of Samsung ECL's Solution Business Group, instructed Samsung ECL personnel to refrain from marketing devices incorporating JAS Solution, and notified them that the agreement under which the JAS Solution was supplied to Samsung ECL had been cancelled. Although CCP terminated the IBM Germany Agreement and the license therein to JAS Solution as of the Termination Date of May 25, 2009, the Defendants, without CCP's consent, have continued to reproduce and

publicly distribute the JAS Solution, both as stand-alone software (bundled into Firmware) and in devices.

20. In particular, but without limitation, since the Termination Date, Samsung ECL and Samsung America have continued to ship devices containing JAS Solution or parts thereof, or derivative works thereof without CCP's consent.

21. In addition, without CCP's consent, one or more of the following entities: Samsung Networks, Inc., or its successor ("Samsung Networks"), Samsung ECL and/or Samsung America, have placed the CCP Software, including the Firmware incorporating JAS Solution or parts of it, or derivative works thereof, online at the Samsung-owned websites, including, for example, "downloadcenter.samsung.com," "samsung.com/us/support/downloads," "samsung.com/us/support/supportDownloadCenter.do," "samsung.com/us/support/content," and "samsungprinter.info," available for free to the public. On information and belief, Samsung has made parts of the JAS Solution, or parts of it, or derivative works thereof available embedded in Firmware to other manufacturers, including Dell and Xerox, and those companies have offered that Firmware for free downloads at their sites.

22. Samsung Networks owns and operates the website samsung.com. The samsung.com website has many sub-domains, including downloadcenter.samsung.com (collectively the "Download Center Websites").

23. Any United States resident, and anyone in the world, with an Internet connection can access the Download Center Websites, so long as that person knows or finds the URLs for the code files on that website; no password or other security key is required to access it.

24. Without CCP's consent, the Download Center Websites have publicly displayed, and, upon information and belief, publicly distributed the JAS Solution or parts of this code,

and/or derivative works, as part of the Firmware, and this conduct continues as of the date this Amended Complaint was filed.

25. Anyone in the world with an internet connection, including New Jersey residents, can download the Firmware, incorporating the JAS Solution, or parts of it, or derivative works thereof, for free from the Download Center Websites if the person has the URL links to the Firmware files on the Download Center Websites.

26. CCP did not authorize Samsung Networks, Samsung ECL or Samsung America or anyone else to make the JAS Solution, or parts of it, or derivative works thereof publicly available online.

27. CCP developed the JAS Solution over the course of ten years, and those software programs are original works of authorship.

28. CCP is the owner of all right, title and interest in and to the copyrights for the JScribe® Core software, including (without limitation) versions 3.2, 4.0, 4.1, 4.2 and 4.3 thereof.

29. CCP has registered copyrights in five versions of the JScribe® Core software (JScribe® Core v. 3.2, JScribe® Core v. 4.0, JScribe® Core v. 4.1, JScribe® Core v. 4.2, and JScribe® Core v. 4.3) with the United States Copyright Office. The Copyright Office has assigned registration number TXu 1-715-513 to the JScribe® Core v 3.2 copyright registration, registration number TXu-1-610-863 to the JScribe® Core v 4.0 copyright registration, registration number TXu-1-610-827 to the JScribe® Core v 4.1 copyright registration, registration number TXu-1-610-915 to the JScribe® Core v 4.2 copyright registration, and registration number TXu-1-610-918 to the JScribe® Core v 4.3 copyright registration. CCP is the owner of all right, title and interest in and to the subject matter of these copyright registrations, which are valid.

30. These five versions of JScribe® Core – 3.2, 4.0, 4.1, 4.2 and 4.3 – will be referenced collectively throughout this Amended Complaint as “JScribe® Core.”

31. CCP is the owner of all right, title and interest in and to the copyrights for the JScribe® API, including (without limitation) the following versions thereof: JScribe® Windows API 3.2, JScribe® Windows API 4.0, JScribe® 4.1 Windows API, JScribe® Windows API 4.2, and JScribe® Windows API 4.3.

32. CCP also has registered copyrights in five versions of the JScribe® API (JScribe® Windows API 3.2, JScribe® Windows API 4.0, JScribe® 4.1 Windows API, JScribe® Windows API 4.2, and JScribe® Windows API 4.3) with the United States Copyright Office. The Copyright Office has assigned registration number TXu 1-677-255 to the JScribe® Windows API 3.2 copyright registration, registration number TXu 1-657-274 to the JScribe® Windows API 4.0 copyright registration, registration number TXu 1-658-301 to the JScribe® 4.1 Windows API copyright registration, registration number TXu 1-658-308 to the JScribe® Windows API 4.2 copyright registration, and registration number TXu 1-658-314 to the JScribe® Windows API 4.3 copyright registration. CCP is the owner of all right, title and interest in and to the subject matter of these copyright registrations, which are valid. These five versions of JScribe® API will be referenced collectively throughout this Amended Complaint as “JScribe® API.”

33. CCP is the owner of all right, title and interest in and to the copyrights for the JScribe® System Integrators Guides, including supplemental JScribe® API Wrapper Specifications, including (without limitation) the following versions thereof: JScribe® 3.2 System Integrators Guide, JScribe® 4.0 System Integrators Guide, JScribe® 4.2 System Integrators Guide, JScribe® 4.3 System Integrators Guide, JScribe® 4.0 API Wrapper

Specification, JScribe® 4.1 API Wrapper Specification, and JScribe® API 4.3 Wrapper Specification.

34. CCP has registered copyrights in the JScribe® System Integrators Guides and JScribe® API Wrapper Specifications with the United States Copyright Office. The Copyright Office has assigned registration number TXu-1-677-332 to the JScribe® 3.2 System Integrators Guide copyright registration, registration number TXu-1-658-281 to the JScribe® 4.0 System Integrators Guide copyright registration, registration number TXu-1-658-313 to the JScribe® 4.2 System Integrators Guide copyright registration, registration number TXu-1-658-315 to the JScribe® 4.3 System Integrators Guide copyright registration, registration number TXu-1-658-282 to the JScribe® 4.0 API Wrapper Specification copyright registration, registration number TXu-1-658-305 to the JScribe® API 4.1 Wrapper Specification copyright registration, and registration number TXu-1-659-516 to the JScribe® API 4.3 Wrapper API Specification copyright registration. CCP is the owner of all rights, title, and interest in and to the subject matter of those copyright registrations, which are valid.

35. These versions of the JScribe® System Integrators Guide and JScribe® API Wrapper Specifications are referred to collectively throughout this Second Amended Complaint as “JScribe® System Integrators Guide.”

36. By reproducing and publicly displaying the JAS Solution, or parts of it, or derivative works thereof at the Download Center Websites, and publicly distributing JAS Solution, or parts of it, or derivative works thereof on those sites, Samsung Networks has directly infringed CCP’s copyrights in the JScribe® Core software and JScribe® API. In addition to directly infringing CCP’s copyrights in JScribe® Core and JScribe® API, Samsung ECL and Samsung America have infringed CCP’s copyrights in the JScribe® System Integrators Guide

relating to JScribe® API, in particular, without limitation, CCP's copyrights relating to network and GUI code, operations, and features ("JScribe® API Network/GUI Material"). Samsung ECL has copied JScribe® API, including JScribe® API Network/GUI Material, across various firmware modules in Samsung products. Samsung's violation of CCP's exclusive rights relating to JScribe® API Network/GUI in the JScribe® System Integrators Guide includes, without limitation, literal copying, copying of the selection, structure, and arrangement of API code, the creation of unauthorized derivative works, and the reproduction, distribution, and sale of these works.

**COUNT I - CONTRIBUTORY AND VICARIOUS COPYRIGHT
INFRINGEMENT: DEFENDANTS SAMSUNG ECL AND SAMSUNG AMERICA**

37. CCP incorporates the allegations of paragraphs 1 through 36 above as though fully set forth herein.

38. Samsung ECL owns and operates a website at the URL samsungelectronics.com. That website has many sub-domains, including the sub-domain ecms.samsungelectronics.com (the "Partner Site").

39. Upon information and belief, Samsung ECL operates the Partner Site for the benefit of its dealers, developers and distributors worldwide, including in New Jersey.

40. To access content on the Partner Site, one must be registered with Samsung ECL, and Samsung ECL must approve, each application for access to the Partner Site.

41. Both before and after May 25, 2009, Samsung ECL made spreadsheets available on the Partner Site. These spreadsheets contained and may still contain information about various Samsung ECL products, including the Firmware that incorporates CCP's JAS Solution, or parts of it, or derivative works thereof.

42. These spreadsheets contained and may still contain active hyperlinks to the

Download Center Websites. When one clicks on a hyperlink in the spreadsheet, one is taken directly to a ZIP file on the Download Center Websites, where one can freely access and download the Firmware containing JAS Solution, or parts of it, or derivative works thereof.

43. On information and belief, the spreadsheets described in paragraphs 41 and 42 were or are downloadable and transferable. That is, anyone accessing the spreadsheets (or a link from the spreadsheet) on the Partner Site could save the spreadsheets (or the link) to his computer, copy it, attach it to an email, forward it to others, etc.

44. Samsung America controlled the website samsungprinter.info (the “Samsung Printer Website”). The Samsung Printer Website was open to the public.

45. Samsung America placed a spreadsheet similar to the ones described in paragraphs 41 and 42 above on the Samsung Printer Website, containing links to the code files on the Download Center Websites.

46. Because no password or other security information was required to access the code files on the Download Center Websites, anyone with this spreadsheet or knowledge of the links contained in the spreadsheet could freely access the code files in the Download Center Websites.

47. The unauthorized availability of JAS Solution, or parts of it, or derivative works on the Download Center Websites described above materially impacts the market for this software and CCP’s ability to exploit its product. As an example of the effect on the market for the Firmware, CCP discovered an inquiry on a developer chat website, “Fix Ya.” In that post, a web user asked whether anyone knew where to find the Firmware for a Samsung-brand printer with JScribe® 4.0 embedded. Another user replied, identifying himself as a developer, and stated that if the user could not acquire the Firmware on the samsung.com website, he would get

the Firmware from the Partner Site and send it to him. This example illustrates how Samsung ECL's, Samsung America's, and Samsung Networks' posting of the Firmware code files online has resulted in uncontrolled distribution of CCP's software products.

48. By posting the spreadsheet containing links to the Download Center Websites online at the Partner Site and the Samsung Printer Website, Samsung ECL and Samsung America were aware of and actively encouraged, supervised, facilitated and induced the direct infringement by Samsung Networks of CCP's copyrights. Samsung ECL and, on information and belief, Samsung America knew CCP's JAS Solution belonged to CCP, knew they had no rights to distribute it as downloads, and they actively encouraged others to infringe by, for example, advertising the many benefits of JScribe® on the samsung.com website. Further, by providing the means by which that infringement occurred, Samsung ECL and Samsung America substantially participated in Samsung Networks' direct infringement. Accordingly, Samsung ECL and Samsung America contributorily infringed CCP's copyrights in JAS Solution.

49. In addition, by facilitating Samsung Networks' direct infringement of CCP's copyrights, Samsung ECL and Samsung America garner goodwill with their customers, partners, developers and distributors by making various products available on the Download Center Websites and the Samsung Printer Website, and they also gain direct financial benefit by avoiding paying a royalty for use of the JAS Solution, and enabling the sale of printers. Further, on information and belief, Samsung ECL and/or Samsung America controlled the content on the website, that is, they had the right and ability to control what information was posted on the Download Center Websites and the Samsung Printer Website, as well as the ability to remove the infringing material from these sites. Accordingly, Samsung ECL and Samsung America have vicariously infringed CCP's copyrights in JAS Solution through their supervision and control of

the above-described direct infringement by Samsung Networks.

50. Samsung ECL and Samsung America knew that: i) making the JAS Solution, or parts of it, or derivative works thereof available online, apart from devices, was not authorized under any agreement; and ii) in any event, as of May 25, 2009, all licenses to the JAS Solution had terminated. Therefore, Samsung ECL's and Samsung America's contributory and vicarious infringement of CCP's copyrights was and remains willful.

51. CCP has suffered damages as a result of the infringing conduct of Samsung ECL and Samsung America.

52. CCP has suffered irreparable harm because of Samsung ECL's and Samsung America's contributory and vicarious infringement of its copyrights in the JScribe® Core software and JScribe® API, and will continue to suffer irreparable harm in the future unless Samsung ECL and Samsung America are enjoined from infringing CCP's copyrights in the JScribe® Core software and JScribe® API.

**COUNT II - COPYRIGHT INFRINGEMENT (DIRECT, CONTRIBUTORY
AND VICARIOUS): DEFENDANT SAMSUNG AMERICA**

[Note: Original Count III (now Count II) has been stayed by the Court pending arbitration.]

53. CCP incorporates the allegations of paragraphs 1 through 52 as though fully set forth herein.

54. CCP has registered a claim to copyright in the JMPS software with the United States Copyright Office. The Copyright Office has assigned registration number TXu-1-610-843 to the JMPS claim to copyright.

55. CCP has registered a claim to copyright in the JSDK software with the United States Copyright Office. The Copyright Office has assigned registration number TXu-1-610-846 to the JSDK claim to copyright.

56. CCP has registered a claim to copyright in the JTalk software with the United States Copyright Office. The Copyright Office has assigned registration number TXu-1-610-862 to the JMPS claim to copyright.

57. CCP has registered a claim to copyright in the KYAOC software with the United States Copyright Office. The Copyright Office has assigned registration number TXu-1-610-844 to the JSDK claim to copyright.

58. Upon information and belief, Samsung America placed copies of the CCP Software, including JScribe® Core, JMPS, JSDK, JTalk and KYAOC, on the Samsung Printer Website, available for free download. In particular, Samsung America placed source code files for KYAOC on the Samsung Printer Website without authorization.

59. In addition, the Samsung Printer Website contained files with detailed instructions for how to use the CCP Software found on that website to install CCP Software onto hardware and other devices. These detailed instructions facilitated and encouraged unauthorized reproduction of the CCP Software by third parties, for which Samsung America garnered profit; thus, making those instructions available on the Samsung Printer Website constitutes contributory and vicarious infringement.

60. CCP never consented to or authorized the reproduction or distribution of its software products on the Samsung Printer Website.

61. CCP has suffered damages as a result of this infringing conduct.

62. CCP has suffered irreparable harm because of Samsung America's infringement of its copyrights in the CCP Software, and will continue to suffer irreparable harm in the future unless Samsung America are enjoined from infringing CCP's copyrights in the CCP Software.

**COUNT III - COPYRIGHT INFRINGEMENT:
DEFENDANTS SAMSUNG ECL AND SAMSUNG AMERICA**

63. CCP incorporates the allegations of paragraphs 1 through 62 as though fully set forth herein.

64. Samsung ECL reproduced CCP Software, namely, the JScribe® Core software and the JScribe® API (the JAS Solution), in the process of creating the Firmware. Although the parties' agreements contemplated distribution of the Firmware (and with it, the JAS Solution, or parts of it, or derivative works thereof) only embedded within a printer or other device, Samsung ECL bundled the Firmware for independent distribution on portable media, such as CDs or external hard drives, as well as by email or internet distribution in code files. This bundling involved reproduction of CCP's JAS Solution, or parts of it, or derivative works thereof.

65. Once bundled and uploaded to such portable media or prepared for email or internet distribution, Samsung ECL distributed that Firmware (including the JAS Solution, or parts of it, or derivative works thereof) to persons in the United States, through its U.S. affiliate Samsung America in New Jersey.

66. Samsung ECL and Samsung America distributed some Firmware, including JAS Solution, or parts, or derivatives thereof to persons who had already obtained a device with a previous version of that Firmware, via web downloads, CDs, email attachments, USB memory devices or otherwise providing that person with the ability to update his device. This Second Amended Complaint will refer to this delivery as a "field update."

67. Samsung ECL and Samsung America distributed some Firmware, including parts of either JScribe® Core and/or JScribe® API, to persons who had already obtained a device with a previous version of that Firmware, via web downloads, CDs, email attachments, USB memory devices or otherwise providing these persons with the ability to add new versions of infringing

code to their machines. This Second Amended Complaint will refer to this delivery as a “field upgrade.”

68. Samsung ECL and Samsung America also distributed Firmware, including JAS Solution, or parts of it, or derivative works thereof to persons who had already obtained a device that did not contain any version of the JScribe® Core or JScribe® API software. This Second Amended Complaint will refer to this delivery as a “field installation.”

69. With each “field installation,” “field update,” and “field upgrade,” Samsung ECL and Samsung America provided persons with detailed instructions showing them how to install the Firmware onto an existing Samsung-brand device. These instructions effectively allow customers, partners, developers and distributors to obtain the JScribe® functionality without purchasing a JScribe®-embedded device. Upon information and belief, Samsung America and Samsung ECL have performed field installations, field updates and field upgrades for customers and others.

70. In addition to directly distributing the Firmware to customers, partners, developers and distributors, Samsung ECL and Samsung America made the Firmware (including the JAS Solution, or parts of it, or derivative works thereof) available on the Download Center Website and the Samsung Printer Website, along with detailed instructions showing them (and other web users) how to install the Firmware onto a Samsung-brand printer to achieve the functionality of a Samsung-brand printer with JAS Solution embedded.

71. On information and belief, in addition to the foregoing, Samsung ECL has distributed JScribe® software, including but not limited to parts of JScribe® API or derivative works thereof, in devices that are not Samsung-branded devices. That is, Samsung ECL has embedded software in devices (including printers) that it manufactures and provides as an

original equipment manufacturer (OEM) to customers including (but not limited to) Dell and Xerox.

72. Samsung ECL's activities set forth in paragraph 71 constitute infringement of CCP's copyrights.

73. In addition, Samsung ECL's and Samsung America's shipment of devices containing JAS Solution or parts thereof, or derivative works thereof without CCP's consent (including, but not limited to, shipments or other distribution that are beyond the scope of any license or agreement), constitutes infringement of CCP's copyrights. Such devices include, but are not limited to, Samsung models SCX-6545 and CLX-8385, that have been shipped in the United States in significant quantities.

74. Still further, in mid-2010 Samsung ECL announced its XOA Express was "based on JScribe."

75. On information and belief, Samsung ECL devices have replaced the JScribe® API software strings with XOA Express strings. Further, on information and belief, Samsung ECL intends to use the JScribe® API or parts of it to run XOA Express.

76. In light of the foregoing, on information and belief, Samsung's XOA Express contains derivative works based on the JScribe® software that constitutes infringement of CCP's copyrights.

77. Further, on information and belief, Samsung ECL has developed an API for JScribe® software based on CCP's copyrighted work (including but not limited to the JScribe® API). Infringing devices include, but are not limited to, the following models, all of which have been sold in the United States: SCX-6545, CLX-8385, CLP-770 (which contains JScribe® Core), SCX-5335 and SCX-6555.

78. However, in light of a 2006 amendment to the IBM Germany Agreement, referred to as the “Consolidation Agreement,” all IBM’s rights in “Derivatives Works” were terminated, and thus, any right Samsung may have had to develop and to distribute derivative works based on the JScribe® software was also terminated.

79. CCP never consented to or authorized the reproduction and distribution of its software products as “field installations,” “field updates” and “field upgrades.”

80. CCP never consented to or authorized the distribution of any JAS Solution, parts of it, or derivative works, in devices that are not Samsung-branded devices.

81. CCP never consented to or authorized the use of any CCP Software as a basis for creating Samsung’s XOA or XOA Express.

82. CCP never consented to the adaptation of JScribe® software source code in Samsung’s Firmware.

83. Samsung ECL’s and Samsung America’s foregoing conduct constitutes infringement of CCP’s copyrights in the JScribe® software, including (without limitation) CCP’s copyrights in the JScribe® Core software and/or the JScribe® API.

84. Samsung ECL’s and Samsung America’s above-described copyright infringement has been and remains willful.

85. CCP has suffered damages as a result of this infringing conduct.

86. CCP has suffered irreparable harm because of Samsung ECL’s and Samsung America’s infringement of its copyrights in the JScribe® Core software and JScribe® API, and will continue to suffer irreparable harm in the future unless Samsung ECL and Samsung America are enjoined from infringing CCP’s copyrights in the JScribe® Core software and JScribe® API.

**COUNT IV - COPYRIGHT INFRINGEMENT: DEFENDANTS
SAMSUNG ECL AND SAMSUNG AMERICA
(JSCRIBE® SYSTEM INTEGRATORS GUIDE – API NETWORK/GUI MATERIAL)**

87. CCP incorporates the allegations of paragraphs 1 through 86 as though fully set forth herein.

88. CCP owns valid and enforceable copyrights in the JScribe® System Integrators Guide. These protected works, like the JScribe® API, are original works of authorship, owned by CCP. Samsung ECL and Samsung America have violated CCP's exclusive rights in these works, including CCP's exclusive rights to reproduce, prepare derivative works, distribute, and sell these works, by their direct and indirect infringement.

89. On information and belief, Samsung ECL, in addition to copying substantial protected expression from the JScribe® API, also has copied substantial protected expression from the JScribe® System Integrators Guide, including JScribe® API Network/GUI Material. Samsung's violation of CCP's exclusive rights relating to JScribe® API Network/GUI Material in the JScribe® System Integrators Guide includes, without limitation, literal copying, copying of the selection, structure, and arrangement of the API functions, and the creation of unauthorized derivative works. Samsung has substantially copied this protected expression of CCP.

90. Samsung ECL embedded this infringing code in the firmware of printers and MFDs manufactured and sold by Samsung ECL without CCP's authorization. The infringing products included Samsung-branded printers and MFDs, and non-Samsung printers and MFDs sold by Samsung ECL as an OEM to third parties such as, without limitation, Dell and Xerox.

91. Samsung ECL, along with Samsung America, imported, distributed, and sold infringing Samsung-branded printers and MFDs in the United States. Samsung ECL's and Samsung ECL's and Samsung America's wrongful conduct directly infringed CCP's copyright

in the JScribe® System Integrators Guide, including JScribe® API Network/GUI Material.

92. Samsung ECL's and Samsung America's import, distribution, and sale of infringing printers and MFDs also contributorily and vicariously infringed CCP's copyright in the JScribe® System Integrators Guide, including JScribe® API Network/GUI Material, as further described below in Count VI.

93. Samsung ECL's and Samsung America's copyright infringement has been and remains knowing and willful. CCP has suffered damages as a direct and proximate result of this infringing conduct.

94. CCP also has suffered irreparable harm because of Samsung ECL's and Samsung America's infringement, and will continue to suffer irreparable harm in the future unless Samsung ECL and Samsung America are enjoined from continuing to infringe CCP's copyrights in the JScribe® System Integrators Guide, including JScribe® API Network/GUI Material.

**COUNT V - CONTRIBUTORY AND VICARIOUS COPYRIGHT
INFRINGEMENT: DEFENDANTS SAMSUNG ECL AND
SAMSUNG AMERICA**

95. CCP incorporates the allegations of paragraphs 1 through 94 above as though fully set forth herein.

96. CCP owns valid and enforceable copyrights in JScribe® Core, JScribe® API, and JScribe® System Integrators Guide. These protected works are original works of authorship, owned by CCP. In addition to directly violating CCP's exclusive rights in these works, including CCP's exclusive rights to reproduce, create derivative works, distribute, and sell these works, Samsung ECL and Samsung America have violated CCP's exclusive rights by their contributory and vicarious infringement.

97. On information and belief, Samsung ECL manufactures for, sells and/or conveys printers and MFDs with embedded firmware infringing CCP's copyrights in JScribe® Core,

JScribe® API, and JScribe® System Integrators Guide (including JScribe® API Network/GUI Material), to other parties who directly infringe CCP's copyrights by the import, distribution, and sale of those infringing products in the United States. On information and belief, Samsung America sells or conveys printers and MFDs with embedded firmware infringing CCP's copyrights in JScribe® Core, JScribe® API, and JScribe® System Integrators Guide to other parties who directly infringe CCP's copyrights by the distribution and sale of the infringing products in the United States and elsewhere. On information and belief, these other parties that directly infringe CCP's copyrights include other Samsung entities as well as third parties including, without limitation, Dell and Xerox.

98. On information and belief, Samsung ECL and Samsung America knew, should have known, and had reason to know that these third parties were directly infringing CCP's copyrights.

99. On information and belief, Samsung ECL and Samsung America intentionally induced, caused, encouraged, and materially contributed to the infringement of CCP's copyrights by these entities. As to at least certain of these entities, including wholly-owned subsidiary Samsung America, Samsung ECL profits directly from and has a financial interest in the above-described infringing activities. As to at least some of these entities, including wholly-owned subsidiary Samsung America, Samsung ECL has, and at all relevant times had, the right and ability to supervise, control, and/or stop the infringing activities of those direct infringers but failed to do so.

100. Samsung ECL's contributory and vicarious infringement includes, without limitation, the sale of infringing Samsung-branded products to other entities who import, distribute and/or sell those products within the United States. Samsung ECL's contributory

infringement also includes, without limitation, the sale of infringing products as an OEM to other entities who import, distribute and/or sell those products within the United States, including, without limitation, Dell and Xerox.

101. Samsung America's contributory infringement includes, without limitation, the import, sale and/or distribution of Samsung-branded products within the United States.

102. Samsung ECL's and Samsung America's above-described copyright infringement has been and remains knowing and willful. CCP has suffered damages as a direct and proximate result of the Samsung ECL's and Samsung America's contributory and vicarious infringement.

103. CCP also has suffered irreparable harm because of Samsung ECL's and Samsung America's contributory and vicarious infringement, and will continue to suffer irreparable harm in the future unless Samsung ECL and Samsung America are enjoined from continuing to contributorily and vicariously infringe CCP's copyrights.

COUNT VI - COPYRIGHT INFRINGEMENT: DEFENDANT IBM

104. CCP incorporates the allegations of paragraphs 1 through 103 above as though fully set forth herein.

105. CCP is the owner of all right, title and interest in and to the copyrights for the JISS OpenPower software.

106. CCP has registered a copyright in the JISS OpenPower software with the United States Copyright Office. The Copyright Office has assigned registration number TXu-1-610-847 to the JISS OpenPower copyright registration. CCP is the owner of all right, title and interest in and to this copyright registration, which is valid.

107. Upon information and belief, IBM has reproduced and distributed the JISS OpenPower in the process of selling servers and other devices, without license or other authorization from CCP. This reproduction of JISS OpenPower constitutes infringement of

CCP's copyrights in the JISS OpenPower software.

108. On information and belief, IBM allowed technicians to download JISS OpenPower software from a server located in the United States without license or other authorization from CCP. On information and belief, that software was then installed on computer servers throughout the world.

109. Since December 2006, IBM has continued to market and, upon information and belief, sell products incorporating the JISS OpenPower software. For example, price lists and descriptions of products incorporating JISS OpenPower were available (at least as of November 24, 2010) on IBM's website.

110. Upon information and belief, IBM has publicly distributed the JISS OpenPower software in the United States, after December 2006. This public distribution of JISS OpenPower constitutes infringement of CCP's copyrights in the JISS OpenPower software.

111. CCP has suffered damages as a result of this infringing conduct.

112. CCP has suffered irreparable harm by IBM's infringement of CCP's copyrights in the JISS OpenPower software, and will continue to suffer irreparable harm in the future unless IBM is enjoined from infringing CCP's copyrights in that work.

**COUNT VII - PATENT INFRINGEMENT (U.S. PATENT NO. 6,684,789):
DEFENDANTS SAMSUNG AMERICA AND SAMSUNG ECL**

[Note: pursuant to the Court's December 12, 2010 Order, this claim has been stayed pending reexamination of U.S. Patent No. 6,684,789]

113. CCP incorporates the allegations of paragraphs 1 through 112 above as though fully set forth herein.

114. On February 3, 2004, the United States Patent and Trademark Office (USPTO) duly and legally issued U.S. Patent No. 6,684,789 ("the '789 Patent") entitled "Method and System for the Transformation of Digital Print Data Streams and Corresponding Printer and

Printer Server,” was duly and legally issued to CCP, as assignee of inventor Thomas Krautter (a CCP employee).

115. Samsung ECL and Samsung America have been and are infringing, inducing infringement and/or contributing to infringement of the ‘789 Patent in this District, and throughout the United States, by making, selling, offering for sale, and/or importing infringing devices, software and other technology covered by one or more claims of the ‘789 Patent, including at least Samsung ECL’s printer devices incorporating the JScribe® Core technology.

116. As a direct and proximate result of Samsung ECL’s and Samsung America’s infringement of the ‘789 Patent, CCP has suffered and continues to sustain monetary damages.

117. CCP has been and continues to be irreparably harmed by Samsung ECL’s and Samsung America’s infringement of the ‘789 Patent. On information and belief, Samsung ECL and Samsung America will continue to infringe unless such infringement is enjoined by this Court.

COUNT VIII - TRADEMARK INFRINGEMENT, UNFAIR COMPETITION UNDER THE LANHAM ACT: DEFENDANTS SAMSUNG AMERICA AND SAMSUNG ECL

118. CCP incorporates the allegations of paragraphs 1 through 117 above as though fully set forth herein.

119. CCP is the owner of all right, title and interest in and to United States Trademark Registration No. 2,662,063, for the word mark JSCRIBE, for use in connection with computer software for output management; software for computer peripherals, namely, printer software; and development of computer software, for output management, for others.

120. On information and belief, Samsung ECL and Samsung America used the mark “JScribe” on web sites, and on packaging or in the device manuals for a JScribe Enabler Kit, without indicating anywhere that JSCRIBE® is a registered trademark of CCP.

121. By posting documents and information on websites that included the JSCRIBE® mark, Samsung ECL and Samsung America were aware of and actively encouraged, supervised, facilitated and induced the direct infringement of CCP's trademark. Samsung ECL and, on information and belief, Samsung America knew the mark JSCRIBE® was a registered trademark belonging to CCP, knew they had no rights to use it in commerce without attribution, or following termination of the IBM Germany Agreement, and actively encouraged others to infringe, for example by advertising the many benefits of JScribe® on the samsung.com website, and on other websites. Further, by providing the means by which that infringement occurred, Samsung ECL and Samsung America substantially participated in Samsung Networks' direct infringement. Accordingly, Samsung ECL and Samsung America contributorily infringed CCP's trademark.

122. On information and belief, Samsung ECL and Samsung America identify devices on their various commercial websites, accessible in the United States, as containing JScribe® software or software "based on JScribe," without indicating anywhere on the websites that JSCRIBE® is a registered trademark of CCP.

123. In addition, Samsung Networks' direct infringement of CCP's trademark, provided direct financial benefit to Samsung ECL and Samsung America by allowing them to avoid paying a royalty for use of CCP's trademark, and by promoting the sales of their printers. Further, on information and belief, Samsung ECL and/or Samsung America controlled the content on the website, that is, they had the right and ability to control what information was posted on samsung.com (including any affiliated foreign websites), as well as the ability to remove the infringing material from these sites. Accordingly, Samsung ECL and Samsung

America have vicariously infringed CCP's trademark for JScribe® through their supervision and control of the above-described direct infringement.

124. Samsung ECL's and Samsung America's use of CCP's registered JSCRIBE® trademark on Samsung ECL's and Samsung America's devices and websites, is without the consent or authorization of CCP.

125. The above-described actions by Samsung ECL and Samsung America constitute a use in commerce of a reproduction, counterfeit, copy, or colorable imitation of CCP's registered JSCRIBE® trademark in connection with the sale, offering for sale, distribution, or advertising of goods.

126. The above-described use by Samsung ECL and Samsung America of CCP's registered JSCRIBE® trademarks is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of CCP with Samsung, or as to the origin, sponsorship, or approval of Samsung's devices by CCP.

127. As a direct and proximate result of Samsung ECL's and Samsung America's infringement of CCP's registered JSCRIBE® trademark, CCP has suffered and continues to sustain monetary damages.

128. CCP has been and continues to be irreparably harmed by Samsung ECL and Samsung America's infringement of CCP's registered JSCRIBE® trademark. On information and belief, Samsung ECL and Samsung America will continue to infringe unless such infringement is enjoined by this Court.

DEMAND FOR JURY TRIAL

Plaintiff CCP demands a jury trial on all issues.

PRAYER FOR RELIEF

WHEREFORE, CCP requests the following relief against defendants Samsung ECL, Samsung America and IBM:

- a. Reasonable royalty for each act of infringement;
- b. an award of compensatory damages and disgorgement of any profits of Samsung ECL and Samsung America attributable to the direct and indirect infringement of CCP's copyrights, along with prejudgment interests and costs;
- c. a preliminary and permanent injunction prohibiting Samsung ECL, Samsung America, and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them from directly or indirectly infringing CCP's copyrights in the JAS Solution and JScribe® System Integrators Guide (JScribe® API Network/GUI Material), including, without limitation, prohibiting Samsung ECL and Samsung America from: i) making the JAS Solution, or parts of it, or derivative works thereof available on the Download Center Websites; ii) displaying or distributing any links to the Download Center Websites; iii) shipping devices containing JAS Solution or parts thereof, or derivative works thereof; and iv) otherwise reproducing, displaying, distributing or preparing derivatives of the CCP Software and the JScribe® System Integrators Guide (JScribe® API Network/GUI Material), including but not limited to Samsung's XOA and the API used in Samsung's printers based in whole or in part on JScribe® software;
- d. a permanent injunction prohibiting Samsung ECL, Samsung America, and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them from directly or indirectly infringing CCP's copyrights in the JAS Solution and JScribe® System Integrators

Guide (JScribe® API Network/GUI Material), including, without limitation, prohibiting Samsung ECL and Samsung America from: i) making links to the JAS Solution, or parts of it, or derivative works thereof on the Download Center Websites available on other websites such as the Samsung Printer Website; and ii) otherwise reproducing, displaying, distributing or preparing derivatives of the CCP's copyrighted software and the JScribe® System Integrators Guide (JScribe® API Network/GUI Material);

e. a Court order requiring Samsung ECL and Samsung America to impound any infringing articles in their possession, custody, or control;

f. a permanent injunction prohibiting Defendants Samsung ECL and Samsung America and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them, from directly or indirectly infringing CCP's copyrights in the JAS Solution and JScribe® System Integrators Guide (JScribe® API Network/GUI Material), including, without limitation, by prohibiting these Defendants from reproducing and distributing the JScribe® Core software or any portion thereof and/or the JScribe® API or any portion thereof via "field installations," "field updates" or "field upgrades" as described herein, and by otherwise reproducing, distributing, displaying or preparing derivatives of the CCP Software and the JScribe® System Integrators Guide (JScribe® API Network/GUI Material), including but not limited to Samsung's XOA and Samsung's JScribe® API;

g. a permanent injunction prohibiting Defendants Samsung ECL and Samsung America and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them, from embedding active and/or inactive (or dormant) versions of CCP's copyrighted

JScribe® software, including but not limited to JScribe® Core software or parts thereof and JScribe® API or parts thereof, or otherwise infringing CCP's copyrights in JScribe® API or JScribe® System Integrators Guide (JScribe® API Network/GUI Material) in devices which are not Samsung-branded devices, but are OEM devices supplied to other companies for re-branding before sale to the end user;

h. a permanent injunction prohibiting Defendants Samsung ECL and Samsung America and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them, from using CCP's copyrighted JScribe® software, including but not limited to the JScribe® API, JScribe® System Integrators Guide (JScribe® API Network/GUI Material) or parts of it, as a basis for creating Samsung's XOA or Samsung's JScribe® API;

i. a permanent injunction prohibiting Defendants Samsung ECL and Samsung America and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them, from developing an API for JScribe® software based on JAS Solution or parts of it (including but not limited to the JScribe® API) or JScribe® System Integrators Guide (JScribe® API Network/GUI Material);

j. a permanent injunction prohibiting Defendants Samsung ECL and Samsung America and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them, from adapting CCP's JScribe® source code, or portions thereof, or using that (adapted) code or other code adopted or derived from the JScribe® System Integrators Guide (JScribe® API Network/GUI Material) in Samsung's Firmware;

k. an award of compensatory damages and disgorgement of any profits of IBM attributable to the infringement of CCP's copyrights, along with prejudgment interests and costs;

l. permanent injunctive relief prohibiting IBM and its officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them, from infringing CCP's copyrights in the JISS OpenPower software, specifically, by prohibiting IBM from reproducing and distributing the JISS OpenPower software in devices, and by otherwise reproducing, distributing, displaying or preparing derivatives of the JISS OpenPower software;

m. a Court order requiring IBM to impound any infringing articles in its possession, custody, or control;

n. an award of compensatory damages and disgorgement of any profits of Samsung ECL and Samsung America attributable to the infringement of the '789 Patent, along with prejudgment interests and costs;

o. a permanent injunction prohibiting Samsung ECL and Samsung America and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them, from infringing, inducing the infringement and/or contributing to the infringement of the '789 Patent pursuant to 35 U.S.C. § 283;

p. an award of compensatory damages and disgorgement of any profits of Samsung ECL and Samsung America attributable to the infringement of CCP's registered JSCRIBE® trademark and unfair competition under the Lanham Act, along with prejudgment interests and costs;

q. a preliminary and permanent injunction prohibiting Samsung ECL and Samsung America and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them, from: i) using the term “JScribe” in connection with any printer, MFD or software on any web site; ii) labeling their devices, either directly or on the device packaging or in the device manuals, as containing JScribe® software; and iii) identifying devices on their various websites, accessible in the United States, as containing JScribe® software or software “based on JScribe”;

r. a preliminary and permanent injunction prohibiting Samsung ECL and Samsung America and their officers, agents, divisions, affiliates, subsidiaries, employees, and representatives, and all those controlled by or acting in concert with or in privity with any of them, from using any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Samsung ECL or Samsung America with CCP, or as to the origin, sponsorship, or approval of Samsung ECL’s or Samsung America’s goods, services, or commercial activities by CCP;

s. such other relief as this Court deems just and proper.

Dated: July 2, 2013

Respectfully submitted,

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