

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OF
2002 JAN 22 P 4
U.S. DISTRICT COURT
DISTRICT OF MASS.

AGFA CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00CV10836 (GAO)
)	
CREO PRODUCTS INC.,)	
CREO INC.,)	
CREOSCITEX AMERICA CORPORATION,)	
CREOSSU INC.,)	JURY TRIAL DEMANDED
SCITEX CORPORATION LTD.,)	
SCITEX DEVELOPMENT CORP., and)	
SCITEX AMERICA CORP.,)	
)	
Defendants.)	

AMENDED COMPLAINT

Plaintiff, Agfa Corporation ("Agfa" or "plaintiff"), by its undersigned attorneys, for its amended complaint against defendants, Creo Products Inc., Creo Inc., CreoScitex America Corporation, CreoSSU Inc., Scitex Corporation Ltd., Scitex Development Corp., and Scitex America Corp., alleges as follows:

1. This action is for injunctive relief and damages for patent infringement by each of the defendants. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et. seq.*

JURISDICTION AND VENUE

2. This Court has proper, original and exclusive jurisdiction over the subject matter of this action under 28 U.S.C. § 1338(a). Venue is proper in this Court under the provisions of 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, each of the defendants has committed acts of patent infringement by offering for sale and/or selling, within the District of Massachusetts, one or more products covered by the patents here in suit.

THE PARTIES

3. Agfa, a Delaware corporation, is a world leader in imaging technology. Agfa develops, produces and markets analog and digital printing systems, primarily for graphics, medical and industrial radiography, and consumer imaging and photography markets. Agfa maintains its worldwide headquarters and the research, development and manufacturing center for its Electronic Prepress Systems in Wilmington, Massachusetts, where it employs more than 800 people.

4. Creo Products Inc., upon information and belief, is a corporation organized and existing under the laws of Canada, and has a place of business in Boston, Massachusetts. Upon further information and belief, Creo Products Inc. acquired certain assets of Scitex Corporation Ltd. relating to the digital prepress business, which business is responsible for the manufacture, use, offer for sale, and/or sale of certain digital printing systems here accused of patent infringement. Creo Products Inc., upon information and belief, also does business as and/or through (a) Creo Inc., a Washington corporation having a place of business in Lowell, Massachusetts, (b) CreoSSU Inc., a Delaware corporation, and/or (c)

CreoScitex America Corporation, a corporation having a place of business in Bedford, Massachusetts. On information and belief, Creo Inc., CreoSSU Inc. and/or CreoScitex America Corporation are manufacturing and marketing agents for Creo Products Inc.

5. Scitex Corporation Ltd., upon information and belief, is a corporation organized and existing under the laws of the State of Israel, and has a place of business in Bedford, Massachusetts. Upon further information and belief, Scitex Corporation Ltd. also does business as and/or through Scitex Development Corp. and/or Scitex America Corp., each of which is a Massachusetts corporation with a place of business in Bedford, Massachusetts. On information and belief, Scitex Development Corp. and/or Scitex America Corp. are manufacturing and marketing agents for Scitex Corporation Ltd.

THE PATENTS IN SUIT

6. Agfa has, at great effort and expense, developed state of the art technology for computer to plate (CTP) lithographic printing systems used to produce printing plates. Agfa's patented technology is directed to automatic CTP systems and methods used for making printing plates by digitally transferring an image directly to a printing plate without the need for first exposing the image on a film sheet. The patented CTP system includes, among other things, an automatic plate handler which stores and automatically manipulates a variety of different plates sizes and types required by printing jobs and an image setter which puts the print image on the printing plate. The CTP system may also include a digital front end, a raster image processor, a plate processor and other equipment. Agfa's patented

technology provides greater prepress speeds and accuracy, reproductions that are more faithful to the original image, and increased efficiency in the printing process.

7. Agfa's patented technology has enjoyed great commercial success from the moment of its introduction. Agfa has sold tens of millions of dollars of its Galileo CTP system embodying the patented technology.

8. Agfa was awarded numerous U.S. and foreign patents directed to different aspects of its proprietary CTP printing systems including, but not limited to:

- a. U.S. Patent 5,738,014
- b. U.S. Patent 5,992,324
- c. U.S. Patent 6,000,337
- d. U.S. Patent 5,655,452
- e. U.S. Patent 5,791,250
- f. U.S. Patent 5,788,455.

9. U.S. Patent 5,738,014, entitled "Method and Apparatus for Making Lithographic Printing Plates in an Automated Computer to Plate Imaging System" ("the '014 Patent"), was duly and legally issued to plaintiff Agfa on April 14, 1998. Plaintiff is the owner of the '014 Patent. A copy of the '014 Patent is attached as Exhibit A to this Complaint.

10. U.S. Patent 5,992,324, entitled "Method and Apparatus for Making Lithographic Printing Plates in an Automated Computer to Plate Imaging System" ("the '324 Patent"), was duly and legally issued to plaintiff Agfa on November 30, 1999. Plaintiff is the

owner of the '324 Patent. A copy of the '324 Patent is attached as Exhibit B to this Complaint.

11. U.S. Patent 6,000,337, entitled "Method and Apparatus for an Automated Plate Handler with Elevator and Table Support Mechanism" ("the '337 Patent"), was duly and legally issued to plaintiff Agfa on December 14, 1999. Plaintiff is the owner of the '337 Patent. A copy of the '337 Patent is attached as Exhibit C to this Complaint.

12. U.S. Patent 5,655,452, entitled "Method and Apparatus for an Automated Plate Handler with Slip Sheet Removal Mechanism" ("the '452 Patent"), was duly and legally issued to plaintiff Agfa on August 12, 1997. Plaintiff is the owner of the '452 Patent. A copy of the '452 Patent is attached as Exhibit D to this Complaint.

13. U.S. Patent 5,791,250, entitled "Method and Apparatus for an Automated Plate Handler with Slip Sheet Removal Mechanism" ("the '250 Patent"), was duly and legally issued to plaintiff Agfa on August 11, 1998. Plaintiff is the owner of the '250 Patent. A copy of the '250 Patent is attached as Exhibit E to this Complaint.

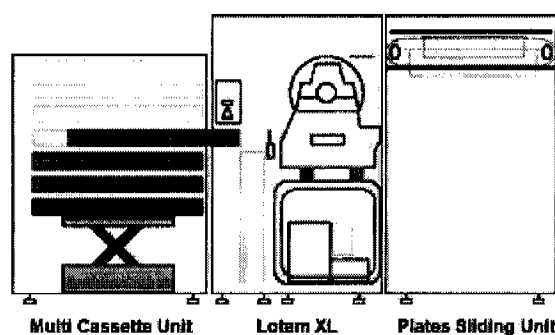
14. U.S. Patent 5,788,455, entitled "Method and Apparatus for Picking and Transporting Plates in an Automated Platesetter" ("the '455 Patent"), was duly and legally issued to plaintiff Agfa on August 4, 1998. Plaintiff is the owner of the '455 Patent. A copy of the '455 Patent is attached as Exhibit F to this Complaint.

THE INFRINGING DEVICES

15. Defendants, upon information and belief, have made, used, offered for sale and/or sold, and currently make, use, offer for sale and/or sell CTP systems in the United

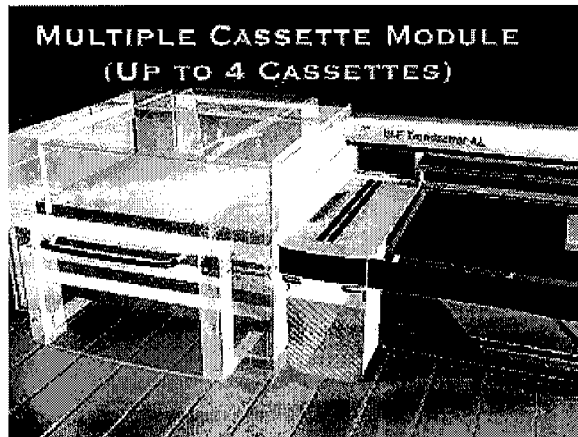
States and elsewhere that misappropriate the Agfa technology protected by, among other things, the aforelisted Agfa patents. Defendants' systems covered by the Agfa patents include the Lotem XL system, the Lotem 800 system, the Lotem Quantum system, the VLF Trendsetter AL system and possibly others. These accused CTP systems use, in part, automatic plate handlers and image setters to expose digital image data onto a lithographic plate without using a film for plate making. In the accused systems, the automatic plate handler (sometimes called a multi-cassette unit or multi-cassette module) contains a plurality of stacks of plates and a mechanism for automatically moving a desired plate stack to a position wherein a single plate may be removed from the desired plate stack and delivered to the imaging setter. The image setters employed in the accused systems include the Lotem XL, the Lotem 800, the Lotem Quantum, and the VLF Trendsetter AL. The accused systems may also include digital front ends, plate processors and/or other related equipment.

16. Upon information and belief, the multi-cassette unit and the Lotem XL image setter in the Lotem XL system are schematically shown below:



17. Upon information and belief, the Lotem 800 system and the Lotem Quantum system use a multiple-cassette unit similar to the one used in the Lotem XL system.

18. Upon information and belief, a multiple cassette module used in the VLF Trendsetter AL system is schematically shown below:



19. Defendants' manufacture, use, sale and offers for sale of the Lotem XL system, the Lotem 800 system, the Lotem Quantum system, and the VLF Trendsetter AL system, and possibly other similar such devices, constitute acts of infringement of dozens of patent claims in the aforelisted Agfa patents.

20. Upon information and belief, by at least 1997, defendants learned of Agfa's patented Galileo CTP system containing the patented technology described in the asserted Agfa patents. Thereafter, defendants promptly commenced the development and manufacture of the accused systems.

21. In or about December 1999 and again in or about January 2000, Agfa brought the existence of the '014, '452, '250 and '455 patents to the attention of certain defendants suggesting that they required licenses under these patents. Specifically, in about December 1999, Mr. Robert Sabourin, Agfa's Patent Counsel, brought the existence of the '014, '452, '250 and '455 patents to the attention of Ms. Marcia Moore, General Counsel of Scitex America Corp. and a legal representative of defendant Scitex Development Corp. Upon

information and belief, Scitex America Corp. is a marketing arm of Scitex Corporation Ltd. and Scitex Development Corp.

22. Further, in about January 2000, Mr. Sabourin also brought the existence of the '014, '452, '250 and '455 patents to the attention of Mr. Amos Michelson, CEO and Director of defendant Creo Products, Inc., President of defendant Creo Inc., and Director of defendant CreoSSU Inc.

23. In or about January 2000, despite full knowledge of at least the '014, '452, '250 and '455 patents, and without advice of counsel regarding the Agfa patents, defendants Creo Products Inc., Creo Inc., CreoSSU Inc., and/or CreoScitex America Corporation acquired the accused systems and other assets from defendants Scitex Corporation Ltd., Scitex Development Corp., and/or Scitex America Corp. Upon information and belief, said acquisition was in furtherance of Defendants' common design, plan and conspiracy, among and between each other, to infringe Agfa's patents, induce infringement of Agfa's patents, and contribute to the infringement of Agfa's patents.

24. Defendants unjustifiably ignored Agfa's inquiries and warnings and have jointly made, used, offered for sale, sold, promoted and/or advertised the accused systems with full knowledge and in deliberate disregard of Agfa's rights in at least the '014, '452, '250 and '455 patents. They committed their tortious acts of infringement with the active support and participation of each other.

25. In May 2000, Agfa sued defendants for infringement of the asserted Agfa patents.

26. Since at least December 1999, defendants failed to properly investigate and insure that they were not infringing the Agfa patents. At no time prior to the commencement of the infringement did Defendants obtain an opinion of counsel that they did not infringe the patents in suit or that the Agfa patents were invalid or unenforceable. Furthermore, defendants waited over 16 months before obtaining any opinion of counsel relating to the validity of the Agfa patents in suit. Even that opinion, however, did not find that all of the claims in the asserted Agfa patents are invalid.

COUNT I - INFRINGEMENT OF THE '014 PATENT

27. Plaintiff incorporates by reference the allegations contained in paragraphs 1-26 above.

28. Defendants have infringed and are infringing the '014 Patent by making, using, selling, and offering to sell products including, but not limited to, the Lotem XL system, Lotem 800 system, Lotem Quantum system and the VLF Trendsetter AL system and possibly others. One or more of such product(s) meet(s) all of the elements of one or more of claims 1-15, 19-26 and 30 of the '014 Patent, and possibly other claims in the '014 Patent.

29. Defendants have induced and contributed to, and continue to induce and contribute to acts of infringement of the '014 Patent by their customers.

30. On information and belief, defendants will continue to infringe the '014 Patent unless enjoined by this Court.

31. Defendants' infringement of the '014 Patent was and is willful and with full knowledge of the '014 Patent, thereby rendering this case exceptional within the meaning of 35 U.S.C. § 285.

32. By their infringement of the '014 Patent, defendants have caused, are causing, and unless such acts and practices are restrained and enjoined by this Court, will continue to cause immediate and irreparable harm to Agfa for which there is no adequate remedy at law, and for which Agfa is entitled to preliminary and permanent injunctive relief under 35 U.S.C. § 283.

33. As a direct and proximate consequence of defendants' infringement of the '014 Patent, Agfa has been, is being, and, until such acts and practices are enjoined by this Court, will continue to be damaged in its business and property, for which Agfa is entitled to compensatory and treble damage relief under 35 U.S.C. § 284.

COUNT II - INFRINGEMENT OF THE '324 PATENT

34. Plaintiff incorporates by reference the allegations contained in paragraphs 1-33 above.

35. Defendants have infringed and are infringing the '324 Patent by making, using, selling, and offering to sell products including, but not limited to, the Lotem XL system, Lotem 800 system, Lotem Quantum system and the VLF Trendsetter AL system and possibly others. One or more of such product(s) meet(s) all of the elements of one or more of claims 1-5, 7-29, and 31-40 of the '324 Patent.

36. Defendants have further induced and contributed to, and continue to induce and contribute to acts of infringement of the '324 Patent by their customers.

37. Upon information and belief, defendants will continue to infringe the '324 Patent unless enjoined by this Court.

38. Defendants' infringement of the '324 Patent was and is willful and with full knowledge of the '324 Patent, thereby rendering this case exceptional within the meaning of 35 U.S.C. § 285.

39. By their infringement of the '324 Patent, defendants have caused, are causing, and unless such acts and practices are restrained and enjoined by this Court, will continue to cause immediate and irreparable harm to Agfa for which there is no adequate remedy at law, and for which Agfa is entitled to preliminary and permanent injunctive relief under 35 U.S.C. § 283.

40. As a direct and proximate consequence of defendants' infringement of the '324 Patent, Agfa has been, is being, and, until such acts and practices are enjoined by this Court, will continue to be damaged in its business and property, for which Agfa is entitled to compensatory and treble damage relief under 35 U.S.C. § 284.

COUNT III - INFRINGEMENT OF THE '337 PATENT

41. Plaintiff incorporates by reference the allegations contained in paragraphs 1-40 above.

42. Defendants have infringed and are infringing the '337 Patent by making, using, selling, and offering to sell products including, but not limited to, the Lotem XL system,

Lotem 800 system, Lotem Quantum system and the VLF Trendsetter AL system and possibly others. One or more of such product(s) meet(s) all of the elements of one or more of claims 1, 9-13 and 27-31 of the '337 Patent, and possibly other claims in the '337 Patent.

43. Defendants have induced and contributed to, and continue to induce and contribute to acts of infringement of the '337 Patent by their customers.

44. On information and belief, defendants will continue to infringe the '337 Patent unless enjoined by this Court.

45. Defendants' infringement of the '337 Patent was and is willful and with full knowledge of the '337 Patent, thereby rendering this case exceptional within the meaning of 35 U.S.C. § 285.

46. By their infringement of the '337 Patent, defendants have caused, are causing, and unless such acts and practices are restrained and enjoined by this Court, will continue to cause immediate and irreparable harm to Agfa for which there is no adequate remedy at law, and for which Agfa is entitled to preliminary and permanent injunctive relief under 35 U.S.C. § 283.

47. As a direct and proximate consequence of defendants' infringement of the '337 Patent, Agfa has been, is being, and, until such acts and practices are enjoined by this Court, will continue to be damaged in its business and property, for which Agfa is entitled to compensatory and treble damage relief under 35 U.S.C. § 284.

COUNT IV - INFRINGEMENT OF THE '452 PATENT

48. Plaintiff incorporates by reference the allegations contained in paragraphs 1-47 above.

49. Defendants have infringed and are infringing the '452 Patent by making, using, selling, and offering to sell products including, but not limited to, the Lotem XL system, Lotem 800 system, Lotem Quantum system and the VLF Trendsetter AL system and possibly others. One or more of such product(s) meet(s) all of the elements of one or more of claims 1-7 and 10-17 of the '452 Patent, and possibly other claims in the '452 Patent.

50. Defendants have induced and contributed to, and continue to induce and contribute to acts of infringement of the '452 Patent by their customers.

51. On information and belief, defendants will continue to infringe the '452 Patent unless enjoined by this Court.

52. Defendants' infringement of the '452 Patent was and is willful and with full knowledge of the '452 Patent, thereby rendering this case exceptional within the meaning of 35 U.S.C. § 285.

53. By their infringement of the '452 Patent, defendants have caused, are causing, and unless such acts and practices are restrained and enjoined by this Court, will continue to cause immediate and irreparable harm to Agfa for which there is no adequate remedy at law, and for which Agfa is entitled to preliminary and permanent injunctive relief under 35 U.S.C. § 283.

54. As a direct and proximate consequence of defendants' infringement of the '452 Patent, Agfa has been, is being, and, until such acts and practices are enjoined by this Court,

will continue to be damaged in its business and property, for which Agfa is entitled to compensatory and treble damage relief under 35 U.S.C. § 284.

COUNT V - INFRINGEMENT OF THE '250 PATENT

55. Plaintiff incorporates by reference the allegations contained in paragraphs 1-54 above.

56. Defendants have infringed and are infringing the '250 Patent by making, using, selling, and offering to sell products including, but not limited to, the Lotem XL system, Lotem 800 system, Lotem Quantum system and the VLF Trendsetter AL system and possibly others. One or more of such product(s) meet(s) all of the elements of one or more of claims 1-10 of the '250 Patent, and possibly other claims in the '250 Patent.

57. Defendants have further induced and contributed to, and continue to induce and contribute to acts of infringement of the '250 Patent by their customers.

58. On information and belief, defendants will continue to infringe the '250 Patent unless enjoined by this Court.

59. Defendants' infringement of the '250 Patent was and is willful and with full knowledge of the '250 Patent, thereby rendering this case exceptional within the meaning of 35 U.S.C. § 285.

60. By their infringement of the '250 Patent, defendants have caused, are causing, and unless such acts and practices are restrained and enjoined by this Court, will continue to cause immediate and irreparable harm to Agfa for which there is no adequate remedy at law,

and for which Agfa is entitled to preliminary and permanent injunctive relief under 35 U.S.C. § 283.

61. As a direct and proximate consequence of defendants' infringement of the '250 Patent, Agfa has been, is being, and, until such acts and practices are enjoined by this Court, will continue to be damaged in its business and property, for which Agfa is entitled to compensatory and treble damage relief under 35 U.S.C. § 284.

COUNT VI - INFRINGEMENT OF THE '455 PATENT

62. Plaintiff incorporates by reference the allegations contained in paragraphs 1-61 above.

63. Defendants have infringed and are infringing the '455 Patent by making, using, selling, and offering to sell products including, but not limited to, the Lotem XL system, Lotem 800 system, Lotem Quantum system and the VLF Trendsetter AL system and possibly others. One or more of such product(s) meet(s) all of the elements of one or more of claims 1-3 and 8-10 of the '455 Patent, and possibly other claims in the '455 Patent.

64. Defendants have induced and contributed to, and continue to induce and contribute to acts of infringement of the '455 Patent by their customers.

65. On information and belief, defendants will continue to infringe the '455 Patent unless enjoined by this Court.

66. Defendants' infringement of the '455 Patent was and is willful and with full knowledge of the '455 Patent, thereby rendering this case exceptional within the meaning of 35 U.S.C. § 285.

67. By their infringement of the '455 Patent, defendants have caused, are causing, and unless such acts and practices are restrained and enjoined by this Court, will continue to cause immediate and irreparable harm to Agfa for which there is no adequate remedy at law, and for which Agfa is entitled to preliminary and permanent injunctive relief under 35 U.S.C. § 283.

68. As a direct and proximate consequence of defendants' infringement of the '455 Patent, Agfa has been, is being, and, until such acts and practices are enjoined by this Court, will continue to be damaged in its business and property, for which Agfa is entitled to compensatory and treble damage relief under 35 U.S.C. § 284.

COUNT VII - CIVIL CONSPIRACY
BY, BETWEEN AND AMONG THE DEFENDANTS

69. Plaintiff incorporates by reference the allegations contained in paragraphs 1-68 above.

70. On information and belief, with full knowledge of certain of the asserted Agfa patents, defendants Creo Products Inc., Creo Inc., CreoSSU Inc., CreoScitex America Corporation, Scitex Corporation Ltd., Scitex Development Corp., and/or Scitex America Corp. deliberately and knowingly have acted and presently act in concert and participation with each other, and/or have acted and presently act pursuant to a common design, in infringing Agfa's patent rights by their promotion, distribution, advertising, manufacture, use and/or sale of the accused systems as set forth above.

71. On information and belief, with full knowledge of certain of the asserted Agfa patents, defendants deliberately and knowingly acted in concert and participation with each other and/or acted pursuant to a common design when defendants Creo Products Inc., Creo Inc., CreoSSU Inc., and/or CreoScitex America Corporation acquired certain assets from defendants Scitex Corporation Ltd., Scitex Development Corp., and/or Scitex America Corp. necessary and essential to infringe Agfa's patents, induce infringement of Agfa's patents and contribute to the infringement of Agfa's patents.

72. On information and belief, defendants committed the acts of infringement set forth above with the active support and participation of each other, making defendants jointly and severally liable.

73. As a direct and proximate consequence of the defendants' unlawful conspiracy, Agfa has been, is being and will continue to be damaged in its business and property.

COUNT VIII- VIOLATION OF MASS. GEN. LAWS CH. 93A

74. Plaintiff incorporates by reference the allegations contained in paragraphs 1-73 above.

75. Defendants engage and have engaged in the conduct of trade or commerce within the Commonwealth of Massachusetts within the meaning of Mass. Gen. Laws ch. 93A.

76. Defendants have engaged in unfair methods of competition and unfair and deceptive acts or practices within the Commonwealth of Massachusetts in violation of Mass. Gen. Laws ch. 93A, Sections 2 and 11. Defendants' activities include, but are not limited to,

the willful infringement of the Agfa patents, and conspiring between and among defendants to infringe the Agfa patents.

77. The aforesaid acts, practices and conduct were committed willfully and deliberately.

78. By reason of the aforesaid acts, practices and conduct, Agfa has been injured in its business or property within the Commonwealth of Massachusetts, and has suffered and will continue to suffer irreparable injury, all in the nature and more particularly set forth in paragraphs 1-71 above.

DEMAND FOR JURY TRIAL

Agfa Corporation hereby demands a trial by jury on all claims and issues so triable.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff, Agfa Corporation, prays as follows:

A. For a preliminary and permanent injunction enjoining and restraining defendants, their officers, agents, servants, and all others acting in concert and participation with them, from making, using, or selling the Lotem XL system, Lotem 800 system, Lotem Quantum system, and the VLF Trendsetter AL system, and any other product that infringes any of the claims of plaintiff's '014, '324, '337, '452, '250 or '455 Patents;

B. For an accounting of the damages suffered by plaintiff, including the lost profits of plaintiff, caused by said infringement of plaintiff's '014, '324, '337, '452, '250 or

'455 Patents and said civil conspiracy to violate plaintiff's patent rights, and for a judgment requiring defendants, jointly and severally, to compensate plaintiff for such damages;

C. For an assessment of up to three times plaintiff's damages including lost profits so determined, pursuant to 35 U.S.C. § 284;

D. For an award, jointly and severally against defendants, of the expenditures made in bringing and prosecuting this action, including attorneys' fees and costs, pursuant to 35 U.S.C. § 285;

E. For an assessment of interest and costs jointly and severally against defendants;

F. For an award to Agfa Corporation of actual and multiple damages sustained by reason of defendants' violations of Mass. Gen. Laws ch. 93A, and, pursuant to Mass. Gen. Laws ch. 93A, for entry of preliminary and permanent injunctive relief and an award to Agfa Corporation for the costs of this suit, including reasonable attorneys' fees; and

G. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

AGFA CORPORATION

By its attorneys,



Date: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Amended Complaint has been served this twenty-second day of January 2002, by hand delivery and by Federal Express, addressed as follows:

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