

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

VISUAL CONTENT IP, LLC,

Plaintiff,

v.

AVISION LABS, INC.,

Defendant.

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Civil Action No. 2:17-cv-00106

Jury Trial Demanded

**PLAINTIFF VISUAL CONTENT IP, LLC'S
AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Visual Content IP, LLC files this Amended Complaint for patent infringement against Defendant Avision Labs, Inc., and alleges as follows:

PARTIES

1. Plaintiff Visual Content IP, LLC (“Visual Content”) is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business located at 1400 Preston Road, Suite 487, Plano, Texas 75093.

2. Defendant Avision Labs, Inc. (“Avision”) is a corporation organized and existing under the laws of the State of California with its principal place of business located at 6815 Mowry Avenue, Newark, California 94560. Avision may be served with process through its registered agent Charlie Chow, 6815 Mowry Avenue, Newark, California 94560.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code.

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Avison is subject to the specific personal jurisdiction of this Court's because Visual Content's claims for patent infringement against Avison arise from Avison's acts of infringement in the State of Texas. These acts of infringement include selling infringing products in the State of Texas, placing infringing products into the stream of commerce through an established distribution channel with full awareness that substantial quantities of the products have been shipped into the State of Texas, and operating an interactive website facilitating the sale of infringing products in the State of Texas, and inducing infringement of Plaintiff's patents in the State of Texas. Therefore, this Court has personal jurisdiction over Avison under the Texas long-arm statute, TEX. CIV. PRAC. & REM. CODE §17.042.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, Avison has engaged in acts of infringement in the State of Texas described above sufficient to subject it to personal jurisdiction in this district if the district were a separate State.

ASSERTED PATENTS

7. On February 26, 2013, the United States Patent and Trademark Office issued United States Patent No. 8,384,947 ("the '947 Patent") entitled "Handheld scanner and system comprising same," a true copy of which is attached as Exhibit 1.

8. On April 8, 2014, the United States Patent and Trademark Office issued United States Patent No. 8,693,047 ("the '047 Patent") entitled "Image capture unit and computer readable medium used in combination with same," a true copy of which is attached as Exhibit 2.

9. The '947 Patent and the '047 Patent (collectively, "the Asserted Patents") were invented by Albert Durr Edgar, Darryl Ray Polk, Michael David Wilkes, Sheppard Parker, Martin Potucek, and Michael Charles Wilder, all from Central Texas. The original assignee of

the Asserted Patents was Image Trends, Inc., of Austin, Texas. Visual Content is the owner by assignment of the Asserted Patents and owns all right, title, and interest in the Asserted Patents, including the right to sue for and recover all past, present, and future damages for infringement.

ACCUSED INSTRUMENTALITIES

10. Avision has made, imported, used, offered for sale, and/or sold certain Avision MiWand portable scanners (“MiWands”), which infringe the Asserted Patents.

FIRST CLAIM FOR RELIEF (Infringement of the '947 Patent)

11. Visual Content incorporates paragraphs 1 through 10 as though fully set forth herein.

12. Upon information and belief, Avision has been and is now directly and/or indirectly infringing one or more claims of the '947 Patent by (1) making, importing, using, offering for sale, and/or selling the MiWands and/or (2) by actively inducing others to use the MiWands in an infringing manner.

13. More particularly, without limitation, upon information and belief, Defendant is now directly infringing one or more claims of the '947 Patent by making, importing, using (including use for testing purposes), offering for sale, and/or selling the MiWands, all in violation of 35 U.S.C. § 271(a). The MiWands include the image processing system and perform the method described and claimed in the '947 Patent. The following is a representative description of how the MiWands infringe representative Claim 17 of the '947 Patent. This description is made without benefit of access to the software and schematics describing the MiWands, which would allow for greater specificity in identifying the particular features of the MiWands that embody the claimed inventions.

14. A MiWand comprises a scanner system. For example, a representative MiWand is described as follows:



<https://www.avision.com/motion.asp?siteid=100407&lgid=2&menuid=10075&prodid=121347&cat=32>

“Wireless design, scan images anywhere

The brand new portable scanner can be operated with a single hand. Powered by lithium battery, you do not need to carry a heavy power adapter and hunt for an electric outlet anymore! Since no computer is required to start a scan, you can carry it to anywhere, anytime! Whenever on the road, in a plane, a car or a café, you can digitize almost everything right away! Whether standing or sitting, you can complete your scan by simply gliding it over a surface. Even the posters on the wall or a pretty carton can be easily digitized!”

<https://www.avision.com/motion.asp?siteid=100407&lgid=2&menuid=10075&prodid=121347&cat=32>

Specification

General Specification	
Technology	CIS (Contact Image Sensor)
Light Source	LED

<https://www.avision.com/motion.asp?siteid=100407&lgid=2&menuid=10075&prodid=121347&cat=32>

This description indicates that the representative MiWand can perform high resolution scans with a “CIS (Contact Image Sensor).”

15. A MiWand includes a processor for image capture. The image below shows that the MiWand has multiple functions (e.g., menu navigation), indicating that the MiWand has a processor.

<p>4 Up arrow</p>	<ul style="list-style-type: none"> Enters Menu screen from [Scan Ready] screen. Navigate “backward” through images and menu options. Press and hold for 3 seconds to turn on the scanner. 	
<p>5 Power button</p>	<ul style="list-style-type: none"> Press to start or end a scan. Accept option choice in Menu and Preview options. Press and hold for 3 seconds to turn off the scanner. 	
<p>6 Down arrow</p>	<ul style="list-style-type: none"> Enters Display mode from [Scan Ready] screen. Navigate “forward” through images and menu options. 	
<p>6 Return arrow</p>	<ul style="list-style-type: none"> Return to previous screens or exists from Display mode or Menu option. 	

https://www.avision.com/download/Brochure/Intelligent%20and%20Portable/Intelligent/MiWand%202%20Wi-Fi%20PRO_ENG.pdf

16. The Avision handheld scanners or MiWands have memory (e.g., SDRAM) coupled to the processor for image capture. The image below indicates that the MiWand has integrated memory with a maximum available storage size of 128MB.

<p>Memory Size</p>	<p>128MB (SDRAM)</p>
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<https://www.avision.com/motion.asp?siteid=100407&lqid=2&menuid=10075&prodid=121347&cat=32>

17. In addition, the Avision MiWands have instructions (e.g., firmware) accessible from said memory by said at least one processor.

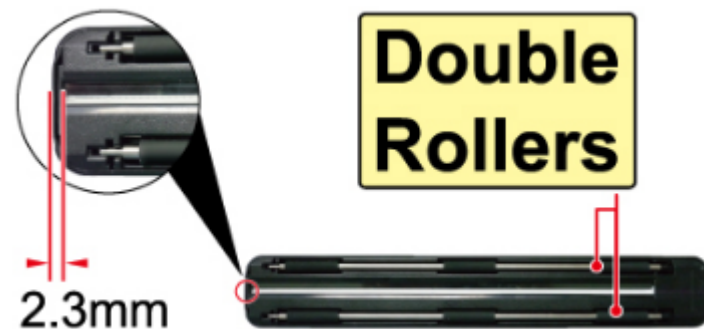
18. The instructions accessible from the memory of the Avision MiWands are configured to cause the processor to generate a plurality of position indicating data instances along a first timeline interval, wherein said position indicating data instances each corresponds to a position of a scanner at a respective position along a path of movement of the scanner. For example, the Avision MiWands have a sensor, such as a roller, for generating position data along a path of movement of the scanner.

1.6 Bottom View



Item	Name	Description
1	Sensor rollers	The rollers are sensors and should only be rolled in one direction. Do NOT roll back and forth while scanning, except during calibration.

<https://www.avision.com/download/Manual/Intelligent%20and%20Portable/Portable/Miwand2WiFi/manual-en-miwand2wifi.pdf>



<https://www.avision.com/motion.asp?siteid=100407&lqid=2&menuid=10075&prodid=121347&cat=32>

19. The instructions accessible from the memory of the MiWands are configured to generate a captured image data instance along a second timeline interval longer than the first timeline interval, wherein the captured image data instance is captured from visual content on a surface on which the scanner is supported and moved. For example, a MiWand captures image data as it is dragged across the surface of an object. For example, a MiWand captures image data as it is dragged across the surface of an object. On information and belief, the scanner is unable to capture and image if the roller is prohibited from moving.



20. The instructions accessible from the memory of the MiWands are configured to use at least two of said position indicating data instances for interpolating a position of the scanner when generation of the captured image data instance was one of initiated, completed, and partially completed. For example, the relative position of the scanner is determined by comparing position data before, during, and/or after an image capture event. For example, on information and belief, a MiWand captures an image by capturing multiple image tile and sequentially placing them adjacent to one another based on position data generated by the roller.



<https://www.avision.com/motion.asp?siteid=100407&lqid=2&menuid=10075&prodid=121347&cat=32>

21. Avision has been and is now indirectly infringing one or more claims of the '947 Patent by inducing customers to use the MiWands to directly infringe one or more claims of the '947 Patent in violation of 35 U.S.C. § 271(b).

22. Avision has been aware of the '947 Patent no later than the service of this original complaint against Avision.

23. Avision has engaged in indirect infringement by its conduct of providing its infringing MiWands to end users of those products for the purpose of enabling those end users to use the MiWand to directly infringe the '947 Patent. On information and belief, Avision has intended, and continues to intend, to induce such patent infringement by end users of its MiWands, and has had knowledge that its inducing acts would cause infringement of the '947 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent. For example, Avision provides instructions to end users of its MiWands instructing the end users how to use the MiWands in a manner which directly infringes

the '947 Patent. These instructions include the published MiWand Instructional/Marketing Videos available from Avison's YouTube channel, <https://www.youtube.com/user/AvisionHQ/>.

24. Visual Content has been damaged by Avison's infringing activities.

**SECOND CLAIM FOR RELIEF
(Infringement of the '047 Patent)**

25. Visual Content incorporates paragraphs 1 through 10 as though fully set forth herein.

26. Avison has been and is now directly and/or indirectly infringing one or more claims of the '047 Patent by (1) making, importing, using, offering for sale, and/or selling the MiWands and/or (2) by actively inducing others to use the MiWands in an infringing manner.

27. More particularly, Avison is now directly infringing one or more claims of the '047 Patent by making, importing, using (including use for testing purposes), offering for sale, and/or selling the MiWands, all in violation of 35 U.S.C. § 271(a). The MiWands include the image processing system and perform the method described and claimed in the '047 Patent. The following is a representative description of how the MiWands infringe representative Claim 6 of the '047 Patent. This description is made without benefit of access to the software and schematics describing the MiWands which would allow for greater specificity in identifying the particular features of the MiWands that embody the claimed inventions.

28. A MiWand comprises an image capture unit. For example, a representative MiWand is described as follows:



<https://www.avision.com/motion.asp?siteid=100407&lgid=2&menuid=10075&prodid=121347&cat=32>

“Wireless design, scan images anywhere

The brand new portable scanner can be operated with a single hand. Powered by lithium battery, you do not need to carry a heavy power adapter and hunt for an electric outlet anymore! Since no computer is required to start a scan, you can carry it to anywhere, anytime! Whenever on the road, in a plane, a car or a café, you can digitize almost everything right away! Whether standing or sitting, you can complete your scan by simply gliding it over a surface. Even the posters on the wall or a pretty carton can be easily digitized!”

<https://www.avision.com/motion.asp?siteid=100407&lgid=2&menuid=10075&prodid=121347&cat=32>

Specification

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Technology	CIS (Contact Image Sensor)
Light Source	LED

<https://www.avision.com/motion.asp?siteid=100407&lgid=2&menuid=10075&prodid=121347&cat=32>

This description indicates that the representative MiWand can perform high resolution scans with a “CIS (Contact Image Sensor).”

29. A MiWand includes a sensor system for generating a plurality of position indicating data instances. For example, on information and belief, a MiWand has a mechanical sensor associated with a roller for generating position indicating data:

1.6 Bottom View



Item	Name	Description
1	Sensor rollers	The rollers are sensors and should only be rolled in one direction. Do NOT roll back and forth while scanning, except during calibration.

<https://www.avision.com/download/Manual/Intelligent%20and%20Portable/Portable/Miwand2WiFi/manual-en-miwand2wifi.pdf>



<https://www.avision.com/motion.asp?siteid=100407&lqid=2&menuid=10075&prodid=121347&cat=32>

30. The MiWands have a data processing arrangement configured for deriving from at least one of the position indicating data instances a position of the image capture unit at a point in time when a captured image data instance was one of initiated, completed, and partially completed, wherein deriving the position of the image capture unit includes interpolating the position of the image capture unit from at least one of said position indicating data instances

generated prior to a point in time when the captured image data instance was one of initiated, completed, and partially completed and at least one of said position indicating data instances generated after the point in time when the captured image data instance was one of initiated, completed, and partially completed. For example, on information and belief, a MiWand derives its position by interpolating the position of the image capture unit from at least one of the position indicating data instances generated prior to the point in time when a captured image data instance is either initiated, completed, or partially completed. For example, on information and belief, a MiWand initially places image data on the top of an image then subsequently places image data further underneath as it is dragged across a document.



31. In addition, Avison has been and is now indirectly infringing one or more claims of the '047 Patent by inducing customers to use the MiWands to directly infringe one or more claims of the '047 Patent in violation of 35 U.S.C. § 271(b).

32. Avison has been aware of the '047 Patent no later than the service of this complaint against Avison.

33. Avision has engaged in indirect infringement by its conduct of providing its infringing MiWands to end users of those products for the purpose of enabling those end users to use the MiWand to directly infringe the '047 Patent. On information and belief, Avision has intended, and continues to intend, to induce such patent infringement by end users of its MiWands, and has had knowledge that its inducing acts would cause infringement of the '047 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent. For example, Avision provides instructions to end users of its MiWands instructing the end users how to use the MiWands in a manner which directly infringes the '047 Patent. These instructions include the published MiWand Instructional/Marketing Videos available from Avision's YouTube channel, <https://www.youtube.com/user/AvisionHQ/>.

34. Visual Content has been damaged by Avision's infringing activities.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Visual Content hereby demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Visual Content requests the following relief:

(a) A judgment in favor of Visual Content that Avision has directly infringed and/or has indirectly infringed by way of inducement of one or more claims of the Asserted Patents;

(b) A judgment that Visual Content has been irreparably harmed by the infringing activities of Avision, and is likely to continue to be irreparably harmed by Avision's continued infringement;

(c) A judgment and order requiring Avision to pay Visual Content damages adequate to compensate for infringement under 35 U.S.C. § 284, and in no event shall be less than a

reasonable royalty for its usage made of the inventions of the Asserted Patents, including pre- and post-judgment interest and costs, including expenses and disbursements;

(d) A judgment awarding Visual Content its costs as provided under FED. R. CIV. P. 54(d)(1);

(e) A judgment for pre- and post-judgment interest on all damages awarded;

(f) A judgment awarding Visual Content post-judgment royalties; and

(g) Any and all such further necessary or proper relief as this Court may deem just and equitable.

Dated: February 3, 2017

Respectfully submitted,

BUETHER JOE & CARPENTER, LLC

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