

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

VISUAL CONTENT IP, LLC,

*Plaintiff,*

v.

VUPOINT SOLUTIONS INC.,

*Defendant.*

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Civil Action No. 2:16-cv-01267

Jury Trial Demanded

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

Pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, Plaintiff Visual Content IP, LLC hereby amends its Complaint for Patent Infringement against Defendant VuPoint Solutions 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 VuPoint Solutions ("VuPoint") is a corporation organized and existing under the laws of the State of California with its principal place of business located at 710 Nogales Street, City of Industry, California 91748. VuPoint was previously served with process through its registered agent Ming-Ching Kuan, 10 Nogales Street, City of Industry, California 91748.

**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. Pursuant to its original Answer in this case, VuPoint does not contest this Court's exercise of personal jurisdiction over it.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, VuPoint 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. On March 7, 2017, the United States Patent and Trademark Office issued United States Patent No. 9,591,167 ("the '167 Patent") entitled "Image capture unit and computer readable medium used in combination with same," a true copy of which is attached as Exhibit 3.

10. The '947 Patent, the '047 Patent, and the '167 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**

11. VuPoint has made, imported, used, offering for sale, and/or sold certain VuPoint Magic Wand portable scanners (“Magic Wands”), which infringe the Asserted Patents.

### **FIRST CLAIM FOR RELIEF (Infringement of the `947 Patent)**

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

13. Upon information and belief, VuPoint 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 Magic Wands and/or (2) by actively inducing others to use the Magic Wands in an infringing manner.

14. 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 Magic Wands, all in violation of 35 U.S.C. § 271(a). The Magic Wands 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 Magic Wands infringe representative Claim 17 of the `947 Patent. This description is made without benefit of access to the software and schematics describing the Magic Wands, which would allow for greater specificity in identifying the particular features of the Magic Wands that embody the claimed inventions.

15. A Magic Wand comprises a scanner system. For example, a representative Magic Wand is described as follows:










<http://www.vupointsolutions.com/magic-wand>

Image sensor	A4 Color Contact Image Sensor	
Resolution	High resolution	1200x1200 dpi (when docked)
		1050x1050 dpi
	Medium resolution	600x600 dpi
	Low resolution	300x300 dpi

<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

This description indicates that the representative Magic Wand can perform high resolution scans with an “A4 Color Contact Image Sensor.”

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

1	<b>SCAN</b> 	Power On/ Off: Press and hold this key for 3 seconds to turn power on or off. In Power on mode: 1) When using the scanner without the docking station, press this button to start scanning, press this button again to stop; 2) When the scanner is on the docking station with PC connection, press this button to switch between Standby mode and USB mode. In Setup mode, press this button to confirm changes. In Playback mode, press this button to change the zoom between normal, 4x, and 8x.
2	 <b>BACK</b>	Press this button to enter Playback mode. Press this button to return to the previous screen. In Setup mode: Press this button to exit Setup mode.
3		Press this button to enter Setup mode. In Playback mode: Press this button to enter the single file delete mode. When zooming in under Playback mode: press this button to shift the functions of  and  between UP/DOWN and LEFT/RIGHT.
4	LCD screen	Display scanning status, scanned image and scanner settings.
5	Paper guide tab	Adjust to scan documents of different sizes.
6	 <b>JPG/PDF</b>	Press this button to select JPG (JPEG), PDF-A (PDF-A4) or PDF-L (PDF-Letter) file format. The icon of the selected mode will be displayed on the LCD screen. In Setup mode: Press this button to move up the selection bar. In Playback mode: Press this button to preview the previous image. When zooming in under Playback mode: press it to move to the upper/left portion of the image.
7	 <b>DPI</b>	Press this button to select LO (300dpi), MI (600dpi), HI (1050dpi), or HI (1200dpi when docked) scan quality. The icon of the selected quality will be displayed on the LCD screen. In Setup mode: Press this button to move down the selection bar. In Playback mode: Press this button to preview the next image. When zooming in under Playback mode: press it to move to the lower/right portion of the image.
8	Docking latch	Slide in to secure the scanner, slide out to release the scanner
9	Reset	Press to reset the scanner (Hardware reset)
10	microSD card slot	The microSD/microSDHC card storage location.

<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

17. The VuPoint handheld scanners or Magic Wands have memory (e.g., ROM, RAM) coupled to the processor for image capture. In the image below, maximum scan lengths change depending on the resolution of the scan, indicating that the Magic Wand has integrated memory with a maximum available storage size.

Scan length	300DPI:125"(max);600DPI:60"(max); 1050DPI:50"(max)/ 1200DPI:45" (max)
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18. In addition, the VuPoint Magic Wands have instructions (*e.g.*, firmware) accessible from said memory by said at least one processor.

19. The instructions accessible from the memory of the VuPoint Magic Wands 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 VuPoint Magic Wands have a sensor, such as a roller, for generating position data along a path of movement of the scanner.



Bottom of the unit sports a set of roller wheels and the scanning light. The scanning light only operates when the roller bar is turning (and of course, when the unit has been powered on and the scan start button has been pressed). This photo was taken by spinning the roller bar outside of the camera's view.

<http://the-gadgeteer.com/2010/07/19/vupoint-magic-wand-scanner-review/>

On information and belief, a Magic Wand is unable to capture an image if the roller is prohibited from moving.

20. The instructions accessible from the memory of the VuPoint Magic Wands 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 VuPoint Magic Wand captures image data as it is dragged across the surface of an object. On information and belief, the Magic Wand is unable to capture an image if the roller is prohibited from moving.



5. Slide the scanner across the document slowly, keeping your hand stable to get the best picture quality.

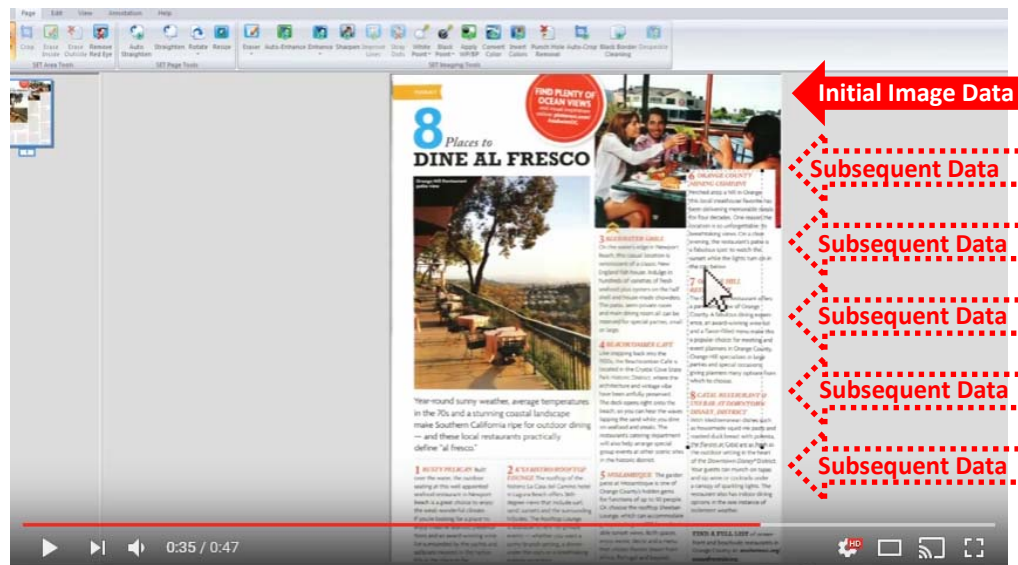


<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

21. The instructions accessible from the memory of the VuPoint Magic Wands 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 Magic Wand is



determined by comparing position data before, during, and/or after an image capture event. For example, on information and belief and as depicted in the image below, a Magic Wand captures an image by capturing multiple image tiles and sequentially placing them adjacent to one another based on position data generated by the roller.



<https://www.youtube.com/watch?v=a0XwvvOazS0>

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

23. VuPoint has been aware of the '947 Patent no later than the service of the original complaint in this case upon VuPoint.

24. VuPoint has engaged in indirect infringement by its conduct of providing its infringing Magic Wands to end users of those products for the purpose of enabling those end users to use the Magic Wand to directly infringe the '947 Patent. On information and belief, VuPoint has intended, and continues to intend, to induce such patent infringement by end users of its Magic Wands, 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, VuPoint provides instructions to end users of its Magic Wands instructing the end users how to use the Magic Wands in a manner which directly infringes the `947 Patent. These instructions include the published MAGIC WAND with Docking Station (PDSDK-ST470-VP) Instructional/Marketing Videos available from VuPoint's YouTube channel.

25. Visual Content has been damaged by VuPoint's infringing activities.

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

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

27. VuPoint 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 Magic Wands and/or (2) by actively inducing others to use the Magic Wands in an infringing manner.

28. More particularly, VuPoint 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 Magic Wands, all in violation of 35 U.S.C. § 271(a). The Magic Wands 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 Magic Wands infringe representative Claim 6 of the `047 Patent. This description is made without benefit of access to the software and schematics describing the Magic Wands which would allow for greater specificity in identifying the particular features of the Magic Wands that embody the claimed inventions.

29. A Magic Wand comprises an image capture unit. For example, a representative Magic Wand is described as follows:



<http://www.vupointsolutions.com/magic-wand>

Image sensor	A4 Color Contact Image Sensor	
Resolution	High resolution	1200x1200 dpi (when docked)
		1050x1050 dpi
	Medium resolution	600x600 dpi
	Low resolution	300x300 dpi

<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

This description indicates that the representative Magic Wand can perform high resolution scans with an “A4 Color Contact Image Sensor.”

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

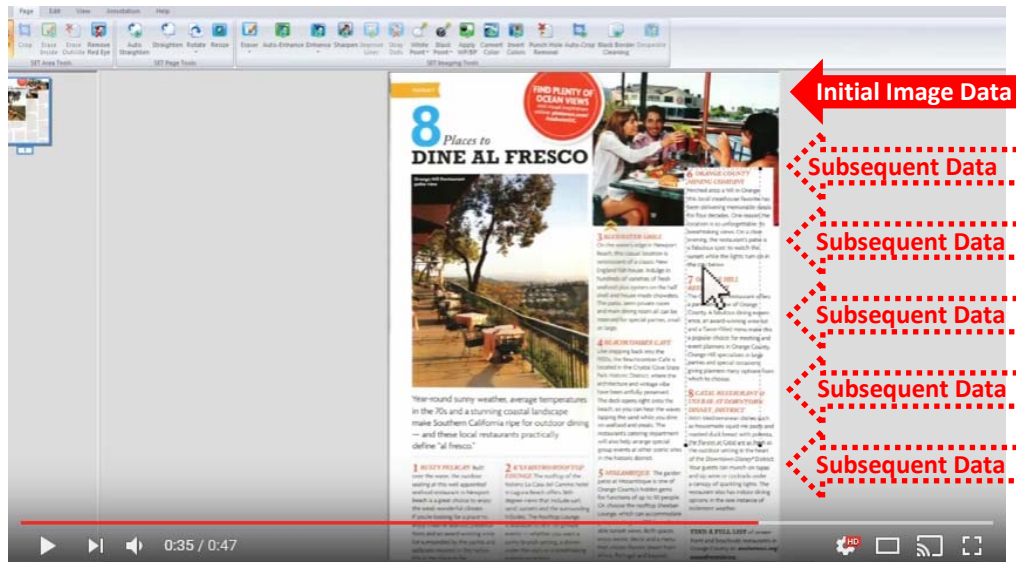


Bottom of the unit sports a set of roller wheels and the scanning light. The scanning light only operates when the roller bar is turning (and of course, when the unit has been powered on and the scan start button has been pressed). This photo was taken by spinning the roller bar outside of the camera's view.

<http://the-gadgeteer.com/2010/07/19/vupoint-magic-wand-scanner-review/>

31. A Magic Wand includes 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, a Magic Wand 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 and as depicted in the image below, a Magic Wand initially places image data on the top of an image then subsequently places image data further underneath as it is dragged across a document.



<https://www.youtube.com/watch?v=a0XwvvOazS0>

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

33. VuPoint has been aware of the '047 Patent no later than the service of the original complaint in this case upon VuPoint.

34. VuPoint has engaged in indirect infringement by its conduct of providing its infringing Magic Wands to end users of those products for the purpose of enabling those end users to use the Magic Wand to directly infringe the '047 Patent. On information and belief, VuPoint has intended, and continues to intend, to induce such patent infringement by end users of its Magic Wands, 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, VuPoint provides instructions to end users of its Magic Wands instructing the end users how to use the Magic Wands in a manner which directly infringes the '047 Patent. These instructions include the published MAGIC WAND with Docking Station (PDSDK-ST470-VP) Instructional/Marketing Videos available from VuPoint's YouTube channel.

35. Visual Content has been damaged by VuPoint's infringing activities.








**THIRD CLAIM FOR RELIEF  
(Infringement of the '167 Patent)**

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

37. VuPoint has been and is now directly and/or indirectly infringing one or more claims of the '167 Patent by (1) making, importing, using, offering for sale, and/or selling the Magic Wands and/or (2) by actively inducing others to use the Magic Wands in an infringing manner.

38. More particularly, VuPoint is now directly infringing one or more claims of the '167 Patent by making, importing, using (including use for testing purposes), offering for sale, and/or selling the Magic Wands, all in violation of 35 U.S.C. § 271(a). The Magic Wands include the image processing system and perform the method described and claimed in the '167 Patent. The following is a representative description of how the Magic Wands infringe representative Claim 21 of the '167 Patent. This description is made without benefit of access to the software and schematics describing the Magic Wands which would allow for greater specificity in identifying the particular features of the Magic Wands that embody the claimed inventions.

39. The Magic Wands process sensor data generated by and received from an image capture unit communicably coupled to the processor to produce processed sensor data. The Magic Wands have a processor for image capture. The image below shows that the scanner has multiple functions (e.g., menu navigation), indicating that the scanner has a processor:

1	<b>SCAN</b> 	Power On/ Off: Press and hold this key for 3 seconds to turn power on or off. In Power on mode: 1) When using the scanner without the docking station, press this button to start scanning, press this button again to stop; 2) When the scanner is on the docking station with PC connection, press this button to switch between Standby mode and USB mode. In Setup mode, press this button to confirm changes. In Playback mode, press this button to change the zoom between normal, 4x, and 8x.
2	 <b>BACK</b>	Press this button to enter Playback mode. Press this button to return to the previous screen. In Setup mode: Press this button to exit Setup mode.
3		Press this button to enter Setup mode. In Playback mode: Press this button to enter the single file delete mode. When zooming in under Playback mode: press this button to shift the functions of  and  between UP/DOWN and LEFT/RIGHT.
4	LCD screen	Display scanning status, scanned image and scanner settings.
5	Paper guide tab	Adjust to scan documents of different sizes.
6	 <b>JPG/PDF</b>	Press this button to select JPG (JPEG), PDF-A (PDF-A4) or PDF-L (PDF-Letter) file format. The icon of the selected mode will be displayed on the LCD screen. In Setup mode: Press this button to move up the selection bar. In Playback mode: Press this button to preview the previous image. When zooming in under Playback mode: press it to move to the upper/left portion of the image.
7	 <b>DPI</b>	Press this button to select LO (300dpi), MI (600dpi), HI (1050dpi), or HI (1200dpi when docked) scan quality. The icon of the selected quality will be displayed on the LCD screen. In Setup mode: Press this button to move down the selection bar. In Playback mode: Press this button to preview the next image. When zooming in under Playback mode: press it to move to the lower/right portion of the image.
8	Docking latch	Slide in to secure the scanner, slide out to release the scanner
9	Reset	Press to reset the scanner (Hardware reset)
10	microSD card slot	The microSD/microSDHC card storage location.

<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

40. The Magic Wands have an image capture unit coupled to the processor to produce processed image data:

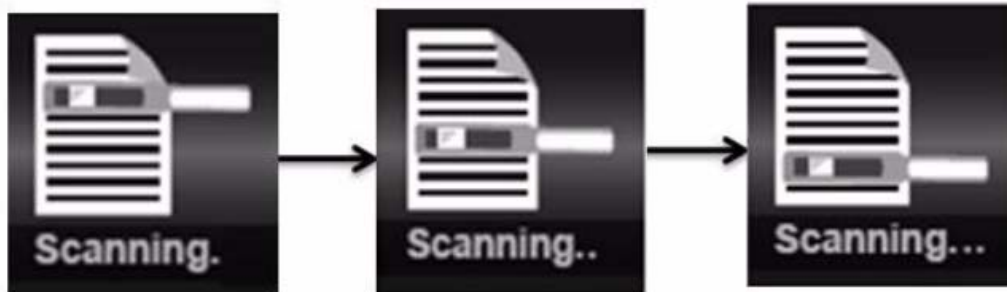
Image sensor	A4 Color Contact Image Sensor	
Resolution	High resolution	1200x1200 dpi (when docked)
		1050x1050 dpi
	Medium resolution	600x600 dpi
	Low resolution	300x300 dpi

<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

41. The Magic Wands capture an image by capturing multiple images and sequentially placing them adjacent to one another based on position data generated by the roller. Additionally, on information and belief, the Magic Wands are unable to capture an image if the roller is prohibited from moving:



5. Slide the scanner across the document slowly, keeping your hand stable to get the best picture quality.



<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

42. The Magic Wands have a sensor, such as a roller, for generating position data along a path of movement of the scanner:






Bottom of the unit sports a set of roller wheels and the scanning light. The scanning light only operates when the roller bar is turning (and of course, when the unit has been powered on and the scan start button has been pressed). This photo was taken by spinning the roller bar outside of the camera's view.

<http://the-gadgeteer.com/2010/07/19/vupoint-magic-wand-scanner-review/>

43. The image tiles include a discrete portion of visual content. In the image below, a preview of a captured image is displayed on the LCD of the Magic Wand:

## 9. Image Preview

1. Press  to enter Playback mode. The last scanned image will be displayed.

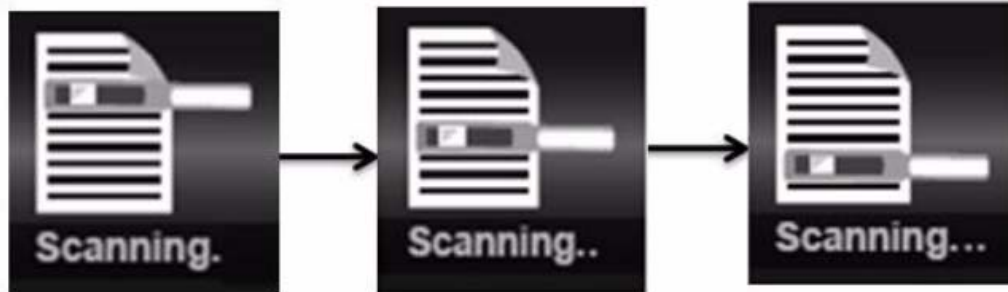


<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

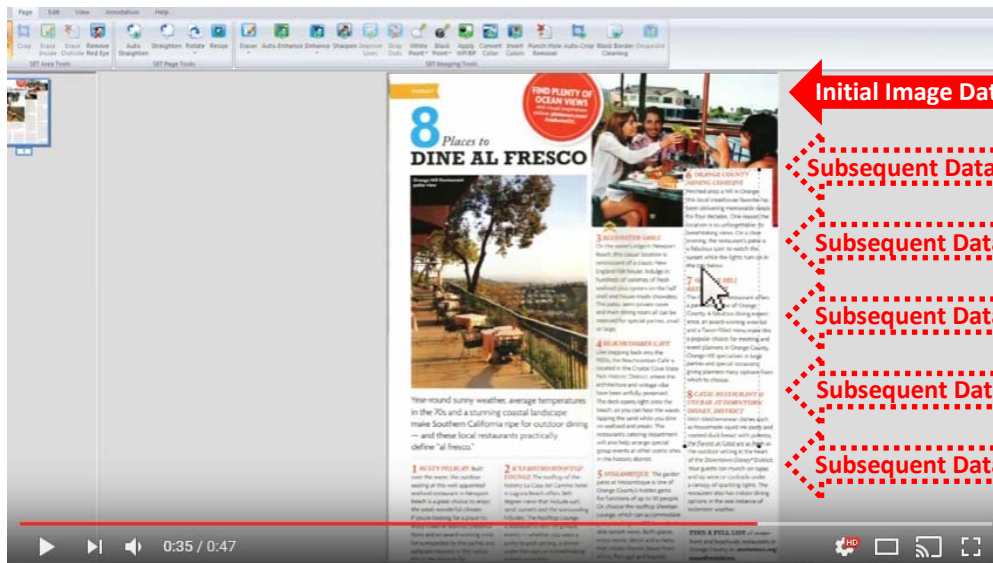
44. On information and belief, the Magic Wands capture an image by capturing multiple image tiles and sequentially placing them adjacent to one another based on position data generated by the roller:



5. Slide the scanner across the document slowly, keeping your hand stable to get the best picture quality.




<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>



<https://www.youtube.com/watch?v=a0XwvvOazS0>

45. The Magic Wands display a feedback image using at least a portion of the processed sensor data by correlating a relative position of a particular one of the image tiles with another one of the image tiles. In the image below, a preview of a captured image is displayed on the LCD of the Magic Wand:

## 9. Image Preview


1. Press  to enter Playback mode. The last scanned image will be displayed.












<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

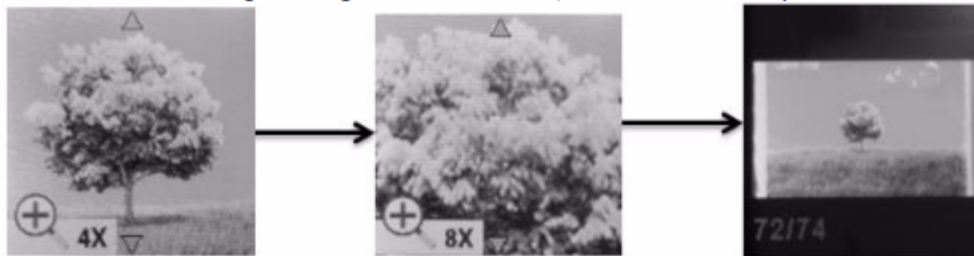
46. The Magic Wands allow a user to modify the processed sensor data and update the feedback image. In the image below, a user can display a magnified version of the captured image on the LCD of the Magic Wand:








## 9. Image Preview

1. Press  to enter Playback mode. The last scanned image will be displayed.






2. Press  or  to select your desired image. Press  to zoom in the image.
3. The  and  indicators will appear on the screen when pressing  in step 2, press  to view the upper portion of the image, press  to view the lower portion of the image.
4. Press  to change the magnification between 4x, 8x and normal zoom options.



5. The  and  indicators will appear on the screen when  is pressed again. The functions of  and  will be shifted to LEFT and RIGHT and you can press  or  button to view the left or right portion of the image.

**NOTE:**

When zooming in under Playback mode (4x, 8x), you may choose to view upper/lower or left/right portion of the image by pressing  to shift the functions of  and  between UP/DOWN and LEFT/RIGHT according to your needs.

<https://onedrive.live.com/?authkey=%21ALZac4Rpxn901hk&cid=9A70E827486EA222&id=9A70E827486EA222%21251&parId=9A70E827486EA222%21228&o=OneUp>

47. In addition, VuPoint has been and is now indirectly infringing one or more claims of the '167 Patent by inducing customers to use the Magic Wands to directly infringe one or more claims of the '167 Patent in violation of 35 U.S.C. § 271(b).

48. VuPoint has been aware of the '167 Patent no later than the service of this Second Amended Complaint in this case upon VuPoint.

49. VuPoint has engaged in indirect infringement by its conduct of providing its infringing Magic Wands to end users of those products for the purpose of enabling those end users to use the Magic Wand to directly infringe the '167 Patent. On information and belief,

VuPoint has intended, and continues to intend, to induce such patent infringement by end users of its Magic Wands, and has had knowledge that its inducing acts would cause infringement of the '167 Patent or has been willfully blind to the possibility that its inducing acts would cause direct infringement of the patent. For example, VuPoint provides instructions to end users of its Magic Wands instructing the end users how to use the Magic Wands in a manner which directly infringes the '167 Patent. These instructions include the published MAGIC WAND with Docking Station (PDSDK-ST470-VP) Instructional/Marketing Videos available from VuPoint's YouTube channel.

50. Visual Content has been damaged by VuPoint'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 VuPoint 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 VuPoint, and is likely to continue to be irreparably harmed by VuPoint's continued infringement;

(c) A judgment and order requiring VuPoint 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

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

Dated: April 5, 2017

Respectfully submitted,

**BUETHER JOE & CARPENTER, LLC**

By: /s/ Kenneth P. Kula

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**ATTORNEYS FOR PLAINTIFF  
VISUAL CONTENT IP, LLC**

**CERTIFICATE OF SERVICE**

Pursuant to Local Rules CV-5(a), (c), and (d), the undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this 5th day of April, 2017. Any other counsel of record will be served by facsimile transmission.

/s/ Kenneth P. Kula

Kenneth P. Kula