

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

CHARLES C. FREENY III, BRYAN E.
FREENY, and JAMES P. FREENY,

Plaintiffs,

v.

LEXMARK INTERNATIONAL, INC.,

Defendant.

Case No. 2:17-cv-00185-JRG-RSP

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Charles C. Freeny III, Bryan E. Freeny, and James P. Freeny (collectively “Plaintiffs”), for their First Amended Complaint against Defendant Lexmark International, Inc., hereby allege as follows:

THE PARTIES

1. Plaintiff Charles C. Freeny III is an individual residing in Flower Mound, Texas.

2. Plaintiff Bryan E. Freeny is an individual residing in Ft. Worth, Texas.

3. Plaintiff James P. Freeny is an individual residing in Spring, Texas.

4. On information and belief, Defendant Lexmark International, Inc. (“Lexmark”) is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 740 West New Circle Road, Lexington, Kentucky 40550.

5. On information and belief, Lexmark has a number of authorized dealers and service companies within this judicial district. As advertised on Lexmark’s website at http://www.lexmark.com/en_us/products/hardware/dealer-locator.html and http://www.lexmark.com/en_US/support-downloads/find-service-provider.shtml, these

authorized dealers and service companies include at least the following companies located within this judicial district:

- Complete Business Systems, Inc., 102 N. Spur 63, Longview, TX 75601;
- East Texas Copy Systems, Inc., 4545 Old Jackson Hwy, Suite 200, Tyler, TX 75703;
- George & Deborah Nuckolls, L.L.C., 5135 Summer Crossing, Texarkana, TX 75503;
- and
- Computata Products, Inc., 1301 Ridgeview Drive, Suite 100, Lewisville, TX 75057.

6. On information and belief, Lexmark has entered into contracts with these authorized dealers and service companies that set forth requirements as to how the authorized dealers and service companies are to handle the sales and servicing of Lexmark products. These authorized dealers and service companies thereby act as Lexmark's agents with respect to the sales and servicing of Lexmark products in this judicial district.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§101 et seq. This Court has jurisdiction over Plaintiffs' federal law claims under 28 U.S.C. §§1331 and 1338(a).

8. This Court has specific and/or general personal jurisdiction over Lexmark because it has committed acts giving rise to this action within this judicial district and/or has established minimum contacts within Texas and within this judicial district such that the exercise of jurisdiction over each would not offend traditional notions of fair play and substantial justice.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) because Lexmark has committed acts of patent infringement within this judicial district giving rise to this action, and Lexmark has a regular and established place of business in this judicial district.

BACKGROUND OF THE INFRINGING PRODUCTS

10. Lexmark manufactures and sells multifunction printers, including the Lexmark CX725 Series, CX410 Series, CX510 Series, CX820 Series, CX825 Series, CX860 Series, X740 Series, X790 Series, X925 Series, X950 Series, MX410 Series, MX511 Series, MX611 Series, MX710 Series, MX810 Series, and MX910 Series printers (“the accused Lexmark products”). The accused Lexmark products provide a variety of document processing and reproduction functions, such as document copying, printing, scanning, and/or faxing functions. Lexmark sells the accused Lexmark products throughout the United States, including within this judicial district.

11. Lexmark also manufactures and sells wireless adapter modules that are designed to be combined with the accused Lexmark products to enable the accused Lexmark products to communicate wirelessly with different types of wireless devices such as smartphones, tablets, and laptop computers, including the Lexmark MarkNet N8250, N8350, N8352, and N8360 wireless adapters (“the accused Lexmark wireless adapters”). Customers can purchase from Lexmark any of the accused Lexmark products bundled with one of these wireless adapter modules, or they can purchase these items separately.

12. For example, on its website at www.lexmark.com, Lexmark describes the MarkNet N8360 as follows:

Network Wi-Fi printing
plus direct print with
NFC

The MarkNet N8360 Wireless Print Server plus NFC Mobile Solutions Module adds 802.11a/b/g/n connectivity to Lexmark devices via network infrastructure or a direct-connect option for mobile users.

Source: <http://www.lexmark.com/US/en/view/product:10166/MarkNet%20N8360%20Wireless%20Print%20Server%20%20plus%20NFC%20Mobile%20Solutions%20Module/catId=product:10166-category&prodId=10166-product>

13. The accused Lexmark products combined with an accused Lexmark wireless adapter can transmit and receive data wirelessly using different types of wireless signals. For example, as advertised on Lexmark's website, the MarkNet N8360 module can communicate wirelessly using IEEE 802.11 a, b, g, and n communication protocols, which are transmitted in the 2.4 GHz and 5.0 GHz frequency bands, as well as Near Field Communication ("NFC") signals.

14. The accused Lexmark products include functionality for controlling access to the printer such that only authorized users and/or devices can access functions on the printer. This security feature requires that the device communicating with the printer transmit certain identifying information such as device identification data, user name, and/or password in order to authenticate and authorize the device to access functions on the printer. For example, in its product brochure for the CX725 Series printers, Lexmark states:

Device management: A combination of administrative access and passwords, HTTPS, SNMPv3, IPsec and 802.1x support lets you remotely monitor, manage, authorize and authenticate who and what gets access to the network.

...

Device operation: You get user authentication via PIN, passwords or badge reader, address book lookup via LDAP over SSL (Secure Socket Layer) to provide a secure connection between the device and the network, and device operator panel lockouts to protect the device settings.

Source: http://media.lexmark.com/www/idml/assets/asset_4580/media/en_US/pdfs/low.pdf

15. The accused Lexmark products can also transmit data over a Local Area Network (“LAN”) and/ or the Internet via a wired connection such as an Ethernet connection. For example, on its website, Lexmark provides the following description of the connectivity capabilities of the CX725 printer:

Standard Ports

- One Internal Card Slot
- USB 2.0 Specification Hi-Speed Certified (Type B)
- Gigabit Ethernet (10/100/1000)
- Front USB 2.0 Specification Hi-Speed Certified port (Type A)
- Rear Hi-Speed USB Port Compatible with USB 2.0 Specification (Type A)

Optional Network Ports

- Internal MarkNet N8360 802.11b/g/n Wireless, NFC

Source: <http://www.lexmark.com/US/en/catalog/product.jsp?catId=cat170005&prodId=10164>

16. The accused Lexmark products can also connect to the Internet. For example, in its product brochure for the CX725 Series printers, Lexmark states:

Lexmark's Embedded Solutions Framework (eSF) and Cloud Solutions Framework (cSF) allow the CX725 Series to load and run software solutions tailored to your specific need or industry.

Lexmark devices with cSF can run web apps designed for the device, accessed via the cloud or an on-premise server. eSF applications are created by Lexmark, its partners and customers, and loaded directly on the device.

...




Scan Center: Save time by scanning originals once and automatically sending the scanned image to multiple user-selectable locations. Destinations include shared network folder, email, fax, FTP server, cloud drive, internal hard disk, mobile device or remote printer.

Source: http://media.lexmark.com/www/idml/assets/asset_4580/media/en_US/pdfs/low.pdf

17. The accused Lexmark products can also send and receive data in the format of email messages. For example, in its “Touch Screen Guide” for the CX725 Series printers, Lexmark provides the following description of the scan-to-email functionality of the printer:



Sending an e-mail

1. Load an original document into the ADF tray or on the scanner glass.
2. Touch , and then enter the required information.
Note: You can also enter the recipient using the address book or shortcut number.
3. If necessary, configure the output file type settings.
4. E-mail the document.

Source: http://publications.lexmark.com/publications/lexmark_hardware/Touch_Screen_Guide/Touch_Screen_Guide.pdf

18. The accused Lexmark products can also connect with, manage, and share resources with other devices within a computer network. For example, as advertised in Lexmark’s product brochure for the CX725 Series printers, the printers have a combination of network security features that “lets you remotely monitor, manage, authorize and authenticate who and what gets access to the network.”

19. The accused Lexmark products can be controlled from an LCD touchscreen on the printer. The touchscreen has a “Home” screen from which the user can select the different basic functions of the printer, such as faxing, copying, and scanning. For example, in its product brochure for the CX725 Series printers, Lexmark provides the following description of the printers’ touchscreen:

1. Intuitive color touch screen with next-generation e-Task interface

The large 7-in. color touch screen features an ultra-smooth surface and can be activated by almost anything, including pens, fingertips or nails—without pressure or direct skin contact. The modern interface is familiar to users, minimizing the need for training.

2. Expandable input

Add trays to print on multiple paper types and boost maximum input capacity to 2300 sheets.

3. Universal input trays




Source: http://media.lexmark.com/www/idml/assets/asset_4580/media/en_US/pdfs/low.pdf

20. In the accused Lexmark products, when a user selects a basic function through the touchscreen such as faxing, copying or scanning, the touchscreen then displays a submenu of functions for that basic function. Upon the user's selection of the particular task that the user wishes to be performed by printer within this submenu of functions, the printer will then perform that task using the appropriate combination of hardware and software components necessary to complete the task. For example, in its "Touch Screen Guide" for the CX725 Series printers, Lexmark explains that the user's selection of a basic function from the Home screen such as copy, email, or fax leads to the display of additional submenus of options that the user can select from:

Initiating a task from the home screen




Making a copy

1. Load an original document into the ADF tray or on the scanner glass.
2. Touch , and then specify the size of the document.
3. If necessary, specify a tray or feeder and output size.
4. Copy the document.




Sending an e-mail

1. Load an original document into the ADF tray or on the scanner glass.
2. Touch , and then enter the required information.
Note: You can also enter the recipient using the address book or shortcut number.
3. If necessary, configure the output file type settings.
4. E-mail the document.



Sending a fax

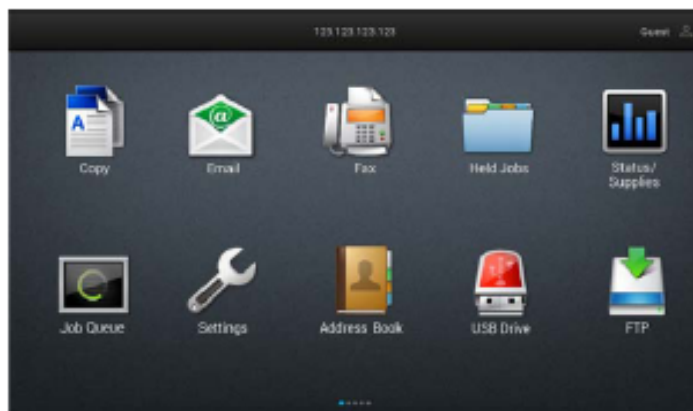
1. Load an original document into the ADF tray or on the scanner glass.
2. Touch , and then enter the required information.
3. If necessary, configure other fax settings.
4. Fax the document.

Source: http://publications.lexmark.com/publications/lexmark_hardware/Touch_Screen_Guide/Touch_Screen_Guide.pdf

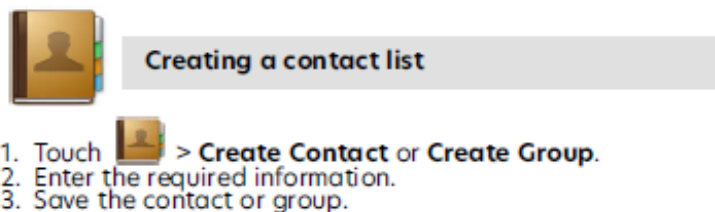
21. The accused Lexmark products include an “Address Book” functionality for storing, organizing, and retrieving contact information for potential recipients of data transmitted from the printer. For example, in its “Touch Screen Guide” for the CX725 Series printers, Lexmark provides the following description of the Address Book functionality:

Touch Screen Guide

Note: Your home screen may vary. For more information, contact your administrator.



...



Source: http://publications.lexmark.com/publications/lexmark_hardware/Touch_Screen_Guide/Touch_Screen_Guide.pdf

22. The accused Lexmark products are designed to be compact, lightweight printers with a small physical footprint so that they take up minimal space within a room or office and can be easily moved to different locations. For example, in its product brochure for the CX725 Series printers, Lexmark advertises the printers as follows:

Compact footprint: Although equipped with many enterprise-class features, the CX725 Series' compact footprint makes it ideal for distributed environments, branch locations or anywhere space is limited.

Source: http://media.lexmark.com/www/idml/assets/asset_4580/media/en_US/pdfs/low.pdf

**COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 6,490,443)**

23. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

24. On December 3, 2002, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,490,443 (“the ’443 patent”), entitled “Communication and Proximity Authorization Systems.” A true and correct copy of the ’443 patent is attached hereto as **Exhibit A**.

25. The ’443 patent describes, among other things, novel systems in which electronic devices can communicate wirelessly to provide and/or receive services from other electronic devices when they are within proximity of each other. These communications can occur over multiple communication signals and with the use of authorization codes.

26. The named inventor of the ’443 patent is Charles C. Freeny, Jr., who is now deceased.

27. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the ’443 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

28. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the '443 patent.

29. On information and belief, Lexmark has directly infringed and continues to directly infringe one or more claims of the '443 patent, including at least claim 1 of the '443 patent, in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States multifunction printers with wireless adapter modules that embody one or more of the inventions claimed in the '443 patent, including but not limited to the accused Lexmark products with accused Lexmark wireless adapters, and all reasonably similar products, in violation of 35 U.S.C. § 271(a).

30. For example, claim 1 of the '443 patent recites “[a] proximity service unit for providing at least one predetermined service for use with multiple types of wireless devices,” with the unit including “a multiple channel wireless transceiver capable of receiving at least two signal types” and the unit providing a service in response to receiving a “request authorization code” from the wireless devices.

31. The accused Lexmark products combined with an accused Lexmark wireless adapter constitute proximity service units that provide at least one predetermined service for use with multiple types of wireless devices. For example, the accused Lexmark products provide services such as document copying, printing, scanning, and/or faxing services. In addition, the accused Lexmark products with an accused Lexmark wireless adapter can be used with multiple types of wireless devices such as smartphones, tablets, and laptop computers.

32. The accused Lexmark products with an accused Lexmark wireless adapter also include a multiple channel wireless transceiver capable of receiving at least two signal types, and

provide a service in response to receiving a “request authorization code” from the wireless devices. For example, the accused Lexmark products combined with a Lexmark wireless adapter can receive multiple wireless signal types such as IEEE 802.11 a, b, g, and n communications transmitted in the 2.4 GHz and 5.0 GHz frequency bands, as well as NFC signals. In addition, the accused Lexmark products include a security feature that requires a wireless device seeking to activate services such as printing functionality on the printer to transmit a request authorization code (such as device identification data, user name, and/or password) in order to activate those services.

33. On information and belief, Lexmark is inducing and/or has induced infringement of one or more claims of the '443 patent, including at least claim 1, as a result of, among other activities, instructing, encouraging, and directing its customers on the use of the accused Lexmark products in an infringing manner in violation of 35 U.S.C. § 271(b). On information and belief, Lexmark has had knowledge of the '443 patent since at least the date of service of the original Complaint in this action. Despite this knowledge of the '443 patent, Lexmark has continued to engage in activities to encourage and assist its customers in the use of the accused Lexmark products.

34. For example, through its website at www.lexmark.com, Lexmark advertises the accused Lexmark products and provides instructions and technical support on the use the accused Lexmark products. The product brochures and user manuals discussed in the preceding paragraphs, for example, are available through Lexmark's website.

35. On information and belief, by using the accused Lexmark products as encouraged and assisted by Lexmark, Lexmark's customers have directly infringed and continue to directly infringe one or more claims of the '443 patent, including at least claim 1. On information and

belief, Lexmark knew or was willfully blind to the fact that its activities in encouraging and assisting customers in the use of the accused Lexmark products, including but not limited to the activities set forth above, would induce its customers' direct infringement of the '443 patent.

36. On information and belief, Lexmark will continue to infringe the '443 patent unless enjoined by this Court.

37. Lexmark's acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Lexmark's infringement of Plaintiffs' rights under the '443 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 7,110,744)**

38. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

39. On September 19, 2006, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 7,110,744 ("the '744 patent") entitled "Communication and Proximity Authorization Systems." A true and correct copy of the '744 patent is attached hereto as **Exhibit B**.

40. The '744 patent describes, among other things, novel systems in which a diverse set of devices can communicate with one another through wireless signals when the devices are within a certain proximity distance to each other. One device within this system can be a "front end unit" that serves as an access point through which multiple end-user devices can be connected simultaneously to a larger network through different types of wireless signals.

41. The named inventor of the '744 patent is Charles C. Freeny, Jr., who is now deceased.

42. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the '744 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

43. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the '744 patent.

44. On information and belief, Lexmark has directly infringed and continues to directly infringe one or more claims of the '744 patent, including at least claim 18 of the '744 patent, in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States multifunction printers with wireless adapter modules that embody one or more of the inventions claimed in the '744 patent, including but not limited to the accused Lexmark products with accused Lexmark wireless adapters, and all reasonably similar products, in violation of 35 U.S.C. § 271(a).

45. For example, claim 18 of the '744 patent recites “[a] communication unit connected to a public communication system, the communication unit capable of detecting a plurality of wireless devices and servicing each of the plurality of wireless devices by providing access to the public communication system when the wireless devices are within a predetermined proximity distance from the communication unit,” and where the communication unit includes a “multiple channel wireless transceiver simultaneously communicating with at least two wireless devices with different types of low power communication signals.”

46. The accused Lexmark products combined with an accused Lexmark wireless adapter constitute a communication unit connected to a public communication system, the communication unit capable of detecting a plurality of wireless devices and servicing each of the

plurality of wireless devices by providing access to the public communication system when the wireless devices are within a predetermined proximity distance from the communication unit. For example, the accused Lexmark products combined with an accused Lexmark wireless adapter can detect a plurality of wireless devices such as smartphones, tablets, and laptop computers and communicate with these devices wirelessly when they are within range of the adapter's transceiver as well as transmit data from these devices to the Internet.

47. In addition, the accused Lexmark products combined with an accused Lexmark wireless adapter include a multiple channel wireless transceiver that can simultaneously communicate with at least two wireless devices with different types of low power communication signals. For example, the accused Lexmark products combined with an accused Lexmark wireless adapter can communicate with wireless devices such as smartphones, tablets, and laptop computers using multiple wireless signal types such as IEEE 802.11 a, b, g, and n communications transmitted in the 2.4 GHz and 5.0 GHz frequency bands, as well as NFC signals, all of which are low power communication signals.

48. On information and belief, Lexmark is inducing and/or has induced infringement of one or more claims of the '744 patent, including at least claim 18, as a result of, among other activities, instructing, encouraging, and directing its customers on the use of the accused Lexmark products in an infringing manner in violation of 35 U.S.C. § 271(b). On information and belief, Lexmark has had knowledge of the '744 patent since at least the date of service of the original Complaint in this action. Despite this knowledge of the '744 patent, Lexmark has continued to engage in activities to encourage and assist its customers in the use of the accused Lexmark products.

49. For example, through its website at www.lexmark.com, Lexmark advertises the accused Lexmark products and provides instructions and technical support on the use the accused Lexmark products. The product brochures and user manuals discussed in the preceding paragraphs, for example, are available through Lexmark's website.

50. On information and belief, by using the accused Lexmark products as encouraged and assisted by Lexmark, Lexmark's customers have directly infringed and continue to directly infringe one or more claims of the '744 patent, including at least claim 18. On information and belief, Lexmark knew or was willfully blind to the fact that its activities in encouraging and assisting customers in the use of the accused Lexmark products, including but not limited to the activities set forth above, would induce its customers' direct infringement of the '744 patent.

51. On information and belief, Lexmark will continue to infringe the '744 patent unless enjoined by this Court.

52. Lexmark's acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Lexmark's infringement of Plaintiffs' rights under the '744 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**COUNT III
(INFRINGEMENT OF U.S. PATENT NO. 6,806,977)**

53. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

54. On October 19, 2004, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,806,977 ("the '977 patent"), entitled "Multiple Integrated Machine System." A true and correct copy of the '977 patent is attached hereto as **Exhibit C**.

55. The '977 patent describes, among other things, novel systems in which a single device can perform the functions of multiple different digital machines, such as the functions of a PC, a phone, a fax machine, a printer, a scanner, a copier, a networking device, and/or a personal digital assistant. The device controls all of these functions through the use of a modular design in which different functions rely on different combinations of hardware and software, with the device including a grouping control unit as well as subgroup function control units to manage the different functions as they are selected by the user.

56. The named inventor of the '977 patent is Charles C. Freeny, Jr., who is now deceased.

57. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the '977 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

58. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the '977 patent.

59. On information and belief, Lexmark has directly infringed one or more claims of the '977 patent, including at least claim 1 of the '977 patent, in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States multifunction printers that embody one or more of the inventions claimed in the '977 patent, including but not limited to the accused Lexmark products, and all reasonably similar products, in violation of 35 U.S.C. § 271(a).

60. For example, claim 1 of the '977 patent recites “[a] multiple integrated machine system capable of performing as at least two or more digital machines” Claim 1 also recites that the “first digital machine” is “a small office home office digital machine having at least two

of the function modes selected from the group comprising a message center mode, a storage center mode, a document center mode, and an internet center mode,” with at least one of these modes including “an email function.” Claim 1 further recites that the claimed system also has “a digital machine element grouping control unit” for combining different digital machine elements to form different digital machines as well as at least two “subgroup function control units” for selecting different functions within each digital machine.

61. The accused Lexmark products constitute multiple integrated machine systems that are capable of performing as at least two or more digital machines, with one of those digital machines being a small office home office digital machine. For example, the accused Lexmark products are capable of performing as a small office home office digital machine with at least a message center and document center mode by providing document copying, printing, scanning, and faxing capabilities. In addition, the accused Lexmark products have at least one email function such as the ability to send scanned documents as email attachments.

62. The accused Lexmark products are also capable of performing as a networking machine by, for example, allowing the printer to connect with, manage, and share resources with other devices within a computer network. The accused Lexmark products are also capable of performing as a personal digital assistant machine by, for example, storing and organizing contact information for users.

63. The accused Lexmark products also include “a digital machine element grouping control unit” for combining different digital machine elements to form different digital machines as well as at least two “subgroup function control units” for selecting different functions within each digital machine. For example, the accused Lexmark products include software that allows the user to switch between using the device as a small office home office machine, a network

digital machine, and a personal digital assistant machine by selecting the desired function through the printer's LCD touchscreen. The software in the accused Lexmark products also provides to the user different submenus of functions for each digital machine upon the user's selection of that digital machine through the LCD touchscreen.

64. Lexmark's acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty.

**COUNT IV
(INFRINGEMENT OF U.S. PATENT NO. 7,301,664)**

65. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

66. On November 27, 2007, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 7,301,664 ("the '664 patent"), entitled "Multiple Integrated Machine System." A true and correct copy of the '664 patent is attached hereto as **Exhibit D.**

67. The '664 patent describes, among other things, novel systems in which a single device can perform the functions of multiple different digital machines, such as the functions of a PC, a phone, a fax machine, a printer, a scanner, a copier, and/or a personal digital assistant. The device controls all of these functions through the use of a modular design in which different functions rely on different combinations of hardware and software, with the device including a grouping control unit as well as subgroup function control units to manage the different functions as they are selected by the user.

68. The named inventor of the '664 patent is Charles C. Freeny, Jr., who is now deceased.

69. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and assignees of all right, title and interest in and to the '664 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

70. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the '664 patent.

71. On information and belief, Lexmark has directly infringed one or more claims of the '664 patent, including at least claim 1 of the '664 patent, in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making, using, selling, offering for sale, and/or importing into the United States multifunction printers that embody one or more of the inventions claimed in the '664 patent, including but not limited to the accused Lexmark products, and all reasonably similar products, in violation of 35 U.S.C. § 271(a).

72. For example, claim 1 of the '664 patent recites “[a] mobile multiple integrated machine system capable of performing as at least a communication machine and a personal digital assistant machine” Claim 1 also recites that the claimed system also has “a digital machine element grouping control unit” for combining different digital machine elements to form different digital machines as well as at least two “subgroup function control units” for selecting different functions within the communication machine and personal digital assistant machine.

73. The accused Lexmark products constitute mobile multiple integrated machine systems that are capable of performing as at least two or more digital machines, with one of those digital machines being a communication machine. The accused Lexmark products are capable of performing as a communication machine by, for example, providing data transmission functions such as faxing documents and sending scanned documents via email.

74. The accused Lexmark products are also capable of performing as a personal digital assistant machine by, for example, storing and organizing contact information for users.

75. The accused Lexmark products also include “a digital machine element grouping control unit” for combining different digital machine elements to form different digital machines as well as at least two “subgroup function control units” for selecting different functions within the communication machine and personal digital assistant machine. For example, the accused Lexmark products include software that allows the user to switch between using the device as a communication machine and a personal digital assistant machine by selecting the desired function through the printer’s LCD touchscreen. The software in the accused Lexmark products also provides to the user different submenus of functions for the communication machine and the personal digital assistant machine upon the user’s selection of that digital machine through the LCD touchscreen.

76. On information and belief, Lexmark is inducing and/or has induced infringement of one or more claims of the ’664 patent, including at least claim 1, as a result of, among other activities, instructing, encouraging, and directing its customers on the use of the accused Lexmark products in an infringing manner in violation of 35 U.S.C. § 271(b). On information and belief, Lexmark has had knowledge of the ’664 patent since at least the date of service of the original Complaint in this action. Despite this knowledge of the ’664 patent, Lexmark has continued to engage in activities to encourage and assist its customers in the use of the accused Lexmark products.

77. For example, through its website at www.lexmark.com, Lexmark advertises the accused Lexmark products and provides instructions and technical support on the use the

accused Lexmark products. The product brochures and user manuals discussed in the preceding paragraphs, for example, are available through Lexmark's website.

78. On information and belief, by using the accused Lexmark products as encouraged and assisted by Lexmark, Lexmark's customers have directly infringed and continue to directly infringe one or more claims of the '664 patent, including at least claim 1. On information and belief, Lexmark knew or was willfully blind to the fact that its activities in encouraging and assisting customers in the use of the accused Lexmark products, including but not limited to the activities set forth above, would induce its customers' direct infringement of the '664 patent.

79. On information and belief, Lexmark will continue to infringe the '664 patent unless enjoined by this Court.

80. Lexmark's acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Lexmark's infringement of Plaintiffs' rights under the '664 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment against Lexmark as follows:

- a. For judgment that Lexmark has infringed and continues to infringe the claims of the '443, '744, '977, and '664 patents;
- b. For a permanent injunction against Lexmark and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '443, '744, '977, and '664 patents;

- c. For an accounting of all damages caused by Lexmark's acts of infringement;
- d. For a judgment and order requiring Lexmark to pay Plaintiffs' damages, costs, expenses, and pre- and post-judgment interest for its infringement of the '443, '744, '977, and '664 patents as provided under 35 U.S.C. § 284;
- e. For a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
- f. For such other relief at law and in equity as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury of all issues triable by a jury.

Dated: June 9, 2017

Respectfully submitted,

/s/ Christopher D. Banys

Christopher D. Banys - *Lead Attorney*

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on June 9, 2017. Therefore, this document was served on all counsel who are deemed to have consented to electronic service.

/s/ Tiffany Dang
Tiffany Dang