

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MONUMENT PEAK VENTURES, LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 18-732-VAC-SRF
)	
HASSELBLAD INCORPORATED,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Monument Peak Ventures, LLC (“MPV”), by and through the undersigned counsel, hereby files this First Amended Complaint and makes the following allegations of patent infringement relating to U.S. Patent Nos. 7,453,498 (“the ’498 Patent”), 7,032,182 (“the ’182 Patent”) and 9,082,046 (“the ’046 Patent”) against Hasselblad Incorporated (“Hasselblad”), and alleges as follows upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters.

NATURE OF THE ACTION

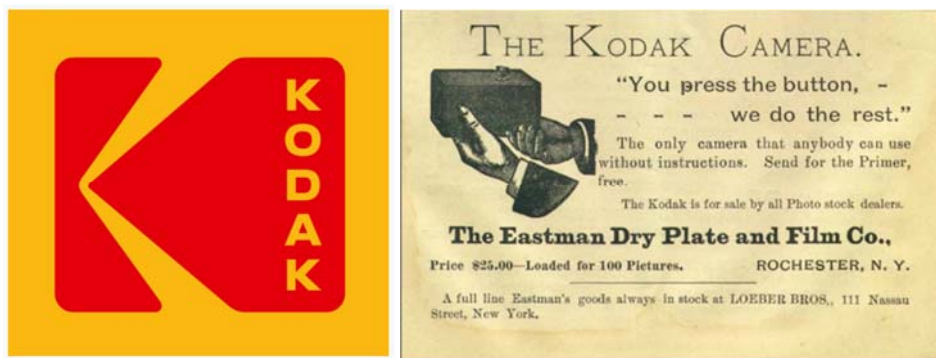
1. This is an action for patent infringement. MPV alleges that Hasselblad infringes one or more of the ’498 Patent, the ’182 Patent, and the ’046 Patent, copies of which are attached as Exhibits A-C, respectively (collectively “the Asserted Patents”).
2. On or about May 17, 2017, MPV, a technology licensing company, approached Hasselblad to offer a license to the Kodak patent portfolio owned by MPV. Since MPV acquired the Kodak portfolio it has successfully licensed several companies without resorting to litigation. Consistent with MPV’s overall strategy to use litigation only as a last resort, MPV expressed on several occasions its desire to consummate a license with Hasselblad outside of litigation.

3. On or about May 26, 2017 MPV informed Hasselblad of its infringement through a data room that included a full list of all patents owned by MPV as well as evidence of use presentations detailing Hasselblad's infringement. MPV made several requests to have a substantive discussion regarding the data room materials so as to avoid litigation. Prior to the commencement of litigation, Hasselblad never agreed to have such a discussion.

4. MPV alleges that Hasselblad directly and indirectly infringes the Asserted Patents by making, using, offering for sale, selling, and/or importing camera products and related hardware and software. MPV seeks damages and other relief for Hasselblad's infringement of the Asserted Patents.

The Asserted Patents Come From the Iconic Kodak Patent Portfolio

5. The Asserted Patents claim inventions born from the ingenuity of the Eastman Kodak Company ("Kodak"), an iconic American imaging technology company that dates back to the late 1800s. The first model of a Kodak camera was released in 1888.



6. In 1935 Kodak introduced "Kodachrome," a color reversal stock for movie and slide film. In 1963 Kodak introduced the Instamatic camera, an easy-to-load point-and-shoot camera.



7. By 1976 Kodak was responsible for 90% of the photographic film and 85% of the cameras sold in the United States.

8. At the peak of its domination of the camera industry, Kodak invented the first self-contained digital camera in 1975.



9. By 1986 Kodak had created the first megapixel sensor that was capable of recording 1,400,000 pixels. While innovating in the digital imaging space Kodak developed an immense patent portfolio and extensively licensed its technology in the space. For example, in 2010, Kodak received \$838,000,000 in patent licensing revenue. As part of a reorganization of its business, Kodak sold many of its patents to some of the biggest names in technology that

included Google, Facebook, Amazon, Microsoft, Samsung, Adobe Systems, HTC and others for \$525,000,000.

10. While scores of digital imaging companies have paid to license the Kodak patent portfolio owned by MPV, Hasselblad has refused to do so without justification.

THE PARTIES

11. Plaintiff MPV is a Texas limited liability company with its principal place of business in Plano, Texas.

12. Upon information and belief, Hasselblad Inc. is a Delaware corporation with a place of business at 1080A Garden State Road, Union, New Jersey 07083. Hasselblad may be served with process through its registered agent, the Corporation Services Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

13. This action for patent infringement arises under the Patent Laws of the United States, 35 U.S.C. § 1 et. seq. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1338.

14. This Court has both general and specific personal jurisdiction over Hasselblad because Hasselblad has committed acts within the District of Delaware giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over Hasselblad would not offend traditional notions of fair play and substantial justice. Hasselblad, directly and through affiliates, subsidiaries and intermediaries (including distributors, retailers, franchisees and others), has committed and continues to commit acts of infringement in this District by, among other things, making, using, testing, selling, importing, and/or offering for

sale products that infringe the Asserted Patents. Hasselblad is also a Delaware corporation as alleged above.

15. Venue is proper in this district and division under 28 U.S.C. §§1391(b)-(d) and 1400(b) because Hasselblad transacts business in the District of Delaware and has committed and continues to commit acts of direct and indirect infringement in the District of Delaware and is incorporated in the District of Delaware.

COUNT 1: INFRINGEMENT OF THE '498 PATENT

16. The allegations of paragraphs 1-15 of this First Amended Complaint are incorporated by reference as though fully set forth herein.

17. MPV owns by assignment the entire right, title, and interest in the '498 patent.

18. The '498 Patent was issued by the United States Patent and Trademark Office on November 18, 2008 and is titled "Electronic Image Capture Device and Image File Format Providing Raw and Processed Image Data." A true and correct copy of the '498 patent is attached as Exhibit A.

19. Pursuant to 35 U.S.C. § 282, the '498 Patent is presumed valid.

20. The inventions of the '498 Patent were not well-understood, routine or conventional at the time of the invention. At the time of the invention, raw image files including color filter array (CFA) data captured by a digital camera were stored in a well-known format, such as the Tag Image File Format (TIFF), in a local memory device on the camera. Before such a "raw" file can be displayed or printed, it must be interpolated and converted to standard color image data, such as sRGB color image data. ('498 Patent at 1:24-54.) This standard color image data can be displayed or printed, or can be compressed and stored using another file format, such as a standard file format (e.g., JPEG). (*Id.* at 1:54-58.) Processes for downloading images from

the camera and converting the image to a standard file format include interpolating CFA images as they are imported, using a CFA interpolation, color correction, and/or sharpening techniques, in order to create a “finished” RGB image file having a standard size. (*Id.* at 1:59-2:3.)

21. The advantage of using a standard file format, such as JPEG, is that it allows the image to be used by many different image software programs, photo printers, retail photo kiosks, and Internet based printing services supplied by many different companies. (*Id.* at 2:8-12.) For this reason, most digital cameras at the time of the invention included a mode that produced and stored standard image files. (*Id.* at 2:12-15.) These image files were produced in the digital camera as the images were captured. (*Id.*) These image files could be subsequently downloaded and processed to be displayed or printed. (*Id.*)

22. The prior art approach suffers from several drawbacks. (*Id.* at 3:18-30.) For example, the process of converting the image from the CFA image data to the sRGB color space may limit the quality of certain images, by reducing the color gamut and dynamic range of the captured image. (*Id.*) Second, the two interpolation steps (the CFA interpolation that produces a standard size image and the interpolation in the computer or printer that produces the desired size) provide more interpolation artifacts than would be produced using a single interpolation step that interpolates from the sensor CFA data directly to the output image data. (*Id.*) Finally, using two separate sharpening steps can also produce artifacts. (*Id.*)

23. The inventive solution of the claimed inventions of the '498 Patent provides a digital camera and a digital imaging system that maintains the advantages of using a raw TIFF image file, which can be used/edited by raw image editing enabled application software like other raw files, and also contains a standard finished image data, which can be extracted from the TIFF file and used for display just like a standard image file. (*Id.* at 4:22-26.)

24. A person of ordinary skill in the art reading the '498 Patent and its claims would understand the patent's disclosure and claims are drawn to solving a specific, technological problem arising in digital photography and image processing. Moreover, a person of ordinary skill in the art would understand that the claimed subject matter of the '498 Patent presents advancements in the field of electronic photography and image processing and, more particularly, in digital photography and the capture, processing and storage of digital images. And, as detailed by the specification, the prior digital image capture devices suffered drawbacks such as those related to storing captured files in standard formats such as JPEG. The inventions of the '498 Patent do not apply to analog photography and are indigenous to the then nascent field of digital photography.

25. In light of the foregoing, a person of ordinary skill in the art would understand that claim 1 of the '498 Patent is directed to an electronic image capture device that processes uninterpolated digital CFA image data to produce interpolated image data and forms a TIFF image file containing both the uninterpolated CFA image data and the interpolated image data. Moreover, a person of ordinary skill in the art would understand that claim 1 of the '498 Patent contains the inventive concept of an electronic image capture device that processes uninterpolated digital CFA image data to produce interpolated image data and forms a TIFF image file containing both the uninterpolated CFA image data and the interpolated image data.

26. Upon information and belief, Hasselblad has directly infringed at least claim 1 of the '498 Patent by making, using, testing, selling, offering for sale, importing and/or licensing in the United States without authority its digital cameras (for example and without limitation, the Hasselblad X1D, H6D, H6X cameras) that store image data in Hasselblad's 3FR format, which

is based on and compatible with the TIFF file format (“the ’498 Infringing Instrumentalities”) in an exemplary manner as described below:

27. One or more of the ’498 Infringing Instrumentalities meet all the limitations of claim 1 of the ’498 Patent. In particular, they are electronic image capture devices for capturing a color image.



Like the iconic V System, the X1D seamlessly combines portability with excellent optical quality for which the brand is renowned. Hasselblad has ingeniously introduced mirrorless technology to digital medium format for the first time ever, creating a precision performance camera that can sit in the palm of your hand. The 50MP CMOS sensor captures the finest details with true natural colours.

**SENSOR**

The tried and tested 50MP CMOS large sensor integrates seamlessly with the X1D, producing ultra-high quality output.

<https://gzhl.at/blob/ldb/c/f/5/f/a5d22c246041cb859945d5707db8e1ff828c.pdf>

28. The '498 Infringing Instrumentalities also include an image sensor comprised of discrete light sensitive picture elements overlaid with a color filter array (CFA) pattern to produce sensor color image data corresponding to the CFA pattern and an A/D converter for producing uninterpolated digital CFA data from the sensor color image data.

X1D-50c

DATASHEET

Sensor type	CMOS, 50 megapixels (8272 × 6200 pixels, 5.3 × 5.3 μm)
Sensor dimensions	43.8 × 32.9mm
Image size	Stills: RAW 3FR capture 65MB on average. TIFF 8 bit: 154MB; Video: HD (1920 × 1080p)
File format	Stills: Lossless compressed Hasselblad 3FR Raw + JPEG Video: H.264 Compressed (25 fps)
Shooting mode	Single shot stills, Video
Colour definition	16 bit; Dynamic range up to 14 stops
ISO speed range	ISO 100, 200, 400, 800, 1600, 3200, 6400, 12800, 25600
Storage options	Dual SD card slots
Colour management	Hasselblad Natural Colour Solution
Storage capacity	16GB card holds 240 images on average
Capture rate	1.7 - 2.3 frames per second

<https://gzhl.at/blob/ldb/c/f/5/f/a5d22c246041cb859945d5707db8e1ff828c.pdf>

29. The '498 Infringing Instrumentalities also include a processor for processing the uninterpolated digital CFA image data to produce interpolated image data. *See* X1D User Manual at 126 (“Rapidly taken captures make heavy demands on the processor in the Camera which in turn produces heat.”).

30. The processor also forms a TIFF image file (e.g., a 3FR file) containing both the uninterpolated CFA image data and the interpolated image data (e.g., RGB data), which is stored in a memory.

X1D-50c

DATASHEET

Sensor type	CMOS, 50 megapixels (8272 × 6200 pixels, 5.3 × 5.3 μm)
Sensor dimensions	43.8 × 32.9mm
Image size	Stills: RAW 3FR capture 65MB on average, TIFF 8 bit: 154MB; Video: HD (1920 × 1080p)
File format	Stills: Lossless compressed Hasselblad 3FR Raw - JPEG Video: H.264 Compressed (25 fps)
Shooting mode	Single shot stills, Video
Colour definition	16 bit; Dynamic range up to 14 stops
ISO speed range	ISO 100, 200, 400, 800, 1600, 3200, 6400, 12800, 25600
Storage options	Dual SD card slots
Colour management	Hasselblad Natural Colour Solution
Storage capacity	16GB card holds 240 images on average
Capture rate	1.7 - 2.3 frames per second

<https://gzhls.at/blob/ldb/c/f/5/f/a5d22c246041cb859945d5707db8e1ff828c.pdf>

31. Hasselblad has thus infringed and continues to infringe at least claim 1 of the '498 Patent by making, using, testing, selling, offering for sale, importing and/or licensing the '498 Infringing Instrumentalities, and operating such that all steps of at least claim 1 are performed.

32. The users, customers, agents and/or other third parties of the '498 Infringing Instrumentalities (collectively, "third-party infringers") have been and are now infringing, including under 35 U.S.C. § 271(a), at least claim 1 of the '498 Patent by using the '498 Infringing Instrumentalities.

33. Hasselblad has, since at least no later than May 26, 2017, known or been willfully blind to the fact that the third-party infringers' use of the '498 Infringing Instrumentalities directly infringe the '498 Patent.

34. Hasselblad's knowledge of the '498 Patent, which covers operating the '498 Infringing Instrumentalities in their intended manner and such that all limitations of at least claim 1 of the '498 Patent are met, made it known to Hasselblad that the third-party infringers' use of the '498 Infringing Instrumentalities would directly infringe the '498 Patent, or, at the very least, render Hasselblad willfully blind to such infringement.

35. Having known or been willfully blind to the fact that the third-party infringers' use of the '498 Infringing Instrumentalities in their intended manner and such that all limitations of at least claim 1 of the '498 Patent would directly infringe the '498 Patent, Hasselblad, upon information and belief, actively encouraged and continues to actively encourage the third-party infringers to directly infringe the '498 Patent by making, using, testing, selling, offering for sale, importing and/or licensing said '498 Infringing Instrumentalities, and by, for example, marketing '498 Infringing Instrumentalities to the third-party infringers; supporting and managing the third-party infringers' continued use of the '498 Infringing Instrumentalities; and providing technical assistance to the third-party infringers during their continued use of the '498 Infringing Instrumentalities. *See, e.g.*, Hasselblad X1D User Manual.

36. Hasselblad induces the third-party infringers to infringe at least claim 1 of the '498 Patent by directing or encouraging them to operate the '498 Infringing Instrumentalities which, alone or in combination with the third-party infringers' devices, satisfy all limitations of claim 1 of the '498 Patent. For example, Hasselblad advertises and promotes the features of the '498 Infringing Instrumentalities and encourages the third-party infringers to operate the '498 Infringing Instrumentalities in an infringing manner. Hasselblad further provides technical assistance as to how the '498 Infringing Instrumentalities should be used by the third-party infringers (*see, e.g.*, Hasselblad X1D User Manual).

37. In response, the third-party infringers acquire and operate the '498 Infringing Instrumentalities such that all limitations of claim 1 of the '498 Patent are practiced.

38. Thus, Hasselblad has specifically intended to induce, and has induced, the third-party infringers to infringe at least claim 1 of the '498 Patent, and Hasselblad has known of or been willfully blind to such infringement. Hasselblad has advised, encouraged, and/or aided the third-party infringers to engage in direct infringement, including through its encouragement, advice, and assistance to the third-party infringers to use the '498 Infringing Instrumentalities.

39. Based on, among other things, the foregoing facts, Hasselblad has induced, and continues to induce, infringement under 35 U.S.C. § 271(b) of at least claim 1 of the '498 Patent.

40. Further, Hasselblad sells, provides and/or licenses to the third-party infringers '498 Infringing Instrumentalities that are especially made and adapted—and specifically intended by Hasselblad—to be used as components and material parts of the inventions covered by the '498 Patent. For example, Hasselblad provides user manuals and instructions which the third-party infringers use in a manner such that all limitations of at least claim 1 of the '498 Patent are met, and without which the third-party infringers would be unable to use and avail themselves of the '498 Infringing Instrumentalities in their intended manner.

41. Upon information and belief, Hasselblad also knew that the '498 Infringing Instrumentalities operate in a manner that satisfy all limitations of at least claim 1 of the '498 Patent.

42. The Hasselblad digital cameras are specially made and adapted to infringe at least claim 1 of the '498 Patent. Upon information and belief, the Hasselblad digital cameras and their components and accessories in the '498 Infringing Instrumentalities are not staple articles or commodity of commerce, and, because the functionality is designed to work with the '498

Infringing Instrumentalities solely in a manner that is covered by the '498 Patent, it does not have a substantial non-infringing use. At least by no later than May 26, 2017, based on the foregoing facts, Hasselblad has known or been willfully blind to the fact that such functionality is especially made and adapted for—and is in fact used in—the '498 Infringing Instrumentalities in a manner that is covered by the '498 Patent.

43. Based on, among other things, the foregoing facts, Hasselblad has contributorily infringed, and continues to contributorily infringe, at least claim 1 of the '498 Patent under 35 U.S.C. § 271(c).

44. Hasselblad's acts of infringement of the '498 Patent have been willful and intentional under the standard of *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923 (2016). Since at least May 26, 2017, Hasselblad has willfully infringed the '498 Patent by refusing to take a license and continuing the foregoing infringement. Instead of taking a license to the '498 Patent, Hasselblad has made the business decision to “efficiently infringe” the '498 Patent. In doing so, Hasselblad willfully infringes the '498 Patent.

45. Hasselblad's acts of direct and indirect infringement have caused, and continue to cause, damage to MPV, and MPV is entitled to recover damages sustained as a result of Hasselblad's wrongful acts in an amount subject to proof at trial.

COUNT 2: INFRINGEMENT OF THE '182 PATENT

46. The allegations of paragraphs 1-45 of this First Amended Complaint are incorporated by reference as though fully set forth herein.

47. MPV owns by assignment the entire right, title, and interest in the '182 patent.

48. The '182 Patent was issued by the United States Patent and Trademark Office on April 18, 2006 and is titled “Graphical User Interface Adapted to Allow Scene Content

Annotation of Groups of Pictures in a Picture Database to Promote Efficient Database

Browsing.” A true and correct copy of the ’182 Patent is attached as Exhibit B.

49. Pursuant to 35 U.S.C. § 282, the ’182 Patent is presumed valid.

50. The inventions claimed in the ’182 Patent were not well-understood, routine, or conventional at the time of the invention. At the time of the ’182 Patent, users must typically open directories, and several folders and files, often painstakingly perusing each of a large number of digital images in an effort to find those of interest. (’182 patent at 1:36-39.) There is often no efficient way to retrieve groups of pictures not stored in the same files or folders, which the user may nonetheless, desire to retrieve and display in the same group. (*Id.* at 1:39-42.) To browse pictures in a picture database, some prior art techniques marginally improve upon the aforementioned brute force methods by allowing a user to introduce a single comment pertaining to each individual picture. (*Id.* at 1:43-46.) Even with this improvement, prior art picture database users must still painstakingly browse each picture to find those of interest. (*Id.* at 1:50-52.)

51. The inventive solution of the claimed inventions of the ’182 Patent is a graphical user interface that allows users to easily and meaningfully augment picture database information in a manner which leads to an improvement in the picture database browsability. (*Id.* at 1:57-60.) The graphical user interface at least includes a display generator adapted to generate a user-friendly display with picture indicia, a picture grouper adapted to, in response to on-screen user input, identify a plurality of pictures as belonging to a group, and a metadata receiver adapted to accept metadata input on-screen by the user, the metadata characterizing the group of pictures. (*Id.* at 2:8-14; 4:53-5:3.)

52. A person of ordinary skill in the art reading the '182 Patent and its claims would understand that the patent's disclosure and claims are drawn to solving a specific, technical problem arising in browsing and retrieving pictures in digital picture databases. Moreover, a person of ordinary skill in the art would understand that the claimed subject matter of the '182 Patent presents advancements in picture database browsability by providing a graphical user interface that allows users to easily and meaningfully augment picture database information in a specific manner.

53. In light of the foregoing, a person of ordinary skill in the art would understand claim 9 of the '182 Patent is directed to a graphical user interface that annotates picture information of groups of pictures with customized metadata for improved picture database browsability. Further, a person of ordinary skill in the art would understand claim 9 of the '182 Patent contains the inventive concept of a graphical user interface that annotates picture information of groups of pictures with customized metadata for improved picture database browsability.

54. Upon information and belief, Hasselblad has directly infringed at least claim 9 of the '182 Patent by making, using, testing, selling, offering for sale, importing and/or licensing in the United States without authority its Phocus software product ("the '182 Infringing Instrumentalities") in an exemplary manner as described below:

55. One or more of the '182 Infringing Instrumentalities meet all the limitations of claim 9 of the '182 Patent. In particular, the '182 Infringing Instrumentalities include a graphical user interface adapted to annotate picture information for pictures in a picture database.



See also, <https://www.hasselblad.com/phocus>.

56. The '182 Infringing Instrumentalities include a display generator adapted to generate a user-friendly display with indicia representing captured pictures.



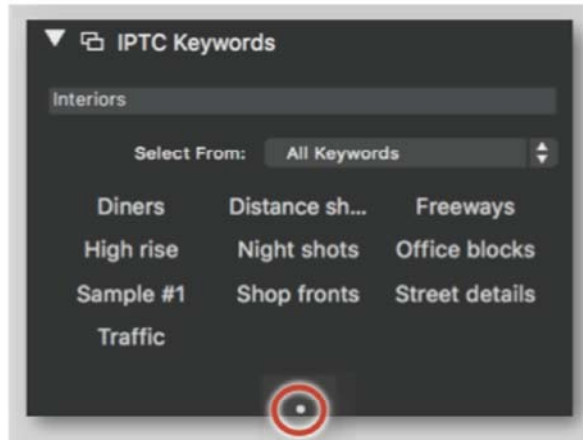
57. The '182 Infringing Instrumentalities include a picture grouper to define a group of pictures in response to on-screen user input identifying a plurality of pictures as belonging to a group.

Basic Options

With the thumbnails visible, you can make a selection of the desired image files by clicking on them (Shift click for contiguous multiple selection or Cmd/Ctrl click for multiple individual selection). A selected image displays a white border surrounding it. You can choose between several options that provide immediate and automated actions regarding the selected images:

See, e.g., Phocus User-Manual_v17 at p. 12.

58. The '182 Infringing Instrumentalities present an entry area for receiving information about the group of pictures.



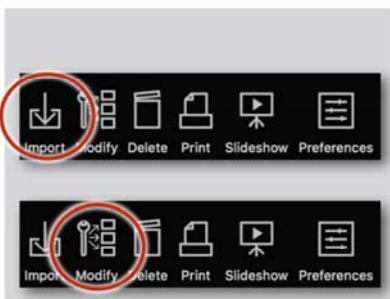
IPTC Keywords

Allows keyword inclusion to files individually or from sets. The tool can be contracted by dragging the lower bar upwards, automatically grouping the keywords (buttons) into numbered collections, as in the illustrations.

Clicking on the menu bar on the tool opens the settings panel to view sets, edit sets, select saved sets and create new sets. See *Editing* and *Managing IPTC keywords* on the following page for full details. Keywords can be added to thumbnails, singly or to multiple selections. Either write in a new keyword or choose from the list. See previous special section for further details.

See, e.g., Phocus User-Manual_v17 at p. 46.

59. The '182 Infringing Instrumentalities include a metadata receiver to accept customized metadata (which characterizes the group of pictures) input on the screen by the user in the entry area.



Import

See *Import* in previous section and *Adjustments* in the following section.

Modify

Opens a dialog offering a list of choices for batch modification of selected (shift clicked) thumbnails.

See illustrations below.

See, e.g., Phocus User-Manual_v17 at p. 57; see also, Phocus User-Manual_v17 at p. 46 and

90.

60. The '182 Infringing Instrumentalities include a metadata association system adapted to automatically associate the customized metadata entry with all of the selected pictures in the group.

Quick Modify

Changing One Tool Setting on Multiple Images
While the toolbar Modify function can be used to batch modify images with a variety of different tool settings, it is also possible to perform a quick modify with individual tools.

See, e.g., Phocus User-Manual_v17 at p. 90; *see also,* Phocus User-Manual_v17 at p. 46 and

57.

61. Hasselblad has thus infringed and continues to infringe at least claim 9 of the '182 Patent by making, using, testing, selling, offering for sale, importing and/or licensing the '182 Infringing Instrumentalities, including within this District.

62. The users, customers, agents and/or other third parties of the '182 Infringing Instrumentalities (collectively, "third-party infringers") have been and are now infringing, including under 35 U.S.C. § 271(a), at least claim 9 of the '182 Patent by using the '182 Infringing Instrumentalities.

63. Hasselblad has, since at least no later than May 26, 2017, known or been willfully blind to the fact that the third-party infringers' use of the '182 Infringing Instrumentalities directly infringe the '182 Patent.

64. Hasselblad's knowledge of the '182 patent, which covers operating the '182 Infringing Instrumentalities in their intended manner and such that all limitations of at least claim

9 of the '182 Patent are met, made it known to Hasselblad that the third-party infringers' use of the '182 Infringing Instrumentalities would directly infringe the '182 Patent, or, at the very least, render Hasselblad willfully blind to such infringement.

65. Having known or been willfully blind to the fact that the third-party infringers' use of the '182 Infringing Instrumentalities in their intended manner and such that all limitations of at least claim 9 of the '182 Patent would directly infringe the '182 Patent, Hasselblad, upon information and belief, actively encouraged and continues to actively encourage the third-party infringers to directly infringe the '182 Patent by making, using, testing, selling, offering for sale, importing and/or licensing said '182 Infringing Instrumentalities, and by, for example, marketing '182 Infringing Instrumentalities to the third-party infringers; supporting and managing the third-party infringers' continued use of the '182 Infringing Instrumentalities; and providing technical assistance to the third-party infringers during their continued use of the '182 Infringing Instrumentalities. *See, e.g.*, <https://www.hasselblad.com/phocus> and Phocus User-Manual.

66. Hasselblad has induced the third-party infringers to infringe at least claim 9 of the '182 Patent by directing or encouraging them to operate the '182 Infringing Instrumentalities which, alone or in combination with the third-party infringers' devices, satisfy all limitations of claim 9 of the '182 Patent. For example, Hasselblad advertises and promotes the features of the '182 Infringing Instrumentalities at <https://www.hasselblad.com/phocus> and encourages the third-party infringers to operate the '182 Infringing Instrumentalities in an infringing manner. Hasselblad further provides technical assistance as to how the '182 Infringing Instrumentalities should be used by the third-party infringers (*see, e.g.*, Phocus User-Manual). In response, the third-party infringers acquire and operate the '182 Infringing Instrumentalities such that all limitations of claim 9 of the '182 Patent are practiced.

67. Thus, Hasselblad has specifically intended to induce, and has induced, the third-party infringers to infringe at least claim 9 of the '182 Patent, and Hasselblad has known of or been willfully blind to such infringement. Hasselblad has advised, encouraged, and/or aided the third-party infringers to engage in direct infringement, including through its encouragement, advice, and assistance to the third-party infringers to use the '182 Infringing Instrumentalities.

68. Based on, among other things, the foregoing facts, Hasselblad has induced, and continues to induce, infringement under 35 U.S.C. § 271(b) of at least claim 9 of the '182 Patent.

69. Further, Hasselblad sells, provides and/or licenses to the third-party infringers '182 Infringing Instrumentalities that are especially made and adapted—and specifically intended by Hasselblad—to be used as components and material parts of the inventions covered by the '182 Patent. For example, Hasselblad provides the Phocus software product which the third-party infringers use in a manner such that all limitations of at least claim 9 of the '182 Patent are met, and without which the third-party infringers would be unable to use and avail themselves of the '182 Infringing Instrumentalities in their intended manner.

70. Upon information and belief, Hasselblad also knew that the '182 Infringing Instrumentalities operate in a manner that satisfy all limitations of at least claim 9 of the '182 patent.

71. The Phocus technology in the '182 Infringing Instrumentalities is specially made and adapted to infringe at least claim 9 of the '182 Patent. Upon information and belief, the Phocus technology in the '182 Infringing Instrumentalities is not a staple article or commodity of commerce, and, because the functionality is designed to work with the '182 Infringing Instrumentalities solely in a manner that is covered by the '182 Patent, it does not have a substantial non-infringing use. At least by no later than May 26, 2017, based on the foregoing

facts, Hasselblad has known or been willfully blind to the fact that such functionality is especially made and adapted for—and is in fact used in—’182 Infringing Instrumentalities in a manner that is covered by the ’182 Patent.

72. Based on, among other things, the foregoing facts, Hasselblad has contributorily infringed, and continues to contributorily infringe, at least claim 9 of the ’182 Patent under 35 U.S.C. § 271(c).

73. Hasselblad’s acts of infringement of the ’182 Patent have been willful and intentional under the standard of *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923 (2016). Since at least May 26, 2017, Hasselblad has willfully infringed the ’182 Patent by refusing to take a license and continuing the foregoing infringement. Instead of taking a license to the ’182 Patent, Hasselblad has made the business decision to “efficiently infringe” the ’182 Patent. In doing so, Hasselblad willfully infringes the ’182 Patent.

74. Hasselblad’s acts of direct and indirect infringement have caused, and continue to cause, damage to MPV, and MPV is entitled to recover damages sustained as a result of Hasselblad’s wrongful acts in an amount subject to proof at trial.

COUNT 3: INFRINGEMENT OF THE ’046 PATENT

75. The allegations of paragraphs 1-74 of this First Amended Complaint are incorporated by reference as though fully set forth herein.

76. MPV owns by assignment the entire right, title, and interest in the ’046 patent.

77. The ’046 Patent was issued by the United States Patent and Trademark Office on July 14, 2015 and is titled “Method for Creating and Using Affective Information in a Digital Imaging System.” A true and correct copy of the ’046 Patent is attached as Exhibit C.

78. The inventions of the '046 Patent were not well-understood, routine or conventional at the time of the invention. At the time of the invention, digital images, from digital cameras or scanned photographic film, could be viewed, stored, retrieved, and printed using a home computer, or could be uploaded to a web site for viewing. ('046 patent at 1:28-31.) Images could be organized into categories according to the people, places, subjects or events depicted. (*Id.* at 1:38-39.) Album pages could be produced from digital images by arranging numerous images on the same page and customized in terms of the size and arrangement of images on the page, the size and finish of the album pages, and the background color or patterns used. (*Id.* at 2:1-7.) However, none of the prior art methods enabled a user's favorite images to be automatically featured, for example by making them larger or more prominent, unless the user manually intervened and manually adjusted their images. (*Id.* at 2:11-15.)

79. The inventive solution of the claimed inventions of the '046 Patent provides affective information related to a user's reaction to an image to classify such image based upon such reaction. (*Id.* at 2:19-21.) The specification of the '046 Patent defines methods for determining affective information related to images, for storing affective information and user identifiers in association with digital images, and for using the affective information and user identifiers in retrieving digital images and in producing hardcopy output, such as album pages. (*Id.* at 3:9-14.)

80. A person of ordinary skill in the art reading the '046 Patent and its claims would understand the patent's disclosure and claims are drawn to solving a specific, technological problem arising in systems for storing and retrieving digital images. (*Id.* at 1:22-24.) Moreover, a person of ordinary skill in the art would understand that the claimed subject matter of the '046 Patent presents advancements in the field of systems that retrieve digital images and, more


particularly, systems that retrieve digital images based upon affective information. (*Id.*) As detailed by the specification, the prior art methods suffered drawbacks such as not enabling a user's favorite images to be automatically featured, for example by making them larger or more prominent, unless the user manually intervenes and manually adjusts their images. (*Id.* at 2:11-15.)

81. In light of the forgoing, a person of ordinary skill in the art would understand that claim 14 of the '046 Patent is directed to a non-transitory computer readable medium having instructions to receive digital images having associated importance ratings for a user, to modify image attributes of digital images to enhance or change a viewed image, and to provide digital images in the order of the associated importance ratings, including the digital images having modified image attributes. (*Id.* at 17:5-17.) Moreover, a person of ordinary skill in the art would understand that claim 14 of the '046 Patent contains the inventive concept of instructions to receive digital images having associated importance ratings for a user, to modify image attributes of digital images to enhance or change a viewed image, and to provide digital images in the order of the associated importance ratings, including the digital images having modified image attributes; put another way, using affective information related to a user's reaction to an image to classify such image based upon such reaction. (*Id.* at 2:19-21.)

82. Upon information and belief, Hasselblad has directly infringed at least claim 14 of the '046 patent by making, using, testing, selling, offering for sale, importing and/or licensing in the United States without authority its Phocus software ("the '046 Infringing Instrumentalities") in an exemplary manner as described below:

83. One or more of the '046 Infringing Instrumentalities meet all the limitations of claim 14 of the '046 Patent. In particular, the '046 Infringing Instrumentalities comprise a non-

transitory computer readable medium having instructions stored thereon.



Phocus

Our powerful, free image processing software, which already delivers the best quality RAW file processing, has been updated and expanded with new features that work seamlessly with the H6D.

A new graphical user interface offers a clean and uncluttered workflow, making it easier for users to find their way around more quickly and simpler than before. The fatter design helps you concentrate on the job in hand and makes for simpler navigation. We've also added some new tools to enable finer control of the editing process and ensure the very highest quality output from your files.

Compatibility
Phocus runs on Macintosh and Windows platforms that use recent operating systems. All USB and FireWire based Hasselblad camera units are supported. Please check the Phocus Read-Me notes for details, requirements and restrictions.

In the package

USB stick with User Guide and Phocus software.

Viewfinder.
Grip with battery.
Sensor unit.
Sensor unit protection lid.

Camera body.
Camera body protection lid.

Lens (if included in purchase).
Lens hood.
Lens protection lid x2.

Battery.
Battery electric socket protection lid.
Battery charger plus connectors and cable.

1 SD card included.
USB 3 cable.
Carrying strap.

<http://www.hasselblad.com/software/phocus>.

<http://static.hasselblad.com/2017/04/H6D-User-Manual-v1.4-170425.pdf>.

http://static.hasselblad.com/2014/12/Phocus_User-Manual_v17.pdf.

84. The '046 Infringing Instrumentalities include instructions to receive a digital image set that includes associated importance ratings for a user:

File Destination: When opened for the first time, Phocus automatically creates a file-destination folder called **Phocus Captures**, located in the **Pictures** folder on the hard drive, where images shot tethered (with the camera connected) will be stored. Imported images from a CF-card will be located in the destination folder you chose during the import process.

File Source: Captures can be imported from a CF card in a reader or directly from a camera in tethered mode. When connecting a Hasselblad camera it will show up in the **Camera Tool**. The capture button in the top left part will also turn bright orange. When working tethered to a Hasselblad camera, all images are captured to the current destination folder and displayed in the **Thumbnail Browser** and **Viewer**.

3FR: These files are a result of captures stored on CF cards generated by untethered Hasselblad equipment. They are visible as 3FR badged thumbnails and remain as such until selected and 'imported' where they then become 3F files.

3F: These files are a result of either captures generated by tethered Hasselblad equipment or as a result of 3FR files being processed to completion within Phocus. 3F files do not have to be 'imported' and can be adjusted and exported immediately. Exported 3F files include integrated metadata.

http://static.hasselblad.com/2014/12/Phocus_User-Manual_v17.pdf.

Thumbnail viewing, filtering and sorting

Thumbnails can be rated using either the **IAA** system or the **Star** system or both. IAA rating is automatically applied to files at capture with H camera/ CFV back firmware from before 2014 and appears in Phocus. All IAA files can be re-rated in Phocus if desired.

Star rating is applied in Phocus only. When applied and embedded at export (this is an option on the Large IPTC list), it will also be accessible and useable in other applications such as *Apple Aperture* and *Adobe Lightroom*.

Both rating systems can be exploited for sorting purposes in the **Thumbnail Browser** using different types of filtering.

Rating is applied to selected files by pressing numerical keys on the keyboard as follows:

<i>STAR rating</i>	<i>IAA rating</i>
1 ☆	6 ●
2 ☆ ☆	7 ●
3 ☆ ☆ ☆	8 ●
4 ☆ ☆ ☆ ☆	
5 ☆ ☆ ☆ ☆ ☆	

http://static.hasselblad.com/2014/12/Phocus_User-Manual_v17.pdf.

85. The '046 Infringing Instrumentalities include instructions to modify image attributes of a digital image in the image set to enhance or change a viewed image.

Welcome to Phocus 3.0

It is our hope that you will open Phocus, take a look around, and be inspired to get to work with an imaging workflow that develops according to the way you want things to happen.

Uncompromising Image Quality

The Phocus RAW processor provides the ultimate in processing quality for Hasselblad digital images, including:

- Digital lens corrections for color aberration, distortion and vignetting (DAC I, II, and III)
- Hasselblad Natural Color Solution (HNCS) for perfect colors
- Moiré removal directly upon raw data, preserving image detail
- Selective adjustments using the Adjustment Layers tool

http://static.hasselblad.com/2014/12/Phocus_User-Manual_v17.pdf.

In Phocus, edits can be applied singly or collectively. Sets of edits are referred to as *Adjustments*.

Note that an *Adjustment* is an internal function within Phocus only. When the file is exported into another format it has the desired edit instructions applied to the exported file. That is, all edits are nondestructive in Phocus and so 3F files remain unaffected and can be recalled at a later date as identical as they were when first processed from the raw data. So, in simple terms, you cannot "press the wrong button" in Phocus because the original file always remains.

Adjustments can also be saved for future use on other files and will appear beneath the *User* heading. *Adjustments* can also be applied simultaneously to a whole batch of files by using the *Modify* tool. This means you can always go back to something you preferred a few minutes ago or back to something you preferred several months ago, for example. In that way, a whole folder of captures can be simultaneously edited in exactly the same way, securely and automatically, in accordance with your own or your clients preferences, for example.

http://static.hasselblad.com/2014/12/Phocus_User-Manual_v17.pdf.

86. The '046 Infringing Instrumentalities include instructions to provide digital images in order of importance ratings, including one or more digital images that have modified image attributes.

Thumbnails can be viewed and sorted in a number of ways. Click on the Menu Icon on the right side of the menu bar to reveal an options menu. Navigate down to the required item for options.

Sort offers a variety of choices.

Click here for name, date or custom filtering.

Sort by name

Sort by date

Custom sort

Sort by rating

Ascending or descending

Filter allows you to sort thumbnails by Star or IAA rating filters. Either click on the menu bar for choice or choose from options menu.

IAA rating

6	●
7	●
8	●

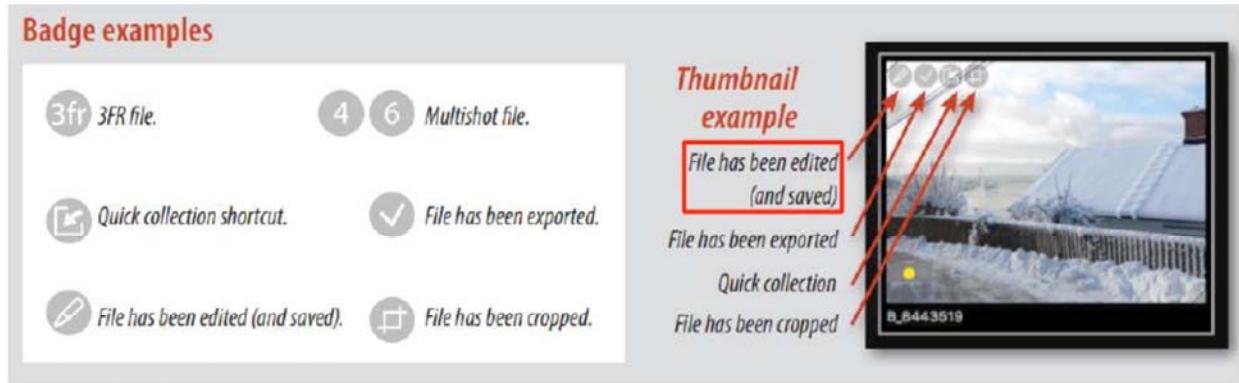
Show Approval Level:

- Show Image Types ▶
- Show Approval Level ▶ ✓ Green
- Show Rating ▶ ✓ Yellow
- Show Image Info ▶ ✓ Red

Filters the displayed files according to Approval Level

For example, checking only the *Green* and *Yellow* rating would automatically exclude all *Red* rated files. You can also apply *Approval Level* filtering by clicking the colored buttons on the header bar.

http://static.hasselblad.com/2014/12/Phocus_User-Manual_v17.pdf.



http://static.hasselblad.com/2014/12/Phocus_User-Manual_v17.pdf.

87. Hasselblad has thus infringed and continues to infringe at least claim 14 of the '046 Patent by making, using, testing, selling, offering for sale, importing and/or licensing the '046 Infringing Instrumentalities, including within this District.

88. The users, customers, agents and/or other third parties of the '046 Infringing Instrumentalities (collectively, "third-party infringers") have been and are now infringing, including under 35 U.S.C. § 271(a), at least claim 14 of the '046 Patent by using the '046 Infringing Instrumentalities.

89. Hasselblad has, since at least no later than May 26, 2017, known or been willfully blind to the fact that the third-party infringers' use of the '046 Infringing Instrumentalities directly infringe the '046 Patent.

90. Hasselblad's knowledge of the '046 Patent, which covers operating the '046 Infringing Instrumentalities in their intended manner and such that all limitations of at least claim 14 of the '046 Patent are met, made it known to Hasselblad that the third-party infringers' use of the '046 Infringing Instrumentalities would directly infringe the '046 Patent, or, at the very least, render Hasselblad willfully blind to such infringement.

91. Having known or been willfully blind to the fact that the third-party infringers' use of the '046 Infringing Instrumentalities in their intended manner and such that all limitations

of at least claim 14 of the '046 Patent would directly infringe the '046 Patent, Hasselblad, upon information and belief, actively encouraged and continues to actively encourage the third-party infringers to directly infringe the '046 Patent by making, using, testing, selling, offering for sale, importing and/or licensing said '046 Infringing Instrumentalities, and by, for example, marketing '046 Infringing Instrumentalities to the third-party infringers; supporting and managing the third-party infringers' continued use of the '046 Infringing Instrumentalities; and providing technical assistance to the third-party infringers during their continued use of the '046 Infringing Instrumentalities. *See, e.g.*, http://static.hasselblad.com/2014/12/Phocus_User-Manual_v17.pdf.

92. Hasselblad induces the third-party infringers to infringe at least claim 14 of the '046 patent by directing or encouraging them to operate the '046 Infringing Instrumentalities which, alone or in combination with the third-party infringers' devices, satisfy all limitations of claim 14 of the '046 Patent. For example, Hasselblad advertises and promotes the features of the '046 Infringing Instrumentalities on www.hasselblad.com and encourages the third-party infringers to operate the '046 Infringing Instrumentalities in an infringing manner. Hasselblad further provides technical assistance as to how the '046 Infringing Instrumentalities should be used by the third-party infringers (*see, e.g.*, http://static.hasselblad.com/2014/12/Phocus_User-Manual_v17.pdf). In response, the third-party infringers acquire and operate the '046 Infringing Instrumentalities such that all limitations of claim 14 of the '046 Patent are practiced.

93. Thus, Hasselblad has specifically intended to induce, and has induced, the third-party infringers to infringe at least claim 14 of the '046 Patent, and Hasselblad has known of or been willfully blind to such infringement. Hasselblad has advised, encouraged, and/or aided the third-party infringers to engage in direct infringement, including through its encouragement, advice, and assistance to the third-party infringers to use the '046 Infringing Instrumentalities.

94. Based on, among other things, the foregoing facts, Hasselblad has induced, and continues to induce, infringement under 35 U.S.C. § 271(b) of at least claim 14 of the '046 Patent.

95. Further, Hasselblad sells, provides and/or licenses to the third-party infringers '046 Infringing Instrumentalities that are especially made and adapted—and specifically intended by Hasselblad—to be used as components and material parts of the inventions covered by the '046 Patent. For example, Hasselblad provides Phocus software which the third-party infringers use in a manner such that all limitations of at least claim 14 of the '046 Patent are met, and without which the third-party infringers would be unable to use and avail themselves of the '046 Infringing Instrumentalities in their intended manner.

96. Upon information and belief, Hasselblad also knew that the '046 Infringing Instrumentalities operate in a manner that satisfy all limitations of at least claim 14 of the '046 Patent.

97. The Phocus technology in the '046 Infringing Instrumentalities is specially made and adapted to infringe at least claim 14 of the '046 Patent. Upon information and belief, the Phocus technology in the '046 Infringing Instrumentalities is not a staple article or commodity of commerce, and, because the functionality is designed to work with the '046 Infringing Instrumentalities solely in a manner that is covered by the '046 Patent, it does not have a substantial non-infringing use. At least by no later than May 26, 2017, based on the foregoing facts, Hasselblad has known or been willfully blind to the fact that such functionality is especially made and adapted for—and is in fact used in—'046 Infringing Instrumentalities in a manner that is covered by the '046 Patent.

98. Based on, among other things, the foregoing facts, Hasselblad has contributorily infringed, and continues to contributorily infringe, at least claim 14 of the '046 Patent under 35 U.S.C. § 271(c).

99. Hasselblad's acts of infringement of the '046 Patent have been willful and intentional under the standard of *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923 (2016). Since at least May 26, 2017, Hasselblad has willfully infringed the '046 patent by refusing to take a license and continuing the foregoing infringement. Instead of taking a license to the '046 patent, Hasselblad has made the business decision to "efficiently infringe" the '046 Patent. In doing so, Hasselblad willfully infringes the '046 Patent.

100. Hasselblad's acts of direct and indirect infringement have caused, and continue to cause, damage to MPV, and MPV is entitled to recover damages sustained as a result of Hasselblad's wrongful acts in an amount subject to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, MPV respectfully requests the following relief:

- A. A judgment that Hasselblad has willfully infringed the '498 Patent;
- B. A judgment that Hasselblad has willfully infringed the '182 Patent;
- C. A judgment that Hasselblad has willfully infringed the '046 Patent;
- D. A judgment that MPV be awarded damages adequate to compensate it for Hasselblad's past infringement and any continuing or future infringement of the '498 Patent, the '182 Patent, and the '046 Patent, including pre-judgment and post-judgment interest costs and disbursements as justified under 35 U.S.C. § 284 and an accounting;
- E. That this be determined to be an exceptional case under 35 U.S.C. § 285 and that MPV be awarded enhanced damages up to treble damages for willful infringement as provided

by 35 U.S.C. § 284;

- F. That MPV be granted its reasonable attorneys' fees in this action;
- G. That this Court award MPV its costs; and
- H. That this Court award MPV such other and further relief as the Court deems

proper.

DEMAND FOR JURY TRIAL

MPV hereby demands trial by jury on all claims and issues so triable.

Dated: July 24, 2018

BAYARD, P.A.

OF COUNSEL:

Marc Belloli
Margaret Elizabeth Day
FEINBERG DAY ALBERTI LIM &
BELLOLI, LLP
1600 El Camino Real, Suite 280
Menlo Park, CA 94025
Telephone: 650-618-4360
Facsimile: 650-618-4368
mbelloli@feinday.com
eday@feinday.com

/s/ Stephen B. Brauerman
Stephen B. Brauerman (#4952)
Sara E. Bussiere (#5725)
600 N. King Street, Suite 400
Wilmington, DE 19801
(302) 655-5000
sbrauerman@bayardlaw.com
sbussiere@bayardlaw.com

*Attorneys for Plaintiff
Monument Peak Ventures, LLC*