

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

LEXOS MEDIA IP, LLC,	§	
	§	Civil Action No. 2:22-CV-00169-JRG
v.	§	(Lead Case)
	§	
AMAZON.COM, INC.	§	

LEXOS MEDIA IP, LLC,	§	
	§	Civil Action No. 2:22-CV-00175-JRG
v.	§	(Member Case)
	§	
TARGET CORPORATION	§	

LEXOS MEDIA IP, LLC,	§	
	§	Civil Action No. 2:22-CV-00273-JRG
v.	§	(Member Case)
	§	
OFFICE DEPOT, LLC	§	

**PLAINTIFF LEXOS MEDIA IP, LLC’S
SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Lexos Media IP, LLC (“Lexos Media IP”) files this Second Amended Complaint for patent infringement against Defendant Office Depot, LLC f/k/a Office Depot, Inc. (“Office Depot”), and alleges as follows:

PARTIES

1. Plaintiff Lexos Media IP, LLC (“Lexos Media IP”) is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 555 Republic Drive, 2nd Floor, Plano, Texas 75074-5481. Lexos Media IP is the intellectual property holding company of Lexos Media, Inc. (“Lexos Media”) and owns intellectual

property associated with the business of that company. Lexos Media IP has had its principal place of business located in Plano, Texas since 2015.

2. Lexos Media was founded in 2009. Lexos Media is a digital advertising technology company that pioneered the use of dynamic cursor modification to promote the online purchase and use of products and services likely of interest to users of e-commerce websites. Lexos Media has provided a technology framework for delivering online advertising in which images and content are deployed in connection with a cursor. Lexos Media has provided this technology framework through two divisions -- AdBull and Cursor Marketing -- both of which provided technology that could be used to modify an Internet user's cursor to display content such as an image or other message to promote the online purchase and use of products and services. Lexos Media IP has been engaged in licensing this technology both in the online marketing space as well as other fields.

3. Office Depot, Inc. originally named as a defendant in this action, was dissolved and merged into Office Depot, LLC, in 2020. The parties have stipulated and substituted Office Depot, LLC for Office Depot, Inc. as the defendant in this action.

JURISDICTION AND VENUE

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

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

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b).

7. Office Depot, during the time frame when the Asserted Patents were in effect and thereafter, has made available and offered its officedepot.com interactive website to persons located in the United States.

8. Office Depot has operated and controlled the officedepot.com interactive website. Office Depot's Terms of Use of Site applicable to officedepot.com has provided that, except in connection with shopping or placing an order through the website, none of the contents of the website may be modified in any manner without the prior written permission of Office Depot. The officedepot.com website provided to persons residing in the State of Texas and in particular the Eastern District of Texas by Office Depot implemented features and functionality that infringed the Asserted Patents.

THE ASSERTED PATENTS

9. On November 30, 1999, the United States Patent and Trademark Office issued United States Patent No. 5,995,102 ("the '102 Patent") entitled "Server system and method for modifying a cursor image," a true copy of which is attached as Exhibit 1.

10. On September 12, 2000, the United States Patent and Trademark Office issued United States Patent No. 6,118,449 ("the '449 Patent") entitled "Server system and method for modifying a cursor image," a true copy of which is attached as Exhibit 2.

11. On July 5, 2011, the United States Patent and Trademark Office issued United States Patent No. 7,975,241 ("the '241 Patent") entitled "System for replacing a cursor image in connection with displaying the contents of a web page," a true copy of which is attached as Exhibit 3.

12. Lexos Media IP is the owner by assignment of these Asserted Patents and owns all right, title, and interest in the Asserted Patents, including the right to sue for and recover all past, present, and future damages for infringement of the Asserted Patents.

THE INNOVATION OF THE ASSERTED PATENTS

13. The Asserted Patents are directed to improvements in the field of online advertising, and provide technical solutions to problems being encountered in that burgeoning field. In order to put the innovation of the Asserted Patents into perspective, it bears emphasis that the application for the asserted '102 Patent was filed in June 1997, a mere few years after online advertisements emerged in the e-commerce marketplace. See https://en.wikipedia.org/wiki/Online_advertising.

14. At the time of the invention underlying the Asserted Patents, there were several drawbacks to prevalent forms of online advertising, such as banner advertisements, web page “frames,” and “self-appearing” advertising screens. Thus, as the Asserted Patents emphasized, at the time of the invention of the Asserted Patents, “[t]here is a need for a simple means to deliver advertising elements without the annoyance of totally interrupting and intrusive content delivery, and without the passiveness of ordinary banner and frame advertisements which can be easily ignored.”

15. The Asserted Patents provided a specific technical solution to improve online advertising technology and overcome these problems. The specification of the Asserted Patents pointed out that, while it was not new at the time for pointers and cursors to change shape, “[i]n conventional systems, the appearance of the cursor or pointer does not change to correspond with on-line content being displayed on the screen.”

16. The claims of the Asserted Patents explain how the invention improves on conventional methods of online advertising. In particular, the Asserted Patents disclosed “a server

system for modifying a cursor image to a specific image displayed on a video monitor of a remote user's terminal for the purposes of providing on-screen advertising.”

17. The claims of the Asserted Patents specifically teach how the invention works to provide the improved online advertising technology. A web browser retrieves a web page stored on a server that is then transmitted to and viewed by a user. The retrieved web page contains a set of predetermined instructions referred to as “cursor display instructions.” The browser interprets the information contained in cursor display instructions and instructs the operating system of the user's terminal to bring about the change in appearance of the cursor within the web page. As the Asserted Patents explain, “the server system provides certain information that causes the cursor image on the video monitor of the user terminal to display an image as specified by the server system. As a result, the server system remotely defines and manages the shape and appearance of the cursor image in accordance with a pre-specified condition.”

18. The claims of the Asserted Patents contain steps or elements that embody this specific process for implementing the cursor modification invention and improving online advertising. The claims focus on a specific means or method that improves online advertising technology, and are not directed to a desired result or effect that itself merely employs generic processes and machinery. They claim a technological solution to the technological problems and drawbacks encountered in the prior art methods for creating effective online advertising – a specific process and system for modifying the appearance of a cursor implemented on the display of a user's computer. The asserted claims are directed to a new and useful technique for performing online advertising. They are not directed to a law of nature, natural phenomena, business method, or algorithm.

THE ESTABLISHED VALIDITY OF THE ASSERTED PATENTS

19. In 2018, Ralph Lauren (“RL”) petitioned the U.S. Patent Trial and Appeal Board (the “PTAB”) for *inter partes* review of the ‘102 and ‘449 Patents. In particular, RL petitioned for *inter partes* review of claims 70-73 of the ‘102 Patent and claims 1-3, 5-7, 12-15, 27-29, 31-33, 38-41, 53-56, 58-63, 72-75, and 77-82 of the ‘449 Patent. Although the PTAB cancelled some of the claims, in two final written decisions, it found that RL had **not** shown that claims 70 and 72 of the ‘102 Patent and claims 1-3, 5-7, 12-15, 28, 29, 31, 32, 38, 39, 53-56, 58-63, 73-75, and 77-80 of the ‘449 Patent are unpatentable. RL appealed the PTAB’s final written decisions, and the Federal Circuit affirmed those decisions.

THE CURSOR MODIFICATION ACCUSED INSTRUMENTALITY

20. One of the innovations Office Depot has used to build the popularity and profitability of its officedepot.com website is the cursor modification technology covered by the Asserted Patents (the “Accused Instrumentality”). For several years, Office Depot has shifted a meaningful amount of its marketing efforts to sales through its officedepot.com website to enhance personalized offerings and promote customer satisfaction. Office Depot’s adoption and continued use of the patented cursor modification technology has been an important aspect of its multichannel strategy to increase revenue and profits.

FIRST CLAIM FOR RELIEF (Infringement of the ‘102 Patent)

21. Office Depot has directly infringed Claim 72 of the ‘102 Patent by using the method claimed therein. In particular, Office Depot has infringed Claim 72 by using the claimed method when providing web pages to individuals for use on the officedepot.com website.

22. Since at least 2016, Office Depot has used a method via the Accused Instrumentality for modifying an initial cursor image displayed on a display of a user terminal connected to at least one server owned, operated, or controlled by Office Depot.

23. The method performed by Office Depot via the Accused Instrumentality has included the step of Office Depot receiving a request to provide a web page from the officedepot.com website to a user terminal.

24. The method performed by Office Depot via the Accused Instrumentality from the officedepot.com website has included the step of Office Depot transmitting and providing a web page from the officedepot.com website to the user terminal in response to the request for a web page.

25. The web page provided by Office Depot via the Accused Instrumentality has included one or more instructions to modify an initial cursor image and contains data corresponding to a specific image displayed, or to be displayed, on a user's terminal that is a modification of an initial cursor image.

26. The method performed by Office Depot via the Accused Instrumentality from the officedepot.com website has included the step of Office Depot providing instructions and code that has controlled and transformed the initial cursor image displayed on the display of the user's terminal into a specific image with a particular shape and appearance in response to Office Depot's instructions.

27. The transformed specific image resulting from Office Depot's infringing process has included content from the officedepot.com website corresponding to at least a portion of the information that is to be displayed on the display of the user's terminal.

28. An example of the display of a web page provided by the officedepot.com website to a user's terminal before the initial cursor is transformed or modified appears below in Figure 1 in the form of an arrow.

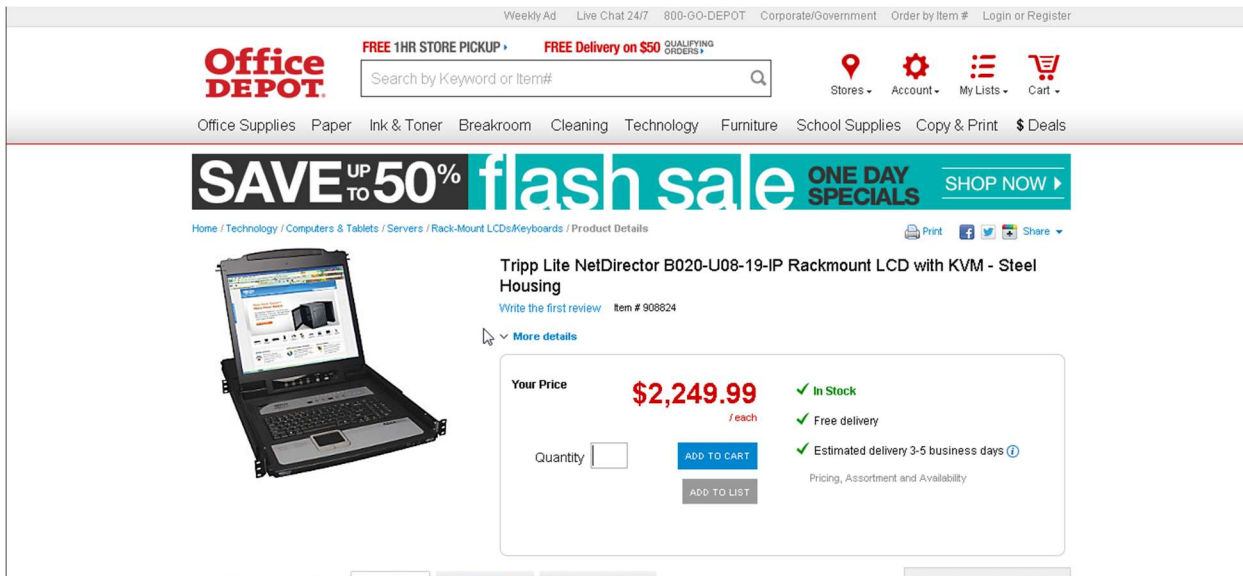


Figure 1

29. The transformed specific image resulting from Office Depot’s infringing process is illustrated below in Figure 2, a screenshot of a web page displayed by the officedepot.com website reflecting the claimed specific image (the slightly shaded, transparent rectangle including an image of a portion of a product displayed on the web page), and which is the claimed content corresponding to a portion of the web page displayed on the display of the website user’s terminal.

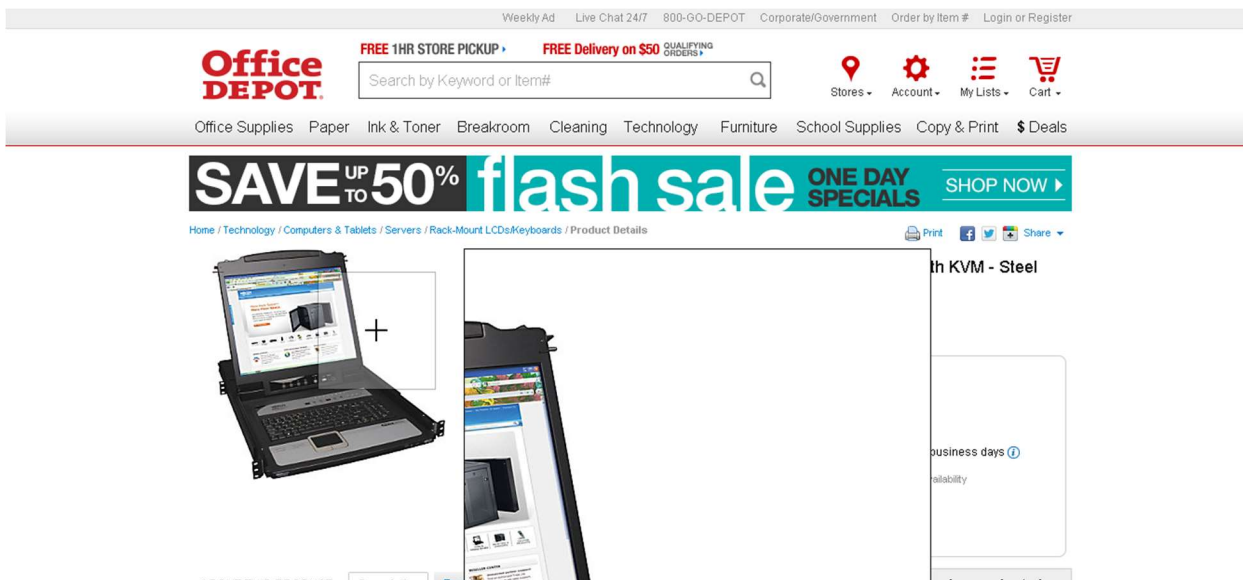


Figure 2

30. The modification of the initial cursor depicted in Figure 1 to the specific image depicted in Figure 2 is a consequence of the user moving the cursor image over the product image of the Rackmount console displayed on the user's terminal.

31. The instructions provided by the officedepot.com website to the user's terminal have indicated code provided and controlled by Office Depot that is operable to process the instructions to modify the initial cursor image to an image in the shape and appearance of the specific image responsive to movement of the cursor image over a display of at least a portion of the information to be displayed on the display of the user's terminal.

32. The shaded and semi-transparent box surrounding the image of a cross-hair cursor and highlighting a partial image of the displayed product is not a generic cursor image. Instead, it is an image that represents some or all of the subject matter being displayed on the web page. In particular, the shaded and semi-transparent box including a partial image of the displayed product is not merely the image of a hand, arrow, or another form of functional cursor, but is an image that highlights and draws attention to the portion of the product or subject matter displayed on the web page that appears within the shaded box. That highlighting of, and attention drawn to, a portion of the product or subject matter displayed on the web page is enhanced by the enlarged display of that portion of the product or subject matter appearing within the shaded and semi-transparent box being displayed to the right of the specific image. The specific image generated by Office Depot's Accused Instrumentality relates to the content being displayed on the screen.

33. Office Depot's acts of infringement of Claim 72 of the '102 Patent include the acts alleged in Lexos Media IP's Disclosure of Asserted Claims and Infringement Contentions (the "Disclosures"), and those disclosures are incorporated by reference herein.

34. To the extent that any required steps of the claim occurred on a device in the possession, custody, control of, or use by a third party, Office Depot performed those steps because it initiated and controlled the performance of those steps.

35. Since at least 2016, Office Depot has continued to use the method described and depicted above with respect to its officedepot.com website for years. For example, Figures 3 and 4 below reflect that Office Depot has used the cursor modification technology since long after 2016. In this example, the Office Depot website transforms the initial cursor, in Figure 3, to a specific image comprising a shaded and semi-transparent rectangle and highlighting a portion of the image of the laptop computer being displayed on the screen, in Figure 4.

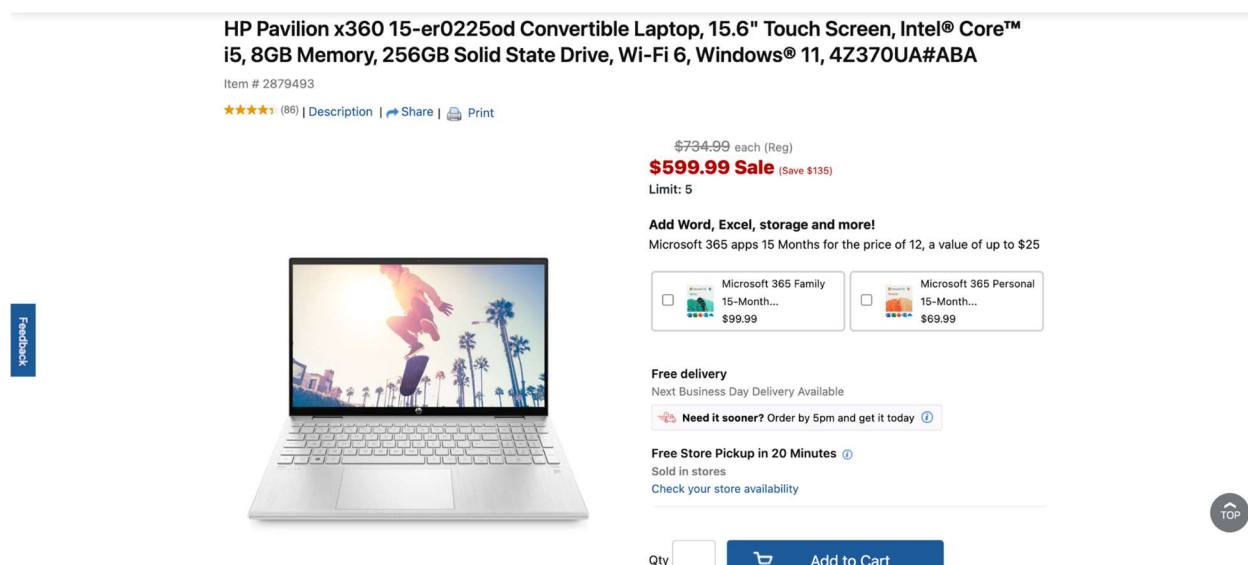


Figure 3

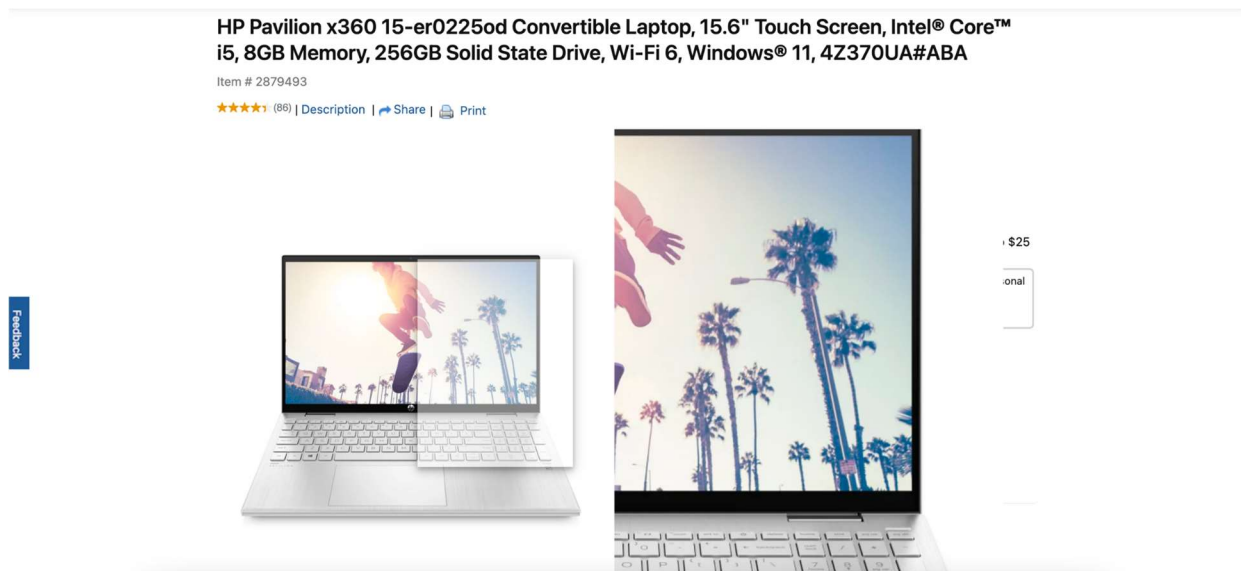


Figure 4

36. The duty to mark under 35 U.S.C. § 287 is inapplicable to the asserted method claims of the `102 Patent. There is no applicable marking requirement that has not been complied with.

37. Lexos Media IP has been damaged by Office Depot's activities that infringed Claim 72 of the `102 Patent.

**SECOND CLAIM FOR RELIEF
(Infringement of the `449 Patent)**

38. Office Depot has directly infringed Claims 1, 38, and 53 of the `449 Patent by making and using those patented inventions in connection with providing individuals with access to the officedepot.com website and to shop for products and services on the website. By doing so, Office Depot has infringed Claims 1 and 38 of the `449 Patent by making and using the claimed system and making the officedepot.com website available to others for use. In addition, Office Depot has infringed Claim 53 of the `449 Patent by using the claimed method when providing the officedepot.com website for use by others.

39. Since at least 2016, Office Depot has made and used the accused server system for modifying a cursor image to a specific image having a desired shape and appearance displayed on a display of a remote user's terminal.

40. Since at least 2016, the officedepot.com website has transmitted a web page to a user's terminal in response to a request from the user terminal for the web page.

41. Since at least 2016, the officedepot.com website has provided to the user terminal a web page that has included data corresponding to the specific image to be displayed on the user's terminal.

42. Since at least 2016, the officedepot.com website has provided to the user terminal a web page that has included code, which is operable to modify the cursor image on the display of the user's terminal.

43. Since at least 2016, the officedepot.com website has included a server computer for transmitting a web page to a remote user terminal which has included one or more instructions and an indication of the location of cursor image data.

44. Since at least 2016, the web pages transmitted by Office Depot have contained instructions and code that have been operable to cause the user terminal to display a modified cursor image on the user's display in the shape and appearance of the specific image, reflected in Figures 1-4 above.

45. Since at least 2016, the specific image displayed by Office Depot on the user's terminal has comprised information that has included content corresponding to at least a portion of the information to be displayed on the display of the user's terminal, as reflected in Figures 2 and 4 above.

46. Since at least 2016, the code from the officedepot.com website has been operable to process the instructions to modify the cursor image to an image in the shape and appearance of the specific image in response to movement of the cursor image over a display of at least a portion of the information to be displayed on the display of the user's terminal.

47. Since at least 2016, the resulting specific image displayed by the officedepot.com website has been related to at least a portion of the information to be displayed on the display of the remote user's terminal.

48. Figures 2 and 4 set forth in Paragraphs 29 and 35 above depict examples of the claimed specific image and the claimed corresponding portion of the specified content information displayed by the officedepot.com website on the display of the website user's terminal since at least 2016.

49. Office Depot, through the officedepot.com website, has used the claimed system for purposes of infringement and has put the claimed system into service. In particular, Office Depot has controlled each element of the system and the system as a whole and has obtained a benefit from doing so in the form of improved marketing of products and services sold by Office Depot through its website. Office Depot has provided and controlled any and all functionality required by the claimed system that has taken place on the website user/customer's computer.

50. Lexos Media IP incorporates by reference herein the allegations above in Paragraphs 22-24. In addition, Office Depot's acts of infringement of Claims 1, 38, and 53 of the '449 Patent include the acts alleged in Lexos Media IP's Disclosure of Asserted Claims and Infringement Contentions (the "Disclosures"), and those disclosures are incorporated by reference herein.

51. Since at least 2016, Office Depot has continued to put the claimed system into service.

52. The duty to mark under 35 U.S.C. § 287 is inapplicable to the asserted method claim of the '449 Patent, and there are no unmarked "patented articles" that were sold or offered for sale by Lexos Media IP or its licensees of the '449 Patent that were subject to § 287. In addition, Lexos Media marked its website, *lexosmedia.com*, with the patent numbers of the Asserted Patents. Consequently, Lexos Media IP has complied with the marking requirement under § 287, to the extent it is applicable.

53. Lexos Media IP has been damaged by Office Depot's infringing activities.

**THIRD CLAIM FOR RELIEF
(Infringement of the '241 Patent)**

54. Office Depot has directly infringed Claim 35 of the '241 Patent by making, using, and putting into service that patented invention in connection with providing individuals with access to the *officedepot.com* website and to shop for products and services on the website.

55. Since at least 2016, Office Depot has made, used, and put into service a system for modifying a cursor image comprising at least one client or user computer that has received content information, for example in the form of a web page, from at least one server or website computer owned, operated or controlled by Office Depot.

56. The content information transmitted from the server or website computer to the client or user computer in accordance with this system has included at least one cursor display instruction specifying an appearance of a visual image. The website provider Office Depot is in control of the process of including cursor display instructions in the transmitted and received web page. An example of such a visual image is set forth in Figure 5 below (e.g. the image of a portion of the product displayed on the web page surrounded by a box or rectangle on August 3, 2020).

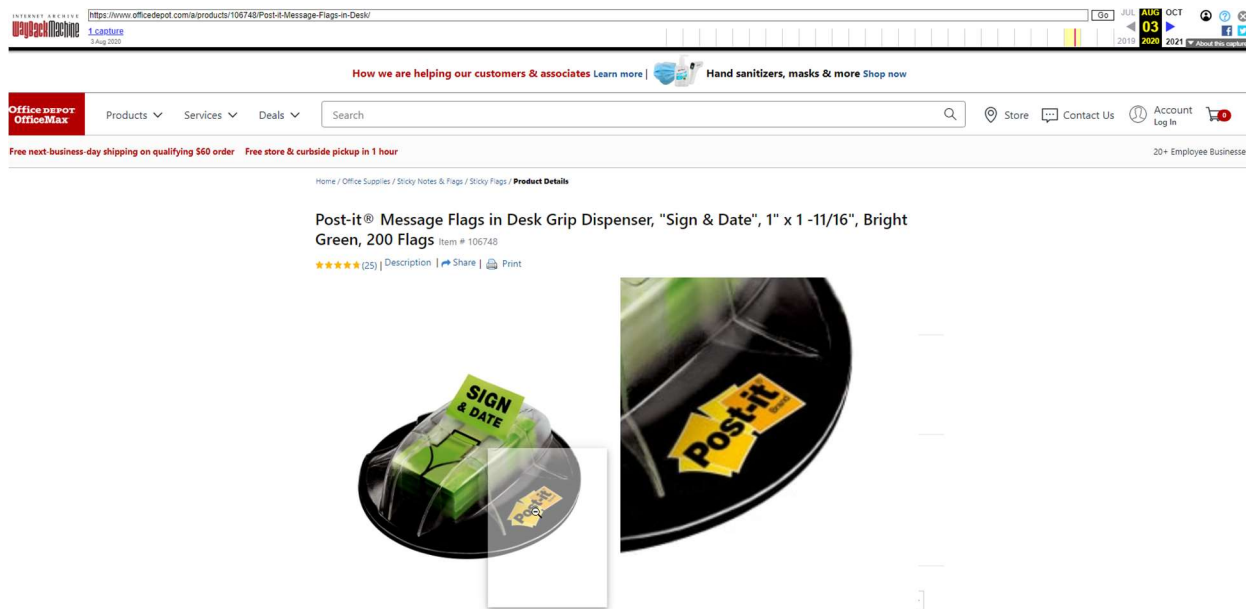


Figure 5

57. Also, in accordance with this system and as instructed by the included cursor display instruction, the client or user computer, following receipt of the content information, has processed the cursor display instruction and modified the cursor image to include the visual image, and displayed a modified cursor image. The website provider Office Depot is in control of this processing of the cursor display instructions.

58. The visual image displayed in accordance with this system included promotional material relating to the subject matter of the displayed web page, as depicted in Figure 5 above.

59. In accordance with this system, the displayed visual image has tracked movement of the modified cursor image. This is reflected in Figures 6 and 7 below.

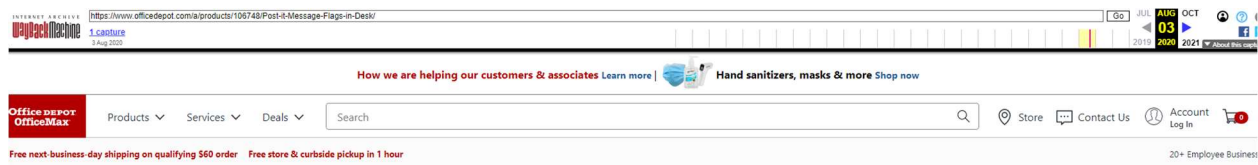


Figure 6



Figure 7

60. Figures 8-11 below reflect that Office Depot used the claimed cursor modification technology described above on August 4, 2020.

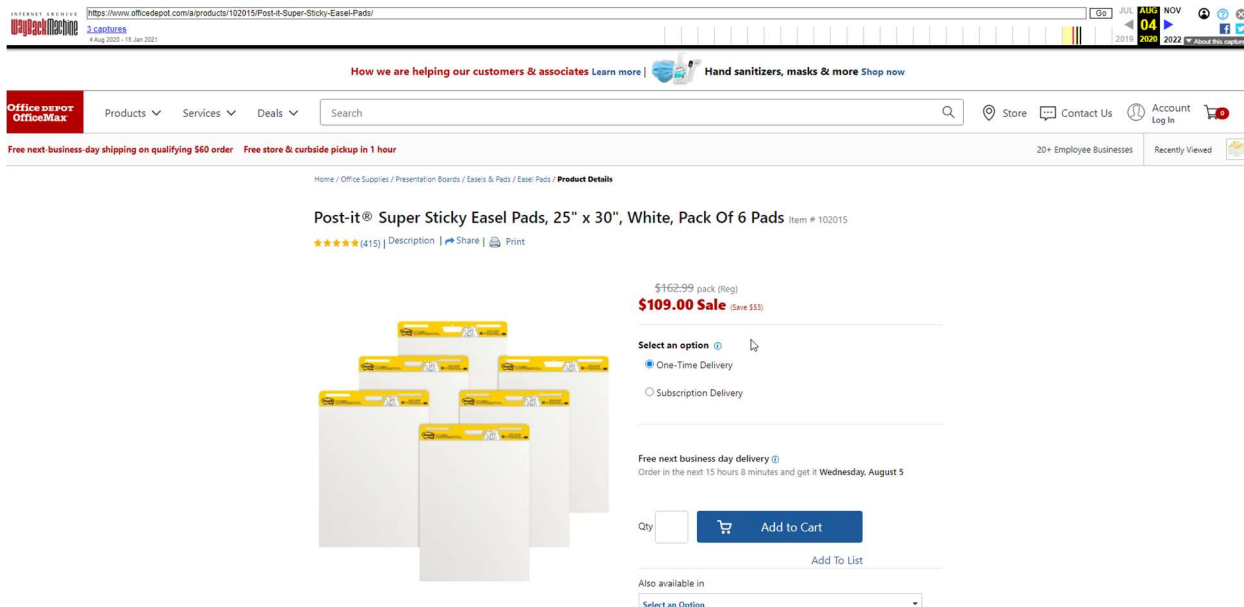


Figure 8

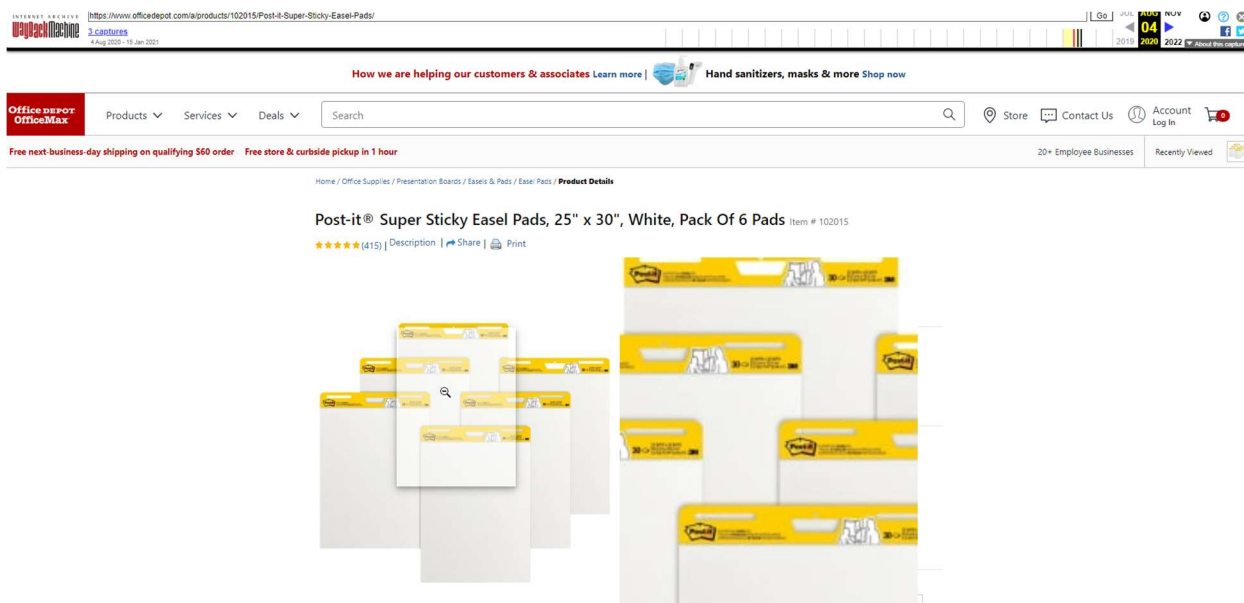


Figure 9

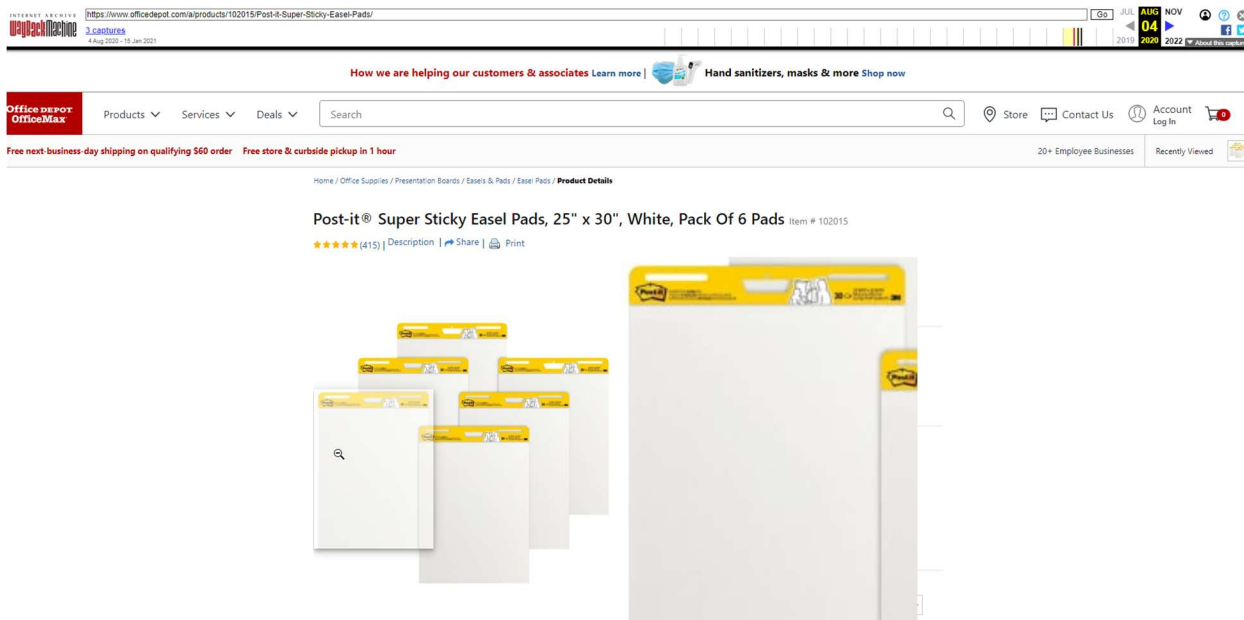


Figure 10



Figure 11

61. Figures 12-15 below reflect that Office Depot used the claimed cursor modification technology described above on August 12, 2020.

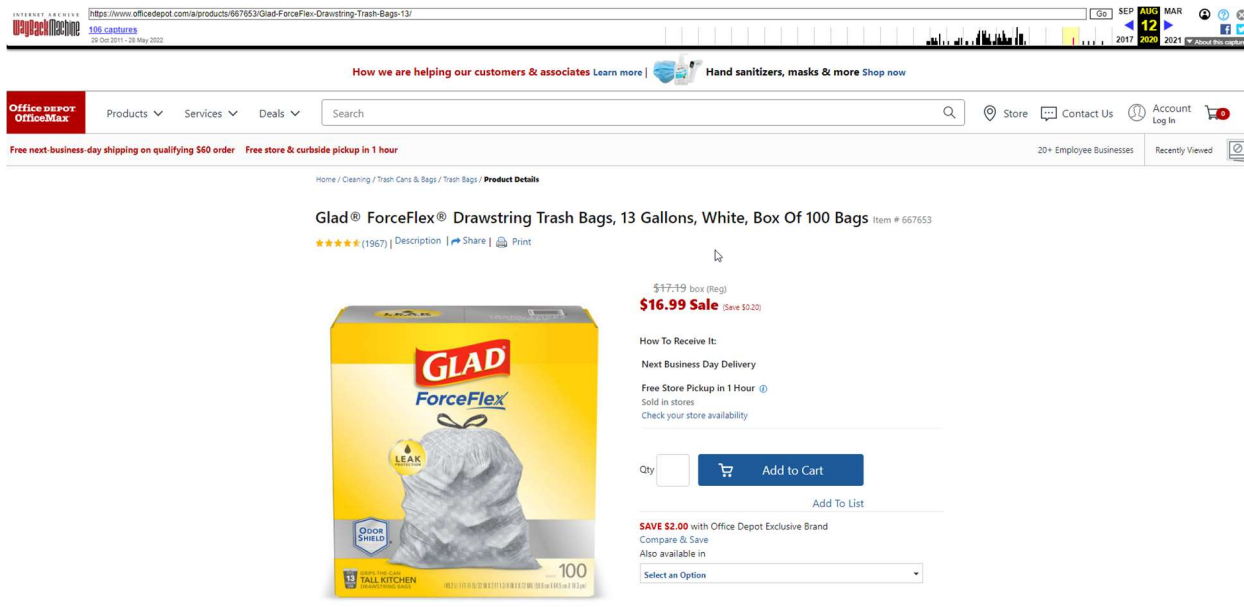


Figure 12

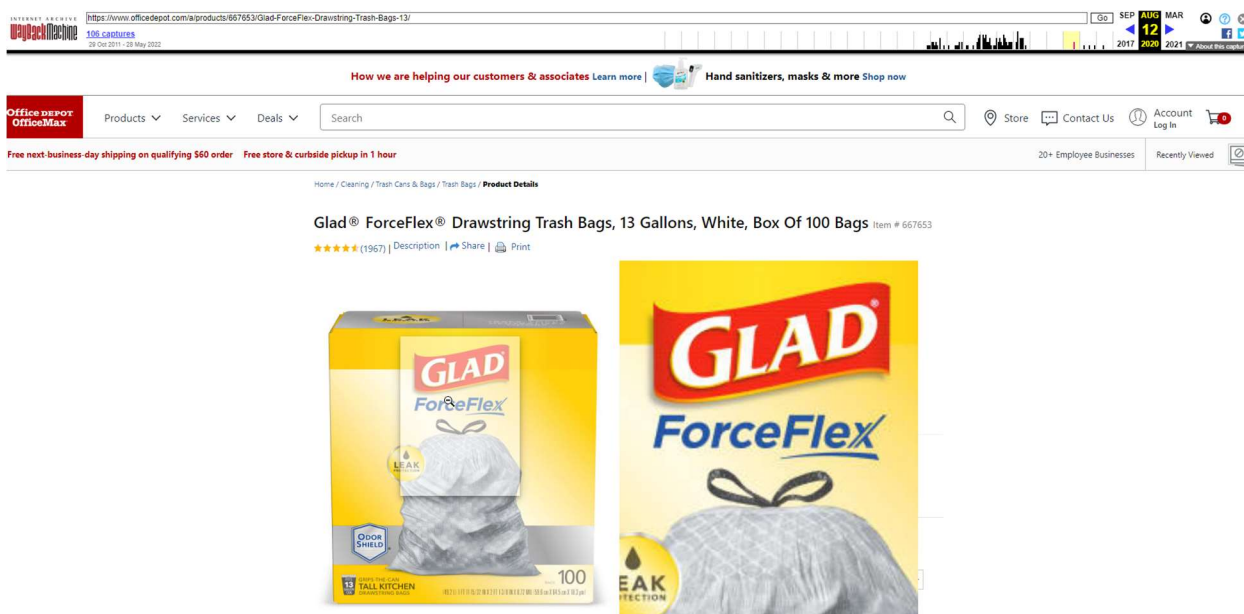


Figure 13

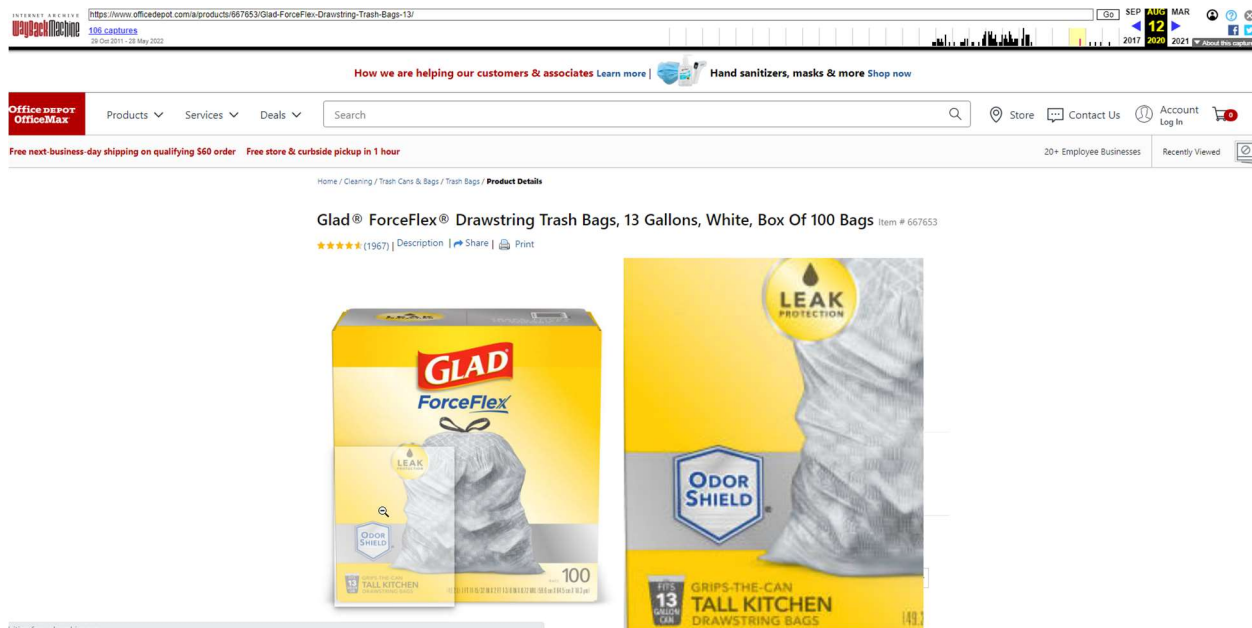


Figure 14

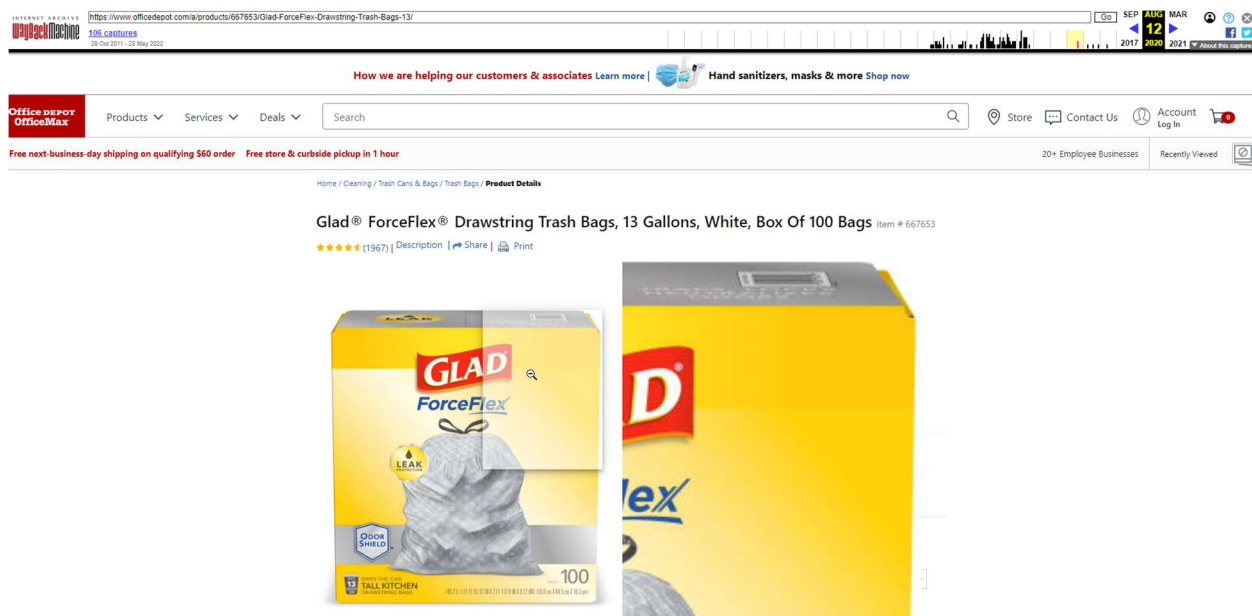


Figure 15

62. Office Depot, through the Office Depot website, has used the claimed system for purposes of infringement and has put the claimed system into service. In particular, Office Depot has controlled each element of the system and the system as a whole and has obtained a benefit from doing so in the form of improved marketing of products and services sold by Office

Depot through its website. Office Depot has provided and controlled any functionality required by the claimed system that has taken place on the user/customer's computer.

63. Lexos Media IP incorporates by reference herein the allegations above in Paragraphs 22-24, 49 and 51.

64. The duty to mark under 35 U.S.C. § 287 is inapplicable to the asserted claim of the '241 Patent because there are no "patented articles" that were sold or offered for sale by Lexos Media IP or its licensees of the '241 Patent that were subject to § 287. In addition, Lexos Media marked its website, *lexosmedia.com*, with the patent numbers of the Asserted Patents. Consequently, Lexos Media IP has complied with the marking requirement under § 287, to the extent it is applicable.

65. Lexos Media IP has been damaged by Office Depot's infringing activities.

DEMAND FOR JURY TRIAL

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

PRAYER FOR RELIEF

WHEREFORE, Lexos Media IP requests the following relief:

(a) A judgment in favor of Lexos Media IP that Office Depot has directly infringed on one or more claims of the Asserted Patents;

(b) A judgment and order requiring Office Depot to pay Lexos Media IP damages adequate to compensate for infringement under 35 U.S.C. § 284, which in no event shall be less than a reasonable royalty for its usage made of the inventions of the Asserted Patents, including disbursements, expenses, and pre- and post-judgment interest and costs; and

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

Dated: December 27, 2022

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via electronic mail on 27th day of December 2022.

/s/ Kenneth P. Kula

Kenneth P. Kula