

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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U.S. DISTRICT COURT
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TEXAS EASTERN

ORION IP, LLC,
A Texas Limited Liability Company

Plaintiff,

v.

YOKOHAMA TIRE CORPORATION,
OFFICEMAX, INC.,
OFFICEMAX CONTRACT, INC.,
OMX, INC.,
OFFICEMAX NORTH AMERICA, INC.,
YAMAHA CORPORATION OF AMERICA,
YAMAHA ELECTRONICS
CORPORATION, USA,
YAMAHA MOTOR CORPORATION, USA,
YAMAHA MOTOR FINANCE
CORPORATION, USA,
CATERPILLAR, INC.,
CATERPILLAR AMERICAS CO.,
CATERPILLAR AMERICAS FUNDING
INC.,
CATERPILLAR FINANCIAL FUNDING
CORPORATION,
CATERPILLAR POWER SYSTEMS, INC.,
CATERPILLAR WORLD TRADING
CORPORATION,
BRIDGESTONE AMERICAS HOLDINGS,
INC.,
BRIDGESTONE FIRESTONE NORTH
AMERICAN TIRE, LLC.,
BFS DIVERSIFIED PRODUCTS, LLC,
BFS RETAIL AND COMMERCIAL
OPERATIONS, LLC,
JC PENNEY CORPORATION, INC.,
JCP MEDIA, LP,
JC PENNEY COMPANY, INC.,
DELL, INC.,
NAVISTAR INTERNATIONAL CORP.,
INTERNATIONAL TRUCK AND ENGINE
CORPORATION,
NEC CORPORATION,
NEC CORPORATION OF AMERICA,

Civil Action No. BY 6:06cv364

JURY TRIAL DEMANDED

**NEC AMERICA,
NEC USA,
NEC DISPLAY SOLUTIONS OF AMERICA,
INC.,
NEC FINANCIAL SERVICES, INC., and
NEC ELECTRONICS AMERICA, INC.**

Defendants.

**PLAINTIFF ORION IP, LLC'S ORIGINAL
COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement in which Orion IP, LLC makes the following allegations against Yokohama Tire Corporation, OfficeMax, Inc., OfficeMax Contract, Inc., OMX, Inc., OfficeMax North America, Inc., Yamaha Corporation of America, Yamaha Electronics Corporation, USA, Yamaha Motor Corporation, USA, Yamaha Motor Finance Corporation, USA, Caterpillar, Inc., Caterpillar Americas Co., Caterpillar Americas Funding Inc., Caterpillar Financial Funding Corporation, Caterpillar Power Systems, Inc., Caterpillar World Trading Corporation, Bridgestone Americas Holdings, Inc., Bridgestone Firestone North American Tire, LLC, BFS Diversified Products, LLC, JC Penney Corporation, Inc., JCP Media, LP, JC Penney Company, Inc., Dell, Inc., Navistar International Corp., International Truck and Engine Corporation, NEC Corporation, NEC Corporation of America, NEC America, NEC USA, NEC Display Solutions of America, Inc., NEC Financial Services, Inc. and NEC Electronics America, Inc.

PARTIES

1. Plaintiff Orion IP, LLC (“Orion”) is a Delaware limited liability company with its principal place of business at 207 C North Washington Avenue, Marshall, Texas 75670.

2. On information and belief, defendant Yokohama Tire Corporation (“Yokohama Tire”) is a California corporation with its corporate headquarters and principal place of business at 601 South Acacia Avenue, Fullerton, CA 92831.

3. On information and belief, defendant OfficeMax, Inc. (“OfficeMax”) is a Delaware corporation having a principal place of business at 150 East Pierce Road, Itasca, IL 60143.

4. On information and belief, defendant OfficeMax Contract, Inc. (“OfficeMax Contract”) is a Delaware corporation with its corporate headquarters and principal place of business at 150 East Pierce Road, Itasca, IL 60143.

5. On information and belief, defendant OMX, Inc. (“OMX”) is a Delaware corporation with its corporate headquarters and principal place of business at 150 East Pierce Road, Itasca, IL 60143.

6. On information and belief, defendant OfficeMax North America, Inc. (“OfficeMax NA”) is an Ohio corporation with its corporate headquarters and principal place of business at 150 East Pierce Road, Itasca, IL 60143.

7. On information and belief, defendant Yamaha Corporation of America (“Yamaha”) is a California corporation with its corporate headquarters and principal place of business at 6600 Orangethorpe Avenue, Buena Park, CA 90620.

8. On information and belief, defendant Yamaha Electronics Corporation, USA (“Yamaha Electronics”) is a California corporation with its corporate headquarters and principal place of business at 6600 Orangethorpe Avenue, Buena Park, CA 90620.

9. On information and belief, defendant Yamaha Motor Corporation, USA (“Yamaha Motor”) is a California corporation with its corporate headquarters and principal place of business at 6555 Katella Avenue, Cypress, CA 90630.

10. On information and belief, defendant Yamaha Motor Finance Corporation, USA (“Yamaha Motor Finance”) is a California corporation with its corporate headquarters and principal place of business at 6555 Katella Avenue, Cypress, CA 90630.

11. On information and belief, defendant Caterpillar, Inc. (“Caterpillar”) is a Delaware corporation having a principal place of business at 100 N.E. Adams Street, Peoria, IL 61629.

12. On information and belief, defendant Caterpillar Americas Co. (“Caterpillar Americas”) is a Delaware corporation having a principal place of business at 100 N.E. Adams Street, Peoria, IL 61629.

13. On information and belief, defendant Caterpillar Americas Funding Inc. (“Caterpillar Funding”) is a Delaware corporation having a principal place of business at 100 N.E. Adams Street, Peoria, IL 61629.

14. On information and belief, defendant Caterpillar Financial Funding Corporation (“Caterpillar Financial”) is a Nevada corporation having a principal place of business at 100 N.E. Adams Street, Peoria, IL 61629.

15. On information and belief, defendant Caterpillar Power Systems, Inc. (“Caterpillar Power”) is a Delaware corporation having a principal place of business at 100 N.E. Adams Street, Peoria, IL 61629.

16. On information and belief, defendant Caterpillar World Trading Corporation (“Caterpillar World”) is a Delaware corporation having a principal place of business at 100 N.E. Adams Street, Peoria, IL 61629.

17. On information and belief, defendant Bridgestone Americas Holding, Inc. (“Bridgestone Americas”) is a Nevada corporation having a principal place of business at 535 Marriott Drive, Nashville, TN 37214.

18. On information and belief, defendant Bridgestone Firestone North American Tire, LLC (“Bridgestone Firestone”) is a Delaware corporation having a principal place of business at 535 Marriott Drive, Nashville, TN 37214.

19. On information and belief, defendant BFS Diversified Products, LLC (“BFS”) is a Delaware corporation having a principal place of business at 310 E 96th Street Indianapolis, Indiana 46240.

20. On information and belief, defendant BFS Retail and Commercial Operations, LLC (“BFS Retail”) is a Delaware corporation having a principal place of business at 310 E 96th Street Indianapolis, Indiana 46240.

21. On information and belief, defendant JC Penney Corporation, Inc. (“JC Penney”) is a Delaware corporation with its corporate headquarters and principal place of business at 6501 Legacy Drive, Plano, TX 75024-3698.

22. On information and belief, defendant JCP Media, LP (“JCP Media”) is a Delaware corporation with its corporate headquarters and principal place of business at 6501 Legacy Drive, Plano, TX 75024-3698.

23. On information and belief, defendant JC Penney Company, Inc. (“JC Penney Company”) is a Delaware corporation with its corporate headquarters and principal place of business at 6501 Legacy Drive, Plano, TX 75024-3698.

24. On information and belief, defendant Dell, Inc. (“Dell”) is a Delaware corporation with its corporate headquarters and principal place of business at One Dell Way, Round Rock, TX 78682.

25. On information and belief, defendant Navistar International Corp. (“Navistar”) is a Delaware corporation with its corporate headquarters and principal place of business at 4201 Winfield Road, Warrenville, IL 60555.

26. On information and belief, defendant International Truck and Engine Corporation (“International Truck”) is a Delaware corporation with its corporate headquarters and principal place of business at 4201 Winfield Road, Warrenville, IL 60555.

27. On information and belief, defendant NEC Corporation (“NEC”) is a Japanese corporation with its corporate headquarters and principal place of business at 7-1, Shiba 5-chome Minato-ku, Tokyo 108-8001, Japan.

28. On information and belief, defendant NEC Corporation of America (“NEC Corp. America”) is a Delaware corporation with its corporate headquarters and principal place of business at 635 North State Hwy. 161, Irving, TX 75093.

29. On information and belief, defendant NEC America (“NEC America”) is a New York corporation with its corporate headquarters and principal place of business at 635 North State Hwy. 161, Irving, TX 75093.

30. On information and belief, defendant NEC USA (“NEC USA”) is a New York corporation with its corporate headquarters and principal place of business at 8 Corporate Center Drive, Melville, NY 11747.

31. On information and belief, defendant NEC Display Solutions of America, Inc. (“NEC Display”) is a Delaware corporation with its corporate headquarters and principal place of business at 500 Park Boulevard Suite 1100 Itasca, Illinois 60143.

32. On information and belief, defendant NEC Financial Services, Inc. (“NEC Financial”) is a Delaware corporation with its corporate headquarters and principal place of business at Glenpointe Centre East, 300 Frank W. Burr Boulevard, Teaneck, New Jersey 07666-6704.

33. On information and belief, defendant NEC Electronics America, Inc. (“NEC Electronics”) is a California corporation with its corporate headquarters and principal place of business at 2880 Scott Boulevard Santa Clara, California 95050-2554.

JURISDICTION AND VENUE

34. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

35. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). Each Defendant has a regular and established place of business in this district, has transacted business

in this district and, on information and belief, and/or has committed acts of patent infringement in this district.

COUNT 1

INFRINGEMENT OF U.S. PATENT 5,615,342

36. Orion is the owner by assignment of United States Patent No. 5,615,342 (“the ‘342 Patent”) entitled “Electronic Proposal Preparation System.” A true and correct copy of the ‘342 Patent is attached as Exhibit A. The ‘342 Patent was duly issued on March 25, 1997.

37. The ‘342 Patent was the subject of a previous Markman ruling issued by the United States District Court for the Eastern District of Texas. A copy of that order is attached as Exhibit B.

38. Jerome D. Johnson is the named inventor on the ‘342 Patent.

39. Defendant Yokohama Tire has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.yokohamatire.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the ‘342 Patent to the injury of Orion.

40. Defendant OfficeMax has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.officemax.com), making and using supply chain methods, sales methods, sales systems,

marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

41. Defendant OfficeMax Contract has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.officemax.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

42. Defendant OMX has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.officemax.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

43. Defendant OfficeMax NA has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.officemax.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

44. Defendant Yamaha has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.yamaha.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

45. Defendant Yamaha Electronics has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.yamaha.com/yec/), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

46. Defendant Yamaha Motor has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.yamaha-motor.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

47. Defendant Yamaha Motor Finance has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of

the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.yamaha-motor.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

48. Defendant Caterpillar has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

49. Defendant Caterpillar Americas has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

50. Defendant Caterpillar Funding has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to

www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

51. Defendant Caterpillar Financial has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

52. Defendant Caterpillar Power has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

53. Defendant Caterpillar World has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing

methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

54. Defendant Bridgestone Americas has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.firestone.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

55. Defendant Bridgestone Firestone has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.firestone.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

56. Defendant BFS has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.firestone.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

57. Defendant BFS Retail has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.firestone.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

58. Defendant JC Penney has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.jcpenney.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

59. Defendant JCP Media has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.jcpenney.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

60. Defendant JC Penney Company has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of

the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.jcpenney.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

61. Defendant Dell has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.dell.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

62. Defendant Navistar has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.navistar.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

63. Defendant International Truck has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to

www.navistar.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

64. Defendant NEC has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.nec.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

65. Defendant NEC Corp. America has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.necam.com and www.necus.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

66. Defendant NEC America has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.necam.com and www.necus.com), making and using supply chain methods, sales methods,

sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

67. Defendant NEC USA has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.necam.com and www.necus.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

68. Defendant NEC Display has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.necdisplay.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

69. Defendant NEC Financial has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.neclease.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

70. Defendant NEC Electronics has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.am.necel.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '342 Patent to the injury of Orion.

71. These defendants have actively induced and are actively inducing infringement of the '342 Patent.

72. On information and belief, to the extent any marking was required by 35 U.S.C. §287, all predecessors in interest to the '342 Patent complied with such requirements and all licensees of the '342 Patent are obligated to mark licensed products in compliance with such requirements.

73. As a result of these Defendants' infringement of the '342 Patent, Orion has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

74. Unless a permanent injunction is issued enjoining these Defendants and their agents, servants, employees, attorneys, representatives, affiliates and all others acting on their behalf from infringing the '342 Patent, Orion will be greatly and irreparably harmed.

COUNT 2

INFRINGEMENT OF U.S. PATENT 5,367,627

75. Orion is the owner by assignment of United States Patent No. 5,367,627 (“the ‘627 Patent”) entitled “Computer-Assisted Parts Sales Method.” A true and correct copy of the ‘627 Patent is attached as Exhibit C. The ‘627 Patent was duly issued on November 22, 1994.

76. The ‘627 Patent was the subject of a previous Markman ruling issued by the United States District Court for the Eastern District of Texas. A copy of that order is attached as Exhibit B.

77. Jerome D. Johnson is the named inventor on the ‘627 Patent.

78. Defendant Yokohama Tire has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘342 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.yokohamatire.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the ‘627 Patent to the injury of Orion.

79. Defendant OfficeMax has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the ‘627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.officemax.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the ‘627 Patent to the injury of Orion.

80. Defendant OfficeMax Contract has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.officemax.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

81. Defendant OMX has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.officemax.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

82. Defendant OfficeMax NA has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.officemax.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

83. Defendant Yamaha has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627

Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.yamaha.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

84. Defendant Yamaha Electronics has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.yamaha.com/yec/), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

85. Defendant Yamaha Motor has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.yamaha-motor.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

86. Defendant Yamaha Motor Finance has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to

www.yamaha-motor.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

87. Defendant Caterpillar has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

88. Defendant Caterpillar Americas has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

89. Defendant Caterpillar Funding has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing

methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

90. Defendant Caterpillar Financial has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

91. Defendant Caterpillar World has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.cat.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

92. Defendant Bridgestone Americas has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.firestone.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

93. Defendant Bridgestone Firestone has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.firestone.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

94. Defendant BFS has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.firestone.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

95. Defendant BFS Retail has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.firestone.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

96. Defendant JC Penney has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627

Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.jcpenney.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

97. Defendant JCP Media has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.jcpenney.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

98. Defendant JC Penney Company has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.jcpenney.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

99. Defendant Dell has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.dell.com), making and

using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

100. Defendant Navistar has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.navistar.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

101. Defendant International Truck has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.navistar.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

102. Defendant NEC has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.nec.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing

systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

103. Defendant NEC Corp. America has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.necam.com and www.necus.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

104. Defendant NEC America has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.necam.com and www.necus.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

105. Defendant NEC USA has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.necam.com and www.necus.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

106. Defendant NEC Display has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.necdisplay.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

107. Defendant NEC Financial has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.neclease.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

108. Defendant NEC Electronics has been and now is directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement of the '627 Patent in the state of Texas, in this judicial district, and elsewhere in the United States by, among other things, methods practiced on various websites (including but not limited to www.am.necel.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems covered by one or more claims of the '627 Patent to the injury of Orion.

109. Defendants have actively induced and are actively inducing infringement of the '627 Patent.

110. As a result of Defendants' infringement of the '627 Patent, Orion has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

111. Unless a permanent injunction is issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, affiliates and all others acting on their behalf from infringing the '627 Patent, Orion will be greatly and irreparably harmed.

JURY DEMAND

112. Orion demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Orion requests that this Court enter:

A judgment in favor of Orion that Defendants Yokohama Tire, OfficeMax, OfficeMax Contract, OMX, OfficeMax NA, Yamaha, Yamaha Electronics, Yamaha Motor, Yamaha Motor Finance, Caterpillar, Caterpillar Americas, Caterpillar Funding, Caterpillar Financial, Caterpillar Power, Caterpillar World, Bridgestone Americas, Bridgestone Firestone, BFS, BFS Retail, JC Penney, JCP Media, JC Penney Company, Dell, Navistar, International Truck, NEC, NEC Corp. America, NEC America, NEC USA, NEC Display, NEC Financial and NEC Electronics have infringed, directly and indirectly by way of inducing and/or contributing to the infringement of the '342 Patent.

1. A permanent injunction enjoining Defendants Yokohama Tire, OfficeMax, OfficeMax Contract, OMX, OfficeMax NA, Yamaha, Yamaha Electronics, Yamaha Motor, Yamaha Motor Finance, Caterpillar, Caterpillar Americas, Caterpillar Funding, Caterpillar Financial, Caterpillar Power, Caterpillar World, Bridgestone Americas, Bridgestone Firestone, BFS, BFS Retail, JC Penney, JCP Media, JC Penney Company, Dell, Navistar, International

Truck, NEC, NEC Corp. America, NEC America, NEC USA, NEC Display, NEC Financial and NEC Electronics and their officers, directors, agents, servants affiliates, employees, divisions, branches subsidiaries, parents and all others acting in concert or privity with any of them from infringement, inducing the infringement of, or contributing to the infringement of the '342 Patent.

2. A judgment and order requiring Defendants Yokohama Tire, OfficeMax, OfficeMax Contract, OMX, OfficeMax NA, Yamaha, Yamaha Electronics, Yamaha Motor, Yamaha Motor Finance, Caterpillar, Caterpillar Americas, Caterpillar Funding, Caterpillar Financial, Caterpillar Power, Caterpillar World, Bridgestone Americas, Bridgestone Firestone, BFS, BFS Retail, JC Penney, JCP Media, JC Penney Company, Dell, Navistar, International Truck, NEC, NEC Corp. America, NEC America, NEC USA, NEC Display, NEC Financial and NEC Electronics to pay Orion damages for Defendants' infringement of the '342 Patent, together with interest (both pre- and post- judgment), costs and disbursements as fixed by this Court under 35 U.S.C. §284;

3. A judgment in favor of Orion that Defendants Yokohama Tire, OfficeMax, OfficeMax Contract, OMX, OfficeMax NA, Yamaha, Yamaha Electronics, Yamaha Motor, Yamaha Motor Finance, Caterpillar, Caterpillar Americas, Caterpillar Funding, Caterpillar Financial, Caterpillar Power, Caterpillar World, Bridgestone Americas, Bridgestone Firestone, BFS, BFS Retail, JC Penney, JCP Media, JC Penney Company, Dell, Navistar, International Truck, NEC, NEC Corp. America, NEC America, NEC USA, NEC Display, NEC Financial and NEC Electronics have infringed, directly and indirectly by way of inducing and/or contributing to the infringement of the '627 Patent.

4. A permanent injunction enjoining Defendants Yokohama Tire, OfficeMax, OfficeMax Contract, OMX, OfficeMax NA, Yamaha, Yamaha Electronics, Yamaha Motor, Yamaha Motor Finance, Caterpillar, Caterpillar Americas, Caterpillar Funding, Caterpillar Financial, Caterpillar Power, Caterpillar World, Bridgestone Americas, Bridgestone Firestone, BFS, BFS Retail, JC Penney, JCP Media, JC Penney Company, Dell, Navistar, International Truck, NEC, NEC Corp. America, NEC America, NEC USA, NEC Display, NEC Financial and NEC Electronics and their officers, directors, agents, servants affiliates, employees, divisions, branches subsidiaries, parents and all others acting in concert or privity with any of them from infringement, inducing the infringement of, or contributing to the infringement of the '627 Patent.

5. A judgment and order requiring Defendants Yokohama Tire, OfficeMax, OfficeMax Contract, OMX, OfficeMax NA, Yamaha, Yamaha Electronics, Yamaha Motor, Yamaha Motor Finance, Caterpillar, Caterpillar Americas, Caterpillar Funding, Caterpillar Financial, Caterpillar Power, Caterpillar World, Bridgestone Americas, Bridgestone Firestone, BFS, BFS Retail, JC Penney, JCP Media, JC Penney Company, Dell, Navistar, International Truck, NEC, NEC Corp. America, NEC America, NEC USA, NEC Display, NEC Financial and NEC Electronics to pay Orion damages for Defendants' infringement of the '627 Patent, together with interest (both pre- and post-judgment), costs and disbursements as fixed by this Court under 35 U.S.C. §284.

6. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. §285 and awarding to Orion its reasonable attorneys' fees that Orion proves it is entitled to at trial;

7. Orion's costs; and

8. Any and all other relief to which Orion may show itself to be entitled.

Respectfully submitted,

ORION IP, LLC

Dated: August 17, 2006

By: 

Danny L. Williams

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