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ATTORNEYS FOR PLAINTIFF
AUTONOMY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AUTONOMY, INC.

Plaintiff,

vs.

ADISCOV, L.L.C.

and

ALBERT B. KRACHMAN, an individual,

Defendants.

Civil Case No.: 4:11-cv-00420-SBA

FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND
VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200

JURY DEMAND

1 1. Plaintiff, Autonomy Inc. (“Autonomy”) files this First Amended Complaint for
2 declaratory judgment of invalidity, unenforceability, and non-infringement (directly or indirectly)
3 of United States Patent No. 6,738,760 (“the ’760 patent”) (attached hereto as Exhibit A), pursuant
4 to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the patent laws of the United States,
5 35 U.S.C. § 100 *et seq.*, and for violations of California’s Unfair Competition Law, Cal. Bus. &
6 Prof. Code § 17200 *et seq.* for the relief sought herein against Defendants Adiscov, L.L.C., and
7 Albert B. Krachman (collectively, “Defendants”). Autonomy alleges as follows:

THE PARTIES

9 2. Plaintiff Autonomy, Inc. is a corporation duly organized and existing under the
10 laws of the State of New Jersey. Autonomy is registered to do business in California and has a
11 principal place of business at One Market Plaza, Spear Tower, San Francisco, California.

12 3. Upon information and belief, Defendant Adiscov, L.L.C. is a Virginia limited
13 liability corporation with a principal place of business at 412 East Columbia Street, Falls Church,
14 Virginia 22046.

15 4. Upon information and belief, Defendant, Albert B. Krachman (“Krachman”) is an
16 individual resident at 412 East Columbia Street, Falls Church, Virginia 22046. Upon information
17 and belief, Krachman does business regularly in California by way of his status since 2005 as an
18 owner and partner at Blank Rome, LLP, a law firm that maintains offices in, and does business in,
19 California at 1925 Century Park East, Suite 1900, Los Angeles, California 90067. Krachman is
20 the named inventor of the ’760 patent.

21 5. Upon information and belief, Defendant Adiscov operates as the alter ego of
22 Defendant Krachman. Upon information and belief, in addition to being wholly-owned by
23 Krachman, Adiscov is dominated and controlled by Krachman alone, and there is a unity of
24 interest and ownership between Krachman and Adiscov. Moreover, the alleged invention of the
25 ’760 patent is also attributable to Krachman. If Adiscov were able to avoid liability as outlined
26 herein based on the legal fiction that it is a separate legal entity from Krachman, it would sanction
27 a fraud or promote an injustice since, at all relevant times, Adiscov has been nothing more than an
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1 alter ego of Krachman. Additionally, the '760 patent, which is purportedly assigned to Adiscov
2 and is being asserted by Adiscov in violation of California's Unfair Competition Law, was issued
3 only as a result of Krachman's activities and misrepresentations made to the United States Patent
4 and Trademark Office.

5 6. Upon information and belief, further proof that Adiscov is the alter ego of
6 Krachman may also be shown through actions including failure to follow corporate formalities,
7 thin capitalization, personal use of corporate assets, and/or commingling of funds.

8 **JURISDICTION AND VENUE**

9 7. This First Amended Complaint states claims arising under the patent laws of the
10 United States, Title 35 of the United States Code, with a specific remedy sought based upon the
11 laws authorizing actions for declaratory judgment in the federal courts of the United States, 28
12 U.S.C. §§ 2201 and 2202, and claims arising under California's Unfair Competition Law, Cal.
13 Bus. & Prof. Code § 17200 *et seq.* This Court has subject matter jurisdiction over all asserted
14 federal claims pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201. This Court has supplemental
15 subject matter jurisdiction over all state law claims, including Autonomy's claims under
16 California's unfair competition law, pursuant to 28 U.S.C § 1367.

17 8. This court has general personal jurisdiction over the Defendants Krachman and
18 Adiscov based on Krachman's systematic and continuous presence in California as a partner with
19 the law firm Blank Rome LLP since 2005 and his status as sole owner of his alter ego Adiscov.
20 On information and belief, Krachman, through Blank Rome, does business in California,
21 principally from its office located at 1925 Century Park East, Suite 1900, Los Angeles, California
22 90067, and does business with clients based in, and operating in, California. On information and
23 belief, Krachman derives income from his firm's presence in California and the business
24 conducted by Blank Rome in California, and, with clients based in, and operating in, California,
25 and as a partner is subject to California income tax laws.

26 9. This Court has specific personal jurisdiction over the Defendants because they
27 have engaged in a systematic practice of targeting companies located in California and in this
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judicial district with their patent licensing strategy. Adiscov and its agents directed its licensing program claiming infringement of the '760 patent to Autonomy at its headquarters located in San Francisco in the Northern District of California as alleged in earlier actions filed and dismissed by Adiscov in the Eastern District of Virginia. Further, on or about November 3, 2010, agents of Adiscov, including at least Corby R. Vowell and Edward W. Goldstein, met with representatives of Autonomy at the offices of Autonomy's counsel, White & Case LLP, in Palo Alto, California, in the Northern District of California, to discuss Adiscov's infringement claims. During this meeting, the parties discussed Autonomy's Introspect product, including how Introspect meets all of the limitations of the asserted claims of the '760 patent.

10. Upon information and belief, in addition to its efforts to license the '760 patent to Autonomy, Defendants' licensing strategy regularly targets California companies with threats of patent infringement, and requests that California companies license the '760 patent. On information and belief, other companies with a presence in California targeted by Defendants include, at least, the following:

- a. Kroll Ontrack, Inc., a company with one of its four North American offices located at 18350 Mt. Langley Street, Suite 110, Fountain Valley, California 92708. On information and belief, Adiscov has entered into a license agreement with Kroll Ontrack, Inc. concerning the '760 patent.
- b. Recommind, Inc., a corporation organized under the laws of California, with its headquarters in this District at 170 Columbus Avenue, Suite 310, San Francisco, California 94133. On information and belief, Adiscov has initiated litigation against Recommind, and is actively pursuing a license agreement concerning the '760 patent.
- c. Stroz Friedberg, LLC, a company with two of its seven North American offices located in California, including in this District at 101 Montgomery Street, Suite 2450, San Francisco, California 94104 and at 1925 Century Park East, Suite 1350,

Los Angeles, California 90067. On information and belief, Adiscov has entered into a license agreement with Stroz Friedberg LLC concerning the '760 patent.

11. Venue in this District is proper under 15 U.S.C. § 22, and 28 U.S.C. §§ 1391 and 1400.

EXISTENCE OF AN ACTUAL CONTROVERSY REGARDING THE INVALIDITY, UNENFORCEABILITY, AND NON-INFRINGEMENT OF THE '760 PATENT

12. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

13. Adiscov purports to be the owner of all rights, title and interest in and to the '760 patent.

14. On or about May 17, 2010 Adiscov notified Autonomy that it was taking the position that the '760 patent is allegedly infringed by unspecified "legal discovery software and services."

15. On or about February 2, 2011 Adiscov notified Autonomy that it was taking the position that the '760 patent is allegedly infringed by "Autonomy's eDiscovery platform, Legal Hold, Investigator, and Early Case Assessment, Introspect, eDiscovery Appliance, and Hosted eDiscovery software, as well as any other legal discovery software or services." Adiscov failed to identify any specific date or version for any of the listed products.

16. Based upon the above facts, there is an actual and justiciable controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

FACTS SUPPORTING AUTONOMY'S UNFAIR COMPETITION CLAIM

Relevant Market and Market Power

17. Since the early 1990s, Autonomy (and its predecessors) have been marketing and selling discovery tools, which are electronic software products that enable law firms and corporations to effectively comply with large scale litigation discovery requests through efficient collection, organization, tagging and production of documents. As discovery tools are software products, they require Autonomy and other discovery tool vendors to acquire or develop separate

and distinct intellectual property (“IP”), which collectively form the software and related products and services.

18. Defendants’ actions impair competition in the market for innovation in and for rights covering IP used to manufacture and sell automated discovery tools in the United States (“Discovery Tool IP”). Discovery Tool IP consists of know-how and patents that are substitutes or alternative inputs that enable the creation of discovery tools. Autonomy has internally created IP including that which it has acquired through acquisition. On information and belief, other discovery tool vendors rely on, and use, Discovery Tool IP in order to manufacture and create their discovery tools. Because the market for IP is regulated by federal and state laws, the United States of America and its political subdivisions are relevant submarkets.

19. Autonomy transacts business by manufacturing, using, selling, or offering to sell discovery tools. Thus, Autonomy is a direct consumer and competitor in the supply of Discovery Tool IP in the United States. Autonomy also possesses the assets to compete and would continue to compete in this business through the internal creation of its own IP, but is foreclosed or threatened to be foreclosed from using its IP as a substitute because of Defendants’ improper monopolistic conduct, as discussed herein.

20. Defendants have monopolized and continue to maintain their monopoly or are attempting to acquire a monopoly in Discovery Tool IP, as set forth herein.

21. Adiscov is an entity whose sole purpose is to exclude, through whatever means necessary, the competing IP in the market for Discovery Tool IP. The ultimate goals of Defendants Adiscov and Krachman are to maintain or obtain monopoly power by foreclosing substitute Discovery Tool IP and therefore charge consumers of the Discovery Tool IP excessive and unfair fees.

Defendants’ Unlawful Conduct

22. Defendants have engaged in an unlawful scheme, which includes, but is not limited to, written intimidation and baseless sham patent litigation (including against Autonomy) designed to effectively harm competition for Discovery Tool IP (detailed below). As a result of

Adiscov and Krachman's unlawful scheme, substantial barriers have been created for competition from other IP substitutes. As to Autonomy, Defendants have harmed competition by bringing litigation asserting the '760 patent as valid and enforceable against products sold by Autonomy. Autonomy's products, including but not limited to the allegedly infringing Introspect product, cannot possibly infringe the '760 patent because they were on sale prior to the date of the application that led to the '760 patent and which therefore render the '760 patent invalid.

23. By bringing baseless and anticompetitive litigation asserting the '760 Patent, which Krachman and Adiscov knew was invalid, non-infringed, fraudulently obtained, or otherwise unenforceable, Adiscov has engaged in willful exclusionary conduct that has caused Adiscov to acquire, maintain and enhance monopoly power in the discovery technology market, or is pursuant to an attempt to do so. This includes asserting the '760 patent against an Introspect product known to be publicly available prior to the date of the application that led to the '760 patent.

24. As a result of their unlawful scheme, Defendants have violated California's Unfair Competition Law, Bus. & Prof. Code, § 17200 *et seq.* In furtherance of the scheme, Defendants have: (1) harassed competitors and consumers of Discovery Tool IP, including Autonomy, with baseless patent infringement litigation over a patent that is invalid, non-infringed, fraudulently obtained or otherwise unenforceable; (2) engaged in a campaign of threats and intimidation based upon the non-infringed or unenforceable patent, all in order to further erode competition; (3) disseminated false information to the industry as it relates to the validity and applicability of the patent; and (4) engaged in other unfair, anticompetitive and illegal actions. The patent asserted here is clearly, and undeniably, invalid as it was based on Autonomy technology and the Introspect product that is alleged to infringe is a product that was widely recognized, sold, and used by the industry well before the '760 patent was issued (detailed below). The assertion of the '760 patent against Autonomy is thus objectively baseless and the assertion was calculated to use the legal system as an anticompetitive weapon rather than to seek valid legal relief. Defendants intentionally imposed significant litigation and unwarranted licensing expenses on consumers of

Discovery Tool IP, including Autonomy, in an effort to secure royalties from these consumers on the invalid patents.

25. This objectively baseless conduct and litigation reduces Autonomy's ability to effectively compete in the discovery tools industry as a manufacturer, service provider, and innovator.

26. Adiscov's lawsuit has caused, and will continue to cause, injury to Autonomy and consumers due to the high cost and substantial burdens associated with defending against Adiscov's baseless claims.

27. Unless Adiscov's patent infringement case against Autonomy is dismissed, Adiscov is likely to succeed in acquiring monopoly power because of its dominant position, the high entry barriers in the market, and the absence of other innovator competitors capable of offering a substitute for the Adiscov's purported Discovery Tool IP.

Krachman and Adiscov were Aware That Its Patent Infringement Lawsuit Was Baseless

Prior to Filing the Complaint

28. On information and belief, Defendants Krachman and Adiscov knew, prior to filing Adiscov's sham patent infringement claims, that the '760 patent is invalid or otherwise unenforceable because Introspect—a product now alleged by Adiscov to infringe the '760 patent—was on sale prior to the date of the application that led to the patent.

29. Introspect was released in 1994, well before the application that led to Krachman's '760 patent was filed in 2000.

30. Introspect is well-known in the industry, and has been since its 1994 release. For example:

- a. Versions of Introspect were used in the highly-publicized Orange County bankruptcy case in the mid-1990s;
- b. Introspect was named to the top ten lists of the American Lawyer's technology magazine, *AmLaw Tech*, in 1997;
- c. AIG had rolled out Introspect to 100 independent law firms by August of 1997;

- d. Introspect was named one of 1997's "Hot Products" by Imaging World magazine;
- e. Introspect was cited for bringing "legal departments faster, more reliable access to important company documents, in a highly cost effective manner" by Imaging Business Magazine in June 1997.

31. Introspect and each of its updates since its first release, are based on the core software product released at least as early as 1994. Introspect's written documentation dating back to this time clearly establishes that Autonomy's predecessor-in-interest possessed, and sold, the discovery tools technology well before the alleged patent was even applied for by Krachman.

32. Regardless, Krachman and Adiscov commenced patent infringement actions against Autonomy and other Discovery Tool IP consumers in bad faith, as Defendants objectively and subjectively knew such claims were baseless and would, therefore, constitute sham litigations because the '760 patent was invalid as Krachman and Adiscov would have known or should have known based on the industry-leading, award-winning, and trailblazing Introspect product that was well-known to be on sale as early as 1994.

Harm to Competition

33. As a result of Defendants' unlawful scheme, Autonomy and other consumers of Discovery Tool IP have been adversely affected. Defendants' actions have damaged Discovery Tool IP consumers insofar as they have eliminated and continue, through this sham litigation, to eliminate competition.

34. Adiscov's complaint against Autonomy was so insufficient in its purported allegations that the complaint was dismissed by the Court in the Eastern District of Virginia on January 27, 2011.

35. Adiscov re-filed a similarly insufficient complaint in the Eastern District of Virginia on February 2, 2011 despite the fact that Autonomy filed this litigation on January 27, 2011.

36. Despite the November 3, 2010 presentation and despite knowing that Introspect predates the application for the '760 patent, in its February 2, 2011 complaint, Adiscov continues

to allege that Introspect infringes the '760 patent, while Introspect has been on sale since 1994, well before the filing date of the application that led to the '760 patent. Specifically, in its February 2, 2011 complaint filed in the Eastern District of Virginia, Adiscov states that "Introspect" infringes at least Claim 1 of the '760 patent.

37. Defendants' fraudulent conduct and sham litigation have the effect of directly stifling innovative market competition and have undermined fair prices that should be determined through an open and competitive market for the development, acquisition or licensing of Discovery Tool IP. Defendants further damaged the consumers of Discovery Tool IP through the use of unnecessary and unfair licensing fees based on the invalid, non-infringed, fraudulently obtained or unenforceable patent. Defendants have effectively excluded or are attempting to exclude all competing substitute IP.

38. On information and belief, Defendants' market power is durable, as the holder of the '760 patent can exclude competition of the Relevant Products for the duration of the invalid, non-infringed, fraudulently obtained, or unenforceable patent. Adiscov purports to be able to exclude competition and thus exercise its market power for as much as another ten years.

39. On information and belief, as an example of Defendants' enduring market power, Adiscov was able to force other Discovery Tool IP consumers to license Adiscov's IP, rather than expend resources to defend against Adiscov's baseless litigation. On information and belief, these consumers, including Kroll Ontrack, Inc. and Engenium Corp., were coerced into agreeing to license terms for purported Discovery Tool IP improperly claimed by Adiscov based on the threat of clearly and unequivocally baseless patent litigation brought without regard to the merits, as evidenced by, among other things, using litigation tactics designed to force a settlement rather than to win on the merits. These include sham lawsuits brought in the United States District Court for the Eastern District of Texas and the United States District Court for the Eastern District of Virginia. If there were competitive alternatives to Adiscov's enduring market power, Adiscov would not be able to force other Discovery Tool IP consumers to pay excessive fines or fees or settle sham litigation claims.

FIRST CLAIM

**DECLARATORY JUDGMENT OF INVALIDITY AND NON-INFRINGEMENT
REGARDING THE '760 PATENT**

40. The Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 39 of this first amended complaint and incorporates them by reference.

41. No valid, and enforceable, claim of the '760 patent, including but not limited to Claim 1, is infringed by the Plaintiff or any of its products and/or services, including at least Autonomy's eDiscovery platform, Legal Hold, Investigator and Early Case Assessment, Introspect, eDiscovery Appliance, and Hosted eDiscovery software, either literally or under the doctrine of equivalents.

42. The claims of the '760 patent are invalid for failure to comply with the requirements of the Patent Laws of the United States, including but not limited to, the provisions of 35 U.S.C. §§ 101, 102, 103, and/or 112.

SECOND CLAIM

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT

43. The Plaintiff hereby restates and realleges the allegations in paragraphs 1 through 42 of this first amended complaint and incorporates them by reference.

44. Defendants' actions, in particular the accusation of Introspect in a patent infringement lawsuit when Defendants had knowledge that the product predates the application that led to the '760 patent, constitute business acts or practices which are unfair pursuant to California's Unfair Competition Law, Bus. & Prof. Code, § 17200 *et seq.*, insofar as the acts are immoral, unethical, oppressive, unscrupulous or substantially injurious to the plaintiff and consumers.

45. Defendants' actions constitute business acts or practices which are unfair pursuant to California's Unfair Competition Law, Bus. & Prof. Code, § 17200 *et seq.*, insofar as the gravity of the harm caused by Defendants' actions far outweighs any benefit of the conduct.

47. There are no valid business justifications for Defendants' actions.

WHEREFORE, the Plaintiff prays for judgment as follows:

2. Declaring that the claims of the patent-in-suit are invalid;

4. A judgment declaring this case exceptional under 35 U.S.C. § 285 and awarding Plaintiff its attorneys' fees and costs in connection with this case;

6. Awarding Plaintiff all such other, and further, relief as the Court deems just and proper.

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Dated: February 10, 2011

Respectfully submitted,

WHITE & CASE LLP

By: /s/ Bijal V. Vakil
Bijal V. Vakil

Attorneys for Plaintiff
AUTONOMY, INC.