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6 VISTO CORPORATION

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 VISTO CORPORATION,

13 Plaintiff

14 v.

15 SPROQIT TECHNOLOGIES, INC.,

16 Defendant

Case No. C 04-0651 EMC

**VISTO’S FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT;
INJUNCTIVE RELIEF; DAMAGES;
DEMAND FOR JURY TRIAL**

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18 Pursuant to Federal Rule of Civil Procedure Rule 15(a), Plaintiff Visto Corporation
19 (“Visto”), for its First Amended Complaint against Defendant Sproqit Technologies, Inc.
20 (“Sproqit”), alleges:

21 **JURISDICTION AND VENUE**

22 1. This case is a civil action for patent infringement in violation of 35 U.S.C. § 271,
23 *et seq.*

24 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28
25 U.S.C. §1338(a) and (b), as it involves substantial claims arising under the patent laws of the
26 United States.

27 3. This Court also has diversity jurisdiction over this case under 28 U.S.C. § 1332, as
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1 the matter in controversy exceeds \$75,000, exclusive of interest and costs, and Visto and Sproqit
2 are citizens of different States.

3 4. Sproqit is subject to personal jurisdiction in this District.

4 5. Venue for the action is proper in the Northern District of California, under 28
5 U.S.C. §1391(b) and (c) and 28 U.S.C. §1400(b), because Sproqit is subject to personal
6 jurisdiction in this District an/or because Visto's claims arose in this District and/or because
7 Sproqit has at all relevant times done business in this District and/or because Sproqit has
8 committed acts of infringement and has a regular and established place of business in this
9 District.

10 **THE PARTIES**

11 6. Plaintiff Visto is a Delaware corporation having its principal place of business at
12 275 Shoreline Drive, Suite 300, Redwood Shores, CA 94065.

13 7. Defendant Sproqit is a Washington corporation having its principal place of
14 business at 4010 Lake Washington Boulevard NE, Suite 200, Kirkland, Washington 98003.

15 **GENERAL ALLEGATIONS**

16 8. Established in 1996, Visto is a leading provider of personal and corporate wireless
17 messaging solutions to mobile operators for personal and corporate use. Visto's technology
18 enables information technology professionals to rapidly deploy a complete, turnkey, cost-
19 effective enterprise-wide mobility solution. The Visto technology provides secure access to the
20 most widely used corporate messaging applications over any network and on a broad array of
21 devices, and supports both browser-based as well as offline-capable devices (e.g. wireless PDAs,
22 smartphones, etc.). Visto has expended considerable resources in inventing and developing its
23 unique products.

24 9. Visto holds all right, title and interest in and to United States Patent No. 6,085,192
25 entitled, "System and Method for Securely Synchronizing Multiple Copies of a Workspace
26 Element in a Network" (the "'192 patent"), filed on April 11, 1997. The '192 patent was duly
27 and properly issued on July 4, 2000 in the name of Daniel J. Mendez, et al. A copy of the '192
28 patent is attached as Exhibit 1 to this First Amended Complaint.

1 10. Visto holds all right, title and interest in and to United States Patent No. 6,023,708
2 entitled, "System and Method for Using a Global Translator to Synchronize Workspace Elements
3 Across a Network" (the "'708 patent"), filed on May 29, 1997. The '708 patent was duly and
4 properly issued on February 8, 2000 in the name of Daniel J. Mendez, et al. A copy of the '708
5 patent is attached as Exhibit 2 to this First Amended Complaint.

6 11. Visto holds all rights, title and interest in and to United States Patent No.
7 5,968,131 entitled, "System and Method for Securely Synchronizing Multiple Copies of a
8 Workspace Element in a Network" (the "'131 patent"), filed on October 26, 1998. The '131
9 patent was duly and properly issued on October 19, 1999 in the name of Daniel J. Mendez, et al.
10 A copy of the '131 patent is attached as Exhibit 3 to this First Amended Complaint.

11 12. Visto holds all rights, title and interest in and to United States Patent No.
12 6,708,221 entitled, "System and Method for Globally and Securely Accessing Unified
13 Information in a Computer Network" (the "'221 patent"), filed on September 20, 2000. The '221
14 patent was duly and properly issued on March 16, 2004 in the name of Daniel J. Mendez, et al. A
15 copy of the '221 patent is attached as Exhibit 4 to this First Amended Complaint.

16 13. Defendant Sproqit provides messaging products and services under the name
17 "Sproqit Architecture" (the "Accused Products").

18 14. Sproqit's activities in connection with the Accused Products infringe, directly, or
19 under the doctrine of equivalents, contributorily, and/or by active inducement, one or more claims
20 of the '192 Patent, '708 Patent, the '131 Patent, and the '221 Patent.

21 **COUNT ONE**

22 **(Infringement of U.S. Patent No. 6,085,192)**

23 15. Visto incorporates the foregoing paragraphs 1-14 as though fully set forth in this
24 Count.

25 16. At least one claim of the '192 Patent reads on the Accused Products, either literally
26 or under the Doctrine of Equivalents.

27 17. Sproqit has directly infringed and continues to directly infringe the '192 Patent
28 under 35 U.S.C. § 271(a), either literally or under the Doctrine of Equivalents, by making, using,

1 selling, offering to sell, selling and/or importing the Accused Products without any authority or
2 license from Visto.

3 18. Sproqit has induced infringement of the '192 Patent and continues to induce
4 infringement of the '192 Patent under 35 U.S.C. § 271(b) by actively and intentionally aiding and
5 abetting others to directly infringe the '192 Patent, either literally or under the Doctrine of
6 Equivalents.

7 19. Sproqit has contributorily infringed and continues to contributorily infringe the
8 '192 Patent under 35 U.S.C. § 271(c) by offering to sell, selling, and/or importing component(s)
9 constituting a material part of the invention of the '192 Patent for use in practicing the invention
10 of the '192 Patent, either literally or under the Doctrine of Equivalents, knowing the same to be
11 especially made or especially adapted for use in infringing the '192 Patent.

12 20. Sproqit's acts have caused and, unless restrained and enjoined, will continue to
13 cause, irreparable damage and injury to Visto for which Visto has no adequate remedy at law.
14 Unless preliminarily and permanently enjoined by this Court, Sproqit will continue to infringe the
15 '192 Patent directly, contributorily and/or by inducement.

16 **COUNT TWO**

17 **(Infringement of U.S. Patent No. 6,023,708)**

18 21. Visto incorporates the foregoing paragraphs 1-20 as though fully set forth in this
19 Count.

20 22. At least one claim of the '708 Patent reads on the Accused Products, either literally
21 or under the Doctrine of Equivalents.

22 23. Sproqit has directly infringed and continues to directly infringe the '708 Patent
23 under 35 U.S.C. § 271(a), either literally or under the Doctrine of Equivalents, by making, using,
24 selling, offering to sell, selling and/or importing the Accused Products without any authority or
25 license from Visto.

26 24. Sproqit has induced infringement of the '708 Patent and continues to induce
27 infringement of the '708 Patent under 35 U.S.C. § 271(b) by actively and intentionally aiding and
28 abetting others to directly infringe the '708 Patent, either literally or under the Doctrine of

1 Equivalents.

2 25. Sproqit has contributorily infringed and continues to contributorily infringe the
3 '708 Patent under 35 U.S.C. § 271(c) by offering to sell, selling, and/or importing component(s)
4 constituting a material part of the invention of the '708 Patent for use in practicing the invention
5 of the '708 Patent, either literally or under the Doctrine of Equivalents, knowing the same to be
6 especially made or especially adapted for use in infringing the '708 Patent.

7 26. Sproqit's acts have caused and, unless restrained and enjoined, will continue to
8 cause, irreparable damage and injury to Visto for which Visto has no adequate remedy at law.
9 Unless preliminarily and permanently enjoined by this Court, Sproqit will continue to infringe the
10 '708 Patent directly, contributorily and/or by inducement.

11 **COUNT THREE**

12 **(Infringement of U.S. Patent No. 5,968,131)**

13 27. Visto incorporates the foregoing paragraphs 1-26 as though fully set forth in this
14 Count.

15 28. At least one claim of the '131 Patent reads on the Accused Products, either literally
16 or under the Doctrine of Equivalents.

17 29. Sproqit has directly infringed and continues to directly infringe the '131 Patent
18 under 35 U.S.C. § 271(a), either literally or under the Doctrine of Equivalents, by making, using,
19 selling, offering to sell, selling and/or importing the Accused Products without any authority or
20 license from Visto.

21 30. Sproqit has induced infringement of the '131 Patent and continues to induce
22 infringement of the '131 Patent under 35 U.S.C. § 271(b) by actively and intentionally aiding and
23 abetting others to directly infringe the '131 Patent, either literally or under the Doctrine of
24 Equivalents.

25 31. Sproqit has contributorily infringed and continues to contributorily infringe the
26 '131 Patent under 35 U.S.C. § 271(c) by offering to sell, selling, and/or importing component(s)
27 constituting a material part of the invention of the '131 Patent for use in practicing the invention
28 of the '131 Patent, either literally or under the Doctrine of Equivalents, knowing the same to be

1 especially made or especially adapted for use in infringing the '131 Patent.

2 32. Sproqit's acts have caused and, unless restrained and enjoined, will continue to
3 cause, irreparable damage and injury to Visto for which Visto has no adequate remedy at law.
4 Unless preliminarily and permanently enjoined by this Court, Sproqit will continue to infringe the
5 '131 Patent directly, contributorily and/or by inducement.

6 **COUNT FOUR**

7 **(Infringement of U.S. Patent No. 6,708,221)**

8 33. Visto incorporates the foregoing paragraphs 1-32 as though fully set forth in this
9 Count.

10 34. At least one claim of the '221 Patent reads on the Accused Products, either literally
11 or under the Doctrine of Equivalents.

12 35. Sproqit has directly infringed and continues to directly infringe the '221 Patent
13 under 35 U.S.C. § 271(a), either literally or under the Doctrine of Equivalents, by making, using,
14 selling, offering to sell, selling and/or importing the Accused Products without any authority or
15 license from Visto.

16 36. Sproqit has induced infringement of the '221 Patent and continues to induce
17 infringement of the '221 Patent under 35 U.S.C. § 271(b) by actively and intentionally aiding and
18 abetting others to directly infringe the '221 Patent, either literally or under the Doctrine of
19 Equivalents.

20 37. Sproqit has contributorily infringed and continues to contributorily infringe the
21 '221 Patent under 35 U.S.C. § 271(c) by offering to sell, selling, and/or importing component(s)
22 constituting a material part of the invention of the '221 Patent for use in practicing the invention
23 of the '221 Patent, either literally or under the Doctrine of Equivalents, knowing the same to be
24 especially made or especially adapted for use in infringing the '221 Patent.

25 38. Sproqit's acts have caused and, unless restrained and enjoined, will continue to
26 cause, irreparable damage and injury to Visto for which Visto has no adequate remedy at law.
27 Unless preliminarily and permanently enjoined by this Court, Sproqit will continue to infringe the
28 '221 Patent directly, contributorily and/or by inducement.

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PRAYER FOR RELIEF

WHEREFORE, plaintiff Visto prays:

1. That Defendant Sproqit, and its parents, affiliates, subsidiaries, officers, agents, servants, employees, attorneys, successors and assigns and all those persons in active concert or participation with them, or any of them, be preliminarily and permanently enjoined and restrained from making, using, offering to sell, selling, importing or causing to be made, used, sold, offered for sale, or imported any product falling within, or designed to practice a method falling within, the scope of United States Patents Nos. 6,085,192, 6,023,708, 5,968,131, and 6,708,221; or otherwise infringing or contributing to or inducing infringement of any claims of these patents.

2. That Defendant Sproqit, and its parents, affiliates, subsidiaries, officers, agents, servants, employees, attorneys, successors and assigns and all those persons in active concert or participation with them, or any of them, be ordered to destroy or offer up to Visto for destruction any and all products within the scope of United States Patents Nos. 6,085,192, 6,023,708, 5,968,131, and 6,708,221 in their possession, custody, or control.

3. That Visto be awarded its lost profits, and/or other damages, in an amount not less than a reasonable royalty, to be assessed by or under the Court’s discretion, adequate to compensate Visto for Sproqit’s infringement of Visto’s patent rights, together with pre-judgment interest.

4. That the Court declare this case an “exceptional” case pursuant to 35 U.S.C. § 285 and that Visto therefore be awarded its attorney’s fees.

5. That Visto recover from Defendant Sproqit increased damages pursuant to 35 U.S.C. § 284 in the amount of three times the amount of Visto’s actual damages.

6. That Visto recover from Defendant Sproqit Visto’s costs and disbursements in preparing for and pursuing this action.

7. That Visto be awarded such other and further relief as the Court deems just and proper.

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Dated: April 14, 2005

Manatt, Phelps & Phillips, LLP

By: /s/ Eugene L. Hahm
Eugene L. Hahm
Attorneys for Plaintiff,
Visto Corporation

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Visto request
a trial by jury on all issues triable of right by a jury.

Dated: April 14, 2005

Manatt, Phelps & Phillips, LLP

By: /s/ Eugene L. Hahm
Eugene L. Hahm
Attorneys for Plaintiff,
Visto Corporation

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