



CV 02-1623 #1

Handwritten notes on the left margin: "DSG 25017", "ss: JK", and "40568".

FILED _____ ENTERED _____
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AUG 02 2002 MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LIZARDTECH, INC , a Washington corporation,

Plaintiff,

v

STUART NIXON, an individual,

Defendant

Civil Action No
CV 02-1623
COMPLAINT

(Jury Trial Requested)

Plaintiff LizardTech, Inc ("LizardTech") for its complaint against Defendant Stuart Nixon, states and alleges as follows

JURISDICTION AND VENUE

1 This is an action for patent infringement under the patent laws of the United States, 35 U S C § 1 *et seq* (Count I), contributory patent infringement under 35 U S C § 271(c) (Count II), and active inducement of patent infringement under 35 U S C § 271(b) (Count III) This Court has original jurisdiction over this matter under 28 U S C § 1338(a) Venue is proper in this district under 28 U S C §§ 1400(b) and 1391(c) in that defendant conducts business in this district, caused damage and injury to plaintiff in this district, and/or is subject to personal jurisdiction in this district Personal jurisdiction and venue are also proper in this forum pursuant to an express agreement between

ORIGINAL

1 LizardTech and Earth Resource Mapping, Inc , which corporation is operated as an alter ego of Stuart
2 Nixon

3 **PARTIES**

4 2 LizardTech is a Washington corporation having a principal office at 1008 Western
5 Avenue, Suite 200, Seattle, WA 98104 LizardTech is licensed to and does carry on business activities
6 within the State of Washington and within this district

7 3 Upon information and belief, defendant Stuart Nixon is an individual who resides in
8 Australia but who conducts business in the United States and elsewhere, including within the state of
9 Washington and within this district

10 **FACTUAL BACKGROUND**

11 4 LizardTech is engaged in the business of designing and developing computer software
12 and related products In particular, LizardTech has expertise in the design and development of software
13 for compressing, decompressing and otherwise processing digital images LizardTech has developed
14 database image processing software that it markets under the trademark and name "MrSID " Such
15 software enables a user to compress large raster images and distribute them over the Internet, a
16 network, or other communications media The compressed images can then be decompressed and
17 viewed on any platform LizardTech's MrSID software finds particular application in the field of
18 geospatial imaging

19 5 LizardTech's MrSID software includes a compression or "encoder" portion and a
20 decompressor or "viewing" component The encoder portion of the MrSID software is used by content
21 providers to compress image data Public users use the viewer portion to decompress and view the
22 compressed images The viewer portion of the MrSID software is distributed without charge to the
23 public, while the encoder portion is licensed to content providers for a fee LizardTech makes the
24 encoder portion of the MrSID software available to its licensees in the form of a Software Development
25 Kit ("SDK") that takes the form of one or more digital level libraries ("dlls") The SDK permits the

1 licensee to incorporate the MrSID compression technique into executable applications ("executables")
2 that can be distributed over the Internet or other channels After distribution, the executables can be
3 decompressed and viewed by others using the viewing component of the MrSID software

4 6 LizardTech is the exclusive licensee of U S Patent No 5,710,835 ("the '835 patent")
5 issued to Jonathan N Bradley on January 20, 1998, and assigned to the Regents of the University of
6 California, Office of Technology Transfer ("the University") LizardTech's MrSID software is
7 protected under one or more claims of the '835 patent, and LizardTech is authorized by the University
8 to enforce the '835 against infringement by others A true and correct copy of the '835 patent is
9 attached as Exhibit A

10 7 Defendant Stuart Nixon is engaged in the business of producing and selling geospatial
11 imaging software and, upon information and belief, produces and sells a suite of geospatial imaging
12 software known as "ERMapper" including through companies in the United states, Australia and the
13 United Kingdom, which he controls and operates as alter egos of himself In or about January 1997,
14 Defendant Nixon and LizardTech began discussing the possibility of incorporating LizardTech's MrSID
15 software into ERM's "ERMapper" product On September 25, 1998, Defendant Nixon executed
16 LizardTech's standard SDK Software License Agreement and took possession of a LizardTech SDK
17 Under the terms of LizardTech's Software License Agreement, Defendant Nixon was authorized only to
18 use the LizardTech SDK for purposes of internal product development and only within ERM's own
19 facility The LizardTech Software License Agreement further required that ERM obtain LizardTech's
20 evaluation and permission before releasing any executable product containing or otherwise using the
21 MrSID software This was to enable LizardTech to ensure that proper notices and other legal
22 safeguards were in place on any executable product containing the MrSID technology prior to public
23 release

24 8 Upon information and belief, Defendant's "ERMapper" software includes compression
25 technology covered under one or more claims of the '835 patent Upon information and belief,

1 Defendant Nixon developed, manufactured, distributed, offered for sale and sold the ERMapper
2 software containing the patented compression technology in the United States and elsewhere

3 9 Defendant Nixon has delivered the LizardTech SDK for use by others without
4 authorization and otherwise in breach of the Software License Agreement

5 10 Defendant Nixon has copied at least one digital level library from the LizardTech SDK
6 and incorporated the same into a CD-ROM, which defendant then distributed as part of a "London
7 Atlas" product, without authorization

8 11 Defendant Nixon has sold and continues to sell or otherwise distribute software to
9 others, which software enables others to practice the invention encompassed by the '835 Patent in
10 violation of 35 U S C § 271(a)

11 12 Defendant Nixon knows that the image compression technology in the software he sells
12 or otherwise distributes to others is especially made or adapted for use in infringing the '835 Patent
13 The image compression technology in the software provided by Defendant Nixon is not a staple article
14 of commerce capable of a substantial non-infringing use

15 13 Defendant Nixon has knowingly aided, caused, and encouraged infringement of
16 the '835 Patent by others, including others to whom defendant has distributed the ECW software
17 products Through active promotion and distribution of the infringing ECW image compression
18 technology and otherwise, defendant has encouraged, aided, and abetted his customers and others in
19 violating 35 U S C § 271(a)

20 **COUNT I**

21 **PATENT INFRINGEMENT**

22 14 Plaintiff realleges each and every allegation as set forth in paragraphs 1-17 above as if
23 fully set forth herein
24
25

1 WHEREFORE, plaintiff demands judgment as follows

2 A That Defendant Nixon and all of his agents, servants, employees, attorneys and all others
3 holding by or through them, or controlled by them, and /or directed or facilitated by any of the
4 foregoing, or in act of concert or participation with them, be temporarily and permanently enjoined and
5 restrained from infringing U S Patent No 5,710,835, contributing to the infringement of U S Patent
6 No 5,710,835, or inducing infringement of U S Patent No 5,710,835,

7 B That Defendant Nixon be ordered to pay over and account to plaintiff for all damages
8 (including lost profits) suffered by plaintiff, and all profits wrongfully derived by defendant as a result
9 of defendant's patent infringement, contributory patent infringement and active inducement to infringe,

10 C That LizardTech be awarded treble damages in view of the willful nature of the
11 infringement,

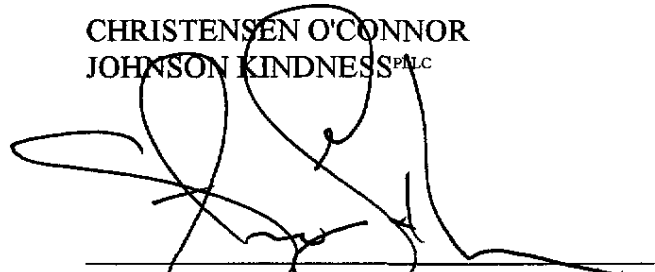
12 D That LizardTech be awarded its costs and reasonable attorney fees, and

13 E That LizardTech be awarded such other and further relief as the Court may deem just
14 and proper

15 **PLAINTIFF DEMANDS TRIAL BY JURY.**

16
17 Dated this 2nd day of August 2002

18 CHRISTENSEN O'CONNOR
19 JOHNSON KINDNESS^{PLLC}



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21
22 Philip P. Mann, WSBA No 28,860
23 Steven V. Gibbons, WSBA No 14,028
24 Kevan L. Morgan, WSBA No 26,531
25 Attorneys for Plaintiff LizardTech, Inc

SVG slj

**EXHIBITS
NOT
SCANNED**