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Attorneys for Defendant
UPEK, INC.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

INTERNATIONAL AUTOMATED
SYSTEMS, INC.,

Plaintiff,

v.

DIGITAL PERSONA, INC.; MICROSOFT
CORPORATION; IBM; IBM
CORPORATION; IBM PERSONAL
COMPUTING DIVISION; LENOVO
(UNITED STATES) INC.; LENOVO GROUP
LTD.; UPEK, INC. and JOHN DOES 1-20,

Defendants.

DECLARATION OF JEFFREY A. MILLER
IN SUPPORT OF UPEK'S MOTION FOR
SUMMARY JUDGMENT THAT THE
PATENT-IN-SUIT IS UNENFORCEABLE
DUE TO NELDON JOHNSON'S
INEQUITABLE CONDUCT AND THAT
THIS CASE IS EXCEPTIONAL UNDER 35
U.S.C. § 285

Case No.: 2:06-CV-00072-DB
Judge: Dee Benson

I, Jeffrey A. Miller, declare:

1. I am an attorney at the law firm of Orrick, Herrington & Sutcliffe LLP, counsel for Defendant UPEK, Inc. in this action. I have personal knowledge of the facts set forth herein, and I could and would testify competently thereto if called as a witness.

2. Attached hereto as Exhibit 1 is a true and correct copy of United States Patent No. 5,598,474.

3. Attached hereto as Exhibit 2 is a true and correct copy of a January 11, 1995 letter from Rhett Ransom of Rapid Patent to J. David Nelson of the law firm Nelson, Snuffer & Dahle, P.C., that was produced to UPEK by the Securities and Exchange Commission and bears Bates No. SEC03145.

4. Attached hereto as Exhibit 3 are true and correct copies of the following pages from the Neldon Johnson Deposition taken on October 24, 2007: (1) Pages 180-183, and (2) Pages 186-187. This document has been filed under seal in this action pursuant to the Protective Order issued by the Court.

5. Attached hereto as Exhibit 4 is a true and correct copy of United States Patent No. 4,325,570.

6. Attached hereto as Exhibit 5 is a true and correct copy of Page 30 of Hearing Transcript held on December 11, 2006 before Judge Jenkins.

7. Attached hereto as Exhibit 6 is a true and correct copy of United States Patent Application Serial No. 08/218,743 produced by International Automated Systems, Inc. to UPEK as Bates Nos. IAS000287-323.

8. Attached hereto as Exhibit 7 is a true and correct copy of the July 20, 1994 PTO Office Action responding to Application No. 08/218,743 produced by International Automated Systems, Inc. to UPEK as Bates Nos. IAS000324-332.

9. Attached hereto as Exhibit 8 is a true and correct copy of United States Patent No. 4,993,068, which bears Bates Nos. UPEK00001924-1936.

10. Attached hereto as Exhibit 9 is a true and correct copy of the October 10, 1994

Amendment to the 08/218,743 Application, filed by Neldon Johnson in response to the July 20, 1994 PTO Office Action produced by International Automated Systems, Inc. to UPEK as Bates Nos. IAS000333-341.

11. Attached hereto as Exhibit 10 is a true and correct copy of the December 15, 1994 PTO Office Action in response to the October 19, 1994 Amendment filed by Neldon Johnson produced by International Automated Systems, Inc. to UPEK as Bates Nos. IAS000342-346.

12. Attached hereto as Exhibit 11 is a true and correct copy of the July 21, 1995 PTO Notice of Abandonment of Application Number 08/218,743 produced by International Automated Systems, Inc. to UPEK as Bates No. IAS000348.

13. Attached hereto as Exhibit 12 is a true and correct copy of United States Patent Application Serial No. 08/402,014 produced by International Automated Systems, Inc. to UPEK as Bates Nos. IAS000352-419.

14. Attached hereto as Exhibit 13 is a true and correct copy of Pages 16-17 and 30 of UPEK's First Set of Requests for Production served on August 4, 2006.

15. IAS did not produce either Exhibit 2 (the January 11, 1995 letter from Rhett Ransom of Rapid Patent to J. David Nelson) or Exhibit 4 (United States Patent No. 4,325,570) to UPEK.

16. Attached hereto as Exhibit 14 is a true and correct copy of a press release dated September 19, 2008, downloaded from <http://www.sec.gov/litigation/litreleases/lr15898.htm> and true and correct copies of the final judgments entered against Neldon P. Johnson and International Automated Systems, Inc. in the case styled *Securities and Exchange Commission v. Int'l Automated Systems, Inc. and Neldon P. Johnson*, Case No. 2:98 CV 0687B.

17. Attached hereto as Exhibit 15 is a true and correct copy of UPEK's subpoena to SEC served on March 15, 2007.

18. Attached hereto as Exhibit 16 is a true and correct copy of prosecution history of United States Patent Application No. 08/781346 produced by International Automated Systems, Inc. to UPEK as Bates Nos. IAS000468-596). This document has been filed under seal in this

action pursuant to the Protective Order issued by the Court.

19. Attached hereto as Exhibit 17 is a true and correct copy of case titled *Aventis Pharma Inc. v. Amphastar Pharmaceuticals, Inc.*, 2008 U.S. App. LEXIS 10357 (Fed. Cir. 2008) downloaded from Lexis.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 23, 2008 at Menlo Park, California.

/s/ Jeffrey A. Miller
Jeffrey A. Miller