

MAX D. WHEELER (3439)
JOSEPH P. BARRETT (8088)
P. MATTHEW COX (9879)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, UT 84145
Telephone: (801) 521-9000
Facsimile: (801) 363-0400

JEFFREY A. MILLER (Admitted *Pro Hac Vice*)
SUGITHRA SOMASEKAR (Admitted *Pro Hac Vice*)
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025
Telephone: (650) 614-7400
Facsimile: (650) 614-7401

Attorneys for Defendant
UPEK, INC.

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

INTERNATIONAL AUTOMATED SYSTEMS,
INC.,

Plaintiff and Counterclaim
Defendant,

v.

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

Defendants and Counterclaimants.

UPEK'S MOTION FOR ATTORNEY FEES
AND COSTS

Case No.: 2:06-CV-00072-DB

Judge: Dee Benson

Defendant UPEK, Inc (“UPEK”) moves the Court to declare this case exceptional under 35 U.S.C. § 285 and award UPEK its attorney fees and costs. Plaintiff International Automated Systems (“IAS”) failed to conduct a reasonable pre-filing investigation to determine whether the accused products infringe the patent-in-suit before filing this baseless lawsuit. Such a pre-filing investigation is required under authority from the Court of Appeals for the Federal Circuit. Had such an investigation been performed, this lawsuit would never have been filed because none of UPEK’s products employ a camera, which is a requirement of all the claims of the patent-in-suit.

Further, IAS knew about prior art that virtually guaranteed that all relevant claims of the patent-in-suit would be invalidated. With the knowledge of this prior art, IAS never made any attempt to determine whether any of its claims could survive a validity attack under that same prior art. In fact, the claims of the patent-in-suit relevant to this lawsuit are almost certain invalid under this prior art that IAS knew about.

Finally, Neldon Johnson’s inequitable conduct in obtaining the patent-in-suit, discussed in UPEK’s co-pending summary judgment motion, provides additional grounds for awarding attorney fees.

Thus, UPEK is entitled to collect all its attorneys’ fees and expenses incurred in defending against this action, as well as post-judgment interest and pre-judgment interest.

This motion is based on the accompanying memorandum that explains more fully the grounds for this motion, and the declarations of Dr. Behnam Bavarian, Jeffrey A. Miller and Joseph P. Barrett, filed and served herewith. UPEK further relies upon the pleadings in this case.

ORAL ARGUMENT REQUESTED

UPEK respectfully requests, pursuant to DUCivR 7-1(f), that oral argument be conducted at a date and time to be noticed by the Clerk of the Court.

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: June 23, 2008

By: /s/ Jeffrey A. Miller
Jeffrey A. Miller, Esq.
Attorneys for Defendant UPEK, Inc.

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P. MATTHEW COX (9879)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

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