

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

LODSYS GROUP, LLC,

Plaintiff,

v.

NUANCE COMMUNICATIONS, INC.;  
SANDISK CORPORATION;

Defendants.

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CIVIL ACTION NO. 2:12-cv-749-JRG

**JURY TRIAL DEMANDED**

**SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Lodsys Group, LLC (“Lodsys”), for its second amended complaint against the above-named defendants, alleges as follows:

**THE PARTIES**

1. Lodsys is a Texas limited liability company with its principal place of business in Marshall, Texas.

2. Defendant Nuance Communications, Inc. (“Nuance”) is a Delaware corporation with its principal place of business in Burlington, Massachusetts.

3. Defendant SanDisk Corporation (“SanDisk”) is a Delaware corporation with its principal place of business in Milpitas, California.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) in that defendants reside in this district, a substantial part of the events giving rise to the claims occurred in this district, and/or the defendants have a regular and established practice of business in this district and have committed acts of infringement in this district.

5. This Court has general and specific personal jurisdiction over defendants, because each defendant has substantial contacts with the forum as a result of conducting substantial business in the State of Texas and within this district. Upon information and belief, each defendant regularly solicits business in the State of Texas and this district; derives revenue from products and/or services provided to individuals residing the State of Texas and this district; conducts business utilizing the claimed systems and methods with and for customers residing in the State of Texas and this district; and provides and/or markets products and services directly to consumers in the State of Texas and this district.

6. Defendants are properly joined in this action because Lodsys's original Complaint for Patent Infringement [dkt. no. 1] asserted claims against each of the defendants for their manufacture, use, sale, importation, and/or offers to sell infringing websites with feedback soliciting technology and/or the same infringing process. On January 14, 2013, the Court entered an Order of Dismissal of Certain Claims [dkt. no. 18] against defendants. Subsequently, Defendant SanDisk indicated any intent to request severance, and Lodsys has already agreed to voluntarily sever its claims against Defendant Sandisk.

#### **INFRINGEMENT OF U.S. PATENT NO. 7,620,565**

7. On November 17, 2009, U.S. Patent No. 7,620,565 (the "'565 patent'") was duly and legally issued for a "Customer-Based Product Design Module." A true and correct copy of the '565 patent is attached hereto as Exhibit A. Lodsys is the owner by assignment of all rights, title, and interest in and to the '565 patent.

8. Defendant Nuance has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Nuance's products and/or services), one or more of the claims of the '565 patent. Nuance manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Nuance's document conversion solutions such as PDF Converter Pro 6, with try then buy features — which infringe at least claim 15 of the '565 patent under 35 U.S.C. § 271.

9. Prior to filing Lodsys' original Complaint, Lodsys informed Nuance of the patents-in-suit and offered to enter into a licensing arrangement that would allow Nuance to continue practicing the inventions claimed in patents-in-suit. Nuance, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, Nuance chose to continue its infringement. On information and belief, Nuance continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '565 patent). Nuance was made aware and, therefore, knew of the risk that it infringed the '565 patent. Accordingly, Nuance acted knowingly, willfully, and with intent to infringe the patents-in-suit.

10. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Nuance is liable for indirect infringement of the '565 patent by inducing infringement and contributing to direct infringement of the '565 patent by others (*e.g.*, end users of Nuance's document conversion solutions such as PDF Converter Pro 6 with try then buy features).

11. At least from the time Nuance received notice from Lodsys, Nuance has purposely and voluntarily made the PDF Converter Pro 6 with try then buy features available to customers, with the expectation that its PDF Converter Pro 6 with try then buy features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, Nuance has thereby induced the end users of its PDF Converter Pro 6 with try then buy features within the Eastern District of Texas to infringe one or more claims of the '565 patent, and Nuance knew or should have known that its actions would induce direct infringement.

12. On information and belief, and in the alternative to direct infringement, Nuance has also contributed to the direct infringement of one or more claims of the '565 patent by intentionally and voluntarily providing the PDF Converter Pro 6 with try then buy features to end users within the Eastern District of Texas, knowing that its PDF Converter Pro 6 with try then buy features to be especially made or adapted for use by end users to infringe the '565 patent

from at least the time Nuance received notice of the patents-in-suit from Lodsys. On information and belief, the PDF Converter Pro 6 with try then buy features has no substantial noninfringing uses, and Nuance acted knowing that its PDF Converter Pro 6 with try then buy features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

13. Defendant SanDisk has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of SanDisk's products and/or services), one or more of the claims of the '565 patent. SanDisk manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to SanDisk's music players such as Sansa Clip Zip 4GB, with software update features — which infringe at least claim 15 of the '565 patent under 35 U.S.C. § 271.

14. Prior to filing Lodsys' original Complaint, Lodsys informed SanDisk of the patents-in-suit and offered to enter into a licensing arrangement that would allow SanDisk to continue practicing the inventions claimed in patents-in-suit. SanDisk, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, SanDisk chose to continue its infringement. On information and belief, SanDisk continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '565 patent). SanDisk was made aware and, therefore, knew of the risk that it infringed the '565 patent. Accordingly, SanDisk acted knowingly, willfully, and with intent to infringe the patents-in-suit.

15. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, SanDisk is liable for indirect infringement of the '565 patent by inducing infringement and contributing to direct infringement of the '565 patent by others (*e.g.*, end users of SanDisk's music players such as Sansa Clip Zip 4GB with software update features).

16. At least from the time SanDisk received notice from Lodsys, SanDisk has purposely and voluntarily made the Sansa Clip Zip 4GB with software update features available

to customers, with the expectation that its Sansa Clip Zip 4GB with software update features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, SanDisk has thereby induced the end users of its Sansa Clip Zip 4GB with software update features within the Eastern District of Texas to infringe one or more claims of the '565 patent, and SanDisk knew or should have known that its actions would induce direct infringement.

17. On information and belief, and in the alternative to direct infringement, SanDisk has also contributed to the direct infringement of one or more claims of the '565 patent by intentionally and voluntarily providing the Sansa Clip Zip 4GB with software update features to end users within the Eastern District of Texas, knowing that its Sansa Clip Zip 4GB with software update features to be especially made or adapted for use by end to infringe the '565 patent from at least the time SanDisk received notice of the patents-in-suit from Lodsys. On information and belief, the Sansa Clip Zip 4GB with software update features has no substantial noninfringing uses, and SanDisk acted knowing that its Sansa Clip Zip 4GB with software update features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

18. Defendants' acts of infringement have caused damage to Lodsys, and Lodsys is entitled to recover from defendants the damages sustained by Lodsys as a result of defendants' wrongful acts in an amount subject to proof at trial. Defendants' infringement is willful and deliberate, including because defendants became aware of the infringing nature of their respective products and services at the latest when they received a notice letter from Lodsys and/or the filing of Lodsys's Complaint, entitling Lodsys to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

#### **INFRINGEMENT OF U.S. PATENT NO. 7,222,078**

19. On May 22, 2007, U.S. Patent No. 7,222,078 (the "'078 patent") was duly and legally issued for "Methods and Systems for Gathering Information from Units of a Commodity

Across a Network.” A true and correct copy of the ‘078 patent is attached hereto as Exhibit B. Lodsys is the owner by assignment of all rights, title, and interest in and to the ‘078 patent.

20. Defendant Nuance has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of Nuance’s products and/or services), one or more of the claims of the ‘078 patent. Nuance manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to Nuance’s document conversion solutions such as PDF Converter Pro 6, with try then buy features — which infringe at least claim 1 of the ‘078 patent under 35 U.S.C. § 271.

21. Prior to filing Lodsys’ original Complaint, Lodsys informed Nuance of the patents-in-suit and offered to enter into a licensing arrangement that would allow Nuance to continue practicing the inventions claimed in patents-in-suit. Nuance, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys’ patent rights, Nuance chose to continue its infringement. On information and belief, Nuance continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the ‘078 patent). Nuance was made aware and, therefore, knew of the risk that it infringed the ‘078 patent. Accordingly, Nuance acted knowingly, willfully, and with intent to infringe the patents-in-suit.

22. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, Nuance is liable for indirect infringement of the ‘078 patent by inducing infringement and contributing to direct infringement of the ‘078 patent by others (*e.g.*, end users of Nuance’s document conversion solutions such as PDF Converter Pro 6, with try then buy features).

23. At least from the time Nuance received notice from Lodsys, Nuance has purposely and voluntarily made the PDF Converter Pro 6 with try then buy features available to customers, with the expectation that its PDF Converter Pro 6 with try then buy features will be used by end users within the Eastern District of Texas. On information and belief, and in the

alternative to direct infringement, Nuance has thereby induced the end users of its PDF Converter Pro 6 with try then buy features within the Eastern District of Texas to infringe one or more claims of the '078 patent, and Nuance knew or should have known that its actions would induce direct infringement.

24. On information and belief, and in the alternative to direct infringement, Nuance has also contributed to the direct infringement of one or more claims of the '078 patent by intentionally and voluntarily providing PDF Converter Pro 6 with try then buy features to end users within the Eastern District of Texas, knowing that its PDF Converter Pro 6 with try then buy features to be especially made or adapted for use by end to infringe the '078 patent from at least the time Nuance received notice of the patents-in-suit from Lodsys. On information and belief, the PDF Converter Pro 6 with try then buy features has no substantial noninfringing uses, and Nuance acted knowing that its PDF Converter Pro 6 with try then buy features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

25. Defendant SanDisk has infringed directly, indirectly, literally, under the doctrine of equivalents, contributorily, and/or through the inducement of others (including but not limited to users of SanDisk's products and/or services), one or more of the claims of the '078 patent. SanDisk manufactures, uses, sells, imports, and/or offers to sell infringing products and/or services — including but not limited to SanDisk's music players such as Sansa Clip Zip 4GB, with software update features — which infringe at least claim 1 of the '078 patent under 35 U.S.C. § 271.

26. Prior to filing Lodsys' original Complaint, Lodsys informed SanDisk of the patents-in-suit and offered to enter into a licensing arrangement that would allow SanDisk to continue practicing the inventions claimed in patents-in-suit. SanDisk, however, chose not to enter into a licensing agreement. Instead, with knowledge of the patents-in-suit and disregard for Lodsys' patent rights, SanDisk chose to continue its infringement. On information and belief, SanDisk continued its infringement despite an objectively high likelihood that its actions constituted infringement of a valid patent (*i.e.*, the '078 patent). SanDisk was made aware and,

therefore, knew of the risk that it infringed the '078 patent. Accordingly, SanDisk acted knowingly, willfully, and with intent to infringe the patents-in-suit.

27. Based on the information presently available to Lodsys absent discovery, and in the alternative to direct infringement, SanDisk is liable for indirect infringement of the '078 patent by inducing infringement and contributing to direct infringement of the '078 patent by others (*e.g.*, end users of SanDisk's music players such as Sansa Clip Zip 4GB, with software update features).

28. At least from the time SanDisk received notice from Lodsys, SanDisk has purposely and voluntarily made the Sansa Clip Zip 4GB with software update features available to customers, with the expectation that its Sansa Clip Zip 4GB with software update features will be used by end users within the Eastern District of Texas. On information and belief, and in the alternative to direct infringement, SanDisk has thereby induced the end users of its Sansa Clip Zip 4GB with software update features within the Eastern District of Texas to infringe one or more claims of the '078 patent, and SanDisk knew or should have known that its actions would induce direct infringement.

29. On information and belief, and in the alternative to direct infringement, SanDisk has also contributed to the direct infringement of one or more claims of the '078 patent by intentionally and voluntarily providing the Sansa Clip Zip 4GB with software update features to end users within the Eastern District of Texas, knowing that its Sansa Clip Zip 4GB with software update features to be especially made or adapted for use by end users to infringe the '078 patent from at least the time SanDisk received notice of the patents-in-suit from Lodsys. On information and belief, the Sansa Clip Zip 4GB with software update features has no substantial noninfringing uses, and SanDisk acted knowing that its Sansa Clip Zip 4GB with software update features is not a staple article or commodity of commerce suitable for substantially non-infringing use.

30. Defendants' acts of infringement have caused damage to Lodsys, and Lodsys is entitled to recover from defendants the damages sustained by Lodsys as a result of defendants'



wrongful acts in an amount subject to proof at trial. Defendants' infringement is willful and deliberate, including because defendants became aware of the infringing nature of their respective products and services at the latest when they received a notice letter from Lodsys and/or the filing of Lodsys's Complaint, entitling Lodsys to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

### **JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Lodsys respectfully requests a trial by jury on all issues.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Lodsys Group, LLC, respectfully requests entry of judgment in its favor and against defendants as follows:

(a) Declaration that (1) defendants have infringed U.S. Patent No. 7,620,565; and (2) defendants have infringed U.S. Patent No. 7,222,078;

(b) Awarding the damages arising out of (1) defendants' infringement of U.S. Patent No. 7,620,565; and (2) defendants' infringement of U.S. Patent No. 7,222,078 to Lodsys, together with pre-judgment and post-judgment interest, in an amount according to proof;

(c) Finding defendants' infringement to be willful from the time that defendants became aware of the infringing nature of their respective products and services, which is the time of receiving a notice letter from Lodsys or the filing of Lodsys' Complaint at the latest, and awarding treble damages to Lodsys for the period of such willful infringement pursuant to 35 U.S.C. § 284;

(d) Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

(e) Awarding such other costs and further relief as the Court may deem just and proper.

Dated: March 15, 2013

Respectfully Submitted

By: /s/ Christopher M. Huck  
Christopher M. Huck  
(admitted pro hac vice)  
Michael A. Goldfarb  
(admitted pro hac vice)  
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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this response was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(V). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 15th day March, 2013.

By: /s/ Christopher M. Huck  
Christopher M. Huck