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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

ERICH SPECHT, an individual, and )  
doing business as )  
ANDROID DATA CORPORATION, and )  
THE ANDROID'S DUNGEON INCORPORATED, )  
Illinois corporations )

Plaintiffs

v.

GOOGLE INC., a Delaware corporation, )  
OPEN HANDSET ALLIANCE, )  
China Mobile Communications Corporation, )  
KDDI CORPORATION, NTT DoCoMo, Inc. )  
SOFTBANK MOBILLE Corp., Sprint Nextel, )  
T-Mobile, Telecom Italia, Telefónica, Vodafone, )  
AKM Semiconductor, Audience, ARM, )  
Atheros Communications, Broadcom Corporation, )  
Ericsson, Intel Corporation, Marvell Semiconductor, Inc., )  
NVIDIA Corporation, Qualcomm Inc., )  
SiRF Technology Holdings, Inc., Synaptics, Inc., )  
Texas Instruments Incorporated, )  
ASUSTeK Computer Inc., HTC Corporation, )  
Huawei Technologies, LG Electronics, Inc., )  
Motorola, Inc., Samsung Electronics, Sony Ericsson, )  
Toshiba Corporation, Ascender Corp., )  
eBay Inc., LivingImage LTD., )  
Myriad, Nuance Communications, Inc., )  
OMRON SOFTWARE Co, Ltd., PacketVideo (PV), )  
SkyPop, SONiVOX, Aplix Corporation, )  
Borqs, Noser Engineering Inc., )  
TAT - The Astonishing Tribe AB, Teleca AB, )  
Wind River, and Garmin International, Inc. )

Defendants

09CV2572

JUDGE LEINENWEBER

MAGISTRATE JUDGE COLE

**FILED**

NF

APR 28 2009

Apr 28 2009

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

**DEMAND FOR JURY  
TRIAL**

**COMPLAINT FOR TRADEMARK INFRINGEMENT**

Plaintiffs ERICH SPECHT ("Erich"), ANDROID DATA CORPORATION, an Illinois corporation ("Android Data") and THE ANDROID'S DUNGEON INCORPORATED,

an Illinois corporation (“Dungeon”) (collectively referred to as “Plaintiffs”), by and through their attorney, as and for their Complaint against Defendants, GOOGLE INC. (“Google”), OPEN HANDSET ALLIANCE (“OHA”) and OHA members: China Mobile Communications Corporation; KDDI CORPORATION; NTT DoCoMo, Inc.; SOFTBANK MOBILE Corp.; Sprint Nextel; T-Mobile; Telecom Italia; Telefónica; Vodafone; AKM Semiconductor; Audience; ARM; Athros Communications; Broadcom Corporation; Ericsson; Intel Corporation; Marvell Semiconductor, Inc.; NVIDIA Corporation; Qualcomm Inc.; SiRF Technology Holdings, Inc.; Synaptics, Inc.; Texas Instruments Incorporated; ASUSTeK Computer Inc.; HTC Corporation; Huawei Technologies; LG Electronics, Inc.; Motorola, Inc.; Samsung Electronics; Sony Ericsson; Toshiba, Software Companies; Ascender Corp.; eBay Inc.; Google Inc.; LivingImage LTD; Myriad; Nuance Communications, Inc.; OMRON SOFTWARE Co, Ltd.; PacketVideo (PV); SkyPop; SONiVOX; Aplix Corporation; Borqs, Noser Engineering Inc.; TAT - The Astonishing Tribe AB; Teleca AB; Wind River; and Garmin International, Inc. allege as follows:

#### **I. THE PARTIES**

1. Plaintiff Erich Specht is a resident of the village of Palatine, Illinois. Plaintiff corporations are Illinois domestic corporations organized and existing under the laws of the State of Illinois and having a principal place of business in the village of Palatine, Illinois.
2. Defendant, Google, Inc., is a Delaware corporation registered to do business as a foreign corporation in Illinois.

3. Defendant Open Handset Alliance is an "Alliance" of mobile operators, software companies, commercialization companies, semi-conductor companies and handset manufacturers with headquarters in Mountain View, California; Bonn Germany; Taoyuan, Taiwan; San Diego, California, and Schaumburg, Illinois .

## **II. JURISDICTION AND VENUE**

4. This is a complaint for Trademark Infringement, Unfair Competition, and False Description arising under §§ 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark Infringement)
5. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338(a) and 15 U.S.C. § 1121.
6. This Court has personal jurisdiction over defendant Google because it is a foreign corporation registered to do business in Illinois with the Illinois Secretary of State. This Court has personal jurisdiction over the OHA members because they maintain a headquarter in Schaumburg, Illinois. The court also has diversity jurisdiction pursuant to 28 U.S.C.A. § 1332.
7. Venue is proper in this district under 28 U.S.C. §1391(b) and (c).

## **III. FACTUAL BACKGROUND**

8. Plaintiff, Android Data Corporation is an Illinois corporation in good standing. It was incorporated on December 30, 1998 by Erich Specht its sole officer, director and shareholder.
9. Plaintiff, The Android's Dungeon Incorporated is an Illinois corporation in good standing. It was incorporated on March 5, 2001 by Erich Specht, the sole officer, director and shareholder.

10. Plaintiff, Erich Specht is a software developer and internet application service provider.
11. Erich has and continues to develop software under the name Android Data that enables remote administration of web sites including secure data transfer, management and categorization of products, image processing, online surveys, email campaigns, document transformation, and the like.
12. The software implements advanced caching of algorithms that allow for greater efficiency of web and database servers.
13. The Android Data software was intended and has been licensed for use to customers who transact hundreds of millions of dollars in world wide transactions including tens of millions in e-commerce over the world wide web using plaintiff's software.
14. Plaintiff chose the name Android Data to communicate the seamless, almost robotic-like, bi-directional communication of data between a client and a data center in a remote location.
15. Plaintiff is and has been further developing the original Android Data product as well as preparing to release additional products in the near future under the Android Data product mark.
16. On June 4, 2000, Plaintiff, Erich, under the name Android Data Corporation, filed an application with the United States Patent and Trademark Office ("PTO") for the mark "Android Data" (Serial number 7801167). A copy of the application is attached as Plaintiffs' Exhibit A.

17. On October 22, 2002 The PTO granted plaintiffs Registration of the mark “Android Data”, Registration number 2639556. As a condition of approval, PTO required that the following language be inserted into the application “No claim is made to the exclusive right to use “Data,” apart from the mark as shown.” Thus the dominant word in the mark was “ANDROID” with Data being a descriptive or non-dominant word. The purpose of the Trademark was for computer e-commerce software to allow users to perform electronic business transactions via a global computer network, in International Class 9 (U.S. CLS. 21, 23,26,36, and 38). A copy of the Trademark Principal Register is attached as Plaintiffs’ Exhibit B.
18. On October 31, 2007 defendant Google filed an application with the PTO for the mark “Android,” Serial number 77318565. The goods and services identified under the application were International Class 9 (hardware; software). The stated Intent to Use was listed as: “The applicant has a bona fide intention to use through the applicant’s related company or licensee the mark in commerce or in connection with the identified goods and/or services.” Thus, Google was seeking the right to the exclusive use of the Android mark in commerce or in connection with any software or hardware use. By definition, this use would include plaintiffs’ permitted use of the Android mark. A copy of Google’s application is attached as Plaintiffs Exhibit C.
19. On November 5, 2007 Defendants Google and the Open Handset Alliance (“OHA”), a partnership or business alliance of 47 firms led by Google, T-Mobile,

HTC, Qualcomm and Motorola made their product launch under plaintiffs' Android mark.

20. Wikipedia, the free online encyclopedia, reports that "Android is the brain child of Google and the flagship software of the OHA. is based on an open source license and will compete against other mobile platforms from Apple Inc., Microsoft, Nokia, Palm, Research In Motion and Symbia .".
21. The OHA initially consisted of 34 firms including mobile operators, software companies, commercialization companies, semiconductor companies, and handset manufacturers.
22. On November 5, 2007, the original members of the OHA were announced in Google's press release as: China Mobile Communications Corporation; KDDI Corporation; NTT DoCoMo, Inc.; Sprint Nextel; T-Mobile; Telecom Italia; Softbank Mobile Corp.; Telefónica; Ascender Corp.; eBay Inc.; Google Inc.; LivingImage Ltd.; Nuance Communications, Inc.; PacketVideo; SkyPop; SONiVOX; Aplix Corporation,; Noser Engineering Inc.; TAT The Astonishing Tribe AB, Wind River; Audience, Broadcom Corporation; Intel Corporation; Marvell Semiconductors, Inc.; Nvidia Corporation, Qualcomm, Inc. SiRF Technology Holdings, Inc.; Synaptics, Inc.; Texas Instruments Incorporated; HTC Corporation; LG Electronics, Inc.; Motorola, Inc.; Samsung Electronics; Vodafone, Ericsson, and Borqs
23. Beginning on November 5, 2007 and continuing to the present, Defendants Google, OHA, and it's members, without authority, have been issuing press

releases for their products and services under plaintiffs' Android mark in violation of the Lanham Act.

24. The defendants have created and control an extensive and integrated worldwide network of companies that pool resources to enable them to market various types of infringing products and services.
25. On November 5, 2007 OHA members Aplix, Ascender, Livingimage, Marvell, Nuance, PacketVideo, Sonivox, Sprint Nextel, and Wind River issued press releases improperly using Plaintiffs' mark. (Source: OHA's website 4/23/09).
26. On November 12, 2007, OHA members Ascender, Google and Synaptics issued press releases improperly using Plaintiffs' mark. (Source OHA website 4/23/09).
27. On February 14, 2008 the PTO issued its Office Action letter denying Google's application under Section 2(d) to use the "Android" mark citing likelihood of confusion with plaintiffs' mark. A copy of the denial is attached as Plaintiff's Exhibit D.
28. The following is an excerpt of the PTO's decision regarding Google's application:

**Refusal: Section 2(d) - Likelihood of Confusion Refusal**

Registration of the proposed mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2639556. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.*

See the enclosed registration.

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are

compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

In the case at hand, the applicant seeks registration of ANDROID in standard character form for "hardware; software." The cited registered mark is ANDROID DATA in typed form for "computer ecommerce software to allow users to perform electronic business transactions via a global computer network."

Regarding the first prong of the test, disclaimed matter is typically less significant or less dominant when comparing marks. Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); and *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553 (TTAB 1987). *See also Hewlett-*

*Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ 2d 1001 (Fed. Cir. 2002); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re El Torito Rests. Inc.*, 9 USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986). The registrant has disclaimed the descriptive wording DATA apart from the mark as shown. Therefore, the examining attorney must closely examine the dominant portion of the registered mark against the applicant's mark. The dominant portion of the registrant's mark is the term ANDROID, which is identical in sound, appearance, and commercial impression to the cited registered mark. Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. *See e.g., Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd* 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and "21" CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §§1207.01(b)(ii) and (b)(iii). Regarding the issue of likelihood of confusion, the question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods they identify come from the same source. *In re West Point-*

*Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 54 USPQ2d 1894, 1890 (Fed. Cir. 2000); *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b). Considering the above, the marks are sufficiently similar to cause a likelihood of confusion under Trademark Act Section 2(d).

Turning to the second prong of the test, the goods of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods come from a common source. *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB

1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(I).

Both the applicant and the registrant are providing software. The registrant has more narrowly stated its goods as “computer e-commerce software to allow users to perform electronic business transactions via a global computer network.” Likelihood of confusion is determined on the basis of the goods or services as they are identified in the application and the registration. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993); *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990). Since the identification of the applicant's goods is very broad, it is presumed that the application encompasses all goods and/or services of the type described, including those in the registrant's more specific identification, that they move in all normal channels of trade and that they are available to all potential customers. TMEP §1207.01(a)(iii).

Therefore, with the contemporaneous use of highly similar marks that share the dominant term ANDROID, consumers are likely to conclude that the goods are related and originate from a single source. As such, registration must be refused under Trademark Act Section 2(d). Any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004

(Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(I).

29. On April 2, 2008, roughly 6 weeks after the PTO denied their application for the Android mark, the OHA presented “Android” at the World Congress in Barcelona. (OHA website 4/23/09).
30. On August 14, 2008, Google filed its response to Office Action. In its response Google admitted that: “Android was an arbitrary term we chose as a brand for our products.” A copy of the response is attached as Plaintiff’s Exhibit E.
31. On August 20, 2008, the PTO issued its Office Action making the decision to deny Google’s application final. A copy of the final action is attached as Plaintiff’s Exhibit F.
32. On September 23, 2008, seven months after their application for the Android mark was denied and one month after the final action letter was issued, Google and OHA issued their press release announcing “Android 1.0 SDK” now available. (OHA website 4/23/09).
33. On October 21, 2008, roughly eight months after their application was denied, Google and OHA issued another press release announcing “Android open source availability.”
34. On October 22, 2008, OHA members Texas Instruments, T-Mobile, and Wind River made press releases improperly using Plaintiff’s Mark. (OHA website 4/23/09).
35. On November 20, 2008 Google filed its Request for Reconsideration after Final Action requesting reconsideration or in the alternative that its application

- examination be suspended. A copy of the request is attached as Plaintiff's Exhibit G.
36. On November 20, 2008 Google also filed an Ex parte Notice of Appeal. A copy of the notice is attached as Plaintiff's Exhibit H.
  37. On November 21, 2008, the PTO's Trademark Trial and Appeal Board issued an order suspending Google's appeal pending its request for reconsideration. A copy of the order is attached as Plaintiff's Exhibit I.
  38. On November 24, 2008, the PTO issued its Notice of Suspension. A copy of the Notice is attached as Plaintiff's Exhibit J.
  39. On December 5, 2008, less than a month after voluntarily suspending its Trademark application examination, OHA issued a press release announcing Android 2.0 SDK release. (OHA website 4/23/09).
  40. On December 9, 2008 OHA announced the addition of its newest members: Omron Software Co, Ltd.; Teleca AB; AKM Semiconductor, Inc.; ARM; Atheros Communications; ASUSTek Computer, Inc.; Garmin International, Inc.; Huawei Technologies; Sony Ericsson and Toshiba. See Plaintiffs' Exhibit K for a full listing of the OHA members and description.
  41. On December 9, 2008, OHA member AKM, ARM, Borqs, Ericsson, Huawei, Omron, Sony Ericsson and Teleca made press releases using Plaintiffs' Android mark. (OHA website 4/23/09).
  42. On February 5, 2009 OHA member Broadcom issued its press release touting the "First Android-Enabled Mobile Phone..."

43. On February 10, 2009 OHA member Telcea issued a press release announcing that "Teleca enables Android for the CDMA phone market."
44. On February 18, 2009 OHA members Nvidia, Freescale, Huawei, Intrinsic, PacketVideo and Texas instruments issue additional press releases using Plaintiffs' Android mark.
45. On February 23, 2009 OHA member GLU Mobile made a press release announcing Build-a-lot for Android market.
46. On February 24, 2009 OHA member Gameloft issued a press release announcing "20 Games for Android Market."
47. Based upon information and belief, Google and the OHA members have been and are continuing to use Plaintiffs' Android mark in advertising, promotional materials and press releases without disclosing plaintiffs ownership and without plaintiffs permission.
48. Google and its OHA members have and are listing Plaintiffs' Android mark as a trademark and/or registered trademark of Google or the OHA.
49. Having continuously used Android Data in interstate commerce and having filed the requisite registration maintenance documents with the PTO, Plaintiffs Android Data mark is in "Live" standing with the PTO.
50. A cursory review of the time line between Google applications, announcements, and product launch, it is clear that Google stole first and asked questions later. Even though they could have, as they put it, arbitrarily chosen any name to brand their products, Google and the OHA members intentionally and without justification chose to affix Plaintiffs' Android mark to their web sites, products,

services, and press releases without regard to ownership. Google and the OHA members have shown a complete disregard of the ownership of the Android mark, their own voluntary suspension actions, and the denials of the PTO.

51. Google and the OHA members have never requested or received plaintiffs permission to use the "Android" or "Android Data" mark.
52. Fully aware of plaintiffs rights to the Android mark, Google and the OHA members have and are intentionally, open, notoriously, and without authority exercising full rights and privileges to the use of plaintiffs' Android mark.
53. As of April 23, 2009, there are thousands of internet sites offering tens of thousands of services and products with plaintiffs counterfeit mark including Google's own "Android-Official Site." All of these sites stem from and are a direct result of Google and the OHA member's actions.
54. Beginning on November 12, 2007 and continuing through April 23, 2009, Google and the OHA members have used Plaintiffs' Android mark in their press releases and promotional materials and web sites without authority to do so.
55. OHA members have known that use of Plaintiff's Trademark is unlawful since at least February 14, 2008.
56. Google and the OHA's use of Plaintiffs' Android mark in its product promotion and advertising on print and on the internet constitutes the use in commerce of a colorable imitation, copy and reproduction of Plaintiff's Trademark.
57. Plaintiff's use of it's Trademark for software and internet commerce is similar to Defendant's use of Plaintiff's mark in software and for internet commerce.

58. For the reasons set forth above and in the PTO's denial of Google's application, the use of Plaintiff's Trademark by defendant is deceptive and confusingly similar and likely to cause confusion, mistake, or deception in the minds of the public.
59. Google and the OHA's infringement constitutes a willful and malicious violation of Plaintiff's Trademark rights.
60. Plaintiffs recently learned of Defendant's actions and is moving as expeditiously as possible.

### III

#### COMPLAINT FOR TRADEMARK INFRINGEMENT, UNDER LANHAM ACT § 3231.

Plaintiffs repeat and hereby incorporate herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 60

61. Plaintiffs have expended considerable resources marketing, advertising and promoting goods under its Android Data mark throughout the United States.
62. Defendants failed to perform even minimal due diligence when they "arbitrarily" chose to brand their products using plaintiffs' Android mark.
63. Notwithstanding plaintiff's statutory right in the Android Data mark, with notice of plaintiff's federal registration rights, and without authorization by plaintiffs, defendants have in the past and are continuing to hold conventions, advertise, manufacture, distribute, and offer to sell an ever increasing line of products and services bearing the Plaintiffs' Android mark.
64. Defendants' unauthorized use of Plaintiffs' Android mark to brand its' many computer related products will undoubtedly lead to deception, confusion and

mistake among the consuming public and trade creating the erroneous impression that the goods created by plaintiffs come from the same origin or that plaintiffs' products are some type of knock-off of defendants' products or name.

65. Defendants actions and deception will deprive plaintiff of the use of its' Android Data mark causing irreparable harm to Plaintiffs for which there is no adequate remedy at law.
66. Defendants have intentionally used in commerce a counterfeit of Plaintiffs' mark in connection with the sale, offering for sale, or distribution of goods or services knowing that such mark or designation is a counterfeit.
67. Defendants have provided goods or services necessary to the commission of the violation described in paragraph 62 above, with the intent that the recipient of the goods or services would put the goods or services to use in committing the violation.
68. By reason of the foregoing acts, Defendants are liable to Plaintiffs for trademark infringement under 15 U.S.C. § 1114.

#### **IV.**

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray:

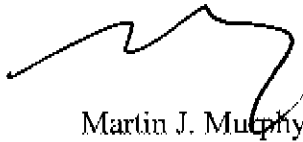
1. That, pursuant to 15 U.S.C. § 1116, Defendants Google Inc, members of the Open Handset Alliance, their agents, officers, employees, representatives, successors, assigns, attorneys and all other persons acting for, with, by, through or under authority from Defendant, including and each of them, be preliminarily and permanently enjoined from:(a) using the Android trademark depicted in Exhibit

B, or any colorable imitation thereof; (b) using any trademark that imitates or is confusingly similar to or in anyway similar to Plaintiff's trademark Android, or that is likely to cause confusion, mistake, deception, or public misunderstanding as to the origin of Plaintiff's products or their connectedness to Defendant.

2. That, pursuant to 15 U.S.C. § 1116, Defendants be required to file with the Court and serve on Plaintiff within thirty (30) days after entry of the Injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the Injunction;
3. That, pursuant to 15 U.S.C. § 1117(c)(2), the Court find that the use of the counterfeit mark was wilful and award Plaintiff's statutory damages of \$2,000,000 against each of the Defendants per counterfeit mark per type of good or service sold..
4. That, pursuant to 15 U.S.C. § 1117, Defendants be compelled to account to Plaintiff for any and all profits derived by them from their illegal acts complained of herein;
5. That the Defendants be ordered pursuant to 15 U.S.C. § 1118 to deliver up for destruction all computer source or executable code that reference or display Plaintiff's "Android" mark, and all containers, labels, signs, prints, packages, wrappers, receptacles, advertising, promotional material, instruction manuals or the like in possession, custody or under the control of Defendants bearing a trademark found to infringe Plaintiff's Android Data trademark rights, as well as all plates, matrices, and other means of making the same;

6. That the Court declare this to be an exceptional case and award Plaintiff its full costs, and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;
7. That the Court grant Plaintiffs any other remedy to which it may be entitled as provided for in 15 U.S.C. §§ 1116 and 1117.
8. For such and other further relief that the court deems just and proper

Respectfully submitted:  
Erich Specht, Android Data Corporation, and  
The Android's Dungeon Incorporated  
By their Attorney,



Martin J. Murphy  
Attorney for Plaintiffs  
2811 RFD  
Long Grove, IL 60047  
(312) 933-3200  
Fax 773-338-9913

<SERIAL NUMBER> 78011167  
<FILING DATE> 06/04/2000

<DOCUMENT INFORMATION>  
<TRADEMARK/SERVICEMARK APPLICATION>  
<VERSION 1.2>

<APPLICANT INFORMATION>  
<NAME> Android Data Corporation  
<STREET> 114 North Ashland Avenue  
<CITY> Palatine  
<STATE> IL  
<COUNTRY> USA  
<ZIP/POSTAL CODE> 60067  
<TELEPHONE NUMBER> 847-991-3307  
<FAX NUMBER> 847-991-3394  
<E-MAIL ADDRESS> erich@androiddata.com

<APPLICANT ENTITY INFORMATION>  
<CORPORATION: STATE/COUNTRY OF INCORPORATION> Illinois

<TRADEMARK/SERVICEMARK INFORMATION>  
<MARK> Android Data  
<TYPED FORM> Yes  
\* Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). \*

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>  
<USE IN COMMERCE: SECTION 1(a)> Yes  
\* Applicant is using or is using through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. §1051(a), as amended.). Applicant attaches one SPECIMEN for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services. \*  
<SPECIMEN> Yes  
<SPECIMEN DESCRIPTION> Portion of brochure describing Android Data's services which has been distributed to potential customers.  
<INTERNATIONAL CLASS NUMBER> 038  
<LISTING OF GOODS AND/OR SERVICES> Computer software and internet services.  
<FIRST USE ANYWHERE DATE> 01/01/1999  
<FIRST USE IN COMMERCE DATE> 01/01/1999

<FEE INFORMATION>  
<TOTAL FEES PAID> 325  
<NUMBER OF CLASSES> 1

TT'S  
A

**<SIGNATURE AND OTHER INFORMATION>**

\* PTO-Application Declaration: The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. \*

<SIGNATURE> /Erich Specht/  
<DATE> 06/04/2000  
<NAME> Erich Specht  
<TITLE> President

**<MAILING ADDRESS>**

<LINE> Android Data Corporation  
<LINE> 114 North Ashland Avenue  
<LINE> Palatine IL 60067

**<CREDIT CARD INFORMATION>**

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<RAM ACCOUNTING DATE> 20000605

**<SERIAL NUMBER INFORMATION>**

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USPTO-24131183202-20000604225223469-78/011167-  
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469

**Internet Transmission Date:**

2000/06/04

**Serial Number:**

78011167

**Filing Date:**

2000/06/04



TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

TOTAL FEES PAID: \$325

RAM SALE NUMBER: 132  
RAM ACCOUNTING DATE: 20000605



NO OCR



06-04-2000

**Drawing Page**

**Serial Number:**

78011167

**Applicant:**

Android Data Corporation  
114 North Ashland Avenue  
Palatine IL USA 60067



**Date of First Use:**

01/01/1999

**Date of First Use in Commerce:**

01/01/1999

**Goods and Services:**

Computer software and internet services.

**Mark:**

ANDROID DATA



NO OCR



06-04-2000

**ORIGINAL SPECIMEN**

**Internet Transmission Date:**

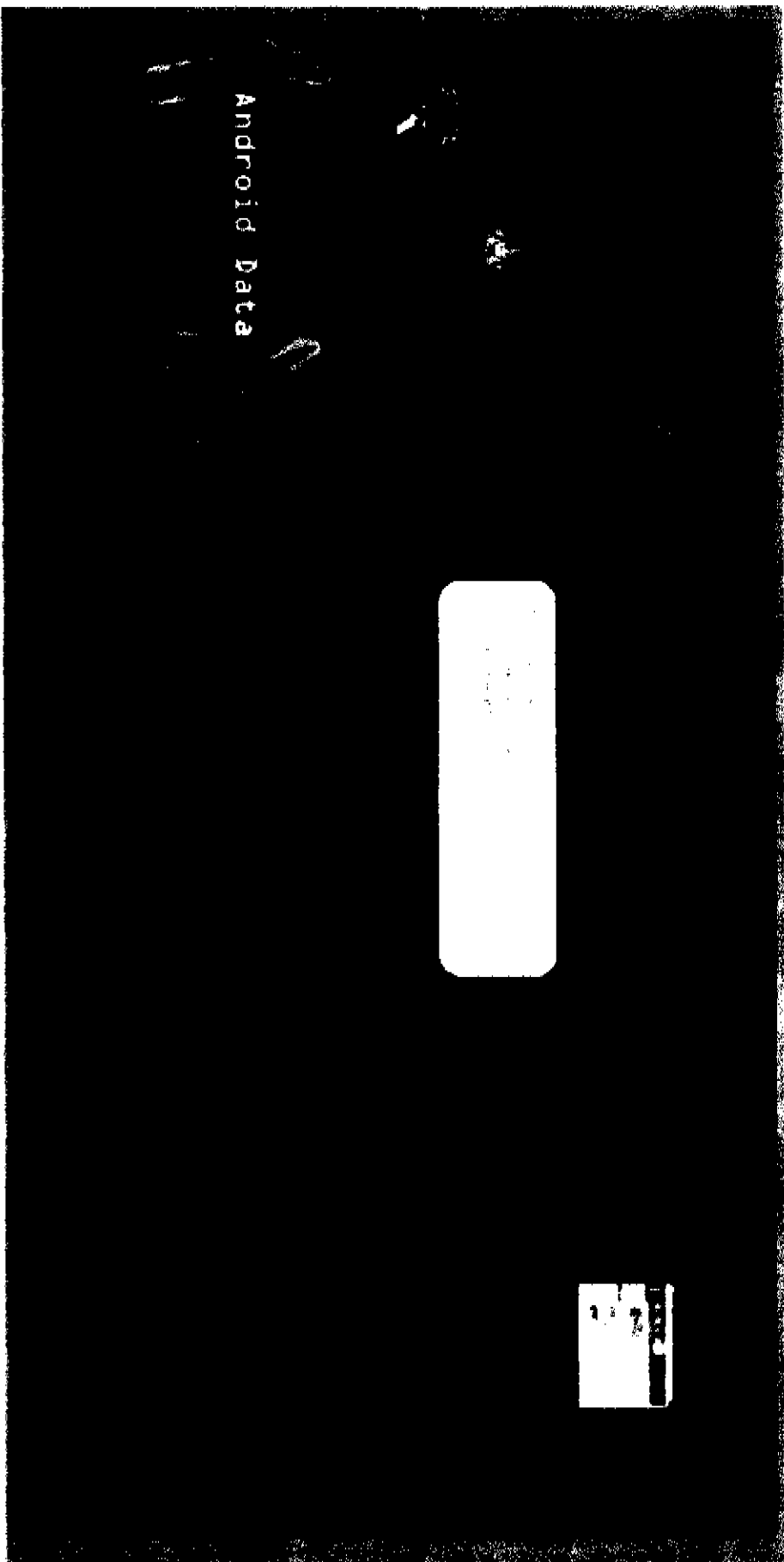
2011-07-27

**Serial Number:**

1903111000

**Filing Date:**

2011-07-27



DUPLICATE SPECIMEN

Internet Transmission Date:

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Filing Date:

2011-01-11 10:00:00

Serial Number:

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Android Data

Android Data



Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

**United States Patent and Trademark Office**

Reg. No. 2,639,556

Registered Oct. 22, 2002

**TRADEMARK  
PRINCIPAL REGISTER**

**ANDROID DATA**

ANDROID DATA CORPORATION (ILLINOIS  
CORPORATION)  
114 NORTH ASHLAND AVENUE  
PALATINE, IL 60067

FOR: COMPUTER E-COMMERCE SOFTWARE  
TO ALLOW USERS TO PERFORM ELECTRONIC  
BUSINESS TRANSACTIONS VIA A GLOBAL COM-  
PUTER NETWORK, IN CLASS 9 (U.S. CLS. 21, 23, 26,  
36 AND 38).

FIRST USE 1-1-1999; IN COMMERCE 1-1-1999.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "DATA", APART FROM THE  
MARK AS SHOWN.

SER. NO. 78-011,167, FILED 6-4-2000.

FLORENTINA BLANDU, EXAMINING ATTORNEY

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EX B