

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

Any party may provide additional information **in confidence** directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

9th Circuit Case Number(s): 10-15113

District Court/Agency Case Number(s): C-08-3251-WHA

District Court/Agency Location: USDC - CA - Northern District - San Francisco

Case Name: Apple Inc.

v.

Psystar Corporation

Please briefly describe the dispute that gave rise to this lawsuit.

Psystar is a technology startup that manufactured and sold non-Apple personal computers capable of running Apple's OS X operating system. Psystar sought to provide a lower cost, higher quality alternative to Apple's hardware. Apple sued Psystar for copyright infringement and violations of the anti-circumvention provisions of the DMCA, claiming that selling hardware capable of running OS X (and hence competing with Apple in the market for personal computers) is illegal.

(Please continue to next page.)

Briefly describe the procedural history, the result below, and the main issues on appeal.

Apple won summary judgment and an injunction below. The district court sealed large parts of the summary-judgment papers. Psystar believes that the summary judgment was error, inter alia, because the district court erred in holding that Apple's efforts to use its copyright in OS X to control the hardware on which purchasers of OS X run OS X did not constitute copyright misuse. Psystar further believes that the district court's sealing orders were error because the sealed material reflected only material that is already available in the public record and because Apple failed to comply with the district court's local rules regarding motions to seal. Psystar further believes that, even accepting the district court's conclusions on the merits, the district court's injunction was overbroad in that it decides issues that are presently in litigation in an antitrust case in the United States District Court for the Southern District of Florida (Psystar v. Apple) --- a case that the California district court declined to dismiss or stay despite Apple's request that it do so.

Describe any proceedings remaining below or any related proceedings in other tribunals.

The district court invited Psystar to seek a declaratory judgment that a new, unlitigated software product, Rebel EFI, does not violate the district court's injunction. Psystar has not yet taken the district court up on its invitation.

A separate antitrust case, Psystar v. Apple, is pending in the United States District Court for the Southern District of Florida. A motion to transfer is pending in that case. Apple's motion in the California case to dismiss or stay the Florida case was denied.

(Please continue to next page.)

Provide any other information that might affect the suitability of this case for mediation.

Both Psystar and Apple agree that this case is not suitable for mediation. The parties have previously participated in mediations to no avail, including a mediation immediately preceding the district court's ruling on summary judgment. Nothing material has changed since then. The parties simply disagree about the determinative law and seek this Court's ruling to resolve their dispute.

CERTIFICATION OF COUNSEL

I certify that:

☒ a current service list with telephone and fax numbers and email addresses
☒ is attached (see 9th Circuit Rule 3-2).

☒ I understand that failure to provide the Court with a completed form and
☒ service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

SERVICE LIST

COUNSEL FOR PSYSTAR CORPORATION

K.A.D. Camara
camara@camarasibley.com
Kent Radford
radford@camarasibley.com
CAMARA & SIBLEY LLP
2339 University Boulevard
Houston, Texas 77005
713-893-7973
713-583-1131 (fax)

COUNSEL FOR APPLE INC.

James G. Gilliland
jggilliland@townsend.com
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111
415-576-0200
415-576-0300 (fax)

George Riley
griley@omm.com
O'MELVENEY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, California 94111
415-984-8700
415-984-8701 (fax)