

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

STATIC CONTROL COMPONENTS, INC.,

PLAINTIFF/COUNTERCLAIM  
DEFENDANT

v.

LEXMARK INTERNATIONAL, INC.,

DEFENDANT/COUNTERCLAIM  
PLAINTIFF

v.

WAZANA BROTHERS INTERNATIONAL,  
INC. d/b/a MICRO SOLUTIONS ENTERPRISES

COUNTERCLAIM DEFENDANT

v.

STATIC CONTROL COMPANIES, INC.

COUNTERCLAIM DEFENDANT

v.

NER DATA PRODUCTS, INC.

COUNTERCLAIM DEFENDANT

Pending in the United States District Court  
Eastern District of Kentucky  
Honorable Gregory F. Van Tatenhove  
Civil Action 04-CV-84-GFVT.

**AFFIDAVIT OF JOSEPH C. SMITH, JR. IN SUPPORT OF  
MOTION TO QUASH IMPROPER SUBPOENA  
SERVED ON OPPOSING PARTY'S TRIAL COUNSEL  
(INCLUDING MOTIONS TO FILE TWO EXHIBITS UNDER SEAL)**

I, Joseph C. Smith, Jr., being first duly sworn under oath, state as follows:

1. I am an attorney who has been licensed to practice law in the State of Colorado

since 1991. I have been admitted to practice before this Court since 1992. I am also admitted to practice before the United States Court of Appeals for the Tenth Circuit, the United States Court of Federal Claims, and the United States Court of Appeals for the Federal Circuit.

2. I am a partner in the law firm of Bartlit Beck Herman Palenchar & Scott LLP, which has offices in Chicago and Denver. I am resident in the firm's Denver office.

3. I have personal knowledge of the facts stated in this affidavit.

4. About July 2005, Static Control Components, Inc. ("Static Control") retained Bartlit Beck to represent Static Control as trial counsel in the above-captioned action. Bartlit Beck was retained solely as trial counsel, not to offer any opinions as to the validity or infringement of any patent.

5. Bartlit Beck was not, and is not, retained by any other party in the above-captioned action for any purpose.

6. As trial counsel for Static Control, Bartlit Beck has not provided any party to this litigation, including Static Control, with any opinion as to the validity or infringement of any patent. Nor has Bartlit Beck provided any legal services whatsoever to any party other than Static Control.

7. Bartlit Beck has participated with counsel for the parties with which Static Control is aligned in this litigation – NER Data Products, Inc.; Pendl Companies, Inc. ("Pendl"); and Wazana Brothers International, Inc. – in privileged communications concerning matters of common interest to those parties' preparation for trial, pursuant to a common interest agreement. The common interest agreement does not contemplate the provision of, nor has it been used to provide, any party with any opinions as to the validity or infringement of any patent.

8. To the best of Bartlit Beck's knowledge, neither Robert Becker nor the law firm Coudert Brothers has played any role in this litigation. Bartlit Beck has never had any communications with Mr. Becker or Coudert Brothers concerning Pendl or this litigation. Bartlit Beck was not aware of the 1999 letter from Mr. Becker to Pendl (referenced in the accompanying motion and separately attached) before Pendl disclosed that letter on October 13, 2006.

9. There have been no communications between Bartlit Beck and Pendl Companies, Inc.

FURTHER AFFIANT SAYETH NOT.

//Joseph C. Smith, Jr.  
\_\_\_\_\_  
Joseph C. Smith, Jr.

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of October, 2006, by Joseph C. Smith, Jr.

Witness my hand and official seal.

//Pamela Gilmore  
\_\_\_\_\_  
Notary Public

My commission expires: June 28, 2010

**[STATE OF COLORADO  
NOTARY PUBLIC SEAL]**