

# **EXHIBIT 26**

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Public Patent Foundation, Inc.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JUNIPER NETWORKS, INC.,  
Plaintiff

vs.

PETER M. SHIPLEY,  
Defendant.

) CASE NO. C09-00696-SBA  
)  
) **BRIEF OF *AMICUS CURIAE* PUBLIC**  
) **PATENT FOUNDATION IN SUPPORT**  
) **OF PLAINTIFF'S OPPOSITION TO**  
) **DEFENDANT'S MOTION TO DISMISS**

) Date: July 28, 2009  
) Time: 1:00 p.m.  
) Courtroom 3  
) Hon. Sandra B. Armstrong  
)  
)  
)

**I. THE PUBLIC INTEREST *AMICUS CURIAE***

The Public Patent Foundation (“PUBPAT”), a not-for-profit 501(c)(3) public charity legal services organization affiliated with Benjamin N. Cardozo School of Law, respectfully submits this brief in support of plaintiff Juniper Networks' opposition to defendant's motion to dismiss.

PUBPAT believes that the public interest is significantly harmed by false marking, and is thus well served by meaningful enforcement of the false marking statute as its literal language and legislative history mandate. The motion to dismiss filed by the defendant in this case raises the important legal question of whether (i) a single decision to falsely mark a batch of articles is one "offense" under 35 U.S.C. §292 (and hence subject to the statute of limitations as of the date of that decision, regardless of how many articles ultimately are marked or when such false markings are actually made) or, rather, (ii) an "offense" occurs each time a falsely marked article is offered for distribution or distributed to the public (thus setting the statute of limitations for each such “offense” as of the date each such “offense” occurs). Because the defendant's position offends the plain meaning of the statute, ignores its legislative history, and would have the consequence of effectively limiting the maximum fine possible under the statute to \$500 in serious contravention of the public interest, PUBPAT respectfully submits that this Court should side with the plaintiff on this key question of the timing (and counting) of "offenses" under §292.

**II. FALSE MARKING IS A SERIOUS VIOLATION OF THE PUBLIC INTEREST**

Let's be honest, people mark or advertise their products as patented for a reason; those markings and advertisements don't just appear out of thin air. The reason why people mark and advertise their products as patented is because they expect doing so will provide them some benefit in the marketplace, such as by winning over consumers, building a superior brand associated with innovativeness, implying that their product has been reviewed and approved by the federal government, or implicitly threatening actual or potential competitors with allegations of patent infringement. Thus, when products are falsely marked or advertised as "patented," such false marking or false advertising provides these potential benefits to the false marker/advertiser without any commensurate justification and, as such, creates the potential to negatively impact the

1 marketplace, the public interest, and the integrity of the patent system.

2 The Court of Appeals for the Federal Circuit has also recognized this harmful result, saying,  
3 the act of false marking misleads the public into believing that a patentee controls the  
4 article in question (as well as like articles), externalizes the risk of error in the  
5 determination, placing it on the public rather than the manufacturer or seller of the article,  
6 and increases the cost to the public of ascertaining whether a patentee in fact controls the  
7 intellectual property embodied in an article.

8 Clontech Labs., Inc. v. Invitrogen Corp., 406 F.3d 1347, 1356-1357 (Fed. Cir. 2005) (footnote  
9 omitted). The false marking statute aims to protect consumers from this risk of being misled by  
10 false patent markings, which not only can create incorrect conclusions about whether a particular  
11 product is controlled by a single party, but can also lead consumers to erroneously attribute  
12 innovative, quality, or performance characteristics to the falsely marked product. For these  
13 reasons, the false marking statute protects the interest of consumers in not being misled into  
14 thinking a certain product – falsely marked as patented – is controlled by a single party, or is better  
15 or more innovative than other products available to them in the marketplace.

16 **A. False Marking Harms Legitimate Patentees and Risks Decreasing the Incentive to  
17 Innovate Provided by the Patent Grant**

18 In addition to the harm caused to consumers, perhaps one of the largest – and most  
19 overlooked – harms caused by false marking is to legitimate patentees. Imagine two competitors in  
20 a marketplace, one has a patent on her product, while the other does not. Both mark their products  
21 as patented, the first being justified in doing so, because she earned that privilege by having a  
22 currently valid patent, but the second not being justified in doing so, either because he never had a  
23 patent that covers the product, or any patent he did have has since expired. The marking of both  
24 products leads consumers to believe that both products are comparably innovative and, thus, of  
25 similar value. This deprives the legitimate patentee of the consumer respect and resulting  
26 commercial value that she deserves, because due to her competitor's false marking, her product  
27 doesn't stand out in the mind of the consumer as being more innovative. By depriving patentees of

1 one of the important benefits of earning a patent, false marking actually runs the risk of decreasing  
2 the incentive to innovate offered by the exclusive patent grant. Thus, one of the most important  
3 functions of the false marking statute is to protect the interests of legitimate patentees in receiving  
4 the marketplace distinction they deserve.

#### 5 **B. False Marking Harms Honest Competitors**

6 False marking also harms law-abiding competitors with unpatented articles. Such  
7 competitors who do not also falsely mark their products face the prospect that consumers will be  
8 misled into thinking their competitor's falsely marked product is more innovative or modern. Such  
9 conduct harms both consumers and law-abiding competitors.

10 In addition, false marking also harms legitimate competitors by exerting a chilling effect on  
11 their willingness to enter the market for, or improve upon, the falsely marked product. For  
12 example, a competitor that has a cheaper method of manufacturing a product might be discouraged  
13 from entering the market if the product were adorned with a false patent declaration. Similarly, if  
14 an innovator had discovered an improvement to the product, that innovator might be discouraged  
15 from introducing the improvement for fear that the false marking might represent a blocking patent  
16 on the improvement. At a minimum, such false designations force legitimate competitors and  
17 innovators to spend scarce resources to investigate and disprove these false assertions.

#### 18 **C. False Marking Injures the Public Interest Regardless of Whether Actual Harm is 19 Caused in Any Particular Case**

20 It is also important to recognize that false marking is a serious violation of the public  
21 interest even if no harm is caused in any particular case. Stepping back for a moment, one cannot  
22 dispute that there exist countless laws in our country that serve to protect societal interests against  
23 certain behavior, even when that behavior might not actually cause any particular harm. For  
24 example, the entire category of crimes for attempting to commit another crime is justified not  
25 because any specific harm was caused by the attempt to commit crime, but because the act of even  
26 attempting to commit a crime is conduct we as citizens have decided to prohibit and meaningfully  
27

1 penalize. Further, many fraud based violations of the law are actionable and serious threats to the  
2 public interest even if no harm results from the fraud. For one, lying in court under oath is an act  
3 that merits significant punishment even if the lie has no effect whatsoever on the outcome of the  
4 case.

5 For similar reasons, even if the circumstances in any particular case of false marking are  
6 such that no actual harm can be proven to have occurred, that does not mean such conduct should  
7 be condoned by society. To the contrary, to condone such behavior with a “no harm no foul”  
8 attitude would in fact *encourage* such behavior when - as in the case of false marking - it offers  
9 such a substantial potential benefit to the actor. Put simply, if there were no law against it, false  
10 marking would be rampant in the marketplace because it is an activity of insubstantial cost to  
11 perform, relative to its potential benefit.

12 Just imagine #2 pencils, aspirin, and even milk being labeled and advertised as patented.  
13 Surely such would cause significant consumer confusion, while also creating a mockery of  
14 legitimate patentees when they honestly tout their products' innovativeness as proven by their  
15 honestly earned patents. Respect for all patents would decline, and the efficiency of the  
16 marketplace would be perverted by false and misleading information for comparing products. This  
17 is why it is important to prohibit and meaningfully punish false marking, regardless of whether  
18 actual harm is caused by a specific act of false marking in any particular case.

19 Lastly, the location of the anti-false marking statute within the Patent Act confirms its  
20 importance to society. The false marking statute is contained in the same chapter of the Patent Act  
21 that contains the statutes pertaining to damages, injunctions, attorney fees, and many of the other  
22 statutes that are the most important to ensuring patents are adequately respected and infringement  
23 of patents is fairly remedied. Thus, to argue that 35 U.S.C. § 292 is somehow an obscure statute,  
24 or one that landed in the Patent Act by happenstance or mistake is simply unsupportable. Truth be  
25 told, the prohibition against false marking lies right in the heart of the Patent Act because it, too, is  
26 a serious violation of the law that Congress intended to sanction.

1 **III. TO PROTECT THE PUBLIC INTEREST, THE MODERN FALSE MARKING**  
2 **STATUTE TERM “OFFENSE” MEANS EVERY TIME A FALSE MARKING IS MADE**  
3 **TO THE PUBLIC**

4 As discussed above, the lack of a false marking statute would cause substantial public harm.  
5 Similarly, under-enforcement of the false marking statute would – as a practical matter – cause the  
6 same types and severity of public harm. Thus, any interpretation of the statute that effectively  
7 nullifies its ability to reign in false marking must be avoided in order to protect these vital public  
8 interests. A Court interpretation that has a sweeping impact on the statute's pragmatic viability  
9 would also be improper as a purely legal matter because it would have the practical effect of  
10 vetoing the policy decision made by Congress in the statute. While its origins may be centuries  
11 old, the fact that Congress has not recently revisited its predecessors' policy decision regarding  
12 false marking and instead actually re-invigorated the patents statute's qui-tam and false marking  
13 provisions with the introduction of the modern §292 in the 1952 Patent Act means that the  
14 prohibition against false marking deserves to be maintained as a vibrant and living statute with  
15 practical meaning and real-world effect. If prohibiting false marking is bad policy, Congress can –  
16 and is in fact the only branch of government that should – consider amending or repealing the  
17 statute.

18 Having said that, the false marking statute nonetheless contains language that gives broad  
19 latitude to judges ruling in such cases to implement what they see as fair and adequate punishment.  
20 Importantly, however, this broad latitude exists in the statutory language “not more than” with  
21 respect to the amount of fine to be imposed “for every such offense.” See 35 U.S.C. § 292 (“Shall  
22 be fined not more than \$500 for every such offense.”). The statute's flexibility does not reside in  
23 the term “offense,” which under any plain reading must be defined to mean each time the false  
24 marking is impressed upon the public. It would pervert the plain language of the statute and  
25 effectively nullify the intended effect of qui-tam enforcement provisions to define an “offense” in  
26 such a way as to severely limit the amount recoverable in any particular case. An “offense” should  
27 not be limited to the number of times a decision was made to falsely mark, because that could very

1 well be less than a handful of times, which would then limit the maximum penalty allowed for such  
2 false marking to no more than a few thousand dollars. Such minimal penalties would result in  
3 gross under-enforcement of the statute – thus completely undermining the public and competitive  
4 interests that §292 seeks to protect.

5 Although a legislatively faithful application of §292 may, at first blush, give rise to what  
6 appears to be an inequitable number of “offenses,” the “not more than \$500” language in the  
7 statute permits a judge to implement whatever she thinks is an appropriate fine for the offender's  
8 overall campaign of false marking, including as little as a fraction of a penny per “offense.”  
9 Surely, while there would be substantial public harm from under-enforcement of the false marking  
10 statute, there also exists the possibility of public harm caused by over-enforcement of the false  
11 marking statute. Thus, the issue of how much of a fine to impose is left to the sound discretion of  
12 the judge in any particular case. So, even if there are a million “offenses” in a particular case, that  
13 would not prohibit a judge from awarding any amount she sees fit, so long as it is no more than the  
14 maximum allowed for under the statute; in this hypothetical, \$500 million.

15 **A. An "Offense" Occurs with Every False Marking Made to the Public, Including**  
16 **“Every” Falsely-Marked "Article" and “Every” Instance of False Advertising**

17 The plain language and legislative history of §292 clearly support a finding of at least one  
18 offense per falsely-marked article and per instance of false advertising. In this regard, PUBPAT  
19 agrees with the position advanced by the plaintiff that each visit to an offending website creates a  
20 new, mismarked "article" on the visitor's computer, thus constituting a separate “offense.” See  
21 Plaintiff Juniper Networks, Inc.'s Opposition to Defendant Peter Shipley's Motion to Dismiss at 16  
22 (“each visit to the Website ... creates a new mismarked web page (an HTML file) which constitutes  
23 a separate offense under §292.”) and 18 (“the Website was and is configured to cause the creation  
24 [of] a new web page or ‘HTML file’ on the computers of those who access the Website”) (quoting  
25 Amended Complaint, ¶13). On this question of what constitutes the mismarked "article,"  
26 PUBPAT respectfully invites the Court to consider the long-standing rule that "a memory  
27 containing stored information, as a whole" qualifies as "an article of manufacture" under the Patent



1 Act. See In re Lowry, 32 F.3d 1579 (Fed. Cir. 1994). Thus, even if two visitors to a website  
2 receive the identical "web page" or "html file" from the same webserver, the "memory containing  
3 stored information, as a whole" of each visitor's computer -- the "articles" produced by the website  
4 visits -- will be different. The memories will be different because, other than the identically  
5 downloaded "web page" or "html file," each computer's memory has completely different content,  
6 thus making its "stored information, as a whole" different.

7 Moreover, even if one were to focus exclusively on the memory locations used to store the  
8 downloaded "web page" or "html file," the likelihood that both visitors' computers would store this  
9 downloaded information in the same memory locations -- thus making the two "articles" the same -  
10 - is essentially zero. That's because computers don't store application-level information in  
11 preassigned spaces; instead, they take whatever then-available space the operating system gives  
12 them. To appreciate why the probability of two computers storing the downloaded web content in  
13 the same memory location is so low, imagine a situation with two extremely-large but identical  
14 parking lots located in different cities and ask: What is the chance that two cars entering the lots at  
15 the same time would end up parking in the same space? If the lots are anywhere near the size of a  
16 typical computer's memory (e.g., about 1 billion locations), it is easy to see how the likelihood that  
17 both end up in the same space is just about zero. Thus, operating a web site that contains a patent  
18 mismatching in violation of §292 cannot be fairly viewed as a continued production of a single,  
19 mismatched "article," since each time the web site is visited, the "article" that is created on the  
20 visitor's computer is different than any "article" that previously existed.

21 Even if operating a mismatched website could be properly viewed merely as a continued  
22 production of one mismatched article, PUBPAT believes that each creation of a mismatched article --  
23 whether the same or different from previously mismatched articles -- represents a separate "offense"  
24 under §292. On this issue, PUBPAT strenuously disagrees with any adoption of the questionable  
25 1910 London decision, because it was based on aspects of the old version of the false marking  
26 statute that were completely eviscerated by amendments in the 1952 Patent Act. Below are  
27 remarks addressing the plain meaning and legislative history of §292, followed by an explanation

1 of why reliance on the century-old London case are flawed.

2 Statutes must be interpreted, if possible, to give effect to every word. See, e.g., Duncan v.  
 3 Walker, 533 U.S. 167, 174 (2001) ("It is our duty 'to give effect, if possible, to every clause and  
 4 word of a statute.'") (quoting United States v. Menasche, 348 U.S. 528, 538-539 (1955)); Market  
 5 Co. v. Hoffman, 101 U.S. 112, 115-116 (1879) ("As early as in Bacon's Abridgment, sect. 2, it was  
 6 said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause,  
 7 sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated  
 8 innumerable times.").

9 The language of §292 is unambiguous: "Whoever marks upon ... any unpatented article ...  
 10 for the purpose of deceiving the public; ... - Shall be fined not more than \$500 for every such  
 11 offense." Id. (emphasis added). To construe §292 in a way that results in the defendant in this case  
 12 being found to have committed only one "offense" would give absolutely no effect to the words  
 13 "any" and "every." Courts that have considered identical language have rejected such  
 14 interpretations. See Pantuso Motors v. CoreStates Bank, N.A., 745 A.2d 614, 618-19 (Pa. Super.  
 15 Ct. 1999) ("According to § 682, the fine for neglecting to satisfy a mortgage applies 'for every such  
 16 offense,' ... we agree with the trial court's finding that ... the penalty may be applied to each  
 17 occasion on which the bank refuses to perform."), rev'd on other grounds, 568 Pa. 601, 798 A.2d  
 18 1277 (2002).

19 This "plain meaning" rule of statutory construction applies even in situations where the  
 20 result might appear unduly punitive.<sup>1</sup> In St. Louis, I. M. & S. R. Co. v. Williams, 251 U.S. 63, 63-  
 21 4 (1919), for example, the Supreme Court rejected a challenge to an Arkansas statute that  
 22 mandated "for every such offense," a penalty of "not less than fifty dollars, nor more than three  
 23 hundred dollars and costs of suit, including a reasonable attorney's fee" against any railroad that  
 24 demanded or collected greater than the prescribed fare. Affirming judgments of \$75 plus costs to  
 25 each of two sisters overcharged \$0.66 each on the same trip, the Supreme Court commented:

26 <sup>1</sup> See Sutherland on Statutory Construction, p. 314 ("Even when a court is convinced that the  
 27 Legislature really meant and intended something not expressed by the phraseology of the act, it  
 28 will not deem itself authorized to depart from the plain meaning of language which is free from  
 ambiguity.").

1 When the penalty is contrasted with the overcharge possible in any instance  
2 it of course seems large, but, as we have said, its validity is not to be tested  
3 in that way. When it is considered with due regard for the interests of the  
4 public, the numberless opportunities for committing the offense, and the  
5 need for securing uniform adherence to established passenger rates, we think  
6 it properly cannot be said to be so severe and oppressive as to be wholly  
7 disproportioned to the offense or obviously unreasonable.

8 Id., 251 U.S. 63, 67.

9 Here, where §292 contains express language ("not more than \$500") that avoids any  
10 possibility of an inequitable result for a defendant who falsely marks thousands or even millions of  
11 low-cost articles (including webpages sent to the computers of visitors to the false marker's  
12 website), there is simply no basis to ignore the plain language of the statute.

13 **B. Legislative History Further Supports the View that Each Falsely-Marked  
14 "Article" and Each Act of False Advertising Constitutes at Least One "Offense"**

15 PUBPAT concedes that arguments to limit the interpretation of "offense" would have at  
16 least some merit if applied to the nineteenth century Patent Act of 1842, where the first penalties  
17 for false marking appeared. Though the 1842 Act -- like the modern statute -- applied to the false  
18 marking of "any unpatented article," it went on to state that "he, she, or they, *so offending, shall be*  
19 *liable for such offense*, to a penalty of not less than one hundred dollars, with costs." Patent Act of  
20 1842, ch. 263, §5, 5 Stat. 543, 544 (1842) (emphasis added). Thus, unlike the modern statute, the  
21 1842 Act linked the "penalty" to the collective act of "offending." It also, of course, did not  
22 contain the "every such offense" language so prominent in the current statute, §292.

23 In 1870, Congress made a key amendment to the false marking statute. Gone was the "he,  
24 she, or they, so offending" language, and in its place was a provision directing that "he shall be  
25 liable for every such offense." Patent Act of 1870, 16 Stat. 198, 2003 (1870). The next  
26 amendment, and the codification as §292, appeared in the Patent Act of 1952. The 1952 Act left  
27 the "for every such offense" language unchanged, but eliminated the mandatory \$100 per offense  
28 penalty of the 1870 Act. Section 292 was amended once more in 1994, but the amendment to the

1 pertinent language is cosmetic. Below, for the convenience of the Court, is a chart highlighting  
 2 changes to the relevant language of §292 and its predecessors from 1842 to the present.

1842 (5 Stat. 544)	1870 (16 Stat. 203)	1952 (66 Stat. 814)	1994 (35 U.S.C. 292)
if any person or persons ... shall affix the same or any word, stamp, or device, of like import, on any unpatented article, for the purpose of deceiving the public, he, she, or they, so offending, shall be liable for such offense, to a penalty of not less than one hundred dollars, with costs,	<del>if any person or persons ... shall in any manner mark upon or affix to -affix the same or any word, stamp, or device, of like import, on any unpatented article</del> <u>the word "patent," or any word importing that the same is patented,</u> for the purpose of deceiving the public, <del>he, she, or they, so offending,</del> shall be liable for <u>every</u> such offense, to a penalty of not less than one hundred dollars, with costs;	<del>if any person shall in any manner</del> <u>Whoever</u> marks upon, or affixes to, <u>or uses in advertising in connection with</u> any unpatented article, the word "patent," or any word <u>or number</u> importing that the same is patented, for the purpose of deceiving the public; <del>... shall be liable</del> <u>finned not more than \$500</u> for every such offense <del>to a penalty of not less than one hundred dollars, with costs;</del>	Whoever marks upon, or affixes to, or uses in advertising in connection with any unpatented article the word "patent" or any word or number importing <del>that</del> the same is patented, for the purpose of deceiving the public; ... Shall be fined not more than \$500 for every such offense.

18 The 1870 amendment, providing that one who falsely marks “shall be liable *for every such*  
 19 *offense to a penalty of not less than one hundred dollars, with costs,*” proved troubling to some  
 20 courts. As one early case comments, “[t]his statute is a highly penal one. In this case, the sum of  
 21 \$4,500 is claimed for affixing the stamp in question upon articles whose retail price is less than  
 22 \$100.” French v. Foley, 11 F. 801 (S.D.N.Y. 1882). While the French court endeavored to enforce  
 23 the 1870 statute as written, others sought ways to narrowly (mis-)construe it, thus avoiding its  
 24 harsh, mandatory penalties.

25 In London v. Everett H. Dunbar Corp., 179 F. 506 (1<sup>st</sup> Cir. 1910), the First Circuit  
 26 expressed its concern that:

1 Patented articles are so varied in kind and in value that, if we construe the  
2 statute to make each distinct article the unit for imposing the penalty, the  
3 result may follow that the false marking of small or cheap articles in great  
4 quantities will result in the accumulation of an enormous sum of penalties,  
5 entirely out of proportion to the value of the articles, while the marking of  
6 expensive machines used in limited numbers may result in the infliction of  
7 penalties which are comparatively slight in relation to the pecuniary value of  
8 the articles.

9 Id., 179 F. 506, 508. As a result, the London court held that

10 a plaintiff, in order to recover more than a single penalty [under the 1870  
11 Act], must go further than to prove the marking of a number of unpatented  
12 articles. The proof must be sufficiently specific as to time and circumstances  
13 to show a number of distinct offenses, and to negative the possibility that the  
14 marking of the different articles was in the course of a single and continuous  
15 act.

16 Id., 179 F. 506, 508.

17 Though clearly at odds with both the statutory language and the legislative history that  
18 created it, the London decision was widely followed at the time. So much so that the drafters of  
19 the 1952 Patent Act commented on the newly-codified §292 as follows:

20 This is a criminal provision. The first two paragraphs of the corresponding  
21 section of existing statute are consolidated, a new paragraph relating to false  
22 marking of 'patent applied for' is added, and false advertising is included in  
23 all the offenses. *The minimum fine, which has been interpreted by the courts  
24 as a maximum, is replaced by a higher maximum.* The informer action is  
25 included as additional to an ordinary criminal action.

26 Senate Report No. 82-1979 (June 27, 1952) (emphasis added). While not a model of clarity,  
27 PUBPAT respectfully submits that the Report's reference to courts "interpreting" the 1870 Act's  
28 minimum fine "as a maximum" only makes sense if viewed as a reference to the London decision  
and its progeny. Through its results-oriented (and some could say improperly judicially active)  
construction of "offense," the London court effectively interpreted the 1870 Act's minimum \$100  
fine as a maximum -- by making it very difficult to prove anything more than one "offense."

Noting that the courts had misinterpreted the 1870 Act to render its fines largely ineffective,  
Congress sought to cure the problem in the 1952 Act. The solution it reached was a sensible one:  
change the minimum per-offense fine to a maximum per-offense fine, thereby completely

1 undermining the basis for the problematic London decision and all the other cases that follow it.

2           Regrettably, Congress' amendment in the 1952 Act was perhaps too subtle to immediately  
3 produce its intended effect. To this day, some courts still continue to follow the London decision,<sup>2</sup>  
4 despite the fact that Congress intentionally eliminated the specific language upon which the  
5 London decision rests. PUBPAT respectfully suggests that the Court not continue this unfortunate  
6 trend, because the London decision, which applied to the 1870 Act, was legislatively rendered  
7 moot and no longer applicable by the passage of the 1952 Act. To be sure, the Supreme Court has  
8 never addressed § 292 and any implication to the contrary, such as that the issue of what constitutes  
9 an “offense” is controlled by the London case, is completely incorrect.

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26 <sup>2</sup> See, e.g., Vanguard Prods. Group v. Merch. Techs. Inc., 2009 U.S. Dist. LEXIS 7306 (D.  
27 Or., Jan. 16, 2009); A.G. Design & Assocs., LLC v. Trainman Lantern Co., 2009 U.S. Dist. LEXIS  
8320 (W.D. Wash., Jan. 23, 2009).

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**IV. CONCLUSION**

For the reasons set forth above, PUBPAT respectfully submits that the Court should refuse to dismiss plaintiff's claim on statute of limitations grounds.

DATE: July 14, 2009

THE MOORE LAW GROUP

By: \_\_\_\_\_ /s/

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