

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TIMEBASE PTY LTD.,

Plaintiff,

vs.

THE THOMSON CORPORATION,

Defendant.

Civil No. 07-460

Judge Lindberg

Magistrate Judge Cole

**DECLARATION OF
ANDREW MARTENS**

I, Andrew Martens, declare as follows:

INTRODUCTION

1. I am a Senior Vice President, New Product Development, at Thomson West. In that capacity, I am responsible for the design and development of West's products and services for legal professionals, including Westlaw®, West's online legal research service. I live in Minneapolis, Minnesota, and work at Thomson West's headquarters in Eagan, Minnesota. This declaration is submitted on behalf of The Thomson Corporation in support of its motion to transfer this action to the District of Minnesota. The facts recited herein are based on my personal knowledge or the business records of The Thomson Corporation, West Publishing Corporation, or West Services, Inc. unless otherwise stated.

2. Timebase named "The Thomson Corporation" as the defendant in this lawsuit. The proper defendants should be "West Publishing Corporation" and "West

Services, Inc.” as they are responsible for Westlaw and Westlaw related products, including the PastStat Locator product. The worldwide headquarters for West Publishing Corporation and West Services, Inc. are located at 610 Opperman Drive in Eagan, Minnesota, a suburb just south of St. Paul, Minnesota. I will refer to West Publishing Corporation and West Services, Inc. throughout this declaration collectively as “West.” The Thomson Corporation’s operational headquarters are located in Stamford, Connecticut.

3. West was founded by John West in St. Paul, Minnesota in 1876. Today, West is the legal profession’s leading provider of authoritative legal information resources and research technologies. West also has been a pioneer in electronic legal research services and technologies. In 1975, West introduced Westlaw[®], an online research service for legal professionals. Westlaw was designed and developed in St. Paul, Minnesota and continues to be developed at and operated from West’s headquarters in Eagan, Minnesota. The Westlaw service is available and sold in each state in the United States.

4. Since 2000, West has principally offered Westlaw through westlaw.com and Westmate[®]. Westlaw.com provides legal database services and database search technology via the Internet through a web browser. Westmate provides many of the same services via a proprietary client application server. Westlaw.com is currently responsible for about 96% of Westlaw’s usage.

5. Based on the parties’ pre-suit discussions, I understand that plaintiff alleges that a feature within the Westlaw architecture known as “PastStat Locator” infringes

United States Patent Number 6,233,592 (“the 592 patent”). The PastStat Locator located on Westlaw is available and sold nationwide. PastStat Locator is a feature within the Westlaw architecture that allows a user to view a version of a statute as it existed at a particular time in the past. As explained further below, West has been responsible and continues to be responsible for all research, development, design, marketing, and sales of the PastStat Locator product. To the extent Timebase alleges that the Westlaw RegulationsPlus and/or Graphical Statutes products, which are features on the Westlaw architecture, infringe the ‘592 patent, both of those products also were designed, developed, and tested at, and operate and are maintained from, West’s Eagan, Minnesota headquarters. In addition, the primary development and marketing teams for RegulationsPlus and Graphical Statutes are the same as those for PastStat Locator identified below in paragraphs 14-17.

LOCATION OF WEST

6. West Publishing Corporation and West Services, Inc. have their principal place of business and world headquarters at 610 Opperman Drive in Eagan, Minnesota. Nearly all of West’s high level business activities occur in Minnesota, including research and development, editorial work, sales, planning, marketing, finance, accounting, and production of commercial products and services. West’s Eagan campus is approximately 15 miles from downtown Minneapolis and St. Paul.

7. West has a highly centralized business operation. Approximately 6,000 of the 7,500 West employees work at the company’s headquarters in Eagan, Minnesota. In

addition, the vast majority of West's management and executive leadership lives and works in Minnesota.

DOCUMENTS AND THINGS
OF DEFENDANT THE THOMSON CORP.

8. Research, development, design, and testing, including source code drafting, product specification creation, user interface development, and content development, for the PastStat Locator product on Westlaw was done at West's Eagan, Minnesota headquarters.

9. Because it is an online research system that requires continual updating and maintenance, Westlaw simply would not function without West's headquarters in Minnesota. West updates the Westlaw content and systems through teams of attorney editors, engineers, and other staff working at West's Eagan facilities.

10. The data that specifically enables the PastStat Locator feature is received, enhanced, processed, linked, and loaded into Westlaw at West's headquarters in Eagan, Minnesota. The data is also updated at West's headquarters in Eagan.

11. The computers and databases for Westlaw are based at West's headquarters. The central hardware and software that form the backbone of the data services provided by Westlaw are located and operated in Eagan, Minnesota. The mainframe computer system and file servers that store and process the data that can be accessed via Westlaw also are located at West's Eagan facilities, as are the computer programs that retrieve information from the legal databases in response to customer searches on Westlaw. In other words, since PastStat Locator is a product within the

Westlaw architecture, all the hardware and software related to PastStat Locator's operation are located at West's Eagan, Minnesota headquarters.

12. The principal marketing, sales, and customer service decisions relating to the nationwide distribution of Westlaw are also made at West's headquarters in Eagan. West's Eagan facility is where marketing strategy is developed through the work of a large marketing team, where the creative work for West's marketing and advertising occurs, and where the actual paper copies of West's marketing materials are printed. Eagan also is where editorial content is generated and orders are processed, and where field representatives are centrally managed, trained, and supported. The close relationship between Westlaw and Minnesota is also manifest in the standard Westlaw subscriber agreements, which select Minnesota law as the applicable law and Minnesota as the forum for the resolution of any disputes. Thus, all marketing strategy, marketing design, marketing materials, and central training and support for PastStat Locator occurs at West's Eagan, Minnesota facilities.

13. Because West is headquartered in Eagan, Minnesota, most of the documents relating to its business are located in Minnesota. The same is true for documents relating to Westlaw generally, and PastStat Locator specifically. West maintains in Eagan, Minnesota, the pertinent documents related to the research, development, design, marketing and sales, financial and accounting for Westlaw and PastStat Locator; documents relating to the use and operation of Westlaw and PastStat Locator; and promotional and marketing material about Westlaw and PastStat Locator.

LIKELY WITNESSES FOR DEFENDANT THE THOMSON CORP.

14. Most, if not all, of the West employees most familiar with the research, development, source code, specifications, database maintenance, marketing, editorial content, sales, planning, finance, and accounting for Westlaw and PastStat Locator work at the Eagan campus and live in the Minneapolis/St. Paul metropolitan area. The following persons have played key roles in the design, development, and business decisions relating to PastStat Locator:

Product Development

Erv Barbre

Mr. Barbre was the Senior Vice President of New Product Development during the development and product launch of PastStat Locator. During this time, Mr. Barbre was also responsible for the marketing team that launched the product. Mr. Barbre would be expected to testify on issues relevant to any remedy in this case. In particular, Mr. Barbre could be expected to testify about the business decisions surrounding the launch of the accused product and the overall market for the accused product.

Shelly Albaum

Mr. Albaum was Vice-President of New Product Development during the early design of PastStat Locator. He championed the product development and ensured that customer needs were addressed in the product design. Mr. Albaum also could be expected to testify about the business decisions regarding the design of the accused product and the market for the accused product, both of which are relevant to any remedy in this case.

Andrew Martens

I was Senior Director of New Product Development during the design and development of PastStat Locator. I provided oversight of the user interface design of PastStat Locator. I am also one of the persons most knowledgeable of the current market for PastStat Locator, which is relevant to any remedy in this case. My input will be necessary if the present dispute is to be resolved by a negotiated settlement. I could be expected to testify regarding the design of the user interface of the accused product and current market conditions for the accused product.

David Spencer

As the Director of Statutory Product Development, Mr. Spencer sponsored the Online Statutes Redesign initiative that resulted in the creation of PastStat Locator. Mr. Spencer

was involved with business case creation for the initiative and the marketing and pricing of the product, and he could be expected to testify regarding marketing and pricing of the accused product, both of which are subjects that are relevant to any remedy in this case.

Darla Agard

Ms. Agard was the product development manager responsible for the creation of user requirements documents and technical specifications for PastStat Locator. She worked with content operations, technology, and West architects throughout the development process. Ms. Agard has significant overall knowledge of the accused product and could be expected to testify regarding the technical specifications of the accused product.

Margaret Wanstall

Ms. Wanstall was a product developer involved with the user interface and usability requirements for the PastStat Locator product. Ms. Wanstall could be expected to testify regarding the user usability requirements for the accused product.

Technology

Elizabeth Psihos

As the lead director from technology, Ms. Psihos was responsible for the content and application technology development teams throughout the product build. Ms. Psihos's team developed the editorial systems that maintained both the retrospective versioning tool and the prospective versioning system. Ms. Psihos has significant overall knowledge of the accused product and could be expected to testify regarding the accused product's operation, content, and maintenance.

Wendy Marco

Wendy Marco was the content technology project manager for PastStat Locator. Ms. Marco was responsible for the creation of the timeline and documentation related to the editorial repository and publishing pipeline developed by Ms. Psihos's team for the statutory content. Ms. Marco has significant overall knowledge of the content technology, authored multiple documents related to content technology, and could be expected to testify regarding the accused product's content and documents she authored.

Duane Torberg

Mr. Torberg was one of the lead architects for PastStat Locator development. He was involved with determining the initial meta-data requirements needed to create the relationships between the documents and the online display of such relationships. Mr. Torberg could be expected to testify regarding programming and source code for the accused product.

Dave Hendrickson

Mr. Hendrickson was also a lead architect for PastStat Locator development. He was responsible for determining how to create and pass the appropriate meta-data information to the application for proper online functionality. Mr. Hendrickson could be expected to testify regarding programming and source code for the accused product.

Todd Billings

As an application technology manager, Mr. Billings was responsible for the development of the Westlaw display of PastStat Locator content and the Westlaw functionality. Mr. Billings led a team of developers focused on servers, CDOs, document display, table of contents, search, delivery, KeyCite, and billing. Mr. Billings could be expected to testify on these topics.

Jon Eveslage

Mr. Eveslage was a lead developer reporting to Todd Billings during the development of the product. He was involved in all aspects of the Westlaw coding changes required to display PastStat Locator features and functionality online. Mr. Eveslage could be expected to testify on these topics.

Jill Janvrin

As the Senior Project Manager for the technology groups, Ms. Janvrin managed and created the necessary timelines and managed the creation of user requirements and system requirements from the product development and technology teams involved with the product. Ms. Janvrin could be expected to testify on these topics.

Content Operations

Richard Brown

As a content operations director, Mr. Brown led the editorial team hired to create the retrospective repository for the versioning product. Mr. Brown had twenty direct reports analyzing state and federal legislation, applying effective dates to hundreds of thousands of statutes, and creating versions of statutes that had never appeared in print or online. Mr. Brown could be expected to testify on these topics.

John Elstad

John Elstad was a director in content operations during the product build of PastStat Locator. Mr. Elstad contributed to the creation of the specifications for the product build, specifically as it related to content nuances and legislative anomalies. Mr. Elstad could be expected to testify on these topics.

Finance

Craig Eiter

As Vice-President of Finance, Mr. Eiter's team provided the financial analysis for the development of the business case supporting the PastStat Locator build and has tracked the PastStat Locator performance versus Business Case. Mr. Eiter could be expected to testify regarding the financial aspects and performance of the accused product, some of which are relevant to any remedy in this case.

The following persons played key roles in the development of an earlier statutes versioning product on Westlaw:

Product Development

Steven Anderson

Mr. Anderson was a director of online development when the first generation versioning product was designed and launched on Westlaw in the 1990s. Mr. Anderson could be expected to testify regarding the development and operation of this early statutes versioning product.

Technology

Peter Blissenbach

Mr. Blissenbach was the technology lead for the first generation versioning product. Mr. Blissenbach could be expected to testify regarding the development and operation of this early statutes versioning product.

15. While I understand that Timebase has not set forth a specific infringement theory in its Complaint, some or all of the individuals listed above would likely be witnesses in this case given their roles in the design and development of Westlaw and PastStat Locator. To the best of my knowledge, all the persons mentioned in Paragraph 14 above currently live in the Minneapolis-St. Paul metropolitan area except Shelly Albaum, who currently lives in Salt Lake City, Utah.

NON-PARTY WITNESSES LOCATED IN MINNESOTA

16. Several of the persons listed above are no longer employed by West, including Erv Barbre, Shelly Albaum, Wendy Marko, and Margaret Wanstall. Mr. Barbre, Ms. Marko, and Ms. Wanstall live in Minnesota, in the Minneapolis/St. Paul metropolitan area.

LOCATION OF KEY BUSINESS PERSONS

17. In addition to the design and development team, the key Westlaw business decisionmakers are based in Minnesota. Almost the entire executive leadership team operates from West's Eagan, Minnesota campus. For example, Steve Swansson, West's Vice President of Sales and Account Management Operations, lives in Minnesota and works at West's Eagan headquarters. Chip Cater, Executive Vice President and Chief Strategy Officer, lives in Minnesota and works at West's Eagan headquarters. Rick King, Executive Vice President and Chief Operating Officer, lives in Minnesota and works at West's Eagan headquarters. Jeannine Bieter, Vice President of Inside Sales and Telephone Account Management, lives in Minnesota and works at West's Eagan headquarters. Jeff Patrias, Senior Director of Direct Marketing, lives in Minnesota and works at West's Eagan headquarters. Elizabeth Psihos, Vice President of Technology, lives in Minnesota and works at West's Eagan headquarters. Craig Eiter, Vice President of Finance, lives in Minnesota and works at West's Eagan headquarters. Some or all of these persons are likely witnesses in this case and could be expected to testify regarding the business operations they manage.

THE THOMSON CORP.'S CONNECTION WITH ILLINOIS

18. Apart from activities related to the sales and use of Westlaw, which occur in all fifty states, Westlaw has no relevant connections to the state of Illinois. There are no Westlaw computer operations or servers in Illinois, nor any Westlaw research, development, editorial, financial or accounting facilities in Illinois. Westlaw business activities in Illinois are primarily limited to its sales and account management activities managed from offices in Deerfield and Chicago, Illinois. The Illinois offices, which employ about 58 people, provide regional support to sales representatives in the Midwest, office space for sales representatives and account managers, and a customer training facility.

19. No employee at any West office or facility in Illinois has substantial knowledge related to this case, and Thomson does not expect any Thomson or West employee located in Illinois to be a witness in this case.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on February 9, 2007, in Eagan, Minnesota.

s/ Andrew Martens

Andrew Martens