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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 METRO-GOLDWYN-MAYER  
19 STUDIOS INC., et al.,  
20 Plaintiffs,

v.

21 GROKSTER, LTD., et al.,  
22 Defendants.

CV 01-08541 SVW (FMOx)  
(Consolidated with: CV 01-09923 SVW  
(FMOx))

**DECLARATION OF VANCE  
IKEZOYE IN SUPPORT OF  
PLAINTIFFS' MOTIONS FOR  
SUMMARY JUDGMENT**

23 JERRY LEIBER, et al.,  
24 Plaintiffs,

v.

25 CONSUMER EMPOWERMENT BV  
26 a/k/a FASTTRACK, et al.,  
27 Defendants.

Date: May 1, 2006  
Time: 1:30 p.m.  
Ctm: The Hon. Stephen V. Wilson

28 **AND RELATED COUNTERCLAIMS**

Ikezoye  
EXHIBIT NO. 2  
9-10-09  
A. IGNACIO HOWARD CSR 9830

1 I, Vance Ikezoye, the undersigned, declare:

2 1. I am the President and Chief Executive Officer of Audible Magic  
3 Corporation. I make this declaration to demonstrate that there are methods to  
4 prevent unauthorized recordings from being distributed on peer-to-peer systems  
5 like those operated by defendants; such methods have been and continue to be  
6 deployed, with tremendous success, in mass scale commercial settings. I have  
7 personal knowledge of the following facts and, if called and sworn as a witness,  
8 could competently testify thereto.

9 2. Established in 1999, Audible Magic focuses on the application of  
10 content-based audio identification technology as a solution for digital rights  
11 management. It is the leader in providing content management services to the  
12 digital media and entertainment industries.

13 3. From the beginning, Audible Magic has proudly disseminated  
14 information on the capabilities and successes of our technology. Audible Magic  
15 has a regular and frequent presence in industry conferences. We continue to  
16 market our technology in emergent and evolving contexts.

17 4. The core of Audible Magic's work is audio recognition technology  
18 that classifies sound based on its perceptual characteristics. A company called  
19 Muscle Fish, LLC, which began in 1992 and which Audible Magic acquired in  
20 July 2000, originally developed the technology. This technology relies on Mel-  
21 Filtered Cepstral Coefficients ("MFCCs"), which are measurements that accurately  
22 characterize and model audio in the same way the ear perceives sound. When a  
23 person hears any sound, the human ear perceives the spectra of the sound. (A  
24 spectrum measures amplitude as a function of frequency.) We have found that  
25 measuring the shape of the spectrum is the method of identifying uniqueness in a  
26 segment of audio that is the most accurate and robust, i.e., able to work in many  
27 different environments and despite changes in format and acoustic and digital  
28

1 modifications. Thus, Audible Magic's technology analyzes the shape of the  
2 spectrum inherent in a digital audio file. The MFCC describes the shape of that  
3 spectrum, adjusted for the way that the human ear actually perceives sound.

4       5.     The analysis performed by this technology produces a set of numeric  
5 values called a "feature vector" or "digital fingerprint," which is absolutely unique  
6 to a particular master recording, whether a sound recording or the soundtrack to a  
7 video or motion picture. In essence, each digital fingerprint identifies a master  
8 recording, much as a human fingerprint identifies a person. The fingerprinting  
9 technology works on all forms of audio, regardless of the digital format into which  
10 the audio has been encoded.

11       6.     The fingerprint remains constant through all typical audio processing,  
12 such as the compression that occurs when an audio file is encoded into digital  
13 formats, including MP3, the most popular format. Thus, one fingerprint can be  
14 used to recognize all manipulated forms of the original audio. The fingerprints are  
15 accurate enough that they can differentiate between various live and studio  
16 performances of a single song.

17       7.     Audible Magic's technology also accurately identifies songs  
18 regardless of the bit rate of the file. The bit rate is the number of bits (small pieces  
19 of data) that occur in a given amount of time, usually a second. Thus, a bit rate is  
20 usually expressed in some multiple of bits per second -- for example, kilobits, or  
21 thousands of bits per second (Kbps). The higher the bit rate, the larger the file and  
22 the better the sound quality. Users can set the bit rate at several different levels,  
23 but the identification technology will work in a range of bit rates from highly  
24 compressed 20 Kbps to CD quality, over 300 Kbps. This range includes the bit  
25 rates used by regular users of P2P services, who generally prefer the higher quality  
26 that comes with higher bit rates, usually at least 56 Kbps and more often much  
27 higher.

28

1           8.     The fingerprints are very small. Only 20 seconds of a master  
2 recording is needed to create the fingerprint. A typical fingerprint is hundreds of  
3 times smaller than a typical file encoded in MP3, the most popular digital format  
4 for sound recordings, and thousands of times smaller than a typical WAV file  
5 (another popular digital format for sound recordings). The small size of the  
6 fingerprint makes it much easier to store and much faster to transmit and check the  
7 fingerprints of unknown audio files against a reference database of fingerprints of  
8 known recordings.

9           9.     The fingerprint technology is very secure and cannot be tampered  
10 with. As long as the audio is not distorted to the point that the listening experience  
11 is significantly affected, the fingerprint will positively identify the recording.

12          10.    Audible Magic possesses a database of fingerprints from  
13 approximately 6 million copyrighted songs. This database roughly represents the  
14 music available for purchase in North America and consists of music from the four  
15 major and over 500 independent music labels. Fingerprints from this large archive  
16 are used to populate an Audible Magic Identification Server with a reference  
17 database.

18          11.    Audible Magic markets several tools that employ our patented audio  
19 fingerprinting technique. Our "CopySense P2P Plug-in" can be easily integrated  
20 into any file-sharing service. Based on our content identification technology and  
21 services, the CopySense P2P Plug-in provides the file-sharing network with the  
22 ability to identify, filter, and link to purchase any registered copyrighted file.  
23 Additionally, our "CopySense Network Appliance" was designed specifically to  
24 intelligently manage P2P applications at a network level. Its capabilities include  
25 identifying and blocking (or allowing) P2P files containing offending media  
26 content such as copyrighted songs, by performing "on-the-fly" matches of files  
27 against copyrighted material registered in our database. Finally, our "Replicheck"  
28 service allows the media manufacturing industry to automatically check

1 reproduction jobs for copyrighted content by matching each song on a CD master  
2 against our database.

3 12. With the Copy Sense P2P Plug-in, Audible Magic's fingerprinting  
4 technology is currently being used to "block" or prevent unauthorized recordings  
5 from being distributed and copied in P2P systems. These systems are very similar  
6 to those operated by defendants in this case.

7 13. For example, Audible Magic has successfully deployed the audio  
8 fingerprinting technology in the iMesh system. The Audible Magic tool has been  
9 adopted by hundreds of thousands of iMesh users and currently appears to make up  
10 a significant majority of all active iMesh users.

11 14. The Audible Magic tool has demonstrated itself to be readily scalable  
12 to enormous volume.

13 15. Based on the Audible Magic technology that was incorporated into the  
14 iMesh client, an audio fingerprint was calculated for each target file at the client  
15 level. That fingerprint was communicated to an Audible Magic Identification  
16 Server hosting a database of fingerprints corresponding to works not authorized for  
17 distribution. If the fingerprint of the unknown audio file matched a fingerprint in  
18 the reference database, the identification server responded with a command to the  
19 user module to "block" the file. If the fingerprint was not recognized, the server  
20 sent a "do not block" command. When the module received a "block" command  
21 from the server, it terminated the transfer and deleted what had already been  
22 received. A "do not block" command resulted in the completion of the download.  
23 The iMesh-Audible Magic filter was, therefore, a "filter out" filter, meaning that  
24 all files were permitted to be freely exchanged unless the work was specifically  
25 identified as one that was not authorized for distribution.

26 16. The iMesh-Audible Magic filter was designed to filter on both the  
27 "download" side (when the iMesh user attempted to download a file from another  
28 user) and the "upload" side (when someone attempted to obtain a file from the

1 iMesh user). In this way, iMesh could ensure that its users were not downloading  
2 or distributing to others files not authorized for distribution. In addition, the  
3 Audible Magic technology was “network agnostic,” which meant that it filtered  
4 sound recordings on multiple networks, across platforms, without regard to the  
5 particular brand of client application on the other end of the intended transfer.

6 17. I understand that testing of the iMesh-Audible Magic filter has  
7 demonstrated, with real world empirical evidence, that the audio fingerprinting  
8 filter would successfully block well over 99% of the files unauthorized for peer-to-  
9 peer distribution. These results confirm our own evaluations and testing of the  
10 fingerprinting technology. That technology, moreover, can be implemented on its  
11 own, or in conjunction with other filters.

12 18. iMesh is currently using an architecturally similar version of the  
13 Audible Magic tool in its commercial business relating to the authorized  
14 distribution of licensed recordings. In that enterprise, iMesh is licensed to  
15 distribute certain works. With the Audible Magic fingerprinting technology,  
16 iMesh is able to ensure that its users are not downloading or distributing files that  
17 are not authorized for distribution, regardless of the network to which iMesh is  
18 connected and regardless of whether that network contains different brands of  
19 client applications that do not filter out copyrighted works. The Audible Magic-  
20 iMesh filter has scaled seamlessly to 5 million “look-ups” per day, and easily could  
21 scale to meet the needs of any network in use today.

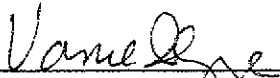
22 19. Audible Magic has also implemented its fingerprinting technology on  
23 a mass scale at the educational network and ISP level. For example, over 60  
24 universities use Audible Magic’s CopySense Network Appliance, which is able to  
25 completely block all P2P protocols. The system enables the schools to filter P2P  
26 traffic by blocking all transfers or by blocking only those transfers containing  
27 copyrighted or sexual content. The many schools that use the CopySense Network  
28 Appliance include the following publicly announced universities: Central

1 Washington University; Fresno Pacific University; Texas A&M, Kingsville;  
2 Tulane University; University of Maryland, Coppin State; University of Portland;  
3 and Wittenberg University. Many of these schools turned to Audible Magic  
4 because illegal file sharing was debilitating their network bandwidth. At  
5 Wittenberg University, for example, it was the Student Senate that unanimously  
6 voted to block illegal file-sharing, because of the poor network performance that  
7 was being caused by illegal file-sharing. Twice in the same year, P2P traffic had  
8 taken the university's network bandwidth down to zero. Audible Magic's  
9 technology resolved the issue simply by blocking the illegal file-sharing. Similar  
10 positive effects on network bandwidths were seen at each of the other universities  
11 to employ the technology. The Audible Magic device monitors myriad protocols  
12 simultaneously and terminates transfers in real-time at each of these schools.

13 20. Needless to say, our technology is effective when our database is  
14 comprehensive. Any initial press reports of early stumbles pertaining to the iMesh  
15 deployment are almost entirely attributable to initial delays in populating our  
16 reference database. That database is now expansive, and it continues to grow. As  
17 discussed above, our technology has been implemented in numerous mass scale  
18 commercial settings with tremendous success.

19 21. In sum, for several years, Audible Magic has offered copyright  
20 filtering technology and tools that could be used effectively to stop infringement  
21 on P2P networks, while not interfering with the free exchange of noninfringing  
22 works. The Audible Magic technology can easily handle tens of millions of  
23 requests a day for identification against a reference database of millions of  
24 recordings. The technology currently achieves above 99% correct identification  
25 rates; our false positive identification rate is better than 1 in 10,000. These rates  
26 are minimums as we have not performed tests that establish the upper bounds of  
27 our technical accuracy. Audible Magic's goal, which we are continually working  
28 towards, is 100% correct identification.

1 I declare under penalty of perjury under the laws of the United States that  
2 the foregoing is true and correct and that this Declaration was executed on  
3 February 2, 2006, at Los Gatos CA.

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6 Vance Ikezoye

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