

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

vs.

MARK D. PAPERMASTER,

Defendant.

08 Civ. 9078 (KMK)

**DECLARATION OF
RODNEY C. ADKINS**

I, Rodney C. Adkins, declare as follows:

1. I am currently employed by International Business Machines Corporation ("IBM") as Senior Vice President, Development and Manufacturing, IBM Systems and Technology Group.

2. I have been employed by IBM for 27 years, and have served in my current position for approximately five years. In my current capacity I oversee and am responsible for all product development and manufacturing activities within IBM's Systems and Technology Group. My responsibilities include global oversight of all server and storage systems hardware and software development activities, as well as semiconductor design, development and manufacturing operations. I also lead semiconductor process and technology development activities for microprocessors and for application-specific integrated circuits used by IBM and its Original Manufacturing Equipment customers. I am one of IBM's Senior Executive Officers.

3. IBM is one of the world's largest technology companies. With nearly 400,000 employees working in locations across the world, IBM is a globally integrated enterprise that targets the intersection of technology and effective business. In addition to the System and Technology Group, the Company's major operations comprise a Global Technology Services segment, a Global Business Services segment, a Software segment and a Global Financing segment.

4. The Systems and Technology Group, in which I hold a leadership position, is of particular significance to the motion that is before the Court. Generally speaking, the Systems and Technology Group is the IBM business that provides the Company's clients with a wide range of business solutions to advanced computing and electronic data storage needs. To that end, the Systems and Technology Group designs and manufactures a wide variety of electronic devices, including microprocessors and servers. A microprocessor is a type of electronic device that provides intelligence and functionality to electronic devices, such as computers and handheld devices. A server operates over a computer network and commonly is designed to handle the computing needs of multiple, concurrent users.

5. IBM's product offering in the area of microprocessors and servers, both large and small, is extensive. IBM derives substantial revenue from sales of microprocessors and servers.

6. In my capacity as head of development and manufacturing for the Systems and Technology Group, I am very familiar with many of the technical aspects involved in the design, development and manufacturing of microprocessors and servers.

7. Mark D. Papermaster has worked at IBM for 26 years. Mr. Papermaster has spent most, if not all, of his career at IBM in various product design and development capacities within the Systems and Technology Group, the department for which I am currently responsible. I have had a direct working relationship with Mr. Papermaster for at least the last ten years, and for most of that period Mr. Papermaster reported, indirectly, to me.

8. In addition to my supervisory relationship with Mr. Papermaster, over the past eight years I have served as Mr. Papermaster's mentor. IBM has instituted a mentoring program for key personnel designed to ensure that highly talented managers like Mr. Papermaster receive guidance from even more senior managers. In my capacity as Mr. Papermaster' mentor, I have discussed extensively with Mr. Papermaster his employment experiences at IBM.

9. I am thus very familiar with the job responsibilities Mr. Papermaster has had at IBM, especially his experiences over the last eight years.

10. Most of Mr. Papermaster's career at IBM has been dedicated to IBM's "Power" architecture, an extensive set of fundamental technical know-how that IBM uses to build, among other things, servers and microprocessors that have a wide variety of applications. IBM's "Power" technology has unique, high performance capabilities that make it compare favorably to alternatives in the marketplace. "Power"-based processors are commonly found in servers and a broad variety of other electronic devices, such as computers, handheld devices and video gaming consoles. IBM "Power" technology is of critical importance to IBM's business.

11. Although most recently Mr. Papermaster has been the head of IBM's "blade" development business,¹ I believe that Mr. Papermaster remains IBM's top expert in "Power" architecture and technology.

12. In addition to his extensive knowledge of confidential know-how related to the Company's "Power" technology, Mr. Papermaster's responsibilities within IBM have allowed him to gain access to other significant, highly confidential information that is of utmost importance to IBM. As I noted above, over the past two years Mr. Papermaster has worked on the design, development and manufacture of "blade" systems, known as "IBM BladeCenter" that use architecture other than "Power." The design and integration of such non-"Power" architecture also involves significant confidential know-how of IBM.

13. By virtue of his position within IBM's Integration & Values Team ("I&VT"), a select group of business executives of which I am similarly a member, Mr. Papermaster is also fully familiar with confidential information regarding the Company's overall strategy and long-term business opportunities, as well as information concerning the development status of specific IBM products other than microprocessors and servers.

14. The technological and strategic know-how in Mr. Papermaster's possession represents the product of IBM's extraordinary investment in innovation. Each year, IBM invests billions of dollars and countless manhours in developing technological innovations that enable IBM to be competitive in the marketplace. For

¹ A "blade" is a small, thin server that fits into "rack" or "chassis" with other "blades" forming a system IBM calls "BladeCenter."

obvious reasons, such information is vital to IBM's business current and future prospects. Indeed, over the years, IBM has built entire business segments around such highly confidential information. Consequently, that information is carefully safeguarded and is not made accessible to the public, to our competitors, or even to most IBM employees. Most of the confidential information with which Mr. Papermaster is thoroughly familiar is disclosed to IBM employees on a need-to-know basis only. Based on my extensive knowledge of the subject matter involved, I do not believe that IBM's competitors can replicate from public sources the highly confidential information Mr. Papermaster has learned over his career at IBM. In my opinion, the trade secrets and confidential information in Mr. Papermaster's possession will be valuable for a very long time, certainly longer than 12 months.

15. Mr. Papermaster recently informed me that he had decided to resign his employment with the Company in favor of a new position with Apple Inc. ("Apple"). Based on the limited information Mr. Papermaster shared with me, I believe Mr. Papermaster will be working very closely with Apple's Chief Executive Officer, Steven Jobs, as a top technical strategist for that company. Mr. Papermaster told me that his new position with Apple would be an officer position, subject to approval by Apple's Board of Directors. Although Mr. Papermaster declined to provide additional details, he expressed that he will have the opportunity to blend his expertise in several markets in which Apple competes or plans to compete.

16. I am very concerned about Mr. Papermaster's decision to join Apple. If Mr. Papermaster is permitted to assume employment with Apple, the use or disclosure of Mr. Papermaster's extensive knowledge of trade secrets and confidences

incorporated in IBM's "Power" architecture and his intricate knowledge concerning the design, development and manufacture of IBM's microprocessors, servers and enterprise systems will cause IBM extraordinary competitive harm. I believe that Mr. Papermaster would be unable to perform his new responsibilities at Apple without divulging or using IBM's confidential information.

17. Like IBM, Apple is an important player in the world of technology. IBM and Apple are engaged in direct competition in at least three areas: servers, personal computers and microprocessors.

18. Apple's Xserve line of servers, which are designed for workgroup and internet services, competes with IBM's System x and BladeCenter lines of small-enterprise and internet-scale computing servers. That is exactly the area where Mr. Papermaster, using IBM's highly confidential information, has been working for the last two years.

19. Although IBM sold its significant personal computer business to the Lenovo Group in 2005, to this day IBM continues to have an interest in that business through an equity investment in Lenovo. Additionally, under an agreement IBM signed with Lenovo at the time of Lenovo's acquisition, IBM continues to sell personal computers when such sales accompany technical services transactions, which IBM enters into on a regular basis. IBM has generated substantial revenue from such sales in the past few years.

20. Recent events point to heightened competition between Apple and IBM in the future. In April 2008, Apple acquired P.A. Semi, a microchip design company based in California with which IBM competes. Since at least 2006, IBM's

microprocessors have actively competed with those of P.A. Semi. Prior to 2006, Apple used IBM's PowerPC microprocessors, which utilize IBM's "Power" architecture, in Apple's personal computers. In 2006, when Apple discontinued use of IBM's PowerPC microprocessors in its line of desktop and laptop computers, Apple considered using P.A. Semi's microprocessors to replace IBM's. IBM and P.A. Semi are competitors.

21. Similarly, IBM is an important participant in the video gaming market through its sales of PowerPC microprocessors. Industry reports suggest that P.A. Semi is developing microprocessors capable of supporting various video gaming applications.

22. Although Apple initially refused to comment on the reasons for and strategic objectives behind the P.A. Semi acquisition, IBM believes that Apple intends to incorporate P.A. Semi microprocessors in its product offerings. IBM believes that Apple intends to develop a more comprehensive line of server and technology systems devices utilizing P.A. Semi processors and IBM's "Power" architecture, the very technology in which Mr. Papermaster is one of the world's foremost experts. That is, Apple may use P.A. Semi microprocessors to replace the Intel-based architecture it currently employs in its Xserve line of servers, which, as explained above, compete with IBM's System x and BladeCenter lines of servers. Mr. Papermaster's current responsibilities include oversight of all design, development and manufacturing activities for the BladeCenter line of servers.

23. In addition, Steven Jobs, Apple's CEO, told the press recently that "P.A. Semi is going to do system-on-chips for iPhones and iPods." IBM designs and manufactures microprocessors suitable for each of those applications. In fact, IBM

currently manufactures and sells chips for use in mobile telephones that directly compete with Apple products such as the iPhone. Moreover, up until two years ago, Apple used IBM's microprocessors in its line of personal computers.

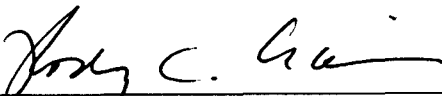
24. IBM granted P.A. Semi a license for purposes of developing low-power microprocessors utilizing some, but not all, of the micro-architecture employed by IBM's PowerPC chip. It is my understanding that, following Apple's acquisition of P.A. Semi, IBM agreed in an amendment to the license to waive its right to terminate such license on account of PA Semi's "change of control." However, one important limitation that is set forth in that amendment is that P.A. Semi may no longer use IBM's "Power" architecture to design *new* lines of microprocessors. Moreover, in addition to the prohibition on the design of new microprocessors set forth in the amendment, the P.A. Semi license contains several limitations and expressly prohibits the use of IBM's "Power" architecture for purposes of designing, manufacturing and selling devices for use in servers and non-portable game consoles. Finally, the confidential know-how that Mr. Papermaster has acquired over his lengthy career at IBM far exceeds the know-how that IBM has licensed to P.A. Semi. Indeed, many of the microprocessors that IBM manufactures, and with which Mr. Papermaster is thoroughly familiar, include extensive functionality that is not covered by and clearly falls outside the scope of the P.A. Semi license. In my opinion, that functionality is in large part responsible for the commercial success IBM's microprocessors have enjoyed.

25. In my opinion, if Apple and P.A. Semi gained access to the confidential information concerning "Power" architecture and microprocessor and server design, development and manufacture that Mr. Papermaster has in his

possession, IBM would be placed at an extreme competitive disadvantage in the marketplace and the harm to IBM would be irreparable. At the processor level, Apple and P.A. Semi would gain access to technical details of the "Power" architecture beyond those IBM has already agreed to convey to P.A. Semi/Apple. Such information would allow Apple to develop processors with greater capabilities than currently-existing P.A. Semi processors. Indeed, Mr. Papermaster could supply Apple with a wide range of highly confidential technical information that does not fall within the scope of the P.A. Semi license. At the system level, Mr. Papermaster's knowledge would allow Apple to improve the Intel-based architecture used in its personal computers, and develop new servers and systems that would compete with IBM's product offerings. Finally, by combining Mr. Papermaster's skills at both levels, Apple and P.A. Semi could develop a new architecture utilizing P.A. Semi's "Power"-based processors to replace Apple's current Intel-based system entirely, an ability which Apple and P.A. Semi do not currently possess. Any of these developments would cause irreparable injury to IBM's ability to compete in the marketplace.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: October 23, 2008
Armonk, New York



Rodney C. Adkins