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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**


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ISYS TECHNOLOGIES, INC., a Nevada  
Corporation,

Plaintiff,

v.

GOOGLE INC., a Delaware Corporation;  
SAMSUNG ELECTRONICS USA, INC., a  
Delaware Corporation; ACER AMERICA CORP.,  
a California Corporation; AMAZON.COM, INC.,  
a Delaware Corporation; and BEST BUY CO.,  
INC., a Minnesota Corporation,

Defendants.

**Case No. 2:11-CV-507 CW****OBJECTIONS OF GOOGLE INC. TO  
DECLARATION OF DAVID POLITIS****Judge Clark Waddoups**


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Defendant Google Inc. hereby objects to several statements made in the Declaration Of David Politis In Support Of Isys' Motion For Temporary Restraining Order And Preliminary Injunction dated 6 June 2011 (hereinafter "Politis Declaration" or "Politis Decl."). The objections are set forth below following each of the several statements from the Politis

Declaration. None of the statements is admissible under the Federal Rules of Evidence (“FRE”) for the reasons stated.

### STATEMENTS AND OBJECTIONS

All the following statements repeated from the Politis Declaration are in *italics*.

1. *In November 2010, the Consumer Electronics Association, owner of the International Consumer Electronics Show, announced that ISYS’ Xi3 Modular Computer was to be recognized as a 2011 International CES Innovations Design and Engineering Award winner in the computer hardware category. (Politis Decl. at ¶ 1)*

### OBJECTIONS

- a. Hearsay. To the extent the statement is offered to prove that ISYS’ Xi3 Modular Computer was to be recognized as a 2011 International CES Innovations Design and Engineering Award winner in the computer hardware category, it is inadmissible as hearsay under FRE 802.
- b. No Foundation. To the extent the statement is offered to prove that the Consumer Electronics Association made the asserted announcement, it lacks foundation as to the declarant’s knowledge of any such announcement.
- c. Best Evidence. This statement should be excluded as an improper introduction of the contents of writings (the announcement) without providing the announcement itself. The statement therefore lacks original documents that should be presented under FRE 1002 and should be excluded because it is not the best evidence.
- d. Irrelevant. This statement is not relevant under FRE 401 because any announcement about the Xi3 Modular Computer is of no consequence to the

determination of the action. The statement does not refer to the CHROMIUMPC mark or any issues of consequence to the determination of the action. It is therefore inadmissible under FRE 402.

2. *Images of the approximately 4" x 3½" Xi3 Modular Computer include:*



(Politis Decl. at ¶ 2)

#### OBJECTIONS

No Foundation. This statement lacks any information as to when these products were made, when the photograph was taken, or whether the products have ever been seen by the public.

3. *The Xi3 Modular Computer and other Xi3 Technology products thereafter received rave reviews at the January 6-9, 2011 International Consumer Electronics Show in Las Vegas, Nevada (“CES 2011”).* (Politis Decl. at ¶ 3)

#### OBJECTIONS

- a. Hearsay. To the extent the statement is offered to prove that individuals or entities favorably received the Xi3 Technology products at CES 2011, it is inadmissible as hearsay under FRE 802.
- b. No Foundation. To the extent the statement is offered to prove that communications were made to declarant regarding Xi3 Technology products at CES 2011, it lacks foundation as to the declarant’s knowledge of any such communications, including who made them, when, and under what circumstances.
- c. Best Evidence. This statement should be excluded as an improper introduction of the contents of writings (the “rave reviews”) without providing the reviews themselves. The statement therefore lacks original documents that should be presented under FRE 1002 and should be excluded because it is not the best evidence.
- d. Irrelevant. This statement is not relevant under FRE 401 because the critical reception to the Xi3 Modular Computer is of no consequence to the determination of the action. The statement does not refer to the CHROMIUMPC mark or any issues of consequence to the determination of the action. It is thus inadmissible under FRE 402.

4. *A Business Wire New [sic] Release covering the CES 2011 show characterized the impact of the Xi3 Technology as “Xi3 Corporation Rocks CES 2011.”* (Politis Decl. at ¶ 4)

#### OBJECTIONS

- a. Hearsay. To the extent the statement is offered to prove the impact of Xi3 Technology at CES 2011, it is inadmissible as hearsay under FRE 802.
- b. No Foundation. To the extent the statement is offered to prove that the news release was issued, it lacks foundation as to the declarant’s knowledge of the release, including who authored and released it, when, and to what media outlets.
- c. Best Evidence. This statement should be excluded as an improper introduction of the contents of writings (the news release) without providing the release itself. The statement therefore lacks original documents that should be presented under FRE 1002 and should be excluded because it is not the best evidence.
- d. Irrelevant. This statement is not relevant under FRE 401 because the impact of Xi3 Technology at CES 2011 of no consequence to the determination of the action. The statement does not refer to the CHROMIUMPC mark or any facts of consequence to the determination of the action. It is therefore inadmissible under FRE 402.

5. *A version of the Xi3 Modular computer is being branded and promoted as the CHROMIUMPC computer.* (Politis Decl. at ¶ 5)

OBJECTIONS

No Foundation. This statement lacks a proper foundation because it does not identify or describe what constitutes the purported “brand[ing] and promot[ion]” or what the basis of declarant’s knowledge of the purported “brand[ing] and promot[ion]” is.

6. *One example of the Xi3 CHROMIUMPC computer is depicted as follows:*



(Politis Decl. at ¶ 6)

OBJECTIONS

No Foundation. This statement lacks any information as to when this product was made, when the photograph was taken, and whether the image represents a true and correct photograph of an actual product bearing the CHROMIUMPC mark. The statement also lacks a foundation as to what it means to “depict” an “example” of “the Xi3 CHROMIUMPC computer.”

7. *In 2008, Google initiated an open-source software development project named Chromium. Google invited independent third parties to participate. (Politis Decl. at ¶ 7)*

**OBJECTIONS**

- a. Not Competent. There is nothing to show that the declarant has any competence to testify about Google's CHROMIUM open-source development projects, and the statement is therefore inadmissible under FRE 601.
- b. No Foundation. This statement lacks a proper foundation because it does not provide the basis for the declarant's purported knowledge about Google's open-source development projects.
8. *This Chromium software initiative was for software development by third parties for networks such as the Internet for accessing, navigating, searching, browsing, running web applications and/or communicating. (Politis Decl. at ¶ 8)*

**OBJECTIONS**

- a. Not Competent. There is nothing to show that the declarant has any competence to testify about Google's CHROMIUM software initiative, and the statement is therefore inadmissible under FRE 601.
- b. No Foundation. This statement lacks a proper foundation because it does not provide the basis for the declarant's purported knowledge about Google's software initiatives.

9. *On May 11, 2011, Google announced the public launch of upcoming sales of its CHROMEBOOK PC product and hinted at also using CHROMEBOX for a desktop PC.*  
(Politis Decl. at ¶ 9)

#### OBJECTIONS

- a. Not Competent. There is nothing to show that the declarant has any competence to testify about Google's sales announcements, and the statement is therefore inadmissible under FRE 601.
- b. No Foundation. This statement lacks a proper foundation because it does not provide the basis for the declarant's knowledge about the purported announcement. The statement also fails to provide a foundation for what "public launch of upcoming sales" of a product means or what the nature of the purported announcement or purported "hint[ing]" was.
- c. Best Evidence. This statement should be excluded as an improper introduction of the contents of writings (the announcement) without providing the announcement itself. The statement therefore lacks original documents that should be presented under FRE 1002 and should be excluded because it is not the best evidence.



10. *Under the direction and inducement of Google in the U.S., Google's CHROMEBOOK PC product is being manufactured, promoted and advertised by Samsung and Acer for sale in the United States and other countries.* (Politis Decl. at ¶ 10).

#### OBJECTIONS

- a. Not Competent. There is nothing to show that the declarant has any competence to testify about the manufacturing, promotion, or advertising of the CHROMEBOOK product or about Google's relationships with Samsung or Acer, and the statement is therefore inadmissible under FRE 601.
- b. No Foundation. This statement does not provide the basis for the declarant's purported knowledge about the manufacturing, promotion, or advertising of the CHROMEBOOK product or about Google's relationships with Samsung or Acer.
- c. Improper Opinion. With respect to "direction and inducement," this is opinion offered to prove a fact when it has not been shown that the witness is an expert. Thus the statement is an inadmissible opinion of a lay person under FRE 701.
- d. Best Evidence. To the extent this statement is based on the contents of writings, it should be excluded as an improper introduction of the contents of writings without providing the writings themselves. The statement therefore lacks original documents that should be presented under FRE 1002 and should be excluded because it is not the best evidence.

Dated this 13th day of June, 2011.

/s/ Craig Buschmann  
Robert Stolebarger  
Craig Buschmann  
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*Attorneys for Google Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of June, 2011, I caused a true and correct copy of the **OBJECTIONS OF GOOGLE INC. TO DECLARATION OF DAVID POLITIS** to be served as follows:

Todd E. Zenger  
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U.S. Mail, postage prepaid  
 Hand Delivery  
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 Overnight courier  
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By: /s/ Sherice L. Atterton