

Todd E. Zenger (5238)
Dax D. Anderson (10168)
Joshua S. Rupp (12647)
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Phone: (801) 328-3600
Fax: (801) 321-4893
Email: tzenger@kmclaw.com
Email: danderson@kmclaw.com
Email: jrupp@kmclaw.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ISYS TECHNOLOGIES, INC., a Nevada
Corporation,

Plaintiff,

vs.

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.

Civil Action No. 2:11-CV-507 C

Judge Clark Waddoups

COMPLAINT

and

DEMAND FOR TRIAL BY JURY

Plaintiff, Isys Technologies, Inc., hereby complains of the defendants as follows.

INTRODUCTION

Isys Technologies, Inc. is the user and owner of the mark CHROMIUMPC for use on computer hardware. This use began in 2009 through Xi3 Corporation, an Isys subsidiary. In 2010, Isys filed for trademark registration thereby providing constructive notice to all including Google of Isys' ongoing intentions to brand computer hardware with the CHROMIUMPC mark. In November 2010 and January 2011, Google knew that Isys received significant awards through its Xi3 subsidiary at national computer tradeshows for new computer hardware being readied for market launch. Google has now opposed Isys' application for CHROMIUMPC relying upon the name of open source software called Chromium by Google and by many, independent open-source developers over which and over whom Google exercises no material control.

Knowing of Isys and its intentions and preparations for large-scale manufacturing and selling of computer hardware, Google was privately preparing new hardware products and filed a trademark application in February 2010 for SPEEDBOOK for computer hardware. When Google's plans to use SPEEDBOOK for a new PC hardware product were derailed by the owner of another SPEEDBOOK mark in late 2010, Google switched its behind-the-scenes efforts to CHROMEBOOK for PC hardware products while delaying Isys' trademark registration by filing unnecessary extensions of time until Google publicly launched its new hardware PC products on May 11, 2011 and thereafter demanding that Isys cease and desist using its CHROMIUMPC mark and abandon its application for registration. This causes damage and irreparable harm to Isys. Isys seeks an expedited review of the matters, invalidation of Google's claims to rights in the mark CHROMIUM and an injunction to prevent the sale of computer hardware by Google bearing a mark confusingly similar to CHROMIUMPC, namely, CHROMEBOOK and/or CHROMEBOX for PC hardware products.

PARTIES

1. Plaintiff, Isys Technologies, Inc. is a Nevada corporation registered to transact business in Utah ("Isys"). ISYS' principal place of business is in Utah.
2. Defendant Google, Inc. is a Delaware corporation ("Google").

3. Defendant Samsung Electronics USA, Inc. is a Delaware corporation (“Samsung”).

4. Defendant Acer America Corporation is a California corporation (“Acer”).

5. Defendant Amazon.com, Inc. is a Delaware corporation (“Amazon.com”).

6. Defendant Best Buy Company, Inc. is a Minnesota corporation (“Best Buy”).

7. John Does 1-10 are yet to be identified agents, affiliate or associated companies or individual participating in, facilitating and/or inducing the acts of Google, Samsung, Acer, Amazon.com and/or Best Buy.

8. Google, Samsung, Acer, Amazon.com, Best Buy and John Does 1-10 are collectively referred to as “Defendants.”

JURISDICTION AND VENUE

9. This action arises under the trade laws of the United States, including the Lanham Act, 15 U.S.C. § 1051, *et. seq.*, under Utah trade laws and under common law. This Court has jurisdiction of this action pursuant to 15 U.S.C. § 1121 and at least 28 U.S.C. §§ 1331 (federal question), 1338 (trademark and unfair competition), 1367 (supplemental jurisdiction) and 2201 (declaratory judgment).

10. The Defendants conduct business in this judicial district.

11. The Defendants are subject to personal jurisdiction in this judicial district.

12. The District of Utah is a proper venue for this action pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

Xi3 Modular Computer and CHROMIUMPC™ computers

13. In or about late 1999, Jason Sullivan, President of Isys, invented a new computing system and methods for manufacturing the computer systems which have been named Xi3™ Technology (“Xi3 Technology”).

14. Some of the features of the Xi3 Technology include closely-integrated circuitry in a smaller dimensional space, a computing design that can be used in many computing applications, fewer raw materials and manufacturing processes, cost savings due to the uniformity and its modular functionality permitting components to be readily added or changed as desired.

15. Due to its modular design, the Xi3 computers can be readily configured to run a number of operating systems, including Microsoft- or Linux-based operating systems.

16. While including the functionality of standard computers and being able to be used for all types of computing environments, some of the uniqueness of the Xi3 Technology is its compact size of a approximately 3½-inch cube, its durability, its light weight, its vertical applications and its ability to cluster and scale for larger processing applications.

17. In the Fall of 2009, ISYS began promoting its Modular Computer as an Xi3 product including the brand name CHROMIUMPC.

18. Since 2009, Isys has continuously promoted its new computers under the CHROMIUMPC brand at trade shows.

19. Since 2009, Isys has continuously promoted its new computers under the CHROMIUMPC brand in discussions with customers in different parts of the United States.

20. Since 2009, Isys has continuously promoted its new computers under the CHROMIUMPC brand in electronic communications about its business including marketing and sales emails to potential customers, Internet blogs, Twitter, Facebook, and its own www.chromiumpc.com website, beginning in November 2009.

21. Isys is senior user and the owner of the mark CHROMIUMPC for use in connection with computer hardware. On June 21, 2010, ISYS filed United States Trademark Application Serial No. 85/067977 for CHROMIUMPC for use in connection with computer hardware including computer carrying cases, computer chassis, computer expansion boards, computer interface boards, computer peripherals and computers (“CHROMIUMPC Application”).

22. Google has known of Isys' pending application for CHROMIUMPC for hardware since the summer of 2010.

23. Prior to publication of the CHROMIUMPC Application for opposition, the United States Trademark Office concluded there were no pending applications or registrations that would bar registration of CHROMIUMPC mark in connection with computer hardware.

24. 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.

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



26. 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").

27. A Business Wire covering the CES 2011 show characterized the impact of the Xi3 Technology as "Xi3 Corporation Rocks CES 2011."

28. A version of the Xi3 Modular Computer is being branded and promoted as the CHROMIUMPC computer.

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



30. In December 2010, Isys' CHROMIUMPC application was published for opposition.

Google lacks trademark rights in the CHROMIUM mark

31. In 2008, Google initiated an open-source software development project named Chromium. Google invited independent third parties to participate.

32. 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.

33. Google abandoned any trademark rights in Chromium software by failing to control the nature and quality of the open source software developed by others but at the same time permitting others to distribute the third party software under the Chromium mark.

34. Google has expressly disclaimed any attempt to know the content or quality of software developed by others and distributed under the brand Chromium thereby allowing third parties to "do pretty much anything [they] want" with software distributed under the Chromium brand.

35. Google has expressly disclaimed any intent to verify any of the content, functionality, reliability or stability of software developed by others and distributed under the brand Chromium.

36. Google has failed to prevent uses or misuses by others of the Chromium mark in connection with software.

37. The acts of Google have caused the Chromium mark to lose its significance as a mark for software.

38. These acts of Google result in a loss of trademark rights in a Chromium mark for software.

Google's bad faith filing of its CHROMIUM trademark application

39. Google filed a trademark application for CHROMIUM in connection with network and Internet software and related education and services.

40. Google knew when it filed its CHROMIUM trademark application that use of the term CHROMIUM would be in an uncontrolled, open-source initiative.

41. Nevertheless, Google filed a federal trademark application for CHROMIUM for software including a misleading and deceptive statement under oath of its intent to exclusively use the mark CHROMIUM in connection with software.

42. In so doing, Google has withheld material information from the United States Trademark Office which would contradict the factual basis for its CHROMIUM application.

Google's bad faith continued in prosecution of its CHROMIUM trademark application after forfeiting trademark rights in CHROMIUM

43. After filing its application, Google instructed independent, open-source developers to freely use the term CHROMIUM in connection with software which was written by the independent, open-source developers but uncontrolled, unmonitored, unsupervised and unsupported by Google. Google has expressly stated that it does not control or guarantee the

quality of software produced by third party developers and distributed under the CHROMIUM brand.

44. Marks are treated by purchasers as an indication that the trademark owner is associated with the product.

45. Without controlling the quality of software distributed by others under the brand CHROMIUM, Google causes a deception which eliminates the ability of the CHROMIUM mark to function as a trademark designation of origin for software upon which the public can rely for consistency of source and quality or as being sourced from Google.

46. This kind of uncontrolled permission or licensing without quality control is inherently deceptive.

47. This kind of uncontrolled permission or licensing without quality control constitutes abandonment of all rights in the mark.

48. This kind of uncontrolled permission or licensing without quality control invalidates the ability of Google to register or maintain a registration for exclusive rights in the CHROMIUM mark.

49. Nevertheless, Google has continued to prosecute its CHROMIUM application while withholding relevant and material information from the United States Trademark Office, namely, the freedom of all open source developers granted by Google to change the content and quality of software and distribute it to the public under the CHROMIUM brand without control from Google.

***Google's bad faith opposition to Isys' pending U.S. Trademark Application
for CHROMIUMPC for hardware***

50. Google has opposed Isys' attempts to register its CHROMIUMPC mark for hardware by filing an opposition with the U.S. Trademark Trial and Appeal Board (TTAB).

51. The only basis cited by Google in its opposition to Isys' CHROMIUMPC mark for hardware is Google's pending application for the CHROMIUM mark for software freely used by others without control.

52. Google has, however, withheld from and not disclosed to the TTAB that Google has abandoned the CHROMIUM mark by giving all open source software developers unfettered permission to brand software subject to no quality control of Google with the CHROMIUM mark.

53. Furthermore, in its opposition Google asserts that there is no distinction between its CHROMIUM application for software and Isys' CHROMIUMPC application for hardware.

54. This software-hardware nondistinction argued by Google to now oppose Isys' CHROMIUMPC mark contradicts Google's publicly asserted and recently relied upon software-hardware distinction used by Google as Google seeks to register a trademark for hardware when the same or similar trademark already exists for software.

55. For example, for its own benefit Google has, under penalty of perjury, maintained that its proposed mark SPEEDBOOK for hardware is distinct from and not likely to cause confusion with a similar, previously registered mark SPEEDBOOK of another for software.

56. This factual and legal position relied upon by Google resulted in a benefit in Google's favor in the U.S. Trademark Office's interim approval of Google's trademark application for the mark SPEEDBOOK for hardware.

57. Google has withheld from and not disclosed to the TTAB that it previously relied to its benefit on the distinction between hardware and software such that there is no likelihood of confusion between similar marks in hardware and software uses.

Google unfairly used extensions of time granted by the Trademark Office to delay registration of Isys' trademark for CHROMIUMPC and to further Google's trademark infringement and unfair competition

58. In November 2009, Isys began using CHROMIUMPC in connection with its modular computers.

59. In or before February 2010, Google selected the brand name SPEEDBOOK for computer hardware and filed a trademark application in Tonga. Tonga trademark application filings are not available to the public for searching online.

60. Google has known of Isys' trademark application for and of Isys' intent to use the CHROMIUMPC mark in connection with computer hardware since no later than July 2010.

61. In August 2010, Google filed a U.S. trademark application for SPEEDBOOK for hardware in the United States relying upon its priority date of February 2010 from its Tongan application.

62. Isys' trademark application for the CHROMIUMPC mark for hardware was given provisional approval by the U.S. Trademark Office ("Trademark Office") October 1, 2010. Google knew this because Google was monitoring Isys' application.

63. On October 19, 2010, Google received communication for the Trademark Office that its SPEEDBOOK application was provisionally approved and that additional information was needed to be filed within six months.

64. Pursuant to Trademark Office procedure, Isys' trademark application for CHROMIUMPC was published for opposition November 23, 2010. The opposition period is thirty days, unless an extension is granted by the Trademark Office.

65. Google knew that Isys' trademark application for CHROMIUMPC was published for opposition in November 2010.

66. On December 20, 2010, Google did not oppose but filed a request for extension of time in which to oppose Isys' CHROMIUMPC application. The Trademark Office granted that extension.

67. Representative of Google and Isys began communicating in the hopes of resolving the matters.

68. Unknown to Isys at the time, in or about December 2010 and January 2011, Google abandoned its intent to name new computer hardware SPEEDBOOK and adopted the name CHROMEBOOK.

69. Without resolution with Isys and without informing Isys of the change to the name CHROMEBOOK, in March 2011 Google filed a second request for extension seeking an extension of time up to May 22, 2011. The Trademark Office granted Google's Request.

70. Google knew that these extensions would materially delay the registration of Isys' registration of the CHROMIUMPC mark.

71. During the second extension period, on May 11, 2011 Google announced a new hardware product bearing the brand CHROMEBOOK.

72. Google took advantage of delays from extensions of time in which Google could consider opposing Isys' CHROMIUMPC application to delay registration of Isys' application for CHROMIUMPC and to permit Google to accomplish its public announcement of the launch of its infringing CHROMEBOOK PC products.

73. Google strategically timed delays relying upon extensions of time granted to permit Google to switch its brand name from SPEEDBOOK to CHROMEBOOK in order to launch its CHROMEBOOK PC products while delaying the registration of Isys' trademark application for CHROMIUMPC.

74. This manipulation rapidly puts the CHROMEBOOK PC products in the public eye through Google's vast promotion and distribution channels and thereby improperly confusing the public into believing that Google is the first to use a CHROME mark in connection with computer hardware PC products.

75. This is known as reverse confusion.

76. This manipulation misleadingly ties trademark rights in a CHROME-mark for hardware with Google in the public's eye.

77. This manipulated reverse confusion harms Isys by impeding and interfering with market entry of its CHROMIUMPC hardware products.

78. This manipulation damages the goodwill of Isys' CHROMIUMPC mark for hardware as a unique source of origin of hardware products.

***Google's bad faith adoption of CHROMEBOOK
and CHROMEBOX for hardware***

79. A term “PC” is a commonly used term for hardware products.
80. The term “book” is a commonly used term for hardware products.
81. The term “box” is a commonly used term for hardware products.
82. The terms “pc,” “book” and “box” equally connote hardware products for personal computer in the computer industry.

83. After abandoning CHROMIUM and knowing of Isys’ pending trademark application for CHROMIUMPC for hardware, Google adopted the mark CHROMEBOOK, and potentially CHROMEBOX, for its PC hardware products.

84. After knowing that Isys’ pending trademark application for CHROMIUMPC for hardware had been approved and published for opposition, Google adopted the mark CHROMEBOOK and/or CHROMEBOX for its hardware PC products.

85. On information and belief, after requesting and receiving an extension of time to prolong the time for filing an opposition to Isys’ CHROMIUMPC mark, Google adopted the mark CHROMEBOOK for its PC hardware products.

86. Google did not adopt the mark CHROMEBOOK for its PC product until about late 2010 or early 2011.

87. Google prolonged the opposition proceeding for the benefit of its announcement of its CHROMEBOOK PC product.

88. 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.

89. Under the direction, license and/or other 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.

90. Under the direction and inducement of Google in the U.S., it appears that Google's CHROMEBOX PC product is being prepared for manufacturing, promotion and advertising by Samsung for sale in the United States and other countries.

91. Under the direction and inducement of Google in the U.S., Samsung and Acer, Best Buy and Amazon.com are promoting and advertising the sale of CHROMEBOOK PC products in the United States and other countries.

92. Beginning June 15, 2011, under the direction and inducement of Google, Samsung and Acer CHROMEBOOK PC products will be sold in the United States and other countries by Best Buy and Amazon.com.

93. All uses of CHROMEBOOK and/or CHROMBOX by Defendants have occurred subsequent to Isys' filing of its application June 21, 2010.

Google's bad faith cease and desist demand to Isys dated May 27, 2011

94. Google responded to Isys' May 20, 2011 CHROMIUMPC press release by sending Isys a cease and desist letter dated May 27, 2011 ("Google Demand Letter") threatening legal action if Isys did not abandon its use and registration of Isys' CHROMIUMPC mark for hardware products.

95. Knowing that Google lacks exclusive control and rights to the mark CHROMIUM, the Google Demand Letter nevertheless asserts ownership of "exclusive" trademark rights in the CHROMIUM mark for software and hardware uses.

96. This demand is made in bad faith.

Damage and harm to Isys caused by Google

97. Google's conduct has been willful.

98. Google's conduct has been in bad faith.

99. Google's conduct has improperly and/or unfairly interfered with Plaintiff's registration of its CHROMIUMPC mark.

100. Google's conduct has damaged and will damage Plaintiff in an amount of hundreds of millions of dollars which amount will be proven at trial.

101. Google's conduct has caused and is causing immediate and irreparable harm to Plaintiff and unless enjoined will continue to cause Plaintiff immediate and irreparable harm.

102. Google's willful and/or bad faith conduct should be determined to be exceptional circumstances and/or egregious litigation practices entitling Plaintiff to an award of attorney fees.

Damage and harm to Isys caused by Samsung

103. Samsung's conduct has damaged Plaintiff in an amount to be proven at trial.

104. Samsung's conduct has caused and is causing immediate and irreparable harm to Plaintiff and unless enjoined will continue to cause Plaintiff immediate and irreparable harm.

Damage and harm to Isys caused by Acer

105. Acer's conduct has damaged Plaintiff in an amount to be proven at trial.

106. Acer's conduct has caused and is causing immediate and irreparable harm to Plaintiff and unless enjoined will continue to cause Plaintiff immediate and irreparable harm.

Damage and harm to Isys caused by Best Buy

107. Best Buy's conduct has damaged Plaintiff in an amount to be proven at trial.

108. Best Buy's conduct has caused and is causing immediate and irreparable harm to Plaintiff and unless enjoined will continue to cause Plaintiff immediate and irreparable harm.

Damage and harm to Isys caused by Amazon.com

109. Amazon.com's conduct has damaged Plaintiff in an amount to be proven at trial.
110. Amazon.com's conduct has caused and is causing immediate and irreparable harm to Plaintiff and unless enjoined will continue to cause Plaintiff immediate and irreparable harm.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Declaration of lack of rights of Google in the mark Chromium – Google)

111. Plaintiff reasserts the previous allegations herein by express reference.
112. Google has raised a present and actual controversy between Isys and Google as to whether Google has trademark rights in the mark CHROMIUM.
113. Google's lack of control of the nature and/or quality of software developed by third parties and distributed under the brand CHROMIUM has caused Google to lose or forfeit all trademark rights to the mark CHROMIUM.
114. As a result, Google has no trademark rights in the mark CHROMIUM.

SECOND CAUSE OF ACTION

(Declaration of invalidity of pending trademark applications for the mark Chromium, Lanham Act – Google)

115. Plaintiff reasserts the previous allegations herein by express reference.
116. Google has raised a present and actual controversy between Isys and Google as to whether Google is entitled to maintain its pending trademark applications for the mark CHROMIUM.

117. Google's lack of control of the nature and/or quality of software developed by third parties and distributed under the brand CHROMIUM evidences a lack of the required bona fide intent for filing to seek trademark registration in the mark CHROMIUM.

118. Google's lack of control of the nature and/or quality of software developed by third parties and distributed under the brand CHROMIUM during continued prosecution of pending trademark applications for the mark CHROMIUM for software evidences a lack of exclusivity required for trademark registration.

119. As a result, Google's pending application seeking registration of the mark CHROMIUM for software and services should be deemed invalid.

THIRD CAUSE OF ACTION

(Declaration that Isys does not infringe any trademark right of Google in the mark CHROMIUM – Google)

120. Plaintiff reasserts the previous allegations herein by express reference.

121. Google has raised a present and actual controversy between Isys and Google as to whether Isys use of the mark CHROMIUMPC for computer hardware infringes any trademark rights of Google for CHROMIUM.

122. Google lacks any trademark rights in the mark CHROMIUM for software or related services.

123. In addition, the product configuration of the CHROMIUMPC is radically different from and bear no resemblance to products of Google.

124. Absent such trademark rights, Isys cannot infringe.

125. In the alternative, Isys' uses of CHROMIUMPC in connection with hardware computer products is distinct from and not likely to cause confusion or mistake among consumers or open source software developers as to the source of goods in comparison to Google's uses of CHROMIUM in connection with software and related services.

FOURTH CAUSE OF ACTION

(Unfair competition under the Lanham Act, 15 U.S.C. § 1125 – Google, Samsung, Acer, Best Buy and Amazon.com)

126. Plaintiff reasserts the previous allegations herein by express reference.
127. The statements, representation and/or advertising of trademark rights in the mark CHROMIUM by Google to Samsung, Acer, Best Buy, Amazon.com, third party open source software developers and/or the consuming public are misleading.
128. The statements, representation and/or advertising of trademark rights in the mark CHROMIUM by Google to Samsung, Acer, Best Buy, Amazon.com, third party open source software developers and/or the consuming public are deceptive.
129. The statements, representation and/or advertising of trademark rights in the mark CHROMIUM by Google to Samsung, Acer, Best Buy, Amazon.com, third party open source software developers and/or the consuming public are false.
130. The statements, representation and/or advertising of trademark rights in the mark CHROMIUM by Google to Samsung, Acer, Best Buy, Amazon.com, third party open source software developers and/or the consuming public are likely to cause confusion with Plaintiff's products bearing the mark CHROMIUMPC.
131. The statements, representation and/or advertising of CHROMEBOOK PC products by Samsung and/or Acer to Best Buy, Amazon.com and/or the consuming public are misleading.
132. The statements, representation and/or advertising of CHROMEBOOK PC products by Samsung and/or Acer to Best Buy, Amazon.com and/or the consuming public are deceptive.
133. The statements, representation and/or advertising of CHROMEBOOK PC products by Samsung and/or Acer to Best Buy, Amazon.com and/or the consuming public are false.

134. The statements, representation and/or advertising of CHROMEBOOK PC products by Samsung and/or Acer to Best Buy, Amazon.com and/or the consuming public are likely to cause confusion with Plaintiff's products bearing the mark CHROMIUMPC.

135. The statements, representation and/or advertising of CHROMEBOOK PC products by Best Buy and/or Amazon.com to the consuming public are misleading.

136. The statements, representation and/or advertising of CHROMEBOOK PC products by Best Buy and/or Amazon.com to the consuming public are deceptive.

137. The statements, representation and/or advertising of CHROMEBOOK PC products by Best Buy and/or Amazon.com to the consuming public are false.

138. The statements, representation and/or advertising of CHROMEBOOK PC products by Best Buy and/or Amazon.com to the consuming public are likely to cause confusion with Plaintiff's products bearing the mark CHROMIUMPC.

139. The statements, representation and/or advertising of CHROMEBOOK PC products by Defendants to the consuming public have caused and/or are likely to cause reverse confusion with Plaintiff's products bearing the mark CHROMIUMPC.

140.

FIFTH CAUSE OF ACTION

(Unfair competition under the Utah Truth in Advertising statute 13-11a-1 *et. seq.* and Utah Unfair Practices Act 13-5-1 *et. seq.* – Google, Samsung, Acer, Best Buy and Amazon.com)

141. Plaintiff reasserts the previous allegations herein by express reference.

142. The statements, representation and/or advertising of trademark rights in the mark CHROMIUM by Google to Samsung, Acer, Best Buy, Amazon.com, third party open source software developers and/or the consuming public are misleading.

143. The statements, representation and/or advertising of trademark rights in the mark CHROMIUM by Google to Samsung, Acer, Best Buy, Amazon.com, third party open source software developers and/or the consuming public are deceptive.

144. The statements, representation and/or advertising of trademark rights in the mark CHROMIUM by Google to Samsung, Acer, Best Buy, Amazon.com, third party open source software developers and/or the consuming public are false.

145. The statements, representation and/or advertising of trademark rights in the mark CHROMIUM by Google to Samsung, Acer, Best Buy, Amazon.com, third party open source software developers and/or the consuming public are likely to cause confusion with Plaintiff's products bearing the mark CHROMIUMPC.

146. The statements, representation and/or advertising of CHROMEBOOK or CHROMEBOX PC products by Samsung and/or Acer to Best Buy, Amazon.com and/or the consuming public are misleading.

147. The statements, representation and/or advertising of CHROMEBOOK or CHROMEBOX PC products by Samsung and/or Acer to Best Buy, Amazon.com and/or the consuming public are deceptive.

148. The statements, representation and/or advertising of CHROMEBOOK or CHROMEBOX PC products by Samsung and/or Acer to Best Buy, Amazon.com and/or the consuming public are false.

149. The statements, representation and/or advertising of CHROMEBOOK or CHROMEBOX PC products by Samsung and/or Acer to Best Buy, Amazon.com and/or the consuming public are likely to cause confusion with Plaintiff's products bearing the mark CHROMIUMPC.

150. The statements, representation and/or advertising of CHROMEBOOK or CHROMEBOX PC products by Best Buy and/or Amazon.com to the consuming public are misleading.

151. The statements, representation and/or advertising of CHROMEBOOK or CHROMEBOX PC products by Best Buy and/or Amazon.com to the consuming public are deceptive.

152. The statements, representation and/or advertising of CHROMEBOOK or CHROMEBOX PC products by Best Buy and/or Amazon.com to the consuming public are false.

153. The statements, representation and/or advertising of CHROMEBOOK or CHROMEBOX PC products by Best Buy and/or Amazon.com to the consuming public are likely to cause confusion with Plaintiff's products bearing the mark CHROMIUMPC.

SIXTH CAUSE OF ACTION

(Trademark infringement under the Lanham Act, 15 U.S.C. § 1125 – Google, Samsung, Acer, Best Buy and Amazon.com)

154. Plaintiff reasserts the previous allegations herein by express reference.
155. The conduct of Defendants constitutes trademark infringement under 35 U.S.C. § 1125.

SEVENTH CAUSE OF ACTION

(Trademark infringement under common law – Google, Samsung, Acer, Best Buy and Amazon.com)

156. Plaintiff reasserts the previous allegations herein by express reference.
157. The conduct of Defendants constitutes trademark infringement under common law.

EIGHTH CAUSE OF ACTION

(Unjust enrichment – Google, Samsung, Acer, Best Buy and Amazon.com)

158. Plaintiff reasserts the previous allegations herein by express reference.
159. To the extent Google, Samsung, Acer, Best Buy and/or Amazon.com have been enriched by the promotion, manufacture, distribution and/or sale of PC products under the mark CHROMEBOOK, such enrichment harms Plaintiff.

160. To the extent Google, Samsung, Acer, Best Buy and/or Amazon.com have been enriched by the promotion, manufacture, distribution and/or sale of PC products under the mark CHROMEBOOK, such enrichment is unjust.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby requests a trial by jury on all causes of action.

RELIEF REQUESTED

- A. Declaration of judgment that Google has no trademark rights in the mark CHROMIUM.
- B. Declaration of judgment that Google's pending United States Trademark Application Serial Nos. 77/560651 and 77/980388 for CHROMIUM for software lack the required statutory basis, are invalid and/or should be denied and/or stricken.
- C. Declaration that Isys does not infringe any trademark right of Google in the mark CHROMIUM.
- D. Judgment that use of the mark CHROMEBOOK and CHROMEBOX by Defendants including Google, Samsung, Acer, Best Buy and/or Amazon.com in connection with computer hardware constitutes unfair completion under the Lanham Act, that Plaintiff has been harmed thereby and that Plaintiff is entitled to damages in an amount to be proven at trial including applicable interest.
- E. Judgment that use of the mark CHROMEBOOK by Google, Samsung, Acer, Best Buy and/or Amazon.com in connection with computer hardware constitutes unfair completion under the Utah Deceptive Trade Practices Act, that Plaintiff has been harmed thereby and that Plaintiff is entitled to damages in an amount to be proven at trial including applicable interest.
- F. Judgment that use of the mark CHROMEBOOK by Google, Samsung, Acer, Best Buy and/or Amazon.com in connection with computer hardware constitutes

trademark infringement under the Lanham Act, that Plaintiff has been harmed thereby and that Plaintiff is entitled to damages in an amount to be proven at trial including applicable interest.

- G. Judgment that use of the mark CHROMEBOOK by Google, Samsung, Acer, Best Buy and/or Amazon.com in connection with computer hardware constitutes trademark infringement under common law, that Plaintiff has been harmed thereby and that Plaintiff is entitled to damages in an amount to be proven at trial including applicable interest.
- H. Judgment that Google, Samsung, Acer, Best Buy and/or Amazon.com has/have been unjustly enriched, that Plaintiff has been harmed thereby and that Plaintiff is entitled to damages in an amount to be proven at trial including applicable interest.
- I. Issuance of a temporary restraining order and preliminary and permanent injunctions precluding the promotion and/or advertising of hardware computer products bearing the mark CHROMEBOOK.
- J. Issuance of a temporary restraining order and preliminary and permanent injunctions precluding the distribution of hardware computer products bearing the mark CHROMEBOOK and CHROMEBOX.
- K. Issuance of a temporary restraining order and preliminary and permanent injunctions precluding the sales of hardware computer products bearing the mark CHROMEBOOK and CHROMEBOX.
- L. Judgment that Google has acted in bad faith and that Plaintiff is entitled to attorney fees for this action.
- M. An award of all appropriate attorney fees, costs and expenses.
- N. An award of any and all other relief the Court deems proper under the circumstances.

DATED this 6th day of June, 2011.

KIRTON & McCONKIE

By: s/ Todd E. Zenger
Todd E. Zenger
Dax D. Anderson
Joshua S. Rupp

Attorneys for Plaintiff
ISYS TECHNOLOGIES, INC.