

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

AMIGA, INC., a Delaware corporation,  
Plaintiffs,  
v.  
HYPERION VOF, a Belgian corporation,  
Defendant.

No. 07-0631-RSM

**SECOND DECLARATION OF EVERT  
CARTON REGARDING STATUS QUO  
ANTE LITEM**

Evert Carton, under penalty of perjury, declares and states as follows:

1. I am Managing Partner of Hyperion VOF, a software company located in Belgium. I currently reside in Belgium. I am Belgian and a US citizen. I am over the age of 18, I have personal knowledge of the matters stated herein and I am competent to testify.

2. AmigaOS 4.0, according to the specifications, design goals and task list put forward in Annex I of the original agreement, was finalized by 27 December 2004. Please see Exhibit 11 to my first declaration for the official notice of that release.

3. Pursuant to the self-executing terms of article 3.01 of the November 2001 agreement, Amiga Washington or its valid, approved legal successors, if any, had to complete payment of \$25,000 by June 27, 2005. If that was not done, "all ownership and title in the enhancements of and additions to the Software effected by Hyperion and its subcontractors

**SECOND DECLARATION OF EVERT CARTON - 1**  
**Cause No: 07-0631-RSM**

**LAW OFFICES OF  
WILLIAM A. KINSEL, PLLC**  
MARKET PLACE TOWER  
2025 First Avenue, Suite 440  
SEATTLE, WASHINGTON 98121  
(206) 706-8148

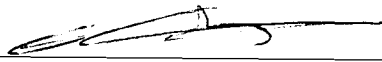
1 pursuant to this Agreement, shall rest with Hyperion.” As I testified in my first declaration,  
2 this payment was not made.

3 4. Another self-executing provision of the 2001 Agreement is Article 2.08. It  
4 states in relevant part that if “Amiga decides to halt development of the Classic Amiga OS for  
5 the Target Hardware, the Amiga One Partners are granted an exclusive, perpetual, worldwide  
6 right and license to develop, use, modify and market the Software and OS 4 under the “Amiga  
7 OS” trademark and at their sole expense.” Under that provision, Amiga was deemed to have  
8 halted development if it failed to release within six months of completion of OS 4.0 a  
9 substantially new version of the Classic Amiga OS for the Target Hardware. This provision  
10 went into effect on June 27, 2005, as Amiga did not release a substantially new version of  
11 Classic Amiga OS.  
12

13 5. Putting aside for the moment the question of Amiga Washington’s insolvency  
14 and the proper or improper transfer of its interests under the contract, the pending controversy  
15 had its origins in a September 22, 2005 request I received from Mr. Bill McEwen for the source  
16 code. If I understand the legal concept of “status quo ante litem” properly, Amiga Delaware’s  
17 requested preliminary injunction is improper because the self-executing provisions of the  
18 November 3, 2001 contract had already vested in Hyperion an exclusive, perpetual, worldwide  
19 right and license in the Software and OS 4 before this dispute began.  
20

21 **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS**  
22 **OF THE STATE OF WASHINGTON AND BELGIUM THAT THE**  
23 **FOREGOING IS TRUE AND CORRECT.**

23 May 23<sup>rd</sup> 2007  
Date

  
Evert Carton

24 Antwerpen, Belgium  
25 Place  
511p.doc

26 **SECOND DECLARATION OF EVERT CARTON - 2**  
**Cause No: 07-0631-RSM**

**LAW OFFICES OF**  
**WILLIAM A. KINSEL, PLLC**  
MARKET PLACE TOWER  
2025 First Avenue, Suite 440  
SEATTLE, WASHINGTON 98121  
(206) 706-8148