

HON. RICARDO MARTINEZ

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMIGA, INC., a Delaware corporation,

Plaintiff,

v.

HYPERION VOF, a Belgium corporation,

Defendant/Counterclaim Plaintiff,

v.

ITEC, LLC, a New York Limited Liability
Company,

Counterclaim Defendant.

CAUSE NO. CV07-0631RSM

**DECLARATION OF JOHN GRZYMALA
IN SUPPORT OF ITEC'S MOTION TO
DISMISS OR TRANSFER**

NOTED FOR HEARING: November 30, 2007

I, JOHN GRZYMALA, declare:

1. I am Secretary of Defendant, Itec, LLC, ("Itec") and am fully familiar with the facts stated herein, which are based on my personal knowledge as well as documents, including Itec business records. I submit this reply declaration in further support of Itec's Reply to Hyperion's Opposition to Itec's Motion to Dismiss Hyperion's Amended Counterclaims or, in the Alternative, to Transfer the Action to the United States District Court for the Southern District of New York.

Typographical Error

2. Paragraph 10 of my November 8, 2007 Declaration in Support of Itec’s Motion to Dismiss (Dkt 73) contains a rather obvious typographical error, which Hyperion has seized upon in its Memorandum in Opposition to Itec’s motion to dismiss or transfer.

3. On page 16, lines 13-14 of Hyperion’s Memorandum in Opposition to Itec’s motion to dismiss, Hyperion points out that I stated in paragraph 10 of my Declaration in Support of Itec’s Motion to Dismiss that the 2003 Hyperion/Itec Agreement “forms the sole basis for Itec’s claims in this lawsuit.” From this, Hyperion postulates that Itec anticipates asserting claims in this lawsuit.

4. Paragraph 10 that Declaration should have read: “The Itec/Hyperion Contract is the only operative agreement between Itec and Hyperion, and it forms the sole and exclusive basis for *Hyperion’s* claims in this lawsuit.” The typographical error was the inadvertent substitution of “Itec” for Hyperion where indicated by the italics.

5. Read in context, it should have been apparent to Hyperion that I meant to say Hyperion’s claims in this lawsuit, not Itec’s claims in this lawsuit, particularly because Itec has not asserted any claims against any party in this lawsuit.

Hyperion’s Mischaracterization of the October 2003 Itec-KMOS Agreement

6. In its opposition papers, Hyperion incorrectly asserts that under the October 2003 Itec-KMOS Agreement, Itec assigned its rights under the 2001 Agreement to KMOS (rights that Itec did not have) and that KMOS acquired “all of Itec’s interests in Amiga’s Amiga OS family of products.” Hyperion thus improperly concludes that “Itec must have considered itself a party to the 3 November 2001 Agreement.” However, all Itec transferred to KMOS in October 2003

1 pursuant to that agreement was what Itec had acquired from Hyperion pursuant to the Itec-
2 Hyperion Contract -- that is, all of Hyperion's rights to OS4.0.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct.

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6 DATED: November 30, 2007

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10 JOHN GRZYMALA
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**DECLARATION OF JOHN GRZYMALA IN SUPPORT OF
ITEC'S MOTION TO DISMISS OR TRANSFER - 3**

Case No. CV07-0631RSM

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CERTIFICATE OF SERVICE

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2
3 I hereby certify that on November 30, 2007, I electronically filed the foregoing with the
4 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
5 following:
6

7 William A. Kinsel
8 Law Offices of William A. Kinsel, PLLC
9 Market Place Tower
10 2025 First Avenue, Suite 440
11 Seattle, WA 98121

12 A copy was also served by hand delivery on November 30, 2007.

13 /s/
14 Lawrence R. Cock, WSBA No. 20326
15 Attorney for Plaintiff Amiga, Inc.
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