

HON. JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHILIPS NORTH AMERICA LLC, a
Delaware Company; KONINKLIJKE
PHILIPS N.V., a Company of the
Netherlands; and PHILIPS INDIA, LTD., an
Indian Company,

Plaintiffs,

v.

SUMMIT IMAGING INC., a Washington
Corporation; LAWRENCE R. NGUYEN,
an individual; and DOES 1-10, inclusive,

Defendants.

Civil Action No. 2:19-cv-01745-JLR

**DEFENDANTS'
MEMORANDUM IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Note on Motion Calendar:
April 30, 2021

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

		Page
1		
2		
3	I. INTRODUCTION	1
4	II. BACKGROUND	2
5	A. The Parties Substantially Agree About the Technical Background of	
6	the Philips-Branded Ultrasound Systems and the Operation of	
7	Summit’s Adepto Software.....	2
8	B. The Record Evidence Does Not Support Philips’ Positions on the	
9	Matters Disputed by the Parties	5
10	C. Interactions Between Summit and Philips	9
11	III. LEGAL STANDARD.....	12
12	IV. ARGUMENT.....	13
13	A. Philips’ DMCA Claims Fail	13
14	1. Philips’ Motion for Summary Judgment on Its Claim Under	
15	Section 1201 of the DMCA Should Be Denied.....	13
16	2. Philips’ Motion for Summary Judgment on Its Claim Under	
17	Section 1202 of the DMCA Should be Denied.....	22
18	B. Summit’s Copyright Misuse Claim Is Viable and Well-Grounded in	
19	the Undisputed Facts of This Case.....	24
20	1. Summit’s Copyright Misuse Claim Fits Squarely Within	
21	Ninth Circuit Jurisprudence	24
22	2. Philips’ Motion Is Based on an Overly Narrow Understanding	
23	of the Scope of a Copyright Misuse Claim.....	27
24	3. Copyright Misuse Is a Defense to Philips’ DMCA	
25	Infringement Claims	29
26	C. Summit’s Other Affirmative Defenses Are Viable and Supported by	
27	Evidence.....	29
	1. Plaintiffs Have Not Shown That Summit’s Equitable Estoppel	
	Defense Should Be Dismissed	30
	2. Plaintiffs Have Not Shown That Summit’s Laches and	
	Acquiescence Defenses Should Be Dismissed	32
	3. Plaintiffs Have Not Shown That Summit’s Unclean Hands	
	Defense Should Be Dismissed	34
	D. Request to Strike Supplemental Report of Adam Sorini From Record	
	34
	V. CONCLUSION.....	36

TABLE OF AUTHORITIES

CASES

1		
2		
3		
4	<i>A&M Records, Inc. v. Napster, Inc.</i> ,	
5	239 F.3d 1004 (9th Cir. 2001)	24, 27
6	<i>Actuate Corp v. International Bus. Machines Corp.</i> ,	
7	2010 WL 1340519 (N.D. Cal. April 5, 2010).....	19
8	<i>Acuson Corp. v. Aloka Co.</i> ,	
9	257 Cal. Rptr. 368 (Ct. App. 1989)	16
10	<i>Adobe Sys. Inc. v. A&S Elecs., Inc.</i> ,	
11	No. C 15-2288 SBA, 2015 WL 13022288 (N.D. Cal. Aug. 19, 2015).....	18, 19
12	<i>Apple Inc. v. Psystar Corp.</i> ,	
13	658 F.3d 1150 (9th Cir. 2011)	24, 29
14	<i>Assessment Techs. Of WI, LLC v. WIREdata, Inc.</i> ,	
15	350 F.3d 640 (7th Cir. 2003)	27
16	<i>Bounce Exch., Inc. v. Zeus Enter., Ltd.</i> ,	
17	2015 U.S. Dist. LEXIS 165073 (S.D.N.Y. Dec. 9, 2015)	24
18	<i>Buell v. Bremerton</i> ,	
19	80 Wn.2d 518, 495 P.2d 1358 (1972).....	32
20	<i>Burroughs Payment Sys. v. Symco Grp.</i> ,	
21	No. 1:10-cv-03029-JEC, 2011 U.S. Dist. LEXIS 170619 (N.D. Ga. Dec. 13, 2011)	18, 19
22	<i>Chamberlain Group., Inc. v. Skylink Techs., Inc.</i> ,	
23	381 F.3d 1178 (Fed. Cir. 2004)	16, 28, 29
24	<i>Couveau v. Am. Airlines</i> ,	
25	218 F.3d 1078 (9th Cir. 2000)	32
26	<i>Danjaq LLC v. Sony Corp.</i> ,	
27	263 F.3d 942 (9th Cir. 2001)	32, 33
	<i>Disney Enters. v. Redbox Automated Retail, LLC</i> ,	
	336 F. Supp. 3d 1146 (C.D. Cal. 2018)	25
	<i>Egilman v. Keller & Heckman, LLP</i> ,	
	401 F. Supp. 2d 105 (D.D.C. 2005).....	20, 22
	<i>Far Out Prods. v. Oskar</i> ,	
	247 F.3d 986 (9th Cir. 2001)	13
	<i>Fischer v. Forrest</i> ,	
	286 F. Supp. 3d 590 (S.D.N.Y. 2018), <i>aff'd</i> , 968 F.3d 216 (2d Cir. 2020)	23
	<i>Ground Zero Museum Workshop v. Wilson</i> ,	
	813 F. Supp. 2d 678 (D. Md. 2011).....	22

1 *HSS Enters., LLC v. AMCO Ins. CO.*,
 No. C06-1485-JPD, 2008 U.S. Dist. LEXIS 31659 (W.D. Wash. April 16, 2008)..... 31

2 *I.M.S. Inquiry Mgmt. Sys., Ltd. v. Berkshire Info. Sys., Inc.*,
 307 F. Supp.2d 521 (S.D.N.Y. 2004) 18

3 *IG Grp. v. Wiesner Publ’g, Inc.*,
 409 F. Supp. 2d 587 (D.N.J. 2006)..... 24

4 *JCW Software, LLC v. Embroidme.com, Inc.*,
 2012 WL 13015051 (S.D. Fla. May 29, 2012)..... 17

5 *Lasercomb Am., Inc. v. Reynolds*,
 911 F.3d 970 (4th Cir. 1990) 25, 28

6 *Lexmark Int’l, Inc. v. Static Control Components, Inc.*,
 253 F. Supp. 2d 943 (E.D. Ky. 2003) 22

7 *Lexmark Int’l, Inc. v. Static Control Components, Inc.*,
 387 F.3d 522 (6th Cir. 2004) 14, 15, 16, 17, 21, 22

8 *MDY Indus., LLC v. Blizzard Entm’t, Inc.*,
 629 F.3d 928 (9th Cir. 2010) 1, 15, 16, 17, 24, 28, 29

9 *Mueller v. Auker*,
 576 F.3d 979 (9th Cir. 2009) 13

10 *Omega S.A. v. Costco Wholesale Corp.*,
 2011 U.S. Dist. LEXIS 155893 (E.D. Cal. Nov. 9, 2011), *aff’d*, 776 F.3d 692
 (9th Cir. 2015)..... 24, 25, 26

11 *Pers. Keepsakes, Inc. v. Personalizationmall.com, Inc.*,
 2012 WL 414803 (N.D. Ill. Feb. 8, 2012) 23, 24

12 *Petrella v. MGM*,
 572 U.S. 663 (2014)..... 30

13 *Practice Mgmt. Info. Corp. v. Am. Med. Ass’n*,
 121 F.3d 516 (9th Cir. 1997), *amended*, 133 F.3d 1140 (9th Cir. 1998)..... 25

14 *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*,
 324 U.S. 806 (1945)..... 34

15 *R.C. Olmstead, Inc. v. CU Interface, LLC*,
 657 F. Supp. 2d 878 (N.D. Ohio 2009)..... 22

16 *Schroeder v. Excelsior Mgmt. Grp., LLC*,
 177 Wn.2d 94, 297 P.3d 677 (2013)..... 30

17 *Sega Enters. v. Accolade, Inc.*,
 977 F.3d 1510 (9th Cir. 1992) 17

18 *Seller Agency Council, Inc. v. Kennedy Ctr. for Real Estate Educ., Inc.*,
 621 F.3d 981 (9th Cir. 2010) 32, 33

19 *Stockwire Research Group, Inc. v. Lebed*,
 577 F. Supp. 2d 1262 (S.D. Fla. 2008) 19

20

21

22

23

24

25

26

27

1 *Synopsys, Inc. v. Innogrit, Corp.*,
 2019 U.S. Dist. LEXIS 171487 (N.D. Cal. Oct. 1, 2019)..... 19, 20

2 *Trident Seafoods Corp. v. Commonwealth Ins. Co.*,
 850 F. Supp. 2d 1189 (W.D. Wash. 2012)..... 30

3 *United States v. Washington*,
 4 20 F. Supp. 3d 899 (W.D. Wash. 2008)..... 33

5 *Universal Studios, Inc. v. Reimerdes*,
 111 F. Supp. 2d 294 (S.D.N.Y. 2000) 17

6
 7 **STATUTES**

8 17 U.S.C. § 1201(a) 13, 28, 29

9 17 U.S.C. § 1201(a)(1)(A) 13

10 17 U.S.C. § 1201(a)(3)(A) 13, 22

11 17 U.S.C. § 1201(a)(3)(B) 13, 21

12 17 U.S.C. § 1201(c)(1)..... 29

13 17 U.S.C. § 1202..... 22, 23, 24

14 17 U.S.C. § 1202(b)(1) 22

15 17 U.S.C. § 1202(c) 22, 23, 24

16 17 U.S.C. § 1202(c)(2)..... 24

17 17 U.S.C. § 602..... 25

18
 19 **OTHER AUTHORITIES**

20 Mitchell, R., *A Holistic Approach to the Digital Millennium Copyright Act*, 2010
 21 Syracuse Sci. & Tech. L. Rep. 1, 55 (Fall 2010)..... 29

22
 23 **RULES**

24 Fed. R. Civ. P. 26..... 34

25 Fed. R. Civ. P. 37..... 34

26 Fed. R. Civ. P. 56(a) 12

27

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.