

United States Patent and Trademark Office
“America Invents Act”

Written Comment of
Cisco Systems Inc.

On Behalf of
The Coalition For Patent Fairness

November 8, 2011

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Undersecretary Kappos and members of the U.S. Patent and Trademark Office, thank you for the opportunity to provide written comments on the implementation of the America Invents Act. The Act is the culmination of six years of effort¹ by Congress and the patent community to reform the patent laws. The Act fixes several long-term problems with our patent system. However, in conducting the Act's mandated studies and in implementing new regulations, it is vitally important that the Office be mindful of Congress's intent in passing several of the Act's provisions. In particular, the Office should recognize that a robust prior user rights defense under 35 U.S.C. § 273 is a vital requirement of the Act that goes hand-in-hand with the switch to a first-to-file system.

I. Introduction to Cisco and the Coalition for Patent Fairness

Cisco is one of the world's largest manufacturer of telecommunications equipment that powers the Internet, with more than \$40 billion in annual sales and more than 66,000 employees worldwide. Cisco's success as a company is a direct result of our ability to innovate. Its products originally were designed for communications within private or enterprise networks. When the public Internet emerged in the mid 1990s, Cisco's products found immediate application for worldwide use. Today's Cisco's networking equipment forms the core of the global Internet and most corporate and government networks. Cisco has invested \$5.8 billion in the 2011 fiscal year on researching and developing the next generation of networking equipment.

Cisco is but one of the technology firms that form the Coalition for Patent Fairness. The coalition represents a large cross-section of America's technology industry, consisting of hundreds of members, including Apple, Autodesk, Dell, Google, Intel, Oracle, RIM, SAP, and Symantec. Together, the companies of the coalition employ millions of Americans and, with more than 75,000 U.S. patents and patent applications, are key users of and believer in the patent system. Its companies invest billions of dollars into research and development and have helped create the innovative culture that drives the U.S. economy. The coalition's companies help the United States to maintain its competitive edge into the future.

¹ See, e.g., Patent Reform Act of 2009, H.R. 1260, 111th Cong.; Patent Reform Act of 2007, H.R. 1908, 110th Cong.; Patent Reform Act of 2005, H.R. 2795, 109th Cong.

II. Prior User Rights and The First-To-File System

One of the Act's most significant changes is that it shifts America's patent system from a first-to-invent system to a first-to-file system. A pure first-to-file system rewards the party that wins the race to the Patent Office as opposed to the party that can show it first conceived the invention. For example, in such a system someone who *later* patents an invention can sue for infringement someone who *earlier* conceived the same invention. While there are administrative benefits to a first-to-file system, there must exist a robust prior use defense for early innovators and prior users who do not obtain, or even file for, patent protection.

A. *Need of Prior User Rights in First-To-File System*

Not every American business can afford to file a patent on or publish every idea that it conceives, particularly if that idea is just one of thousands of components or functions comprising that business's product or services. Resources spent to assure priority on every potentially patentable advance in a complex product will not be available to fund the innovations themselves. Some American businesses may also determine that it is more beneficial to forego patent protection in the United States in favor of trade secret protection. To obtain patent protection for an innovation, an inventor must disclose that innovation to the public. However, while the disclosure is effectively world-wide, the patent protection is limited to the United States. Therefore, businesses competing against foreign companies, or in markets outside the United States, may be better served by keeping some innovations private.

As Senator Leahy aptly stated: "The prior user rights defense, in general, is important for American manufacturers because it protects companies that invent and use a technology, whether embodied in a process or product, but choose not to disclose the invention through the patenting process, and instead rely on trade secret protection. The use of trade secrets instead of patenting may be justified in certain instances to avoid, for example, the misappropriation by third parties where detection of that usage may be difficult. These companies should be permitted to continue to practice the invention, even if another party later invents and patents the same invention." (Cong. Rec. – Senate, S5440, September 8, 2011)

B. *Effect of Prior User Rights on Start-Up Enterprises and Small Businesses*

Indeed, many companies – particularly small businesses and start-ups – require the protection of trade secrets to fully develop products that would

otherwise be hijacked by companies developing products for foreign markets unhampered by the constraints of American patents. Without prior user rights, many such small businesses and start-ups would be forced to choose between risking patent infringement liability on the one hand and disclosing their innovations without the opportunity to fully develop their innovations into commercial products. Consider as an example Coca-Cola's position in the late 1800s. Had the formula or manufacturing process been patented when it was conceived in the late 1800s, the world's most prized "secret formula" would have been disclosed to all competitors long before Coca-Cola would have had the opportunity to develop the international business it has today. Robust prior user rights allow small businesses and start-ups – including the future Coca-Colas of the world – the freedom and safety to protect their "secret formulas" while developing their products.

In remarks on the Act, Congressman Lamar Smith (R-Tex) agreed that "[t]he inclusion of prior user rights is essential to ensure that those who have invented and used a technology but choose not to disclose that technology – generally to ensure that they not disclose their trade secrets to foreign competitors – are provided a defense against someone who later patents the technology." (Cong. Rec. Extension of Remarks, E1219, June 22, 2011).

C. Review of Foreign Prior User Rights

Appreciating this potential problem, most countries with first-to-file patent systems have robust protections for prior users, including, for example, Austria, Denmark, Finland, Germany, the United Kingdom, Australia, Japan, and South Korea. Indeed, among European Patent Convention countries, only Cyprus does not have any prior user rights defense. The above countries all have in common at least two basic protections for prior users.

First, foreign patent systems' prior user defenses protect *all* forms of invention, including processes, products, and products of processes, recognizing that the concerns about wasteful filings and the undermining of needed trade secret protection are generally applicable. Furthermore, protecting only processes is insufficient because clever patentees could circumvent prior user protections by including only apparatus claims, thereby depriving prior users of their defense. As these countries recognize, it would be unfair to allow a patentee to attack a practicing company merely by switching the formalities of the claim.

Second, many foreign jurisdictions extend the prior user rights defense not only to products and processes already in commercial use, but also to substantial

investments in the development or preparation of those products and processes. For companies that develop and manufacture products, the research, development, and testing process can often take years and costs millions of dollars. In addition, many foreign jurisdictions do not limit prior user rights in time, instead protecting *any* activities that predate the filing of a patent application. A prior user rights defense that does not fully protect this investment has the perverse effect of penalizing American businesses who spend more time and investment in perfecting their products and services for the marketplace.

Third, prior user rights defenses in many foreign countries do not require prior use to have occurred a full year before the relevant priority date, as is required under the America Invents Act. Generally, the defenses in foreign countries protect any private use that took place before the patent application was filed, and in some cases, any acts that took place before the patent was granted. As drafted, the defense in this country protects only commercial use that “occurred at least 1 year before” the patent was filed.²

As examples of strong prior user rights protections, consider the defenses in three of the U.S.’s most significant economic competitors: the United Kingdom, Germany, and Japan.

United Kingdom: Pursuant to Section 64 of the Patents Act of 1977, a person is not liable for patent infringement if, before the patent is granted, that person either “does in good faith [the patented] act” or “makes in good faith effective and serious preparations to do [the patented] act.”³ This defense protects products as well as patented acts.⁴ Moreover, if the act or preparation was done “in the course of a business,” the prior user right is transferrable along with the business.⁵

Germany: German law similarly protects both actions and preparations, and allows for transference of prior user rights along with a business. Section 12 of the German Patent Act states, in part: “A patent shall not apply to a person who had already been using the invention in Germany, or had made the arrangements necessary for doing so at the time of the filing of the application. . . . This authorization can only be willed or transferred together with the business.”

² 35 U.S.C. § 273(a)(2)

³ UK Patents Act, § 64(1)

⁴ *Id.* at § 64(3)

⁵ *Id.* at § 64(2)

Japan: Rather than framing it as a defense, Japanese law grants prior users a non-exclusive license to patented technology and extends that protection to preparation as well. Japanese Patent Act, Article 79 states, in part: “A person who . . . made an invention identical to the said invention, or a person who . . . has been working the invention or preparing for the working of the invention in Japan at the time of the filing of the patent application, shall have a non-exclusive license on the patent right, only to the extent of the invention and the purpose of such business worked or prepared.”

These countries have recognized that a prior user rights defense limited to processes only is too easily circumvented and that, without protection for preparation, a prior user rights defense effectively penalizes businesses who spend more time perfecting their products for the marketplace.

It is especially telling that so many foreign countries have strong prior user rights defenses in light of the fact that litigation in many of these countries does not include discovery. For example, in order to bring a claim for infringement in Germany, a plaintiff must already be aware of the allegedly infringing practice, which is unlikely to include private practices protected by trade secret. A plaintiff would simply be unaware of such practices and therefore would not be likely to accuse them of infringement. Counsel from Bardehle Pagenberg in Munich, Germany confirmed that this is in fact the case. Very few German lawsuits implicate a prior user rights defense precisely because undisclosed, private practices are unlikely to be accused of infringement in the first place. Ilya Kazi of Mathys & Squire suggested the same circumstance may help limit application of this defense in the United Kingdom, as well. This stands in stark contrast to American patent litigation, in which a plaintiff may learn of trade-secret protected actions during discovery and then later accuse such practices of infringement.

With our discovery-based litigation system, a robust prior user rights defense is even more important. Indeed, although it is impossible to know how often a prior user rights defense would be asserted, a recent Lex Machina study determined that it would have been featured in as many as 90 patent infringement cases in the United States between January 1, 2005 and October 15, 2011.⁶ The defense would have been applied against apparatus and method claims, suggesting that protecting only methods would leave legitimate prior users defenseless in many instances. Moreover, the cases were not limited to any specific industry. Rather, this defense might have been asserted against patents involving such

⁶ Lex Machina, U.S. Empirical Prior User Rights/Inventorship Study, Nov. 7, 2011, attached as Exhibit A.

industries and technologies as food and beverage manufacturing, banking, communications, pharmaceuticals, security systems, biotechnology, computer hardware and software, transportation, and medical devices.⁷ This suggests that, while a prior user rights defense likely would be asserted in a small percentage of the total number of patent infringement cases, it is still significant enough to have a measurable impact on litigation in many different industries. It will therefore similarly have a measurable impact on how a wide range of companies must operate in this country.⁸ As the study concludes: “The fact that the prior inventorship defense was relied on so heavily (against expectation), and was successful so often, reflects the importance of prior user rights.”⁹

D. Effect of Prior User Rights on Innovation

To foster innovation, American companies must be afforded the same basic prior user rights protections enjoyed by foreign competitors in their own countries. As Congressman Smith stated, we must “ensure that our most innovative companies who hold many of the keys to U.S. economic competitiveness are provided sufficient prior user right protections to put them on an even competitive field internationally.” (Cong. Rec. Extension of Remarks, E1219, June 22, 2011). Without a robust prior user rights defense, the patent system will strip technology away from Americans, punish independent inventors for filing second and put American companies at a disadvantage over foreign competition. With them, American businesses can compete on equal footing and put their technology to work at home.

Particularly in this current economic climate, it is important to encourage – and not create barriers that stifle – continued investments in U.S. industry. Cisco and the Coalition for Patent Fairness respectfully request that the Office strongly support robust prior user rights and confirm that the prior user rights provided by the Act have the breadth to fully address the concerns noted above.¹⁰

⁷ *Id.*

⁸ Notably, only six cases involved university-originated patents, signifying that the university exclusion would have had little, if any, impact on American business.

⁹ *Id.*

¹⁰ Although these comments do not address the “legal and constitutional issues, if any, that may arise from placing trade secret law in patent law,” AIA Section 3(m), we are prepared to provide a comment on the issue upon request.

Exhibit A

LEX MACHINA

U.S. PRIOR USER RIGHTS / INVENTORSHIP STUDY

EXECUTIVE SUMMARY

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Congress has essentially asked the U.S. Patent and Trademark Office an impossible question: *What would happen if prior user rights were implemented in the United States?* More concretely, it has asked as to the impact of this defense on innovation, and as to non-U.S. implementations of prior user rights. But problems exist with both approaches. Future innovation rates are hard to predict. Foreign data may be hard to gather comprehensively. Moreover, the application of prior user rights in exogenous procedural environments (*i.e.*, foreign courts) may be misleading. A better approach is to comprehensively gather empirical data on U.S. doctrinal analogues, including *prior inventorship rights*. See Exhibit A, attached hereto.

This project was conceived by Professor Mark Lemley; and commissioned and financed by the Coalition for Patent Fairness (“CPF”). Lex Machina, Inc. conducted an empirical study investigating the empirical incidence of litigation merits determinations surrounding 35 U.S.C. §102(g)(2), which the Leahy-Smith America Invents Act (the “Act”) replaces, in part, with the prior user rights defense. *Id.* The CPF took no part in data analysis.

IMPORTANCE OF STUDY

In replacing the first-to-invent system with a first-to-file system, the Act exposes inventors and entrepreneurs to the risk that they will be found to infringe their own inventions. Traditionally, 35 U.S.C. 102(g)(2) (the “prior inventor defense”) protected against this risk. Because section 102(g)(2) has now been eliminated, prior user rights are an essential mechanism to protect prior inventors. In this study, we evaluate the importance of section 102(g)(2), and hence the need for prior user rights.

OUTCOME OF STUDY

The results were surprising.

Lex Machina completed what is, to our knowledge, the largest empirical study of §102(g)(2) in U.S. history, focusing on merits analyses of this defense occurring on or between January 1, 2005 and October 15, 2011. See *id.* We expected few such events, especially since three quarters of patent infringement lawsuits settle (see, e.g., <https://lexmachina.com/members/cases/outcomes>) and other sources of prior art are easier to find and apply. See, e.g., Lex Machina Empirical Study on 35 U.S.C. 102(a) (forthcoming) (www.lexmachina.com).

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To ensure comprehensiveness, we identified relevant cases in two independent ways. The first, employing attorneys and artificial intelligence experts on the IPLC database, swept over 31,000 U.S. patent infringement lawsuits and 1.7 million contemporaneous litigation events. See Ex. A. The second legal team searched using exogenous, state of the art methodologies and tools. Then the two preliminary result sets were combined and analyzed.

Lex Machina verified 90 (ninety) federal cases or case clusters (*i.e.*, groups of related lawsuits) with one or more “merits analysis event” on § 102(g)(2). *Id.* A prototypical merits analysis event (or “MAE”) is a summary judgment order, but it may also be a Federal Circuit opinion, a trial outcome, a substantive evidentiary order, or another judicial analysis.

Diversity. It was an extremely diverse set of cases, covering inventions ranging from medical device, to networking technology, to drinking cups. Lex Machina classified the MAE cases into 17 (seventeen) different industries, including:

- Computer Hardware (14 cases)
- Manufacturing (12)
- Medical Devices (10)
- Software (10)
- Pharmaceuticals (8)
- Networking (8)
- Biotechnology (7)
- Home & Consumer (5)
- Transportation (4)
- Telecommunications (2)
- Chemicals (2)
- Office Equipment (2)
- Consumer Electronics (2)
- Gaming (1)
- Security (1)
- Banking & Financial (1), and
- Food & Beverage (1).

See *id.* The MAE case set was just as diverse in terms of geographic locus: It covers U.S. district courts from all over the country. *Id.* And both apparatus and process patent claims are heavily represented. See *id.*

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MAE Outcomes. More importantly, the success rate was high. Of nineteen trial outcomes, nine resulted in a successful §102(g)(2) outcome (*i.e.*, a dispositive or semi-dispositive win through the defense). See *id.* In the summary judgment context, a denial of a summary judgment motion may simply mean that there are genuine issues of material fact still to be resolved. Nevertheless, the MAE case set includes: (i) 13 (thirteen) outright summary judgment wins for the defense; (ii) 21 (twenty-one) denials of defense motions for summary judgment; (iii) two instances where the court analyzed the issue but did not enter judgment; (iv) 9 (nine) instances where the court granted summary judgment for the patent owner (eliminating the §102(g)(2) defense before trial); and (v) 14 (fourteen) instances in which the court denied the patent holders' motion to eliminate the defense. On evidentiary motions (motions to strike the defense or exclude relevant evidence from trial (motions *in limine*)), the courts granted four (4) and denied five (5) motions by patent holders. During post-trial proceedings, the courts denied judgment as a matter of law once to a defense-holder and once to a patent holder. Lastly, the MAE case set includes two case-dispositive wins for the §102(g)(2) defense on appeal. In contrast to the defense of inequitable conduct, the §102(g)(2) defense was used moderately, but successful frequently.

SIGNIFICANCE

The fact that the § 102(g)(2) prior inventorship defense was relied on so heavily (against expectation), and was successful so often, reflects the importance of prior user rights. Based on prior cases, we do not expect a flood of prior user right defenses; but prior user rights are likely to stand as an important bulwark protecting first inventors who might otherwise stand to lose their rights under the new first-to-file system.

BACKGROUND ON LEX MACHINA

Lex Machina is the “spin-off” of the Stanford Intellectual Property Litigation Clearinghouse (the “IPLC”) (<http://www.law.stanford.edu/program/centers/iplc/>). The mission of the IPLC and its commercial successor is to support the United States with accurate empirical data on the patent litigation system. Lex Machina has a positive legal duty, under its charter from Stanford, to support the courts of the United States and help inform the better administration of IP law. Lex Machina's technology and data currently supports (i) patent holding companies, (ii) operating technology companies, (iii) law firms, (iv) universities, and (v) myriad government users.

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**Cases, Industries, Merits Events re 35 U.S.C. §102(g)(2)
Occurring On or Between January 1, 2005 – October 15, 2011**

#	CASE NAME	INDUSTRY (TECHNOLOGY)	CIVIL CASE ID (DISTRICT) IPLC CASE PAGE	MERITS ANALYSIS EVENT[S]
1.	Renato Speciality v. Wood Stone Corp.	Mfg. (Food & Beverage; Restaurant Ovens)	4:01-cv-00317-PNB (TXED) https://lexmachina.com/members/cases/51/	https://lexmachina.com/cases/51/documents/10161.pdf
2.	Data Treasury Corp. v. First Data Corp.	Banking & Financial (Image Scanning Device / Checks)	5:03-cv-00039-DF-CMC (TXED) https://lexmachina.com/members/cases/137/	https://lexmachina.com/cases/137/documents/4000023950.pdf
3.	Z4 Tech, Inc. v. Microsoft Corp.	Software (Method & Apparatus for Securing Software / Antipiracy)	6:06-cv-00142-LED (TXED) https://lexmachina.com/members/cases/248/	https://lexmachina.com/cases/248/documents/11732.pdf https://lexmachina.com/cases/248/documents/258917.pdf
4.	Cybergym Research, LLC v. Icon Health & Fitness, Inc.	Networking (Networked Exercise Equipment)	2:05-cv-00527-DF (TXED) https://lexmachina.com/members/cases/348/	https://lexmachina.com/cases/348/documents/187730.pdf

5.	Telecomm. Sys. Inc. v. Mobile 365, Inc.	Telecomm. (SMS Texting Infra.)	3:06-cv-00485-JRS (VAED) https://lexmachina.com/members/cases/959	https://lexmachina.com/cases/959/documents/14243.pdf
6.	Crown Packaging Tech. Inc. v. Rexam Beverage Can Co.	Mfg. (Food & Beverage; Beverage Can Mfg.)	1:05-cv-00608-MPT (DED) https://lexmachina.com/members/cases/1684	https://lexmachina.com/cases/1684/documents/203774.pdf
7.	Solvay S.A. v. Honeywell Int'l Inc.	Chemicals (Manuf. of Pentafluoropropane)	1:06-cv-00557-SLR (DED) https://lexmachina.com/members/cases/1809	https://lexmachina.com/cases/1809/documents/4000027170.pdf https://lexmachina.com/cases/1809/documents/4000027169.pdf https://lexmachina.com/cases/1809/documents/2000001432.pdf
8.	Cytec Corp. v. Tripath Imaging, Inc.	Biotech. (Method, Apparatus, System, Network Review, Ana. etc.)	1:03-cv-11142-DPW (MAD) https://lexmachina.com/members/cases/3190	https://lexmachina.com/cases/3190/documents/203695.pdf
9.	Siemens v. Seagate Tech.	Computer Hardware (Memory / Sensors, + Method)	8:06-cv-00788-JVS-AN (CACD) https://lexmachina.com/members/cases/4181	http://www.cafc.uscourts.gov/images/stories/opinions-orders/09-1382.pdf https://lexmachina.com/members/cases/4181/dockets?show=All#docket4153873
10.	In re: Infineon Tech. v. Mosaid Tech.	Computer Hardware (Memory / DRAM)	2:03-cv-04698-WJM-RJH (NJD) https://lexmachina.com/members/cases/6686	https://lexmachina.com/cases/6686/documents/16809.pdf
11.	Pinpoint Inc. v. Amazon.com Inc.	Software (E-Commerce; System, Method)	1:03-cv-04954 (ILND) https://lexmachina.com/members/cases/7540	https://lexmachina.com/cases/7540/documents/277458.pdf

12.	Tradecard, Inc. v. S1 Corp.	Software (Banking)	1:03-cv-01468-AKH (NYSD) https://lexmachina.com/members/cases/7659	https://lexmachina.com/cases/7659/documents/245265.pdf
13.	Cross Med. Prods. v. Medtronic Sofamor	Medical Device	8:03-cv-00110-DDP-AN (CACD) https://lexmachina.com/members/cases/8623	https://lexmachina.com/cases/8623/documents/204343.pdf
14.	Spectralytics, Inc. v. Cordis Corp.	Medical Device (Stent; Method of Producing)	0:05-cv-01464-PJS-LIB (MND) https://lexmachina.com/members/cases/9382	https://lexmachina.com/cases/9382/documents/283953.pdf
15.	Borgwarner, Inc. v. Honeywell Int'l, Inc.	Mfg. (Industrial)	1:07-cv-00184-MR (NCWD) https://lexmachina.com/members/cases/11513	https://lexmachina.com/cases/11513/documents/2000027634.pdf
16.	Boss Control, Inc. v. Bombardier, Inc.	Security Systems	4:00-cv-03491 (TXSD) https://lexmachina.com/members/cases/12121	https://lexmachina.com/cases/12177/documents/282411.pdf
17.	Junker v. Eddings	Home & Consumer (Design Patent)	3:02-cv-00172-M (TXND) https://lexmachina.com/members/cases/12177	https://lexmachina.com/cases/12177/documents/282411.pdf
18.	Flex-Rest, Inc. v. Steelcase, Inc.	Office Equipment (Keyboard Positioning System)	1:02-cv-00537-DWM (MIWD) https://lexmachina.com/members/cases/13232	https://lexmachina.com/cases/13232/documents/39896.pdf https://lexmachina.com/cases/13232/documents/39862.pdf
19.	Old Reliable Wholesale, Inc. v. Cornell Corp.	Home & Consumer (Building / Roofing; Insulated Roof Board)	5:06-cv-02389-DDD (OHND) https://lexmachina.com/members/cases/13680/	https://lexmachina.com/cases/13680/documents/2000002823.pdf
20.	Chrimar Sys., Inc. v. Cisco Sys., Inc.	Networking (Network Security System)	2:01-cv-71113-AC (MIED) https://lexmachina.com/members/cases/14245	https://lexmachina.com/cases/14245/documents/205674.pdf

21.	EMC Corp. v. Columbia Data Prods., Inc.	Computer Hardware (/Software) (Storage: Using virtual device to access data as through mass data storage system; Method and System for providing a static snapshot of data stored on mass storage system)	2:01-cv-00312-TC (UTD) https://lexmachina.com/members/cases/15625	https://lexmachina.com/cases/15625/documents/205052.pdf
22.	Lucent Tech., Inc. v. Gateway, Inc.	Software (Multimedia; some method and apparatus claims)	3:02-cv-02060-B-CAB (CASD) https://lexmachina.com/members/cases/16082	https://lexmachina.com/cases/16082/documents/205722.pdf https://lexmachina.com/cases/21693/documents/2000023249.pdf
23.	Futuristic Fences, Inc. v. Illusion Fence, Corp.	Home & Consumer (Design Patents; Fence Panel, Controller)	1:06-cv-22042-ASG (FLSD) https://lexmachina.com/members/cases/17515/	https://lexmachina.com/cases/17515/documents/28459.pdf
24.	Rock-Tenn Co. v. Anchor Packaging, Inc. Rock-Tenn Co. v. Cryovac, Inc. Rock-Tenn Co. v. C&M Fine Pack, Inc.	Mfg. (Packaging: Processes for packaging perishable and other products)	1:02-cv-03080-JTC (GAND) 1:02-cv-02438-JTC (GAND) 1:02-cv-02437-JTC (GAND) https://lexmachina.com/members/cases/18391 https://lexmachina.com/members/cases/17871 https://lexmachina.com/members/cases/17911	https://lexmachina.com/cases/17871/documents/34021.pdf https://lexmachina.com/cases/17911/documents/34061.pdf
25.	Versa Corp. v. AG-BAG Int'l,	Mfg.	3:01-cv-00544-HU (DED) https://lexmachina.com/members/cases/18343	https://lexmachina.com/cases/18343/documents/280871.pdf

	Ltd.	(Agricultural Bagging Machine)		
26.	Kenexa Brassring, Inc. v. Taleo Corp.	Software (System and Method for Interactive Data Entry)	1:07-cv-00521-SLR (DED) https://lexmachina.com/members/cases/19589	https://lexmachina.com/cases/19589/documents/4000002869.pdf
27.	Monsanto Co. v. Bayer Bioscience N.V.	Biotech.	4:00-cv-01915-ERW (MOED) https://lexmachina.com/members/cases/23268	https://lexmachina.com/cases/23268/documents/2000015935.pdf https://lexmachina.com/cases/23268/documents/205856.pdf
28.	Mondis Tech. Ltd. v. LG Elec. Inc.	Computer Hardware (Display Apparatus; Multiple apparatus patents; Method)	2:07-cv-00565-TJW-CE (TXED) https://lexmachina.com/members/cases/23491	https://lexmachina.com/cases/23491/documents/4000020090.pdf
29.	Teva Pharm. Indus. Ltd. v. Astrazeneca Pharm. LP	Pharma. (Composition of Matter)	2:08-cv-04786-WY (PAED) https://lexmachina.com/members/cases/26004	https://lexmachina.com/cases/26004/documents/4000008467.pdf
30.	Bose Corp. v. Lightspeed Aviation, Inc.	Consumer Electronics (Apparatus: High Compliance Headphone Driving)	1:09-cv-10222-WGY (MAD) https://lexmachina.com/members/cases/80375	https://lexmachina.com/cases/80375/documents/2000024245.pdf
31.	Netscape Comm. Corp. v. Valueclick, Inc.	Software (Persistent client state in HTTP based client-server system)	1:09-cv-00225-TSE-TRJ (VAED) https://lexmachina.com/members/cases/89917	https://lexmachina.com/cases/89917/documents/2000015334.pdf

32.	<p>Therasense, Inc. v. Becton, Dickinson and Co.</p> <p>Becton, Dickinson and Co. v. Therasense, Inc.</p> <p>Therasense, Inc. v. Nova Biomedical Corp.</p> <p>Abbott Diabetes Care, Inc. v. Roche Diagnostic Corp.</p>	<p>Biotech.</p> <p>(Sensors, Method of Using Sensors, Device)</p>	<p>3:04-cv-02123-WHA (CAND)</p> <p>3:04-cv-03327-WHA (CAND)</p> <p>3:04-cv-03732-WHA (CAND)</p> <p>3:05-cv-03117-WHA (CAND)</p> <p>https://lexmachina.com/members/cases/1000000494</p> <p>https://lexmachina.com/members/cases/1000000520</p> <p>https://lexmachina.com/members/cases/1000000529</p> <p>https://lexmachina.com/members/cases/1000000631</p>	<p>https://lexmachina.com/cases/1000000494/documents/1000007915.pdf</p> <p>https://lexmachina.com/cases/1000000520/documents/1000007921.pdf</p> <p>https://lexmachina.com/cases/1000000529/documents/1000007929.pdf</p> <p>https://lexmachina.com/cases/1000000631/documents/1000007947.pdf</p>
33.	<p>MEMC Elec. Materials, Inc. v. Mitsubishi Materials Silicon Corp.</p>	<p>Computer Hardware</p> <p>(Semiconductor: Low Defect Density Silicon Comp.)</p>	<p>4:01-cv-04925-SBA (CAND)</p> <p>https://lexmachina.com/members/cases/1000000708</p>	<p>https://lexmachina.com/cases/1000000708/documents/1000007959.pdf</p>
34.	<p>Sanofi-Aventis Deutschland GMBH, v. Genentech, Inc.</p> <p>Genentech, Inc. v. Sanofi-Aventis Deutschland GMBH</p> <p>(University Origin: Iowa Research Foundation)</p>	<p>Biotech.</p> <p>(Enhancer for eukaryotic expression systems; Vectors & Micro-organisms)</p>	<p>3:09-cv-04919-SI (CAND)</p> <p>3:08-cv-04909-SI (CAND)</p> <p>https://lexmachina.com/members/cases/2000000751</p> <p>https://lexmachina.com/members/cases/1000001284</p>	<p>https://lexmachina.com/cases/2000000751/documents/4000011662.pdf</p> <p>https://lexmachina.com/cases/1000001284/documents/4000011721.pdf</p>
35	<p>Hurricane Shooters, LLC v. Emi Yoshi, Inc.</p>	<p>Mfg.</p> <p>(Food & Beverage: Product: Plural chamber drinking cup)</p>	<p>8:10-cv-00762-JSM-AEP (FLMD)</p> <p>https://lexmachina.com/members/cases/2000002458</p>	<p>https://lexmachina.com/cases/2000002458/documents/4000028161.pdf</p>

36.	The Fox Group, Inc. v. Cree, Inc.	Computer Hardware (Semiconductor: Low defect density silicon carbide, etc.)	2:10-cv-00314-RBS-FBS (VAED) https://lexmachina.com/members/cases/2000003287	https://lexmachina.com/cases/2000003287/documents/4000025455.pdf
37.	Storage Tech. Corp. v. Quantum Corp.	Computer Hardware (Storage; Optical Servo System for Tape Drive)	1:03-cv-00672-RPM (COD) https://lexmachina.com/members/cases/18899	https://lexmachina.com/members/cases/18899/dockets?show=All#docket1188711
38.	Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.	Computer Hardware (Semiconductor: Devices, Transistors, Control, Converter)	1:04-cv-01371-LPS (DED) https://lexmachina.com/members/cases/1589	https://lexmachina.com/cases/1589/documents/2000001449.pdf
39.	Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.	Pharma. (Composition: Optically active pyridobenzoxazine derivatives and anti-microbial use)	1:02-cv-00032-IMK-JSK (WVND) https://lexmachina.com/members/cases/11781	https://lexmachina.com/cases/11781/documents/42640.pdf
40.	Shuffle Master, Inc. v. MP Games LLC	Gaming (Multiple Patents-In-Suit re each of Methods, Systems; Apparatus)	3:04-cv-00407-ECR-RAM (NVD) https://lexmachina.com/members/cases/18387	https://lexmachina.com/cases/18387/documents/278041.pdf
41.	Arctic Cat, Inc. v.	Transport.	0:01-cv-00543-MJD-RLE (MND)	https://lexmachina.com/cases/6267/documents/275646.pdf

	Injection Research Specialists, Inc.	(Snowmobile Engines)	https://lexmachina.com/members/cases/6267	
42.	Tyco Healthcare Grp. LP v. Ethicon Endo-Surgery, Inc.	Medical Device (Ultrasonic Blade, System)	3:04-cv-01702-JBA (CTD) https://lexmachina.com/members/cases/10021	https://lexmachina.com/cases/10021/documents/275918.pdf
43.	IGT v. Alliance Gaming Corp.	Computer Hardware (Multiple Method / Apparatus / System Patents)	2:04-cv-01676-RCJ-RJJ (NVD) https://lexmachina.com/members/cases/18924	https://lexmachina.com/cases/18924/documents/278103.pdf
44.	Medtronic Xomed, Inc. v. Gyrus ENT LLC	Medical Device (Method of performing sinus surgery utilizing & sinus debrider instrument)	3:04-cv-00400-TJC-MCR (FLMD) https://lexmachina.com/members/cases/18060	https://lexmachina.com/cases/18060/documents/34826.pdf
45.	Crossroads Sys., Inc. v. Pathlight Tech., Inc.	Computer Hardware (Storage)	1:00-cv-00248-SS (TXWD) https://lexmachina.com/members/cases/12157	https://lexmachina.com/cases/12157/documents/31206.pdf
46.	Benedict v. General Motors Corp.	Software (Method for controlling daytime running lights; related circuitry)	4:00-cv-00483-RH (FLND) https://lexmachina.com/members/cases/16954	https://lexmachina.com/cases/16954/documents/205071.pdf
47.	Chemfree Corp. v. J. Walter, Inc.	Chemicals (Washing Machine Parts and Related Method)	1:04-cv-03711-CRW (GAND) https://lexmachina.com/members/cases/17245	https://lexmachina.com/cases/17245/documents/235198.pdf https://lexmachina.com/cases/17245/documents/4000023168.pdf

48.	TV Interactive Data Corp. v. Microsoft Corp.	Software (Wireless Controller Apparatus and Method)	3:02-cv-02385-JSW (CAND) https://lexmachina.com/members/cases/1000000272	https://lexmachina.com/cases/1000000272/documents/1000007860.pdf
49.	Smith v. Pro-Lock	Mfg. (Security: Drill Jig for Padlocks)	2:00-cv-00709-LKK-JFM (CAED) https://lexmachina.com/members/cases/9414	https://lexmachina.com/cases/9414/documents/205474.pdf
50.	Crossroads Sys., Inc. v. Chaparral Network Storage, Inc.	Computer Hardware (Storage Router and Related Method)	1:00-cv-00217-SS (TXWD) https://lexmachina.com/members/cases/12205	https://lexmachina.com/cases/12205/documents/31144.pdf
51.	WM. Wrigley Jr. Co. v. Cadbury Adams USA LLC	Food & Beverage (Chewing Gum Composition and Related Method)	1:04-cv-00346 (ILND) https://lexmachina.com/members/cases/7824	https://lexmachina.com/cases/7824/documents/2000002983.pdf
52.	ICU Medical, Inc. v. Rymed Tech., Inc.	Medical Device (Medical Valve and Method of Use)	1:07-cv-00468-LPS (DED) https://lexmachina.com/members/cases/19580	https://lexmachina.com/cases/19580/documents/4000003031.pdf https://lexmachina.com/cases/19580/documents/4000004155.pdf
53.	Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.	Pharma. (Composition of Matter and Related Method)	2:06-cv-03533-DMC –MF (NJD) https://lexmachina.com/members/cases/5571	https://lexmachina.com/cases/11781/documents/42640.pdf
54.	Van Romer v. Interstate Prods., Inc. (University Origin: North Carolina State)	Computer Hardware (Semiconductor)	6:06-cv-02867-WMC (SCD) https://lexmachina.com/members/cases/11920	https://lexmachina.com/cases/11920/documents/2000019984.pdf

55.	Myers v. Master Lock Co.	Mfg. (Security / Locks)	1:06-cv-00619-LTB-MJW (COD) https://lexmachina.com/members/cases/19311	https://lexmachina.com/cases/19311/documents/233194.pdf
56.	Commonwealth Scientific and Indus. Research Org. v. Buffalo Tech. (University / Research Institute Origin: CSIRO [Australia])	Networking (Wireless LAN: Method and Apparatus)	6:06-cv-00324-LED (TXED) https://lexmachina.com/members/cases/408	https://lexmachina.com/cases/408/documents/29064.pdf
57.	Zimmer Tech., Inc. v. Howmedica Osteonics Corp.	Medical Device (Modular Hip Prosthesis)	3:02-cv-00425-WCL-RBC (INND) https://lexmachina.com/members/cases/14659	https://lexmachina.com/cases/14659/documents/4000009958.pdf
58.	Hybrid Patents Inc. v. Charter Comms. Inc.	Networking (Asymmetric Data Access System and Method)	2:05-cv-00436-TJW-CE (TXED) https://lexmachina.com/members/cases/324	https://lexmachina.com/cases/324/documents/4000010486.pdf
59.	Forest Labs. Inc., v. Ivax Pharm. Inc.	Pharma. (Composition and Related Method)	1:03-cv-00891-JJF (DED) https://lexmachina.com/members/cases/1415	https://lexmachina.com/cases/1415/documents/1514.pdf
60.	Safeflight, Inc. v. Chelton Flight Sys., Inc.	Transport. (Aircraft Navigation System and related Method)	5:05-cv-02622-JRA (OHND) https://lexmachina.com/members/cases/14474	https://lexmachina.com/cases/14474/documents/225621.pdf
61.	Synthon IP, Inc. v. Pfizer Inc.	Pharma. (Process of Manufacture)	1:05-cv-01267-TSE-TRJ (VAED) https://lexmachina.com/members/cases/900	https://lexmachina.com/cases/900/documents/1351.pdf

62.	Forgent Networks, Inc. v. Echostar Tech. Corp.	Networking (Video Display System and Method)	6:06-cv-00208-LED (TXED) https://lexmachina.com/members/cases/407	https://lexmachina.com/cases/407/documents/4000033776.pdf https://lexmachina.com/cases/407/documents/4000033776.pdf
63.	Volovik v. Bayer Corp. [Chiron Diagnostics]	Biotech. (Pump re Immunoassays / Diagnostics)	0:01-cv-01426-JNE-AJB (MND) https://lexmachina.com/members/cases/6348	https://lexmachina.com/cases/6348/documents/205486.pdf
64.	Pfizer Inc. v. Teva Pharm. USA, Inc.	Pharma. (Composition of matter and Related Method of use)	2:04-cv-00754-GEB-MCA (NJ) https://lexmachina.com/members/cases/6895	https://lexmachina.com/cases/6895/documents/2000001625.pdf
65.	Fargo Elecs., Inc. v. Iris, Ltd., Inc.	Consumer Electronics (Printer Ribbon and Method)	0:04-cv-01017-JRT-FLN (MND) https://lexmachina.com/members/cases/7150	https://lexmachina.com/cases/7150/documents/13265.pdf
66.	Ben. Venue Labs., Inc. v. Hospira, Inc.	Medical Device (Composition of Matter and related Method)	2:03-cv-00210-TJW (OHND) https://lexmachina.com/members/cases/13992	https://lexmachina.com/cases/13992/documents/237917.pdf
67.	Friskit, Inc. v. Realnetworks, Inc.	Software (Media streaming and related Methods)	3:03-cv-05085-WWS (CAND) https://lexmachina.com/members/cases/1000000444	https://lexmachina.com/cases/1000000444/documents/1000007899.pdf
68.	Phase Four Indus. Inc. v. Marathon Coach Inc.	Transport. (Recreational	5:04-cv-04801-JW (CAND) https://lexmachina.com/members/cases/1000000968	https://lexmachina.com/cases/1000000968/documents/1000008521.pdf

		Vehicles)		
69.	Aventis Pharm. Deutschland GMBH v. Lupin Ltd.	Pharma. (Composition of Matter, Process of Manufacture and Method of Use)	2:05-cv-00421-RGD-TEM (VAED) https://lexmachina.com/members/cases/911	https://lexmachina.com/cases/911/documents/1461.pdf
70.	Freedom Wireless, Inc. v. Boston Comms. Grp. Inc.	Telecomm. (Device)	1:00-cv-12234-EFH (MAD) https://lexmachina.com/members/cases/2964	https://lexmachina.com/cases/2964/documents/287727.pdf
71.	Briggs & Stratton Corp. v. Kohler Co.	Mfg. (Lawn Mower Engine Parts)	3:05-cv-00025-bbc (WIWD) https://lexmachina.com/members/cases/89680	https://lexmachina.com/cases/89680/documents/279558.pdf
72.	Syngenta Seeds, Inc. v. Monsanto Co.	Biotech. (Methods for Transforming Maize)	1:02-cv-01331-SLR (DED) https://lexmachina.com/members/cases/1276	https://lexmachina.com/cases/1276/documents/14323.pdf https://lexmachina.com/members/cases/1276/dockets#docket130462
73.	JJK Indus. v. Kplus Inc.	Home & Consumer ("Energized Body Jewelry")	4:02-cv-02259 (TXSD) https://lexmachina.com/members/cases/12427	https://lexmachina.com/cases/12427/documents/30823.pdf
74.	Storage Tech. v. Cisco Sys., Inc.	Networking (Method and Apparatus)	3:00-cv-01176-SI (CAND) https://lexmachina.com/members/cases/1000000026	https://lexmachina.com/members/cases/1000000026/dockets#docket100004822
75.	Automotive Tech. Int'l, Inc. v. TRW Vehicle Safety Sys., Inc.	Transport. (Airbag and Method of	2:02-cv-73572-NGE (MIED) https://lexmachina.com/members/cases/14024	https://lexmachina.com/cases/14024/documents/205345.pdf

		Construction and Use)		
76.	Billingnetwork.com, Inc. v. Cerner Physician Practice, Inc.	Networking (Billing Comm. System)	8:04-cv-01515-JDW-MAP (FLMD) https://lexmachina.com/members/cases/17522	https://lexmachina.com/cases/17522/documents/205598.pdf
77.	Boston Scientific Corp. v. Cordis Corp. (University Origin: University of California)	Medical Device (Vascular Implant)	5:02-cv-01474-JW (CAND) https://lexmachina.com/members/cases/1000000861	https://lexmachina.com/cases/1000000861/documents/1000007986.pdf
78.	Candela Corp. v. Palomar Medical Tech., Inc.	Medical Device (Method and Apparatus for Treating Wrinkles)	9:06-cv-00277-RC (TXED) https://lexmachina.com/members/cases/672	https://lexmachina.com/cases/672/documents/257722.pdf
79.	Cardiac Science, Inc. v. Koninklijke Philips Electronics N.V.	Medical Device (Defibrillator and Related Methods)	0:03-cv-01064-DWF-RLE (MND) https://lexmachina.com/members/cases/6891	https://lexmachina.com/cases/6891/documents/4000033498.pdf
80.	Cordance Corp. v. Amazon.com, Inc. (University Origin: Colorado State)	Software (Internet; Online Shopping System)	1:06-cv-00491-MPT (DED) https://lexmachina.com/members/cases/1795	https://lexmachina.com/cases/1795/documents/286416.pdf
81.	Optimumpath, LLC, v. Belkin Int'l, Inc.	Networking (Wireless)	4:09-cv-01398-CW (CAND) https://lexmachina.com/members/cases/1000005600	https://lexmachina.com/cases/1000005600/documents/4000013884.pdf
82.	Sabasta v. Buckaroos, Inc.	Mfg.	4:06-cv-00180-RP-TJS (IASD) https://lexmachina.com/members/cases/15209	https://lexmachina.com/cases/15209/documents/37914.pdf

		(Roll-Bending Die re Pipe Insulation)		
83.	The GSI Group, Inc. v. Sukup Mfg. Co.	Mfg. (Grain-shifting and Related Methods)	3:05-cv-03011 (ILCD) https://lexmachina.com/members/cases/22547	https://lexmachina.com/cases/22547/documents/276626.pdf
84.	Eolas Tech. Inc. v. Microsoft Corp. (University Origin: University of California)	Software (Multimedia; Method)	04-1234 (ILND / FEDCIR) http://www.cafc.uscourts.gov/images/stories/opinions-orders/04-1234.pdf Original filing predates Lex Machina dataset 01 JAN 00	http://www.cafc.uscourts.gov/images/stories/opinions-orders/04-1234.pdf
85.	Invitrogen Corp. v. Clontech Labs., Inc.	Biotech. (Bioengineering; Related Methods)	04-1039 (MAD / FEDCIR) 04-1040 (MAD / FEDCIR) Original filing predates Lex Machina dataset 01 JAN 00	http://www.cafc.uscourts.gov/images/stories/opinions-orders/04-1039.pdf
86.	Advanced Magnetic Closures, Inc. v. Rome Fastener Corp.	Office Equipment (Magnetic Snap Lock)	98-CV-7766 (NYSD) Original filing predates Lex Machina dataset 01JAN00 Cf.: http://www.cafc.uscourts.gov/images/stories/opinions-orders/09-1102.pdf	2007 WL 1552395
87.	Eli Lilly & Co. v. Sicor Pharm., Inc.	Pharma. (Composition of Matter, Related Method)	1:06-cv-00238 (INSD) https://lexmachina.com/cases/14831	https://lexmachina.com/cases/14831/documents/2000021119.pdf
88.	Energy Transp. Group, Inc. v. Sonic Innovations, Inc.	Computer Hardware (Hearing Aid Related Computer System, Host Controller)	1:05-cv-00422 (DED) https://lexmachina.com/members/cases/1667	https://lexmachina.com/members/cases/1667/dockets#docket2001377516
89.	RMDI, LLC v.	Mfg.	2:10-cv-00029 (UTD)	https://lexmachina.com/members/cases/2000001756/dockets#docket20013

	Remington Arms Co., Inc.	(Firearms; Multi-Caliber Ambidextrously Controllable Firearm)	https://lexmachina.com/members/cases/2000001756	63394
90.	Johnson & Johnson Vision Care, Inc. v. CIBA Vision Corp. CIBA Vision Corp. v. Johnson & Johnson Vision Care, Inc. (University / Research Institute Origin: Commonwealth Scientific and Industrial Research Organization [Australia])	Home & Consumer (Contact Lens; Lenses and Methods of Forming, Using)	3:05-cv-135-J-32TEM (FLMD) 3:06-cv-301-J-32TEM (FLMD) https://lexmachina.com/members/cases/16942 https://lexmachina.com/members/cases/17497	https://lexmachina.com/cases/16942/documents/276267.pdf