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By Facsimile

Honorable Gary L. Lancaster, Chief Judge
United States District Court
Western District of Pennsylvania
700 Grant Street
Pittsburgh, PA 15219
Fax: (412) 208-7407

Re: Semantic Compaction v. Speak for Yourself, 12-cv-248-GLL

Dear Chief Judge Lancaster:

The Public Patent Foundation at Benjamin N. Cardozo School of Law represents Maya Nieder, Robert Hambright and Schuyler Rummel-Hudson, three minors who intend to move to intervene in the above entitled matter. I write on their behalf to notify you of their intent while we complete the drafting of their moving papers. If you would like to discuss our clients' intended motion, I am available at your convenience to do so. Otherwise we will submit the motion to you as soon as possible.

Maya, Robert and Schuyler are Young Children That Rely on the Speak for Yourself App

Maya Nieder is a four year old girl who lives in the Bronx, New York. She has global developmental delays of unknown origin, which have caused her to have to undergo two surgeries, one to remove her adenoids and another to insert ear tubes. While Maya seems to hear normally, she can not speak. Until recently, she was only able to communicate by making sounds, using signs, gesturing, and communication boards. Last November, in an effort to help Maya communicate, Maya's parents considered purchasing a device sold by Prentke Romich Company ("PRC"), a co-plaintiff in this matter. Maya's parents met personally with a PRC representative who presented PRC's possible solutions for Maya's needs. Unfortunately, after examining the PRC devices, Maya's parents were disappointed to see that they were clumsy, unintuitive, too heavy, and just completely unusable by Maya.

Roughly two months after meeting with the PRC representatives, Maya's parents became aware of the Speak for Yourself ("SFY") software offered by the defendants in this matter for use with Apple, Inc. iPad devices. Unlike the failed PRC devices, SFY on iPad worked miraculously for Maya, who has since been able to finally speak for the first time in her life. The PRC devices and SFY on iPad are dramatically different, in many important ways, and it is those differences that have empowered Maya to now be able to express her needs, desires and thoughts

to her parents. SFY has given new life to the Nieders and the relationship between parents and daughter.

Robert Hambright is a four year old boy who lives in Tuscaloosa, Alabama. Robert was diagnosed with autism at twenty months old, and he is completely nonverbal. Robert's parents tried to use several different means of communicating with Robert, including sign language, books, and software products, but none worked for Robert. In November 2011, Robert's parents purchased a Vantage Lite from PRC. The total cost of the unit was \$10,695.18. After their insurance paid its portion, they were responsible for only \$1,419.91. From the beginning, Robert struggled with the weight of the device. In March 2012, the Vantage Lite stopped working. As it was still under warranty from PRC, Robert's parents called PRC to see about getting the unit repaired, but were told it would take at least a week and that no loaner unit was available for Robert to borrow in the interim. That meant Robert would be without his voice for at least a week. Robert was eventually able to borrow a unit from a school for a few days, but the fear of their son losing his voice for a week led Robert's parents to decide to explore other options.

While researching other possible solutions Robert's parents found Speak for Yourself. They decided to try it and almost immediately realized it was the best thing they had found for Robert. Because Speak for Yourself is an app and not hardware, Robert's parents no longer had to fear their son losing his voice due to any hardware failure. If he broke his iPad, they could easily go to any number of local stores, purchase a new iPad and have the app back working in minutes. The iPad also has many different accessories including waterproof cases; the Vantage Lite is not waterproof, meaning it can't be taken to the pool, the beach, or even to the tub at bath time. Robert's parents also found Speak for Yourself's software interface to be better suited for Robert. All words only required a maximum of two keys being pressed where the Vantage Lite could be more. Also all words could only be on the device one time. With the Vantage Lite the same word could be on the device multiple times with each using a different sequence of keys, thus making it more confusing and complicated for Robert to use.

Schuyler Rummel-Hudson is a twelve year old girl who lives in Plano, Texas. She has a brain malformation called bilateral perisylvian polymicrogyria which in her case severely limits her ability to speak, robbing her of most consonants and some correct vowel usage. Beginning at the age of five, Schuyler began using a Vantage speech device produced by PRC, which became her primary mode of communication. Over the years, however, Schuyler has become increasingly self-conscious about her use of a dedicated medical speech device. Schuyler is an ambulatory child whose disability is largely invisible, and she has reached an age where the social stigma of using her speech device has become an impediment to its use.

At her most recent individual education program (IEP) meeting, Schuyler told the team that she wants to move to using the iPad as her primary speech device next year. As part of her reasoning, she stated that the iPad would give her the ability to use other apps in an educational environment, and that when she uses the iPad, other students see her as a "normal" kid. When given the choice of augmentative and alternative communication (AAC) apps to use, Schuyler

chose Speak for Yourself, which is the most robust app that she tried. She is currently learning the app so that when the school year begins, she will be proficient in its use.

Maya, Robert and Schuyler Seek to Intervene to Protect Their Interests

Under Rule 24(a), Maya, Robert and Schuyler have the right to intervene in this matter because they have “an interest relating to the property or transaction that is the subject of the action,” are “so situated that disposing of the action may as a practical matter impair or impede [their] ability to protect [their] interest,” and the existing parties do not adequately represent their interest.

First, Maya, Robert and Schuyler have an interest in continuing their use of the SFY software. This interest is at the heart of this action, in which PRC seeks to enjoin use of the SFY software. None of the defendants named in this action are direct users of the software in the same way that Maya, Robert and Schuyler are users, and thus none will suffer the irreparable harm that Maya, Robert and Schuyler will suffer if use of the SFY software is enjoined.

Second, Maya, Robert and Schuyler have an interest in not being found by this court to be direct infringers of plaintiffs' patents or copyrights, something plaintiffs seek to have this court do even though neither Maya, Robert nor Schuyler are yet parties to this matter. Specifically, plaintiffs directly accuse Maya, Robert and Schuyler of being infringers in Counts I, II and V of their Amended Complaint, which set forth indirect infringement allegations against SFY. Counts I and II alleging Contributory Patent Infringement and Induced Patent Infringement require underlying acts of direct patent infringement by SFY users.

Plaintiffs here can not be successful in proving contributory or induced patent infringement against SFY unless they prove SFY users like Maya, Robert and Schuyler are themselves direct infringers. See, for example, Paragraph 51 of plaintiffs' Amended Complaint (Dkt 21), which states, “Defendants’ product has been used to commit acts of direct infringement because numerous customers and end-users have purchased and used the SFY App, as evidenced by postings of written or video-recorded testimonials on Defendants’ website and Facebook page regarding their experience using the SFY App after purchasing the product through Apple’s App Store.” Similarly, Count V alleging Contributory Copyright Infringement requires underlying acts of direct copyright infringement by users including Maya, Robert and Schuyler.

If this matter were disposed such that either use of the SFY software was enjoined or users of the SFY software were held to be direct infringers of plaintiffs patents or copyrights, Maya, Robert and Schuyler's ability to protect their interests against those results would as a practical matter be impaired, because (i) it may not be practically possible for Maya, Robert and Schuyler to bring a legal action of their own to protect those interests and (ii) the precedential effect of any such disposition of this matter may nonetheless practically impede their doing so.

Finally, Maya, Robert and Schuyler's interests are not adequately represented by the

existing parties in this matter because the interests of neither the plaintiffs nor the defendants align with Maya, Robert and Schuyler's. It is without question that the plaintiffs here have directly contrary interests to Maya, Robert and Schuyler, as they are seeking to enjoin the use of SFY and to have users of SFY declared to be direct infringers. Thus, it can not be argued in any way that the plaintiffs will adequately represent Maya, Robert and Schuyler's interests.

The defendants have interests that may appear at first blush to be similar to Maya, Robert and Schuyler's, but they are in fact not similar at all, because defendants' sole interest is in minimizing the financial impact of this litigation to themselves. None of defendants are users who depend on the continued availability of the SFY software to communicate, either themselves or with their children. Further, defendants do not have any legal obligation to protect and preserve the rights of SFY users to continue to use the software, and thus they can not be said to be situated in this action either directly or through binding obligation so as to adequately represent those interests.

For example, it may be in defendants' interests to settle this matter by agreeing to terminate all development, distribution and use of the SFY software in exchange for a dismissal. Those terms, however, would be directly contrary to Maya, Robert and Schuyler's interests. As another example, Maya, Robert and Schuyler's interest in not being found to be a direct infringer of plaintiffs' patents or copyrights is not adequately represented by the defendants, who may choose to defeat the indirect infringement allegations on grounds other than whether users are direct infringers.

Thus, while it is too early to tell for sure whether the defendants here will take positions in direct conflict with Maya, Robert and Schuyler's interests, it is not too early to tell that the defendants do not adequately represent those interests. Only by appearing directly in this matter can Maya, Robert and Schuyler be assured that their interests will be adequately represented, which is why they now seek to intervene.

Finally, timeliness is a threshold inquiry for a motion to intervene, but clearly satisfied here, as plaintiffs just filed their Amended Complaint in this matter on June 20, 2012, which defendants answered earlier this week. As required by Rule 24(c), Maya, Robert and Schuyler will accompany their motion to intervene with a pleading that sets out the claim or defense for which intervention is sought. If your Honor would like to set a deadline for Maya, Robert and Schuyler to file their motion to intervene so as to avoid any issue of timeliness, please let us know that deadline and we will meet it.

After Intervening, Maya, Robert and Schuyler Intend to Represent Their Interests

After intervening, Maya, Robert and Schuyler intend to represent their interests against having SFY enjoined and against being found to be direct infringers. Regarding defendants' currently pending motion for a preliminary injunction, Maya, Robert and Schuyler also intend to submit evidence of the the irreparable harm being caused to them by PRC's demand to Apple to

remove the SFY app from the iTunes Store. For one, when Apple updates the underlying operating system for the iPad this fall (see *iOS 6 Preview* available at <http://www.apple.com/ios/ios6/> (“Coming this fall”)), the current version of SFY used by Maya, Robert and Schuyler may no longer work and there is now no way for them to receive an update of SFY to make it compatible with the new iPad operating system.

Maya, Robert and Schuyler tried the PRC devices, but they are not acceptable alternatives due to their physical and software shortcomings. Since there is no substitute for SFY, its removal from the iTunes Store threatens to take away the ability of Maya, Robert and Schuyler to communicate, critically impairing their relationships with their parents, educators, and peers, and stunting their emotional and mental development. The irreparable harm being suffered by Maya, Robert and Schuyler is not addressed by the parties in their briefs submitted to you earlier this week regarding defendants' currently pending motion for a preliminary injunction, which further shows that the parties do not adequately represent Maya, Robert and Schuyler's interests.

Thank you, in advance, for your time and consideration. Neither we nor our clients intend to cause needless disruption or delay in this matter. However, our clients are compelled to move to intervene so that they do not lose their voices.

Respectfully submitted,



Daniel B. Ravicher

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