

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OPINIONLAB, INC.,

Plaintiff,

v.

LODSYS, LLC,

Defendant.

Civil Action No. 11-cv-4015

The Hon. George W. Lindberg

JURY TRIAL DEMANDED

**DECLARATION OF MARK SMALL
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

I, Mark Small, declare as follows:

1. I am the Chief Executive Officer for Defendant Lodsys, LLC ("Lodsys"). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify completely to such facts under oath.
2. I reside in Wisconsin. I own a home in Wisconsin, and have lived in that home for the past 10 years. I have a Wisconsin driver's license. I am registered to vote in Wisconsin. And I stand ready, willing, and able to provide the Court any relevant documentary evidence concerning my Wisconsin residency.
3. I conduct business for Lodsys from Wisconsin. During the time I have provided services for Lodsys, I have not resided in or conducted business from Illinois.
4. Lodsys is a Texas limited liability company, and its principal place of business is at 505 East Travis Street, Suite 207, Marshall, Texas. Lodsys maintains an office at its headquarters in Marshall, Texas.

5. Lodsys does not have (nor has it ever had) any employees, offices, or facilities in Illinois. It does not maintain any bank accounts or other assets in Illinois. Nor does it lease or own any real or other property in Illinois.

6. Lodsys has not entered into any exclusive licenses (in Illinois or elsewhere) of U.S. Patents Nos. 5,999,908; 7,133,834; 7,222,078; or 7,620,565. Nor does Lodsys control or direct the business operations of its licensees. And Lodsys has not filed any lawsuits for patent infringement (or otherwise) in Illinois.

7. Attached hereto as Exhibit A is a true and correct copy of the preview page of my web profile on LinkedIn, which references the "Greater Chicago Area." I have not updated the geographical reference on my LinkedIn profile for several years. I was previously employed by a company with a regional office in Chicago, Illinois. While employed by that company, I still lived in and conducted business from Wisconsin.

8. Attached hereto as Exhibit B is a true and correct copy of the complaint Lodsys filed on February 11, 2011 in the Eastern District of Texas, styled as *Lodsys, LLC v. Brother International Corporation, et al.*, Case No. 2:11-CV-90.

9. Attached hereto as Exhibit C is a true and correct copy of the complaint Lodsys filed on May 31, 2011 in the Eastern District of Texas, styled as *Lodsys, LLC v. Combay, Inc., et al.*, Case No. 2:11-CV-272.


10. Attached hereto as Exhibit D is a true and correct copy of the complaint Lodsys filed on June 10, 2011 in the Eastern District of Texas, styled as *Lodsys, LLC v. adidas America, Inc., et al.*, Case No. 2:11-CV-283.

11. Attached hereto as Exhibit E is a true and correct copy of the complaint Lodsys filed (or is in the process of filing) on July 5, 2011 in the Eastern District of Texas, styled as *Lodsys, LLC v. ESET, LLC, et al.*

12. Attached hereto as Exhibit F is a true and correct copy of the contact information for Lodsys's registered agent in Austin, Texas.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 5, 2011, at Oconomowoc, Wisconsin.


Mark Small

CERTIFICATE OF SERVICE

The undersigned attorney of record certifies that service of the foregoing document has been made on June 29, 2011, via the Court's CM/ECF system based on its electronic filing, under Local Rules 5.5(a)(3) and General Order 09-014 Section X.E. In this manner, service has been made on all attorneys of record in this case.

/s/ William W. Flachsbart

William W. Flachsbart