

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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CONFIRMIT, INC.  
330 Seventh Avenue, 3rd Floor  
New York, NY 10001,

Plaintiff,

vs.

LODSYS, LLC  
800 Brazos Street, Suite 400  
Austin, TX 78701

and

LODSYS GROUP, LLC  
800 Brazos Street, Suite 400  
Austin, TX 78701

Defendants.

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**CONFIRMIT, INC.'S COMPLAINT FOR DECLARATORY JUDGMENT**

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Plaintiff Conformat, Inc. ("Conformat") hereby alleges for its Complaint for Declaratory Judgment against Defendants Lodsyst, LLC and Lodsyst Group, LLC (collectively, "Defendants" or "Lodsyst") as follows:

**NATURE OF THE ACTION**

1. This is an action for a declaratory judgment that Conformat does not infringe any valid claim of United States Patent Nos. 5,999,908 ("the '908 patent"), 7,133,834 ("the '834 patent"), 7,222,078 ("the '078 patent") or 7,620,565 ("the '565 patent") (collectively, the "Patents-In-Suit"), and for a declaratory judgment that the claims of each of the Patents-In-Suit are invalid.

2. A true and correct copy of the '908 patent is attached hereto as Exhibit A.

3. A true and correct copy of the '834 patent is attached hereto as Exhibit B.
4. A true and correct copy of the '078 patent is attached hereto as Exhibit C.
5. A true and correct copy of the '565 patent is attached hereto as Exhibit D.

### **THE PARTIES**

6. Plaintiff Conformat is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 330 Seventh Avenue, 3rd Floor, New York, NY 10001 and provides software and services available in this district.

7. On information and belief, Lodsys, LLC is a limited liability company organized and existing under the laws of the State of Texas, and claims to have a place of business at 505 East Travis Street, Suite 207, Marshall, Texas 75670. The Texas Secretary of State lists the corporate address of Lodsys, LLC as 800 Brazos, Suite 400, Austin, Texas 78701.

8. On information and belief, Lodsys Group, LLC is a limited liability company organized and existing under the laws of the State of Texas, and claims to have a place of business at 505 East Travis Street, Suite 207, Marshall, Texas 75670, the same address as Lodsys, LLC. The Texas Secretary of State lists the corporate address of Lodsys Group, LLC as 800 Brazos, Suite 400, Austin, Texas 78701, the same address as that listed for Lodsys, LLC. Together, Lodsys, LLC and Lodsys Group, LLC claim to have all rights and title to the Patents In-Suit.

9. On information and belief, Mark Small is the Chief Executive Officer of both Lodsys, LLC and Lodsys Group, LLC. He conducts Lodsys' business from an office located in Oconomowoc, Wisconsin, within this judicial district.

## **JURISDICTION AND VENUE**

10. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

11. This action is filed to resolve an actual and justiciable controversy between the parties hereto. Defendants' conduct towards Conconfirm's customer establishes that a real and substantial dispute exists between the parties regarding Defendants' allegations that Conconfirm's platforms and products infringe the '908 patent, the '834 patent, the '078 patent and/or the '565 patent. This dispute is both definite and concrete and admits of specific relief through a decree of a conclusive character. As set forth in succeeding paragraphs herein, there is a conflict of asserted rights among the parties and an actual controversy exists between Conconfirm and the Defendants with respect to the infringement, validity and scope of the '908 patent, the '834 patent, the '078 patent and the '565 patent.

12. Upon information and belief, this Court has personal jurisdiction over Lodsys because Mr. Small is located within this judicial district, and conducts Lodsys' business related to licensing and enforcement of the Patents-In-Suit, including licensing and enforcement actions directed at a Conconfirm customer, from his location within this judicial district.

13. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

## **ALLEGATIONS SUPPORTING DECLARATORY JUDGMENT JURISDICTION**

14. Conconfirm realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-13.

15. Confrimit develops and licenses software that Confrimit typically provides either on a software-as-a-service basis or within a customer's information technology infrastructure. Confrimit's software includes the Confrimit Horizons platform, which helps organizations gather feedback from their customers and employees, analyze the results and take action based on that analysis.

16. Lodslys purports to own rights in the Patents-In-Suit.

17. Lodslys did not invent the technology claimed in the Patents-In-Suit. Instead, Lodslys claims to have acquired the Patents-In-Suit from a non-practicing entity, Webvention, LLC, and now seeks to extract royalties by demanding that a Confrimit customer, or Confrimit, take a license under the Patents-In-Suit.

18. On information and belief, Lodslys is a patent holding company that does not practice any of the Patents-In-Suit but attempts to obtain licensing revenues in connection with its assertions of those patents.

19. Through communications and conduct, Lodslys has repeatedly threatened a Confrimit customer, Ally Financial ("Ally"), with assertion of the Patents-In-Suit against Confrimit Horizons. On April 21, 2011, Lodslys sent a notice of infringement letter ("Ally Notice Letter") to Ally, a Confrimit customer, bearing the heading "Re: Infringement of U.S. Patent Nos. 5,999,908, 7,133,834, 7,222,078, and 7,620,565 (Abelow)" and attached hereto as Exhibit E. The Ally Notice Letter defines the term "Lodslys Patents" as including all four of the Patent-In-Suit and states that "[w]e have reviewed your use of the Lodslys Patents and have prepared the enclosed claim chart demonstrating at least one instance of how you utilize the inventions embodied in the Lodslys Patents." A claim chart purporting to establish infringement of the '078 patent, a Patent-In-Suit, is included with the Ally Notice Letter. The claim chart,

through screen shots of Ally's website, identifies Confrimit platforms and/or products as the allegedly infringing functionality. The Ally Notice Letter asserts that "[t]he images used in the charts are representative only and in addition to the charted claim of the referenced patent, you should consider the remaining claims of that patent and the other Lodsys Patents both with respect to the charted utilization and to other products and services offered by you." The Ally Notice Letter also included an offer to Ally to license all of the Patents-In-Suit. In addition, Lodsys attached to the Ally Notice Letter "a complete copy of the '908 patent as well as certain pages of the '843, '078, and '565 patents for your review."

20. Following sending the Ally Notice Letter, Lodsys has contacted Ally on multiple occasions making monetary demands for a license to all of the Patents-In-Suit.

21. As a result of the Ally Notice Letter and Lodsys' repeated licensing demands, Ally has asserted that Confrimit is obligated to indemnify it with respect to the Patents-In-Suit.

22. Confrimit acquired CustomerSat Inc. ("CustomerSat"), a web-based Enterprise Feedback Management solution provider, from MarketTools, Inc. ("MarketTools") on August 16, 2012.

23. Through communications and conduct, Lodsys has repeatedly threatened MarketTools with assertion of the Patents-In-Suit against CustomerSat's survey platform. On December 5, 2011, Lodsys sent a notice of infringement letter ("MarketTools Notice Letter") to MarketTools, bearing the heading "Re: Infringement of U.S. Patent Nos. 5,999,908, 7,133,834, 7,222,078, and 7,620,565 (Abelow)" and attached hereto as Exhibit F. As in the Ally Notice Letter, the MarketTools Notice Letter defines the term "Lodsys Patents" as including all four of the Patent-In-Suit and states that "[w]e have reviewed your use of the Lodsys Patents and have prepared the enclosed claim chart demonstrating at least one instance of how you utilize the

inventions embodied in the Lodsys Patents.” A claim chart purporting to establish infringement of the ‘908 patent, a Patent-In-Suit, is included with the MarketTools Notice Letter. The claim chart, through screen shots of MarketTool’s website, identifies CustomerSat’s platforms and/or products as the allegedly infringing functionality. The MarketTools Notice Letter asserts that “[t]he images used in the charts are representative only and in addition to the charted claim of the referenced patent, you should consider the remaining claims of that patent and the other Lodsys Patents both with respect to the charted utilization and to other products and services offered by you.” The MarketTools Notice Letter also included an offer to MarketTools to license all of the Patents-In-Suit. In addition, Lodsys attached to the Notice Letter “a complete copy of the ‘908 patent as well as certain pages of the ‘843, ‘078, and ‘565 patents for your review.”

24. Following sending the MarketTools Notice Letter, Lodsys has contacted MarketTools on multiple occasions making monetary demands for a license to all of the Patents-In-Suit.

25. Lodsys is not entitled to any royalties from Confrimit or any of its customers, nor does Confrimit or any of its customers need a license to the Patents-In-Suit. Confrimit, Ally, MarketTools, CustomerSat and Confrimit’s other customers, and the end users of the Confrimit customers’ websites have not infringed, and do not infringe, either directly or indirectly, any valid and enforceable claim of any of the Patents-In-Suit, either literally or under the doctrine of equivalents.

26. Lodsys’ conduct creates a substantial controversy between Confrimit and Lodsys of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

## **FIRST CLAIM FOR RELIEF**

### **(Declaratory Judgment of Non-infringement of the '908 patent)**

27. Confirmat realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 26 as though fully set forth herein.

28. Based on the above-stated conduct, Confirmat is informed and believes, and on that basis avers, that the Defendants contend the Confirmat Horizons platform and the CustomerSat platform infringe one or more claims of the '908 patent.

29. Accordingly, an actual controversy exists between Confirmat and the Defendants as to whether or not Confirmat has infringed, or is infringing the '908 patent; has contributed to infringement, or is contributing to infringement of the '908 patent; and has induced infringement, or is inducing infringement of the '908 patent.

30. The controversy is substantial and of such immediacy and reality that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, *et seq.*, Confirmat is entitled to a declaration, in the form of a judgment, that by its activities Confirmat has not infringed and is not infringing any valid and enforceable claim of the '908 patent; has not contributed to infringement and is not contributing to infringement of the '908 patent; and/or has not induced infringement and is not inducing infringement of the '908 patent. Such a determination and declaration is necessary and appropriate at this time.

## **SECOND CLAIM FOR RELIEF**

### **(Declaratory Judgment of Non-infringement of the '834 patent)**

31. Confirmat realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 30 as though fully set forth herein.

32. Based on the above-stated conduct, Conconfirmit is informed and believes, and on that basis avers, that Defendants contend the Conconfirmit Horizons platform and the CustomerSat platform infringe one or more claims of the '834 patent.

33. Accordingly, an actual controversy exists between Conconfirmit and the Defendants as to whether or not Conconfirmit has infringed, or is infringing the '834 patent; has contributed to infringement, or is contributing to infringement of the '834 patent; and has induced infringement, or is inducing infringement of the '834 patent.

34. The controversy is substantial and of such immediacy and reality that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, *et seq.*, Conconfirmit is entitled to a declaration, in the form of a judgment, that by its activities Conconfirmit has not infringed and is not infringing any valid and enforceable claim of the '834 patent; has not contributed to infringement and is not contributing to infringement of the '834 patent; and/or has not induced infringement and is not inducing infringement of the '834 patent. Such a determination and declaration is necessary and appropriate at this time.

### **THIRD CLAIM FOR RELIEF**

#### **(Declaratory Judgment of Non-infringement of the '078 patent)**

35. Conconfirmit realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 34 as though fully set forth herein.

36. Based on the above-stated conduct, Conconfirmit is informed and believes, and on that basis avers, that Defendants contend the Conconfirmit Horizons platform and the CustomerSat platform infringe one or more claims of the '078 patent.

37. Accordingly, an actual controversy exists between Conconfirmit and the Defendants as to whether or not Conconfirmit has infringed, or is infringing the '078 patent; has contributed to

infringement, or is contributing to infringement of the '078 patent; and has induced infringement, or is inducing infringement of the '078 patent.

38. The controversy is substantial and of such immediacy and reality that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, *et seq.*, Confirmat is entitled to a declaration, in the form of a judgment, that by its activities Confirmat has not infringed and is not infringing any valid and enforceable claim of the '078 patent; has not contributed to infringement and is not contributing to infringement of the '078 patent; and/or has not induced infringement and is not inducing infringement of the '078 patent. Such a determination and declaration is necessary and appropriate at this time.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Declaratory Judgment of Non-infringement of the '565 patent)**

39. Confirmat realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 38 as though fully set forth herein.

40. Based on the above-stated conduct, Confirmat is informed and believes, and on that basis avers, that Defendants contend the Confirmat Horizons platform and the CustomerSat platform infringe one or more claims of the '565 patent.

41. Accordingly, an actual controversy exists between Confirmat and the Defendants as to whether or not Confirmat has infringed, or is infringing the '565 patent; has contributed to infringement, or is contributing to infringement of the '565 patent; and has induced infringement, or is inducing infringement of the '565 patent.

42. The controversy is substantial and of such immediacy and reality that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, *et seq.*, Confirmat is entitled to a declaration, in the form of a judgment, that by its activities Confirmat has not infringed and is not

infringing any valid and enforceable claim of the '565 patent; has not contributed to infringement and is not contributing to infringement of the '565 patent; and has not induced infringement and is not inducing infringement of the '565 patent. Such a determination and declaration is necessary and appropriate at this time.

### **FIFTH CLAIM FOR RELIEF**

#### **(Declaratory Judgment of Invalidity of the '908 Patent)**

43. Confirmit realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 42 as though fully set forth herein.

44. Claims 1-37 of the '908 patent are invalid for failure to meet the conditions of patentability of, and to otherwise comply with, one or more provisions of 35 U.S.C. § 100, *et seq.*, including §§ 101, 102, 103 and 112. At a minimum, each of the claims of the '908 patent is invalid under 35 U.S.C. §§ 102 and/or 103 based upon at least the following pieces of prior art in view of Lodsys' apparent application of the claims of that patent: U.S. Patent No. 4,245,245 ("Matsumoto"), U.S. Patent No. 4,546,382 ("McKenna"), U.S. Patent No. 4,345,315 ("Cadotte"), U.S. Patent No. 4,567,359 ("Lockwood"), U.S. Patent No. 4,689,619 ("O'Brien, Jr."), U.S. Patent No. 4,740,890 ("William"), U.S. Patent No. 4,816,904 ("McKenna"), U.S. Patent No. 4,829,558 ("Welsh"), U.S. Patent No. 4,862,268 ("Campbell"), U.S. Patent No. 4,893,248 ("Pitts"), U.S. Patent No. 4,973,952 ("Malec"), U.S. Patent No. 4,912,552 ("Allison, III"), U.S. Patent No. 4,992,940 ("Dworkin"), U.S. Patent No. 5,001,554 ("Johnson"), U.S. Patent No. 5,003,384 ("Durden"), U.S. Patent No. 5,029,099 ("Goodman"), U.S. Patent No. 5,036,479 ("Prednis"), U.S. Patent No. 5,056,019 ("Schultz"), U.S. Patent No. 5,065,338 ("Phillips"), U.S. Patent No. 5,077,582 ("Kravette"), U.S. Patent No. 5,083,271 ("Thacher"), U.S. Patent No. 5,117,354 ("Long"), U.S. Patent No. 5,138,377 ("Smith"), U.S. Patent No.

5,207,784 (“Schwartzendruber”), U.S. Patent No. 5,237,157 (“Kaplan”), U.S. Patent No. 5,282,127 (“Mii”), U.S. Patent No. 5,283,734 (“Von Kohorn”), U.S. Patent No. 5,291,416 (“Hutchins”), U.S. Patent No. 5,335,048 (“Takano”), U.S. Patent No. 5,347,449 (“Meyer”), U.S. Patent No. 5,347,632 (“Filepp”), U.S. Patent No. 5,477,262 (“Banker”), U.S. Patent No. 5,496,175 (“Oyama”), U.S. Patent No. 5,740,035 (“Cohen”), U.S. Patent No. 5,956,505 (“Manduley”), JP H2-65556 (“Kita”), JP-03-064286-A (“Garza”), JP H3-80662 (“Ukegawa”), JP S60-200366 (“Tanaka”), JP S62-280771 (“Furukawa”) and Sandra Card, *TOC/DOC at Caltech: Evolution of Citation Access Online*, 8 Info. Tech. & Libr. 146 (1989). These examples of prior art are intended to be illustrative and not exhaustive, and Confermit reserves the right to assert other specific pieces of prior art.

45. Accordingly, an actual controversy exists between Confermit and the Defendants as to the validity of the ‘908 patent, and each claim thereof.

46. The controversy is substantial and of such immediacy and reality that pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, *et seq.*, Confermit is entitled to a declaration, in the form of a judgment, that each claim of the ‘908 patent is invalid for failure to satisfy one or more requirements of 35 U.S.C. § 1, *et seq.* Such a determination is necessary and appropriate at this time.

### **SIXTH CLAIM FOR RELIEF**

#### **(Declaratory Judgment of Invalidity of the ‘834 Patent)**

47. Confermit realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 46 as though fully set forth herein.

48. Claims 1-22 of the ‘834 patent are invalid for failure to meet the conditions of patentability of, and to otherwise comply with, one or more provisions of 35 U.S.C. § 100, *et*

*seq.*, including 101, 102, 103 and 112. At a minimum, each of the claims of the '834 patent is invalid under 35 U.S.C. §§ 102 and/or 103 based upon at least the following pieces of prior art in view of Lodsyst's apparent application of the claims of that patent: U.S. Patent No. 4,245,245 ("Matsumoto"), U.S. Patent No. 4,546,382 ("McKenna"), U.S. Patent No. 4,345,315 ("Cadotte"), U.S. Patent No. 4,567,359 ("Lockwood"), U.S. Patent No. 4,689,619 ("O'Brien, Jr."), U.S. Patent No. 4,740,890 ("William"), U.S. Patent No. 4,816,904 ("McKenna"), U.S. Patent No. 4,829,558 ("Welsh"), U.S. Patent No. 4,862,268 ("Campbell"), U.S. Patent No. 4,893,248 ("Pitts"), U.S. Patent No. 4,973,952 ("Malec"), U.S. Patent No. 4,912,552 ("Allison, III"), U.S. Patent No. 4,992,940 ("Dworkin"), U.S. Patent No. 5,001,554 ("Johnson"), U.S. Patent No. 5,003,384 ("Durden"), U.S. Patent No. 5,029,099 ("Goodman"), U.S. Patent No. 5,036,479 ("Prednis"), U.S. Patent No. 5,056,019 ("Schultz"), U.S. Patent No. 5,065,338 ("Phillips"), U.S. Patent No. 5,077,582 ("Kravette"), U.S. Patent No. 5,083,271 ("Thacher"), U.S. Patent No. 5,117,354 ("Long"), U.S. Patent No. 5,138,377 ("Smith"), U.S. Patent No. 5,207,784 ("Schwartzendruber"), U.S. Patent No. 5,237,157 ("Kaplan"), U.S. Patent No. 5,282,127 ("Mii"), U.S. Patent No. 5,283,734 ("Von Kohorn"), U.S. Patent No. 5,291,416 ("Hutchins"), U.S. Patent No. 5,335,048 ("Takano"), U.S. Patent No. 5,347,449 ("Meyer"), U.S. Patent No. 5,347,632 ("Filepp"), U.S. Patent No. 5,477,262 ("Banker"), U.S. Patent No. 5,496,175 ("Oyama"), U.S. Patent No. 5,740,035 ("Cohen"), U.S. Patent No. 5,956,505 ("Manduley"), JP H2-65556 ("Kita"), JP-03-064286-A ("Garza"), JP H3-80662 ("Ukegawa"), JP S60-200366 ("Tanaka"), JP S62-280771 ("Furukawa") and Sandra Card, *TOC/DOC at Caltech: Evolution of Citation Access Online*, 8 Info. Tech. & Libr. 146 (1989). These examples of prior art are intended to be illustrative and not exhaustive, and Confrimit reserves the right to assert other specific pieces of prior art.

49. Accordingly, an actual controversy exists between Confrimit and the Defendants as to the validity of the '834 patent, and each claim thereof.

50. The controversy is substantial and of such immediacy and reality that pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, *et seq.*, Confrimit is entitled to a declaration, in the form of a judgment, that each claim of the '834 patent is invalid for failure to satisfy one or more requirements of 35 U.S.C. § 1, *et seq.* Such a determination is necessary and appropriate at this time.

### **SEVENTH CLAIM FOR RELIEF**

#### **(Declaratory Judgment of Invalidity of the '078 Patent)**

51. Confrimit realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 50 as though fully set forth herein.

52. Claims 1-74 of the '078 patent are invalid for failure to meet the conditions of patentability of, and to otherwise comply with, one or more provisions of 35 U.S.C. § 100, *et seq.*, including 101, 102, 103 and 112. At a minimum, each of the claims of the '078 patent is invalid under 35 U.S.C. §§ 102 and/or 103 based upon at least the following pieces of prior art in view of Lodsyst's apparent application of the claims of that patent: U.S. Patent No. 4,245,245 ("Matsumoto"), U.S. Patent No. 4,546,382 ("McKenna"), U.S. Patent No. 4,345,315 ("Cadotte"), U.S. Patent No. 4,567,359 ("Lockwood"), U.S. Patent No. 4,689,619 ("O'Brien, Jr."), U.S. Patent No. 4,740,890 ("William"), U.S. Patent No. 4,816,904 ("McKenna"), U.S. Patent No. 4,829,558 ("Welsh"), U.S. Patent No. 4,862,268 ("Campbell"), U.S. Patent No. 4,893,248 ("Pitts"), U.S. Patent No. 4,973,952 ("Malec"), U.S. Patent No. 4,912,552 ("Allison, III"), U.S. Patent No. 4,992,940 ("Dworkin"), U.S. Patent No. 5,001,554 ("Johnson"), U.S. Patent No. 5,003,384 ("Durdin"), U.S. Patent No. 5,029,099 ("Goodman"), U.S. Patent No.

5,036,479 (“Prednis”), U.S. Patent No. 5,056,019 (“Schultz”), U.S. Patent No. 5,065,338 (“Phillips”), U.S. Patent No. 5,077,582 (“Kravette”), U.S. Patent No. 5,083,271 (“Thacher”), U.S. Patent No. 5,117,354 (“Long”), U.S. Patent No. 5,138,377 (“Smith”), U.S. Patent No. 5,207,784 (“Schwartzendruber”), U.S. Patent No. 5,237,157 (“Kaplan”), U.S. Patent No. 5,282,127 (“Mii”), U.S. Patent No. 5,283,734 (“Von Kohorn”), U.S. Patent No. 5,291,416 (“Hutchins”), U.S. Patent No. 5,335,048 (“Takano”), U.S. Patent No. 5,347,449 (“Meyer”), U.S. Patent No. 5,347,632 (“Filepp”), U.S. Patent No. 5,477,262 (“Banker”), U.S. Patent No. 5,496,175 (“Oyama”), U.S. Patent No. 5,740,035 (“Cohen”), U.S. Patent No. 5,956,505 (“Manduley”), JP H2-65556 (“Kita”), JP-03-064286-A (“Garza”), JP H3-80662 (“Ukegawa”), JP S60-200366 (“Tanaka”), JP S62-280771 (“Furukawa”) and Sandra Card, *TOC/DOC at Caltech: Evolution of Citation Access Online*, 8 Info. Tech. & Libr. 146 (1989). These examples of prior art are intended to be illustrative and not exhaustive, and Confrimit reserves the right to assert other specific pieces of prior art.

53. Accordingly, an actual controversy exists between Confrimit and the Defendants as to the validity of the ‘078 patent, and each claim thereof.

54. The controversy is substantial and of such immediacy and reality that pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, *et seq.*, Confrimit is entitled to a declaration, in the form of a judgment, that each claim of the ‘078 patent is invalid for failure to satisfy one or more requirements of 35 U.S.C. § 1, *et seq.* Such a determination is necessary and appropriate at this time.

## EIGHTH CLAIM FOR RELIEF

### (Declaratory Judgment of Invalidity of the '565 Patent)

55. Confirmit realleges and incorporates herein by reference each and every allegation contained in Paragraphs 1 through 54 as though fully set forth herein.

56. Claims 1-32 of the '565 patent are invalid for failure to meet the conditions of patentability of, and to otherwise comply with, one or more provisions of 35 U.S.C. § 100, *et seq.*, including 101, 102, 103 and 112. At a minimum, each of the claims of the '565 patent is invalid under 35 U.S.C. §§ 102 and/or 103 based upon at least the following pieces of prior art in view of Lodsys' apparent application of the claims of that patent: U.S. Patent No. 4,245,245 ("Matsumoto"), U.S. Patent No. 4,546,382 ("McKenna"), U.S. Patent No. 4,345,315 ("Cadotte"), U.S. Patent No. 4,567,359 ("Lockwood"), U.S. Patent No. 4,689,619 ("O'Brien, Jr."), U.S. Patent No. 4,740,890 ("William"), U.S. Patent No. 4,816,904 ("McKenna"), U.S. Patent No. 4,829,558 ("Welsh"), U.S. Patent No. 4,862,268 ("Campbell"), U.S. Patent No. 4,893,248 ("Pitts"), U.S. Patent No. 4,973,952 ("Malec"), U.S. Patent No. 4,912,552 ("Allison, III"), U.S. Patent No. 4,992,940 ("Dworkin"), U.S. Patent No. 5,001,554 ("Johnson"), U.S. Patent No. 5,003,384 ("Durden"), U.S. Patent No. 5,029,099 ("Goodman"), U.S. Patent No. 5,036,479 ("Prednis"), U.S. Patent No. 5,056,019 ("Schultz"), U.S. Patent No. 5,065,338 ("Phillips"), U.S. Patent No. 5,077,582 ("Kravette"), U.S. Patent No. 5,083,271 ("Thacher"), U.S. Patent No. 5,117,354 ("Long"), U.S. Patent No. 5,138,377 ("Smith"), U.S. Patent No. 5,207,784 ("Schwartzendruber"), U.S. Patent No. 5,237,157 ("Kaplan"), U.S. Patent No. 5,282,127 ("Mii"), U.S. Patent No. 5,283,734 ("Von Kohorn"), U.S. Patent No. 5,291,416 ("Hutchins"), U.S. Patent No. 5,335,048 ("Takano"), U.S. Patent No. 5,347,449 ("Meyer"), U.S. Patent No. 5,347,632 ("Filepp"), U.S. Patent No. 5,477,262 ("Banker"), U.S. Patent No.

5,496,175 (“Oyama”), U.S. Patent No. 5,740,035 (“Cohen”), U.S. Patent No. 5,956,505 (“Manduley”), JP H2-65556 (“Kita”), JP-03-064286-A (“Garza”), JP H3-80662 (“Ukegawa”), JP S60-200366 (“Tanaka”), JP S62-280771 (“Furukawa”) and Sandra Card, *TOC/DOC at Caltech: Evolution of Citation Access Online*, 8 Info. Tech. & Libr. 146 (1989). These examples of prior art are intended to be illustrative and not exhaustive, and Confrimit reserves the right to assert other specific pieces of prior art.

57. Accordingly, an actual controversy exists between Confrimit and the Defendants as to the validity of the ‘565 patent, and each claim thereof.

58. The controversy is substantial and of such immediacy and reality that pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, *et seq.*, Confrimit is entitled to a declaration, in the form of a judgment, that each claim of the ‘565 patent is invalid for failure to satisfy one or more requirements of 35 U.S.C. § 1, *et seq.* Such a determination is necessary and appropriate at this time.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff Confrimit respectfully requests that this Court enter judgment in its favor and grant the following relief:

1. An order and judgment declaring that Confrimit, its platforms and products, its customers and the end users of the Confrimit customers’ websites do not infringe any valid claim of the ‘908 patent;

2. An order and judgment declaring that the claims of the ‘908 patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103 and 112;

3. An order and judgment declaring that Conconfirm, its platforms and products, its customers and the end users of the Conconfirm customers' websites do not infringe any valid claim of the '834 patent;

4. An order and judgment declaring that the claims of the '834 patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

5. An order and judgment declaring that Conconfirm, its platforms and products, its customers and the end users of the Conconfirm customers' websites do not infringe any valid claim of the '078 patent;

6. An order and judgment declaring that the claims of the '078 patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

7. An order and judgment declaring that Conconfirm, its platforms and products, its customers and the end users of the Conconfirm customers' websites do not infringe any valid claim of the '565 patent;

8. An order and judgment declaring that the claims of the '565 patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

9. For a preliminary and permanent injunction enjoining and restraining Defendants and their respective officers, partners, employees, agents, parents, subsidiaries or anyone in privity with them, and all persons acting in concert with them and each of them:

- a. from making any claims to any person or entity that any platform or product of Conconfirm infringes the '908 patent, the '834 patent, the '078 patent and/or the '565 patent;
- b. from interfering with, or threatening to interfere with the manufacture, sale, or use of any of Conconfirm's platforms or products by Conconfirm, its

customers, distributors, predecessors, successors or assigns, or the end users of the Conformat customers' websites; and

- c. from instituting or prosecuting any lawsuit or proceeding that places in issue the right of Conformat, its customers, distributors, predecessors, successors or assigns, or the end users of the Conformat customers' websites to make, use or sell platforms or products which allegedly infringe the '908 patent, the '834 patent, the '078 patent and/or the '565 patent.

10. An order declaring this case exceptional and awarding Conformat its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285 and all other applicable statutes, rules and common law; and

11. For such other and further relief as the Court may deem proper.

**JURY DEMAND**

Plaintiff respectfully requests a trial by jury of all issues so triable.

Dated: August 27, 2012

Respectfully submitted,

By: s/ David G. Hanson  
WI State Bar ID No. 1019486  
dhanson@reinhardt.com  
Lisa Nester Kass  
WI State Bar ID No. 1045755  
lkass@reinhardt.com  
Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 1700  
Milwaukee, WI 53202  
Telephone: 414-298-1000  
Facsimile: 414-298-8097

Of counsel:

James J. DeCarlo (admission application pending)  
Decarloj@gtlaw.com

Jonathan M. Dunsay (admission application  
pending)

dunsayj@gtlaw.com

GREENBERG TRAUIG, LLP

MetLife Building

200 Park Avenue

New York, New York 10166

Telephone: (212) 801-9200

Facsimile: (212) 801-6400

**ATTORNEYS FOR CONFIRMIT INC.**