

03-CV-00003-DOCTRUM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THENDIC ELECTRONICS COMPONENTS,
et al.,

Plaintiffs,

v.

AMIGA INC.,

Defendant.

No. C03-0003L

ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on "Plaintiffs' Motion and Memorandum in Support of Summary Judgment: Granting Specific Performance and Dismissing Amiga's Counterclaim" and its "Supplemental Brief in Support of Motion for Summary Judgment: Granting Specific Performance." When the Court first considered plaintiffs' unopposed motion for summary judgment, it noted that there was an ambiguity regarding whether the parties intended to authorize the incorporation of Amiga's operating system into certain Thendic products that were not listed in Appendix A. In response to the Court's request, plaintiffs submitted a memorandum addressing the issues raised by the Court. In particular, plaintiffs presented evidence regarding the intent of the parties at the time the OEM Software License Agreement ("License Agreement") was signed. *See, e.g., Berg v. Hudesman*, 115 Wn.2d 657, 663 (1990) (quoting A. Corbin, *The Interpretation of Words and the Parol Evidence Rule*, 50

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1 Cornell L. Quar. 161, 162 (1965)). In light of defendant's failure to participate in this litigation
2 through counsel, defendant has neither opposed plaintiffs' motion for summary judgment nor
3 presented evidence of intent that would preclude a finding in plaintiffs' favor.

4 The Court therefore finds that, as a matter of law, the license granted by defendant
5 was not limited to Thendic products that operate on Windows CE and that the list of products
6 included in Appendix A "is not, and was not, intended to be exhaustive of 'Thendic' products
7 entitled to integration." Decl. of Bill Buck (filed 1/14/04). Plaintiffs' motion for summary
8 judgment is GRANTED. Plaintiffs are entitled to specific performance as requested in the
9 complaint, "i.e., integration of Amiga's DE Operating System into Thendic's Pegasos and/or
10 other products in question." Complaint at 2. Defendant shall, within thirty days of the date of
11 this Order, grant plaintiffs rights and possession of the DE Operating System for integration into
12 Pegasos. The Clerk of Court is directed to enter judgment against defendant and in favor of
13 plaintiffs.

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15 DATED this 19th day of February, 2004.

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18 Robert S. Lasnik
United States District Judge