

03-0003-0003

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The Honorable Robert Lasnick

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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

THENDIC ELECTRONICS COMPONENTS,
a foreign corporation, and GENESI SARL, a
foreign corporation,

Plaintiffs;

vs.

AMIGA INC., a corporation in the state of
Washington,

Defendant.

NO. 003-0003

PLAINTIFFS' REPLY IN SUPPORT OF
ITS MOTION TO MODIFY THE
ORDER GRANTING SPECIFIC
PERFORMANCE I.E., INTEGRATION
OF AMIGA'S DE OPERATING
SYSTEM TO PEGASOS



03-CV-00003-RPLY

COME NOW THE PLAINTIFFS, Thendic and Genesi Sarl, (hereinafter "Thendic" when referring to both Plaintiffs) by and through their attorney of record, Richard Hughes and submit its Reply in support of its Motion to Modify the Order Granting Specific Performance.

L. AUTHORITY

Plaintiffs' rely upon the Declaration of Bill Buck and Richard Hughes and attachments.

PLAINTIFFS' REPLY IN SUPPORT
OF THE MOTION TO MODIFY THE
ORDER OF SPECIFIC
PERFORMANCE

Page -1-

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ORIGINAL

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II. ARGUMENT

Despite abandonment by its counsel mid-way through litigation resulting in both dismissal of Amiga's counterclaims and an Order of Specific Performance, Amiga's Response, in substantial part, can be fairly characterized as a futile attempt to argue against this Court's Order for Specific Performance. To that end, Amiga's Response is untimely, wholly irrelevant, and utterly fails to address the issues addressed in "Thendic's" Motion to Modify the Order of Specific Performance.

Amiga asserts that language in the proposed Order subsequently bolded in Amiga's Response was not defined and thus the Order should not be modified. However, "Thendic" added language that was both "defined" and/or "expressly conferred" as it stated in its original motion. The bolded language "and any other present or future "Thendic" product" is expressly conferred by the OEM Software License Agreement. See ("Agreement")(P. 1, Fifth Whereas).¹ Amiga's failure to address the following proposed terms: "Documentation", "Source Code", "Object Code", "Derivative Work", "Enhancements, including improvements", "Updates", and "Upgrades" can only be construed to mean that it tacitly agrees with the proposed Order for Modification as it relates to the above terms.

The only remaining terms at issue in the Proposed Order are: "...to present and beyond, along with all Amiga systems, programs, or software integrated into or otherwise associated with its DE Operating System, for integration into Pegasos...". However, Amiga wholly fails to state any reason as to why those terms are not conferred by the ("Agreement"). The terms "Enhancements, including changes or improvements", "Updates", and "Upgrades", addressed and defined in "Thendic's" Motion to Modify provides the basis for the remaining language in the

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¹ Amiga's brief places undue emphasis on Paragraphs 4 through 5 of the ("Agreement") and thereby attempts to minimize the effect of the ("Agreement's") other sections, including the Recitals set forth on P. 1. See *Response*, (P. 3-5 L. 14-11). Amiga's myopic contractual interpretation is not supported by case law or by the ("Agreement") at issue. See *First Nat. Bank & Trust Co. of Minn. V. U.S. Trust Co.*, 184 Wash 212, 219 (1935)([i]he essential feature of a contract is the promise and whenever the court can collect from the instrument an agreement...it amounts to a covenant, whether it be contained in the recital or in any other part of the instrument.); *Hunt v. United Bank & Trust Co.*, 210 Cal. 108, 291 P. 184; *Becker v. Kelsey*, 157 A. 177, 9 N. J. Misc. 1265. See also, ("Agreement") P. 4, ¶ 3.2 titled "Rules of Construction, stating in part: "The descriptive headings of this Agreement are inserted for convenience of reference and do not constitute a part of and shall not be utilized in interpreting this Agreement."

1 Proposed Order. Now, after this Court has ruled, Amiga finally admits that the ("Agreement")
2 conferred rights to "Thendic" to use AmigaDE, "Updates", "Upgrades" and presumably
3 "Enhancements, changes and improvements as defined within the term "Enhancements." *Amiga*
4 *Response* P. 4, L. 3-4. Frankly, "Thendic" can see no reason why the remaining language
5 proposed in its order fails to fall squarely under the rights associated with the above referenced and
6 defined terms.

7 While "Thendic" strongly asserts that it is entitled to OS and its progeny as an "Upgrade",
8 "Update" and/or "Enhancement" it seeks only to incorporate the language in the proposed order
9 sidestepping, for now, the more contentious issue over its rights to OS. However, since Amiga has
10 spent considerable efforts to persuade this Court that "Thendic" is not entitled to OS, "Thendic"
11 will rebut this assertion.

12 The Amiga DE Operating System was marketed and sold to "Thendic" as an Operating
13 System. Now, for the first time, Amiga asserts that Amiga DE is not an Operating System. *See*
14 *Amiga's Response* (P. 7, L. 18-19); ("Amiga DE is not an operating system and never was.")
15 *McEwen Decl.* P. 3, ¶ 10, L. 20. Ironically, the ("Agreement") specifically refers to the "Amiga
16 DE Operating System" as an "Operating System" at least seven times and similarly refers on
17 numerous occasions to "Licensed Software", "Licensed Product" and "Amiga Software" similarly
18 defined as the "Amiga DE Operating System along with 'Enhancements', 'Updates' and
19 'Upgrades' per the "Agreement"(See definitions "Licensed Software" and "Licensed Product").²
20 Moreover, the ("Agreement") states in pertinent part "...Amiga is, and at all times shall remain,
21 responsible for integrating its DE Operating System, which may include but is not limited to a Java
22 enabled browser, MP3, and a mail client, into any of Thendic". *See* ("Agreement")(Page 6, ¶ 5.1).
23 A Java enabled web-browser, an MP3 player and a mail client are application programs that adhere
24 to an operating system just as Microsoft Outlook Express is an email application that works with
25 Windows. *See Declaration of Buck. P.1, L. 25-27.* If the Amiga DE Operating System did not
26

27 ² While Amiga Software is not explicitly defined, it would take a contorted interpretation for it to mean other than the
28 Amiga DE Operating System."

1 include an operating system and was touted as being only an "application" as Amiga now
2 contends, it could not have promised or discussed integration of Java, MP3 and mail client as
3 stated in the ("Agreement"). *See Declaration of Buck. P. 2, L. 1-3.*

4 Bill Buck and Raquel Velasco have a unique knowledge base regarding Amiga.
5 Commodore Business Machines sold a computer running on the Amiga Operating System and
6 filed for bankruptcy in 1994. In 1994 German PC Distributor (ESCOM) bought the rights and
7 assets of Commodore Business Machines. At that time, Bill Buck was CEO of a company that was
8 partnered with (ESCOM) to develop and promote The Amiga Operating System through a
9 hardware platform. Similarly, "Thendic" has also developed hardware platforms i.e. Pegasos and
10 Smart Boy. In 1996, ESCOM also filed for bankruptcy. In connection with that bankruptcy the
11 bankruptcy trustee authorized Bill Buck and Raquel Velasco to operate and manage Amiga Inc
12 from June 1996 through November 1996. As a result Bill Buck is intimately familiar with the
13 issues at hand. As a result of Bill Buck's involvement with Amiga he was able to understand the
14 full import of the ("Agreement") even if Bill McEwen and Amiga did not. *See Declaration of*
15 *Buck P.2, L. 4-13.*

16 The email attached as Exhibit 4 to McEwen's declaration sets forth the fundamental
17 roadmap which brings the parties to court. In the first paragraph of the email Bill Buck was
18 commenting on Bill McEwen's focus that "DE was the way." Buck recommends that the DE
19 Operating System could be split into two revenue producing opportunities. One would allow for
20 the Amiga DE component to attract developers from many platforms and the other that would
21 allow the Classic Operating System to migrate to the Power PC Platform championed by Motorola
22 and IBM for Apple. Together, they comprised the total DE Operating System as promised and
23 governed by the ("Agreement"). This was the plan recommended by Bill Buck and Raquel
24 Velasco and this is what was carried out and is reflected in Amiga's Website. *See Declaration of*
25 *Buck.P. 2, L. 14-21 (See Ex. 2 & 3 to B. Buck's Decl. in support of Motion to Modify).*

26 Key to understanding the issues is the recognition that Amiga DE and Amiga's Operating
27 System are currently being represented with differing technical descriptions exclusive of one

1 another. However, that was not the intent of the ("Agreement") and that distinction is not
2 supported by Bill Buck's email dated January 12, 2001. When Buck states in his email "Amiga
3 OS is an operating system; DE is something different that makes lots of things work in other than
4 Amiga operating system environments", Buck was attempting to make McEwen understand that
5 under the ("Agreement") the Amiga DE Operating System had two development opportunities.
6 The Amiga DE Operating System was to contain (1) a Development Environment, and, (2) an
7 Operating System. Again, the first paragraph of the email reflects McEwen's insistence that "DE
8 was the way", lending substantial credibility to "Thendic's" belief that it is entitled to what was
9 promised within Amiga's DE Operating System. *See Declaration of Buck P. 2, L. 22-27 and P. 3,*
10 *L. 1-4.*

11 It was Buck who helped McEwen understand the opportunities available to Amiga and
12 "Thendic" by creating the distinction: creating two complimentary systems Amiga DE and Amiga
13 OS out of the Amiga DE Operating System because the two systems had not yet been fully
14 developed as promised by Amiga in the ("Agreement") and by Bill McEwen in negotiations
15 leading up to the ("Agreement"). *See Declaration of Buck, P. 3, L. 5-9.*

16 Since this email was created, Amiga has been engaged in a pattern of doublespeak where
17 they refer only to "Amiga DE", "DE", or "Digital Environment" as opposed to the "Amiga DE
18 Operating System". The only apparent reason for the doublespeak was Amiga's plan to separate
19 Amiga DE from Amiga's Operating System following Buck's recommendation. In and of itself,
20 that bifurcation was not necessarily problematic provided that Amiga would honor the
21 ("Agreement") and integrate both Amiga DE and Amiga's Operating System into "Thendic's"
22 products. Aside from Amiga's refusal to integrate Pegasos with the DE Operating System, Amiga
23 contracted with Hyperion to develop the operating system at the expense of the DE Operating
24 System promised to "Thendic". Moreover, Amiga again recently breached its promise of
25 providing "Thendic" with its DE Operating System when unbelievably Amiga sold its operating
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27

1 system to Itec on April 24, 2003.³ Shockingly, it was not until March 15, 2004, that Amiga
2 officially announced that it sold Amiga OS to KMOS, Inc. Interestingly, Amiga never similarly
3 announced that it had sold its OS to Itec, Inc., on April 23, 2003. Even though Amiga knew
4 "Thendic" was seeking the DE Operating System promised by Amiga, which would arguably
5 include OS, it had the gall to jettison perhaps the key component to this litigation unduly
6 complicating matters and likely creating even more litigation. *See Declaration of Buck, P. 3, L.*
7 *10-19. Ex. 1 (Copy of Amiga's Website).*

8 Regardless of whether "Thendic" was to receive the Amiga DE Operating System as an
9 Operating System, Amiga DE and OS along with its progeny are merging and becoming one
10 product. *See Exhibits 2 & 3 to Buck's prior declaration.* Amiga admits to the integration of its
11 Amiga DE with its OS. However, Amiga now attempts to characterize the integration as DE
12 working with Amiga's Operating Systems. *See McEwen Dec. P. 3, L. 19.* Amazingly, McEwen
13 admits that Amiga DE fails to work with the Amiga Operating System significantly limiting its
14 marketability and application. *See McEwen Dec. P. 4, L. 12-15.* One can only ask the rhetorical
15 question: Since Amiga promised to provide "Thendic" with the Amiga DE Operating System, how
16 can it now be neither an operating system nor a program that operates with Amiga's Operating
17 System unless Amiga is in breach by taking its DE Operating System capabilities and grafting
18 them into "Amiga's Operating System?"

19 Amiga attempts to raise a variety of irrelevant issues. Only some will be raised and
20 dismissed. Bill Buck is co-director of Genesi Sarl-a party to this lawsuit. *See Declaration of Buck,*
21 *P. 1, L. 24.* Amiga can contact "Thendic" by way of its attorney Richard Hughes. The email
22 attributed to "Fleecy Moss" was and still is believed to be from Fleecy Moss. *See Declaration of*
23 *Buck, P. 3, L. 20.* The Motion and declaration making that assertion was filed with the Court
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27 ³ Ironically, Mr. McEwen apparently perjured himself during his deposition taken on August 14, 2003, nearly four
28 months following the sale of Amiga's OS System to Itec wherein he testified that Amiga's assets included its
29 Intellectual Property Rights to Amiga OS. *See Declaration of R. Hughes, P. 35-36 L. 13-22.*

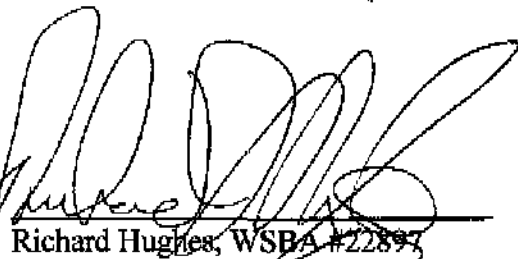
1 nearly 10 days prior to there being any so-called admission of forgery by one "Adam Ccremuga of
2 Brisbane, Australia as set forth in Amiga's brief.

3 **III. CONCLUSION**

4 Amiga cannot reargue the propriety of the Court's Order for Specific Performance at this late
5 date. Amiga tacitly approves to most of the modified language proposed in "Thendic's" Order; fails
6 to offer any cogent reason for non-modification and wastes time addressing non-issues. The Motion
7 to Modify should be granted and the most recent sale of OS and the apparent perjury of Bill McEwen
8 provide ample justification for the steps Amiga will take to avoid integrating the Amiga DE Operating
9 System-including Upgrades, Updates and Enhancements as promised.

10 Dated this 17th day of March, 2004

11 **Law Office of Richard Hughes**

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16 Richard Hughes, WSBA #22897
Attorney for "Thendic"

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

THENDIC ELECTRONICS COMPONENTS,)
a foreign corporation, and GENESI SARL, a)
foreign corporation,)
Plaintiffs;)
vs.)
AMIGA INC., a corporation in the state of)
Washington,)
Defendant.)

NO. 03-003
DECLARATION OF BILL BUCK IN
SUPPORT OF PLAINTIFFS' REPLY IN
SUPPORT OF ITS MOTION TO
MODIFY THE ORDER GRANTING
SPECIFIC PERFORMANCE

I, Bill Buck, am over 18, reside in Paris, France and am competent to declare as follows:
1. At the time the OEM Software Agreement was entered into and until recently, I was a Director at Thendic Electronics Components (hereinafter "Thendic").
2. Genesi Sarl is a corporation that is affiliated and related with Thendic. *See the OEM Agreement, P. 3, defining "Thendic."*
3. I am the co-director of Genesi Sarl.
4. A Java enabled web-browser, an MP3 player and a mail client are application programs that adhere to an operating system just as Microsoft Outlook Express is an email application that works with Windows.

DECLARATION OF BILL BUCK

1 5. If the Amiga DE Operating System did not include an operating system and was touted as
2 being only an "application" as Amiga now contends, it could not have promised or discussed
3 integration of Java, MP3 and mail client as stated in the ("Agreement").

4 6. In 1994 Commodore Business Machines sold a computer running on the Amiga Operating
5 System and filed for bankruptcy. In 1994 German PC Distributor (ESCOM) bought the rights and
6 assets of Commodore Business Machines. At that time, I was the CEO of a company that was
7 *partnered with (ESCOM) to develop and promote The Amiga Operating System through a*
8 *hardware platform. Similarly, "Thendic" has also developed hardware platforms i.e. Pegasos and*
9 *Smart Boy. In 1996, ESCOM also filed for bankruptcy. In connection with that bankruptcy the*
10 *bankruptcy trustee authorized me, and Raquel Velasco, to operate and manage Amiga Inc from*
11 *June 1996 through November 1996. As a result I am intimately familiar with the issues at hand.*
12 *As a result of my involvement with Amiga, I am able to understand the full import of the*
13 *("Agreement") even if Bill McEwen and Amiga did not.*

14 7. In my email to McEwen, attached as Exhibit 4 to McEwen's declaration, McEwen
15 commented that "DE was the way." I recommended that the DE Operating System could be split
16 *into two revenue producing opportunities. One would allow for the Amiga DE component to*
17 *attract developers from many platforms and the other that would allow the Classic Operating*
18 *System to migrate to the Power PC Platform championed by Motorola and IBM for Apple.*
19 *Together, they comprised the total DE Operating System as promised and governed by the*
20 *("Agreement"). Raquel Velasco and I recommended this idea and this is what was carried out and*
21 *is reflected in Amiga's Website.*

22 8. Amiga DE and Amiga's Operating System are currently being represented with differing
23 technical descriptions. However, that was not the intent of the ("Agreement") and that distinction
24 is not supported by my email dated January 12, 2001. When I stated in my email "Amiga OS is an
25 operating system; DE is something different that makes lots of things work in other than Amiga
26 operating system environments." I was attempting to make McEwen understand that under the
27 ("Agreement") the Amiga DE Operating System had two development opportunities. The Amiga

28 DECLARATION OF BILL BUCK

29 Page -2-

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1 DE Operating System was to contain (1) a Development Environment, and, (2) an Operating
2 System. Again, the first paragraph of the email reflects McEwen's insistence that "DE was the
3 way", lending substantial credibility to "Thendic's" belief that it is entitled to what was promised
4 within Amiga's DE Operating System.

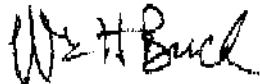
5 9. I helped McEwen understand the opportunities available to Amiga and "Thendic" by
6 creating the distinction: creating two complimentary systems Amiga DE and Amiga OS out of the
7 Amiga DE Operating System because the two systems had not yet been fully developed as
8 promised by Amiga in the ("Agreement") and by Bill McEwen in negotiations leading up to the
9 ("Agreement").

10 10. Aside from Amiga's refusal to integrate Pegasos with the DE Operating System, Amiga
11 contracted with Hyperion to develop the operating system at the expense of the DE Operating
12 System promised to "Thendic". Moreover, Amiga again recently breached its promise of
13 providing "Thendic" with its DE Operating System when unbelievably Amiga sold its operating
14 system to Itec on April 24, 2003. Shockingly, it was not until March 15, 2004, that Amiga
15 officially announced that it sold Amiga OS to KMOS, Inc. Interestingly, Amiga never similarly
16 announced that it had sold its OS to Itec, Inc., on April 23, 2003. Even though Amiga knew
17 "Thendic" was seeking the DE Operating System promised by Amiga, which would arguably
18 include OS, it had the gall to jettison perhaps the key component to this litigation unduly
19 complicating matters and likely creating even more litigation.

20 11. I believe the email attributed to "Fleecy Moss" was and still is from Fleecy Moss.

21 12. Attached as Exhibit 1 is a true and accurate copy of material taken from Amiga's website
22 referencing the sale of Amiga's OS to Itec on April 24, 2003.

23 DATED: March 17, 2004.

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25
26 Bill Buck

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28 DECLARATION OF BILL BUCK

29 Page -3-

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*Buck Declaration
Exhibit I*

AMIGA

so the world may know

Amiga, Inc. Sells the Amiga Operating System, to focus on AmigaDE and the Mobile Market.

Ravensdale, WA - 3:00 pm Pacific Time, March 15, 2004 - Amiga, Inc. announced today that it has sold the Amiga Operating System to KMOS, Inc, allowing Amiga, Inc to focus on the growing mobile market.

On April 23, 2003 Amiga entered into an Agreement with Itec LLC, later acquired by KMOS, Inc. for the transfer and sale of all of Amiga's right, title, source code, and all versions, from the "Classic Amiga Operating System" through AmigaOS 4.0 and all subsequent versions to KMOS, Inc.

"The expanding mobile market offers Amiga over 200 million potential customers that we need to focus on," said Bill McEwen - President/CEO of Amiga, inc. "We began looking for a company that could focus and provide proper resources for the AmigaOS and the associated markets and we found that with KMOS, Inc." McEwen Said.

"We welcome the acquisition of the AmigaOS intellectual property by KMOS. Together with KMOS, Hyperion looks forward to exploring new business opportunities for AmigaOS 4. I would like to reassure all our customers that the acquisition by KMOS will not have any adverse impact whatsoever on the release of the consumer version of AmigaOS 4.0 later this year." said Evert Carton, managing partner of Hyperion Entertainment VOF.

KMOS, Inc. is acquiring and developing technology enabling the company to participate in the worldwide communications market. Garry Hare, KMOS' CEO, said "KMOS is very excited about the commercial potential of this innovative operating system. At Amiga's insistence to which we totally agreed, we will honor the terms of the November 2001, agreement with Amiga One Partners: Hyperion VOF and Eyetech Group Ltd., an English Corporation, in their entirety. Mr. Hare continues, "I should point out, that except as they relate to the Amiga OS family of products, KMOS did not acquire the Amiga name, intellectual property or its DE line of products. These assets remain the property of Amiga Inc."

About Amiga:

Amiga, Inc. established itself in 1985 as the premier provider of multimedia technologies to the world. Its award-winning software has been a mainstay for motion picture studios, government agencies, and entertainment enthusiasts from around the world. Today Amiga continues to lead the way in multimedia development by providing developers with hardware-independent technologies for writing and porting applications to a new hardware-agnostic, multimedia platform. AmigaDE and Amiga Anywhere powered with intent from the Tao Group, enables applications to run unchanged on a broad range of processors including ARM, StrongARM, Intel X-Scale, OMAP, MIPS, Intel x86, Motorola 68K, and Hitachi SH. It can run hosted on a wide variety of operating systems including Windows CE .NET, Windows 9x, 2000, and XP. AmigaDE and Anywhere applications can be purchased online at www.shopamiga.com. Amiga is based in Ravensdale, Wash. For more information visit www.amiga.com.

About Hyperion Entertainment VOF

Hyperion Entertainment is a privately held Belgian-German company, founded in March of 1999. The company specializes in 3D graphics and the conversion of top-quality entertainment software from Windows to niche-platforms including Amiga, Linux (x86,PPC) and MacOS (OS 9/X). Hyperion Entertainment has undertaken contract-work in the field of 3D graphics for companies such as Monolith (www.libt.com) and has developed a mature, fast, small foot-print technology to bring 3D graphics to low power digital devices such as PDAs and STBs. Hyperion is currently working on AmigaOS 4.0, a vastly enhanced PPC native incarnation of the groundbreaking OS introduced by Commodore in 1985.

About KMOS, Inc.

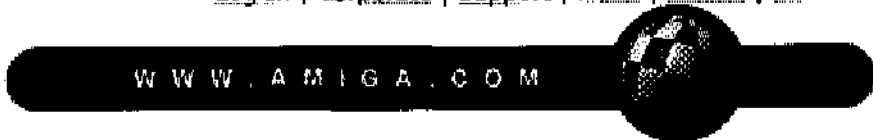
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KMOS, Inc. a State of Delaware licensed corporation develops and distributes enabling technology, software applications and specialty content to the wired and wireless communication market.



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webmaster@amiga.com | [Site Map](#)

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The Honorable Robert Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

THENDIC ELECTRONICS COMPONENTS,)
a foreign corporation, and GENESI SARL, a)
foreign corporation,)
Plaintiffs;)
vs.)
AMIGA INC., a corporation in the state of)
Washington,)
Defendant.)

NO. 03-003
DECLARATION OF RICHARD HUGHES IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF ITS MOTION TO MODIFY THE ORDER GRANTING SPECIFIC PERFORMANCE

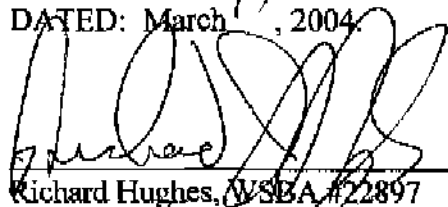
I, Richard Hughes, am over 18, and am competent to declare as follows:

1. Attached as **Exhibit 1** of the declaration of Richard Hughes is a true and accurate copy of a portion of the deposition transcript recorded on August 14, 2003.

DECLARATION OF RICHARD HUGHES

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1
2 DATED: March 17, 2004.

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5 Richard Hughes, VSEBA #22897
6 Attorney for "Thendic"
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28 DECLARATION OF RICHARD
29 HUGHES

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Hughes Declaration
Exhibit 1

1 UNITED STATES DISTRICT COURT
 2 WESTERN DISTRICT AT SEATTLE
 3
 4 -----
 5 THENDIC ELECTRONICS
 6 COMPONENTS, a foreign
 7 corporation, and GENESI
 8 SARI, a foreign corporation,
 9 Plaintiffs,
 10 -vs- No. 003-003
 11 AMIGA INC, a corporation
 12 in the State of Washington,
 13 Defendant.
 14 -----
 15 DEPOSITION UPON ORAL EXAMINATION OF
 16 BILL McEWEN
 17 -----
 18 11:00 a.m.
 19 August 7, 2003
 20 524 Second Avenue
 21 Suite 500
 22 Seattle, Washington
 23
 24 Susan Cannon, CCR 1601 Fifth Avenue, Suite 860
 25 Court Reporter Seattle, WA 98101

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 14 Attorney at Law
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 18 Seattle, WA 98104-2323
 19
 20 ALSO PRESENT: BOLTON PECK
 21
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1 EXHIBIT INDEX
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 3 EXHIBIT NO. PAGE
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 5 No. 2 49
 6 No. 3 53
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 13 EXAMINATION INDEX
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 16
 17 BY MR. HUGHES: PAGES: 4 - 58
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1 BILL McEWEN, having been first duly sworn upon
 2 oath by the Notary, testified as
 3 follows:
 4
 5 EXAMINATION
 6 BY MR. HUGHES:
 7 Q. Can you state your name?
 8 A. Bill McEwen.
 9 Q. What's your address?
 10 A. 24403 256th Avenue Southeast.
 11 Q. Have you ever had your deposition taken before?
 12 A. Yes.
 13 Q. And aside from one which I think you were
 14 present with Amy Adams -- it was actually two supplemental
 15 discoveries, one to me and one to Amiga, have you been
 16 deposed aside from that?
 17 A. No.
 18 Q. I'm just trying to catch up on some documents
 19 that I just got provided by your counsel so I apologize for
 20 that.
 21 Are you currently taking any medication
 22 that would limit or affect your ability to answer truthfully
 23 in this matter?
 24 A. No.
 25 Q. Are you under any mental or emotional condition

Q. So is there anything certain about Amiga being
 involved in this negotiation phase? You don't have a signed
 agreement?

A. Until it's in the bank, until it's in the bank,

we can't really believe that this is happening.

Q. Are you hopeful that it will be executed
 shortly?

A. Yes.

Q. By when?

A. End of the month.

Q. What sort of funding are you talking about?

A. Plenty.

Q. What sort of amounts?

A. It's in the negotiation.

Q. What sort of amounts are you hoping to be
 funded?

A. More than five million.

Q. Less than ten?

A. Yes.

Q. Of the 2.2 million of the Amiga employee debt,
 does that include Mr. Peck's judgment?

A. It does.

Q. Aside from the hardware which we have gone into,
 does Amiga and aside from the intellectual property which
 we'll deal in the a moment, does Amiga have other assets?

A. Trademarks, brand name.

Q. Anything else?

A. No.

Q. It has to have I assume some bank account from
 which to deposit the sales of the website?

A. Yes.

Q. Is it running a current balance?

A. I have not checked in the last week.

Q. Who is the bank with?

A. Issaquah.

Q. What? Issaquah Bank?

A. Yes.

Q. Do you have any idea what the balance has been
 running?

A. About a hundred dollars.

Q. Is that the only bank account that Amiga has
 open?

A. Yes.

Q. And how long has the balance of a hundred
 dollars been averaging? Is that sort of its typical
 balance?

A. Currently.

Q. Has that been the practice for several months?

A. The account has not been open. It's only been
 opened for about a month.

Q. Prior to that, what account did it have?

A. Mt. Rainier National Bank.

Q. Before that?

A. That was it.

Q. Where is Mt. Rainier National Bank located?

A. The branch we were at was Black Diamond,
 Washington.

Q. Is the Issaquah Bank's branch you are doing
 business with out of Issaquah?

A. Yes.

Q. What's the name of the account?

A. Amiga, Inc.

Q. So aside from the computers and the software
 that those computers run off of, the current account with
 Issaquah Bank, its intellectual property, trademarks and
 brand names, are there any other assets that Amiga has
 currently?

A. Not to my knowledge.

Q. What intellectual property does Amiga possess?

A. All versions of the Amiga operating system.

Q. What versions are there? Just because I'm not
 tech savvy.

A. Nor am I. Bolton, how many versions are there?
 He knows better than I do.

MR. PECK: The first very first public one

was like 1.0, but it didn't --

A. Just give him the version numbers. You know
 better than I do.

MR. PECK: 1.0 to 3.9 currently, spanning
 1985 to 3.9 came out I believe it was 2001.

A. 2001. That would be right. Thank you.

Q. Back to you, do they turn over at any point in
 time?

A. Turn over?

Q. We have 1.0. When did it become a 2; do you
 know?

A. When the next release is ready. There is no
 time schedule.

Q. Here is my question. Does it go 1.0 to 1.1?

A. It's varies as to -- since we took it over, it
 went from 3.5 to 3.9. So it's dependent on what is
 happening within the code base.

Q. In one jump it went from 3.5 to 3.9?

A. Correct.

Q. So you have all the Amiga operating systems,
 whatever their numbers may be?

A. Correct.

Q. Have you developed 4.0 or has Hyperion developed
 4.0?

A. Hyperion was the main contractor. We also