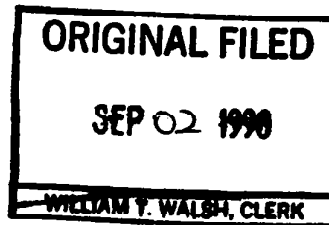


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ATTORNEYS FOR Plaintiff
Palomino Computer Solutions, Inc.



**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PALOMINO COMPUTER SOLUTIONS, INC.,	:	HONORABLE <u>(WGB)</u>
	:	Civil Action No.
	:	<u>92w 4136</u>
Plaintiff,	:	
	:	
v.	:	
	:	COMPLAINT
MAI SYSTEMS CORPORATION,	:	
	:	
Defendant.	:	

Plaintiff Palomino Computer Solutions, Inc., having its principal place of business at 210 Summit Avenue, Suite 300, Montvale, New Jersey, by way of Complaint against defendant, says:

PARTIES

1. Plaintiff Palomino Computer Solutions, Inc. ("Palomino") is a New Jersey corporation, having its principal place of business at 210 Summit Avenue, Suite 300, Montvale, New Jersey.

2. Defendant MAI Systems Corporation ("MAI") is a California corporation having its principal place of business at 9601 Jeronimo Road, Irvine, California. Its Process Manufacturing Group has its principal place of business at 660 White Plains Road, Tarrytown, New York.

JURISDICTION

This Court has jurisdiction of the action pursuant to 28 U.S.C. §1332(a). The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00.

VENUE

Venue is properly laid in this Court pursuant to 28 U.S.C. §1391 because plaintiff resides in this District and defendant is subject to the personal jurisdiction of this Court.

FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT OF LICENSE

1. Palomino provides consulting services for users of a software program called CIMPRO (Computer Integrated Manufacturing for PROcesses).

2. CIMPRO is an enterprise resource planning system which centralizes and manages supply, distribution, research and development, finance and manufacturing for process manufacturers, which produce products using complex processes such as chemical reactions, blending, combustion, separation, refining, heating and cooling.

3. CIMPRO was introduced by Datalogix International Inc. in 1983 ("Datalogix").

4. MAI apparently obtained the rights to CIMPRO in 1995.

5. CIMPRO is an open systems software solution.

6. Datalogix held out CIMPRO, and MAI holds out CIMPRO, as an open systems software solution to the public and to the market for CIMPRO.

7. An open systems software solution is one whose specifications are public and non-proprietary. Systems that are not presented as open are claimed to be proprietary to their originators or others owning rights assigned by their originators.

8. A perceived advantage of open systems is that third parties can design add-on products for them. As a result, the owners of such open-system software often benefit from increased demand because users may enhance the benefit they derive from the software by using these third party "solutions." As a result, users are likely to continue to license the software or software upgrades from the owner.

9. Datalogix gave, and MAI gives, CIMPRO customers access to the CIMPRO source code, which is program instructions in their original form.

10. In order to implement CIMPRO and to support customers, Datalogix relied, and MAI relies, on relationships with various software vendors and systems integrators.

11. The relationships referred to in the preceding paragraph provided Datalogix, and provide MAI, with (i) additional access to the existing market of large information systems users; (ii) assistance in the product development process; and (iii) assistance in the implementation of CIMPRO.

12. Many of the relationships referred to in the preceding two paragraphs are not memorialized in formal written agreements.

13. Walter McMahon is the president of Palomino.

14. Mr. McMahon was formerly employed by Datalogix, where he worked as a software developer and analyst on CIMPRO.

15. Mr. McMahon left the employment of Datalogix, at its request, as a cost-cutting measure in 1992.

16. After leaving Datalogix, Mr. McMahon went into business as a third-party CIMPRO solutions provider working directly for CIMPRO customers. This was known to Datalogix at the time.

17. Mr. McMahon founded Palomino in 1994.

18. Palomino has never sold and does not sell CIMPRO.

19. Palomino has never represented and does not represent itself as an authorized CIMPRO provider or licensee.

20. Datalogix benefited from Mr. McMahon's and Palomino's activities because Palomino provided services to CIMPRO that Datalogix either could not or did not.

21. Datalogix was aware of Mr. McMahon's or Palomino's work as a third-party solution provider for CIMPRO.

22. Datalogix referred CIMPRO customers to Mr. McMahon or Palomino for certain CIMPRO solutions.

23. At least one of Datalogix's CIMPRO customers specifically inquired of Datalogix whether it approved of the activities of Mr. McMahon in providing CIMPRO solutions.

24. When asked by a CIMPRO customer whether it approved of the activities of Mr. McMahon in providing CIMPRO solutions,

Datalogix acknowledged that it did approve of Mr. McMahon's activities.

25. At no time did Datalogix inform Palomino that its activities were unauthorized or constituted a violation of its intellectual property or its trade secret rights.

26. At no time did Datalogix inform Palomino that it has any objection to its activities.

27. Mr. McMahon relied on the knowledge and consent of Datalogix in founding Palomino and conducting its business as a CIMPRO solutions provider.

28. Datalogix's acquiescence and consent to Palomino's activities constitutes and implied license by Datalogix to Palomino to provide third party solutions for CIMPRO customers.

29. Palomino has, since its founding, continued its activities as a third-party provider of CIMPRO services until the present.

30. Principal executives and other former personnel of Datalogix who were aware of Mr. McMahon's or Palomino's activities are presently employed in comparable positions of responsibility by defendant's Process Manufacturing Group, which develops and markets CIMPRO.

31. At no time prior to July 29, 1998, did defendant inform Palomino that its activities were unauthorized or constituted a violation of its intellectual property or its trade secret rights.

32. At no time prior to July 29, 1998, did defendant inform Palomino that it disapproved of its activities.

33. Palomino relied on the consent of defendant in conducting its business as a CIMPRO solutions provider.

34. As a result of Datalogix's and MAI's actions, Palomino was granted an implied license by defendant to provide third party solutions for CIMPRO customers.

35. By correspondence dated July 29, 1998, defendant threatened Palomino with litigation under various theories and

demanded that it cease its business of provided CIMPRO customers with CIMPRO solutions (the "July correspondence").

36. CIMPRO has not complied with the demands in the July correspondence and disputes the claims made therein by Palomino.

37. As a result of the July correspondence a genuine controversy exists between Palomino and defendant as to their respective rights respecting Palomino's business.

WHEREFORE, plaintiff Palomino Computer Solutions, Inc. demands:

(a) that this Court determine and adjudicate the rights and liabilities of the parties herein with respect to the provision by Palomino of third-party solutions to CIMPRO customers;

(b) a declaratory judgment that Palomino is engaged in a lawful business that infringes no legitimate rights possessed by defendant;

(c) a declaratory judgment that Palomino possesses a valid license to provide third-party solutions to CIMPRO customers; and

(d) that Palomino be awarded costs and all other legal and equitable relief to which its is entitled.

SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT OF LICENSE

1. Palomino incorporates by reference the allegations set forth in the First Cause of Action.

2. Defendant is the legal successor in interest of Datalogix as to the rights and obligations of Datalogix regarding Datalogix's dealings concerning CIMPRO.

3. The legal effect of the foregoing is that the terms of the license granted to Palomino by Datalogix to provide third party solutions for CIMPRO customers is binding on defendant.

WHEREFORE, plaintiff Palomino Computer Solutions, Inc. demands:

(a) that this Court determine and adjudicate the rights and liabilities of the parties herein with respect to the provision by Palomino of third-party solutions to CIMPRO customers;

b) a declaratory judgment that Palomino is engaged in a lawful business that infringes no legitimate rights possessed by defendant;

(c) a declaratory judgment that Palomino possesses a valid license to provide third-party solutions to CIMPRO customers; and

(d) that Palomino be awarded costs and all other legal and equitable relief to which its is entitled.

THIRD CAUSE OF ACTION: DECLARATORY JUDGMENT OF ESTOPPEL

1. Palomino incorporates by reference the allegations set forth in the First and Second Causes of Action.

2. As a result of the foregoing actions of defendant or its predecessor in interest, defendant is estopped from making

any claim in law or equity against Palomino concerning or affecting Palomino's provision of third-party solutions to CIMPRO customers.

WHEREFORE, plaintiff Palomino Computer Solutions, Inc. demands:

(a) that this Court determine and adjudicate the rights and liabilities of the parties herein with respect to the provision by Palomino of third-party solutions to CIMPRO customers;

(b) a declaratory judgment that defendant MAI is estopped from making any claim in law or equity against Palomino relating to Palomino's provision of third-party solutions to CIMPRO customers; and

(c) that this Court issue a permanent injunction requiring that defendant cease and desist from making any claims, including but not limited to customers or potential customers of Palomino, that Palomino's activities are not lawful; and

(d) that Palomino be awarded costs and all other legal and equitable relief to which it is entitled.

**FOURTH CAUSE OF ACTION: TORTIOUS INTERFERENCE
WITH PROSPECTIVE ECONOMIC ADVANTAGE**

1. Palomino incorporates by reference the allegations set forth in the First, Second and Third Causes of Action.

2. One of the services provided by Palomino to CIMPRO customers is making the CIMPRO software used by these customers "Year 2000 compliant."

3. CIMPRO users require Year 2000 compliance in the near future in order to prevent the malfunction of their CIMPRO-based systems and the concomitant damage to their businesses that may result from such malfunction.

4. CIMPRO 4.25, is the predominant version of CIMPRO in use today.

5. CIMPRO 4.25 is not Year 2000 compliant.

6. Upon information and belief, defendant does not generally advise its customers as to how to make CIMPRO 4.25 Year 2000 compliant.

7. Defendant is offering a new version of CIMPRO, release 5.3, which defendant purports to be Year 2000 compliant.

8. Some CIMPRO customers do not wish to purchase CIMPRO 5.3 because CIMPRO 5.3 is a completely new software package that may not be sufficiently compatible or adaptable for their present uses.

9. Some CIMPRO customers do not wish to purchase CIMPRO 5.3 because CIMPRO 5.3 is more expensive than making CIMPRO 4.25 Year 2000 Compliant by means of the services provided by Palomino or others.

10. Some CIMPRO customers do not wish to purchase CIMPRO 5.3 because they are not confident that defendant will continue to update or support CIMPRO.

11. Defendant has warned customers or potential customers of Palomino not to engage Palomino to provide

consulting services to make their CIMPRO 4.25 software Year 2000 compliant.

12. Defendant has threatened litigation based on various theories to customers who engage Palomino to provide consulting services to make their CIMPRO 4.25 software Year 2000 compliant, some of which has substantial merit.

13. Defendant has threatened litigation against companies that engage Palomino to implement CIMPRO Year 2000 solutions based on its allegation that Palomino's activities are a violation of copyright, trade secret, and other rights of defendant.

14. The allegations of defendant referred to in the preceding paragraph are false.

15. Defendant has threatened litigation against Palomino based on defendant's assertion that Palomino's activities, including its implementation of CIMPRO Year 2000 solutions, somehow violate defendant's copyrights, trade secrets, or other "rights."

16. The allegations of defendant referred to in the preceding paragraph are without legal merit.

17. The July 29, 1998 correspondence also demanded that Palomino provide defendant, *inter alia*, with a list of all Palomino's CIMPRO customers.

18. The July 29, 1998 correspondence also demanded that Palomino provide defendant, *inter alia*, with a list of all modifications made to CIMPRO software licensed by CIMPRO users.

19. Defendant has taken the course of conduct described in this complaint for the purpose of driving Palomino out of a lawful business.

20. Defendant has taken the course of conduct described in this complaint for the purpose of appropriating CIMPRO's customers and technology by wrongful means.

21. Defendant has undertaken the course of conduct described in this complaint for the purpose of forcing consumers to buy a product they do not want, CIMPRO 5.3, because defendant

does not have the technological or commercial capacity to compete with Palomino by means of conventional fair competition.

22. As a result of the actions of defendant, Palomino has suffered injury to its business or property including having suffered the loss of commercial opportunities, which but for defendant's actions Palomino would have had.

23. As a result of the actions of defendant, Palomino is also at risk of losing future commercial opportunities, which but for defendant's actions Palomino would have had, to provide Year 2000 compliance services for CIMPRO customers

24. As a result of the foregoing, Palomino has suffered damage to its economic interests, lost profits, loss of reputation, and other damages.

WHEREFORE, plaintiff Palomino Computer Solutions, Inc. demands:

(a) that this Court determine and adjudicate the rights and liabilities of the parties herein with respect to the


provision by Palomino of third-party solutions to CIMPRO customers;

(b) that Palomino be awarded compensatory damages in an amount to be determined at trial;

(c) that this Court issue a permanent injunction requiring that defendant cease and desist from making any claims, including but not limited to customers or potential customers of Palomino, that Palomino's activities are not lawful; and

(c) that Palomino be awarded costs and all other legal and equitable relief to which its is entitled.

PITNEY, HARDIN, KIPP & SZUCH
Attorneys for Plaintiff
PALOMINO COMPUTER SOLUTIONS,
INC.

By: 
FREDERICK L. WHITMER (FW 8888)
A Member of the Firm

DATED: September 1, 1998