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8 INTEL CORPORATION
9

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

RS

13 INTEL CORPORATION, a Delaware
corporation,

14 Plaintiff,

15 vs.
16

17 PSION TEKLOGIX INC., a Canadian
corporation; PSION TEKLOGIX
18 CORPORATION, a Delaware corporation; and
PSION PLC, a United Kingdom public limited
19 company,

20 Defendants.
21

Case No. **09 0664**

**COMPLAINT FOR INJUNCTIVE RELIEF,
DECLARATORY JUDGMENT, AND
CANCELLATION OF TRADEMARK
FROM FEDERAL REGISTER**

22
23 Plaintiff Intel Corporation ("Intel") alleges as follows:

24 1. This action arises from the allegations recently launched by PSION TEKLOGIX INC.,
25 PSION TEKLOGIX CORPORATION, and PSION PLC (hereinafter collectively "Psion") that it has
26 the exclusive right to use the term "netbook." It does not. The consuming public has already adopted
27 "netbook" as a generic term for a category of notebook computers that are small, inexpensive, and
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1 contain less processing power, making them optimal for connecting to the internet (or "net"). It is well
2 established that "netbook" does not operate to identify a single source, or brand, of any such computer;
3 netbooks are simply extensions of the notebook category, smaller computers purpose-built for mobile
4 internet access. Psion's allegations therefore fail. Moreover, Psion's (currently) existing trademark
5 registration for the term Netbook cannot resuscitate its alleged rights in a generic term. Accordingly,
6 the Court should cancel Psion's trademark registration, declare that Intel's use of "netbook" is lawful,
7 and enjoin Psion from asserting rights in the netbook term.

8 **I. JURISDICTION**

9 2. This Court has personal jurisdiction over Psion because it, on information and belief,
10 conducts business in the State of California and within this judicial district, and has an agent for
11 service of process in California. In addition, Psion has made repeated contacts with businesses with
12 headquarters or significant presences in this judicial district, including Intel, regarding use of the term
13 "netbook."

14 3. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C.
15 §§ 1331, 1338 and 2201. Intel's claims are, in part, based on violations of the Lanham Act, as
16 amended, 15 U.S.C. §§ 1051, *et seq.* The Court has jurisdiction over the state law claim pursuant to 28
17 U.S.C. §§ 1338(b) and 1367.

18 4. Venue lies in the Northern District of California pursuant to 28 U.S.C. § 1391(b) and
19 (c). Intel is informed and believes that Psion transacts or has transacted business in this judicial district
20 and may be otherwise found here, and a substantial part of the events, omissions, and injuries giving
21 rise to Intel's claims occurred in this judicial district.

22 **II. INTRADISTRICT ASSIGNMENT**

23 5. This is an intellectual property action and therefore shall be assigned on a district-wide
24 basis per Civil L.R. 3-2(c).

25 **III. THE PARTIES**

26 6. Plaintiff Intel is a Delaware corporation having its principal place of business at 2200
27 Mission College Boulevard, Santa Clara, California, which is located in the Northern District of
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1 California. Intel offers a wide variety of goods and services, which are sold worldwide and throughout
2 the United States, including in the Northern District of California.

3 7. Upon information and belief, Psion Teklogix Inc., a Canadian corporation and owner of
4 the U.S. Trademark Registration for the term "Netbook," has a principal place of business at 2100
5 Meadowvale Boulevard, Mississauga, Ontario, L5N 7J9, Canada.

6 8. Upon information and belief, Psion Teklogix Corporation, a Delaware Corporation, has
7 a principal place of business at 2100 Meadowvale Boulevard, Mississauga, Ontario, L5N 7J9, Canada
8 with offices located at 3000 Kustom Drive, Hebron, Kentucky, 41048, and is the U.S. affiliate of Psion
9 Teklogix Inc. and Psion PLC.

10 9. Upon information and belief, Psion PLC, a United Kingdom public limited company, is
11 the parent company of Psion Teklogix Inc. and Psion Teklogix Corporation, and has a principal place
12 of business located at 48 Charlotte Street, London, W1T 2NS, United Kingdom.

13 10. Psion purports to provide mobile computing products and services throughout the
14 United States, and promotes its goods and services at the website www.psionteklogix.com. Upon
15 information and belief, Psion targets customers nationwide via its website, including customers in
16 California and this judicial district, and has customers within this state and this judicial district.

17 11. At all times herein mentioned, each defendant was the agent, employee, partner, joint
18 venturer, aider and abetter, alter ego, and co-conspirator of or with each of the remaining defendants,
19 and in doing the things hereinafter alleged, was acting within the course and scope of such agency,
20 employment, partnership, joint venture, and conspiracy, and each defendant ratified and approved the
21 acts of the remaining defendants.

22 **IV. FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS**

23 **Intel**

24 12. Intel develops, manufactures and sells a wide variety of computer, communications and
25 internet-related products and services. Intel is a leading manufacturer of microprocessors used in a
26 wide variety of computing applications. Among other things, Intel manufactures low-powered
27 processors, such as the INTEL® ATOM™ processor, which are used in netbooks. Intel does not and
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1 has never manufactured any netbooks, and has never offered any “netbook” branded products or
2 services. Indeed, it maintains the URL www.netbook.com to promote netbook computers featuring the
3 INTEL ATOM processor, just as Intel maintains other generic URLs such as www.pc.com,
4 www.chips.com, and www.connectedpc.com to promote products featuring Intel processors.
5 However, as shown below, netbooks also feature non-Intel processors, just as other personal computers
6 (“pc”) may feature non-Intel processors.

7 **Psion**

8 13. Psion purports to be the owner of U.S. Trademark Registration No. 2,404,976 issued on
9 November 21, 2000 for the mark Netbook for use in connection with “laptop computers” (hereinafter
10 “Netbook Registration”).

11 14. On information and belief, Psion is a provider of mobile computing products and
12 services, with a present focus on handheld and vehicle-mount computers for industrial use. Psion
13 claims that it began to offer laptop computers under the mark Netbook in the United States in
14 approximately 1999. Psion discontinued its offering of laptop computers under the mark Netbook in
15 approximately 2003. In approximately October of 2003, Psion launched the Psion Netbook Pro laptop
16 computer, which on information and belief has long since been discontinued.

17 15. On information and belief, Psion’s sales and marketing of products under the Netbook
18 Registration were never significant in the United States, and the Netbook designation did not operate
19 as an indicator of source to the general consuming public in the United States. Moreover, on
20 information and belief, Psion no longer offers laptop computers under the mark Netbook, or even
21 Netbook Pro.

22 16. Psion’s U.S. trademark registration for “laptop computers” registered on November 21,
23 2000. On November 17, 2006, only four days before the applicable deadline to maintain its
24 registration, Psion filed a combined declaration of use and incontestability under 15 U.S.C. §§ 1058
25 and 1065 (“Section 8 & 15 Declaration”), which included a sworn declaration from Herb Turzer,
26 Senior Product Management.

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1 go.” The term “netbook” was a logical name for this new category of computer, with “net”
2 representing its specific purpose (connectivity to the net) and “book” representing its size and mobility
3 (as in the existing category name “notebook”). There is no alternative term with any appreciable usage
4 that describes the netbook category, just as there is no alternative term with any appreciable usage to
5 alternatively describe desktops.

6 22. In part because of the production of computer processors which permitted these smaller,
7 more compact computers to be produced, the term netbook achieved widespread usage in 2008, and
8 numerous commentators already predict that 2009 is the “year of the netbook.” Beginning with the
9 launch of the Asus Eee PC in 2007, many computer manufacturers began to launch inexpensive
10 compact laptop computers with lower processor speeds that were optimal for a mobile connection to
11 the internet. These netbooks included Acer Aspire One, Sylvania GNET, Samsung NC10, the MS
12 Wind series, and the Hewlett-Packard Mini series, among others. To accurately distinguish these
13 computers from notebooks, and to ensure that consumers are aware of the different characteristics of
14 these machines, both computer manufacturers and many of the nation’s largest retailers, such as
15 Amazon.com, Best Buy, Staples, Target, Sam’s Club, and Costco, use the term netbook generically in
16 offering such computers, without regard to brand or source.

17 23. The term netbook is not only not brand specific with respect to the computer
18 manufacturer (e.g. Hewlett Packard, Samsung, etc.), it is also not brand specific with respect to the
19 computer processor contained inside the netbook. For example, Sylvania and Everex each offer a
20 netbook with a VIA C7 (non-Intel) processor. Other processor companies, such as NVIDIA,
21 Qualcomm, and Texas Instruments, have also used the term netbook.

22 24. Traditional and online media sources have been using the term “netbook” to identify
23 this category of computers. Such sources include, but are not limited to, The Wall Street Journal,
24 CNET News, PC Magazine, and The San Diego Union-Tribune:

- 25 • “A new class of small laptops entering the market has some of the major laptop vendors on
26 edge. These computers have been dubbed *netbooks*. Originally, they were targeted at emerging
27 markets for use in education. Now they’re finding their way into the U.S., where they’re being
28 snapped up by consumers as second laptops for use in the home or by kids.”
Will Netbooks Shake Up the Laptop Market?, PC MAGAZINE, March 28, 2008.

- 1 • “With low-power processors, tiny screens, and finger-cramping keyboards, Netbooks aren't
2 good for much more than surfing the Web, checking e-mail, working on office documents, and
3 maybe a little light multimedia playback--but that's still 90 percent of what we do with our
4 laptops anyway.”
5 *Searching for the perfect netbook*, CNET NEWS, August 18, 2008.
- 6 • “At the start of this year, most netbooks lacked hard disks, instead offering very limited storage
7 via memory chips — often less storage than a \$199 iPhone. They were pitched as limited
8 devices mainly meant for using the Internet — thus the name ‘netbook’ — and their makers
9 assumed users mainly would use Web-based applications.”
10 *Netbooks Come Into Their Own*, WALL STREET JOURNAL ONLINE, November 5, 2008.
- 11 • “Since their inception, netbooks have followed a simple common blueprint with definable
12 characteristics. They generally weigh under 3 pounds, cost less than \$500, and cram in basic
13 parts – small battery, integrated graphics, and a conservative feature set.”
14 PC MAGAZINE, December 3, 2008.
- 15 • “The one product buoying PC makers right now, however, is the Netbook. ... Jumping on the
16 Netbook trend has been a boon to Acer and Asus in particular. While Asus continues to lead
17 the pack, Acer has made some serious headway in establishing its brand via the tiny
18 notebooks.”
19 *The rise of the Netbook*, CNET NEWS, December 18, 2008.
- 20 • “Devices such as the EE PC from Asus and similar products from Hewlett-Packard and Dell
21 have created and defined the netbook category as computers designed for on-the-go Web
22 surfing, weighing roughly three pounds, with prices as low as \$300 ”
23 SAN DIEGO UNION-TRIBUNE, Jan. 8, 2009.

17 As would be expected, consumers are also using the term netbook to identify this category of
18 computers:

- 19 • “I just bought a netbook. For what it's worth, having now put myself through all this angst, I
20 decided in the end to go back to the one that had most impressed me when I first tried out
21 different devices at J&R a few months back, the HP 2133. ... All in all, about \$470 for a less
22 than three pound device that should let me get massively more work done.”
23 [http://streetcarstospaceships.typepad.com/from_streetcars_to_spaces/2008/10/i-just-bought-a-](http://streetcarstospaceships.typepad.com/from_streetcars_to_spaces/2008/10/i-just-bought-a-netbook.html)
24 [netbook.html](http://streetcarstospaceships.typepad.com/from_streetcars_to_spaces/2008/10/i-just-bought-a-netbook.html), October 14, 2008.
- 25 • “Netbooks are popular for people on the go. There are a lot to choose from and I will be
26 blogging about several of them. ... I like this little gadget because it can go with me practically
27 anywhere. I take it to work with me everyday because I can get on it during my lunch hour and
28 not have to use my office computer.”
<http://gadgetchic1.blogspot.com/2008/10/sylvania-g-netbook.html>, October 23, 2008.

1 infringing.” Accordingly, Psion’s counsel concluded that “we can therefore see no basis for a ‘good
2 faith’ defence to infringement.” The letter further contended that “[w]e believe your client’s
3 inducement to be ongoing” and that Intel has “legal liabilities” arising from its use of the netbook term.
4 The letter further asserted that “Intel aided, abetted and otherwise induced manufacturers and retailers”
5 to “use the term ‘netbook’” for netbook computers. He suggested that the 30 million hits that result
6 from a Google search for the term “netbook” was not, in Psion’s view, evidence of genericness, but
7 rather “seem[s] to point to the scale of potential damages due to [Psion] if a court were to assess
8 damages for infringement [against Intel] on a reasonable royalty basis.”

9 31. On information and belief, on or around January 29, 2009, Psion filed a complaint with
10 Google Inc. (“Google”) via Google’s Adwords Trademark Complaint Procedure asserting its Netbook
11 Registration. As a result, Google informed Intel that Google would prohibit all advertisements that
12 include the term “netbook” in the ad text. This action by Psion had the immediate effect of effectively
13 ending Intel’s (and all others’) ability to advertise the netbook category of computers via search engine
14 marketing.

15 32. On information and belief, Psion’s current campaign to purportedly protect its
16 trademark rights is little more than an attempt to profit from the widespread use of the netbook term.

17 33. Despite Psion’s own acknowledgement that a Google search of the term “netbook”
18 retrieves over 30,000,000 hits, Psion has failed to point to even one instance of actual confusion over
19 the past two years.

20 **FIRST CAUSE OF ACTION**
21 **CANCELLATION OF TRADEMARK REGISTRATION**
22 **(15 U.S.C. § 1119)**

23 34. Intel realleges and incorporates herein by reference the matters alleged in Paragraphs 1
24 through 33 of this Complaint.

25 35. Psion purports to be the owner of U.S. Trademark Registration No. 2,404,976 issued on
26 November 21, 2000, for the mark Netbook for use in connection with “laptop computers.”
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1 36. As detailed above, the Netbook mark does not serve to identify Psion as the source of
2 goods or services offered under the Netbook mark. Thus, the Netbook Registration is invalid under 15
3 U.S.C. §§ 1052(e), 1115(b)(4), 1115(b)(8), and/or 1064(3), and should be cancelled.

4 37. Furthermore, as detailed above, Psion made a knowing and material misrepresentation
5 in the renewal of the Netbook Registration by stating that it was using the mark on all of the goods and
6 services specified in the Netbook Registration on the date that it filed its Section 8 and 15 affidavits
7 when it was not. Psion's Netbook Registration therefore should be cancelled due to its commission of
8 fraud on the United States Patent and Trademark Office, pursuant to 15 U.S.C. § 1115(b)(1).

9 38. The registration should further be canceled pursuant to 15 U.S.C. § 1115(b)(2) because
10 Psion has abandoned the Netbook Registration by not using the mark in commerce for three
11 consecutive years with no intent to resume use.

12 39. Due to the threats made by Psion against Intel and Intel's business partners, Psion's
13 Netbook Registration is injurious to Intel within the meaning of 15 U.S.C. § 1064(3), and Intel will be
14 damaged if the registration is not canceled.

15 40. This Court, pursuant to its authority under 15 U.S.C. § 1119 to order cancellation of
16 trademark registrations and otherwise rectify the U.S. trademark register with respect to the
17 registration of any party to an action before it, should order cancellation of U.S. Trademark
18 Registration No. 2,404,976.

19
20 **SECOND CAUSE OF ACTION**
DECLARATION OF NON-INFRINGEMENT
21 **(28 U.S.C. § 2201)**

22 41. Intel realleges and incorporates herein by reference the matters alleged in Paragraphs 1
23 through 40 of this Complaint.

24 42. Based on the foregoing allegations, there exists between the parties a substantial
25 controversy of sufficient immediacy and reality to warrant declaratory relief.

26 43. Intel has not infringed and does not infringe, directly or indirectly, the Netbook
27 Registration or any other purported trademark rights owned by Psion.
28

1 44. Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of
2 Civil Procedure 57 that any use by Intel of the generic term “netbook” in connection with the netbook
3 category of laptop computers does not, contributorily or otherwise, infringe any trademark rights of
4 Psion, and further in no way causes Intel to unfairly compete with Psion.

5 **THIRD CAUSE OF ACTION**
6 **UNFAIR COMPETITION**
7 **(CAL. BUS & PROF. CODE § 17200)**

8 45. Intel realleges and incorporates herein by reference the matters alleged in Paragraphs 1
9 through 44 of this Complaint.

10 46. Psion’s acts described above, including but not limited to its fraudulent conduct before
11 the U.S. Patent and Trademark Office for the purpose of maintaining its registration, constitute unfair
12 competition in violation of California Business and Professional Code § 17200 *et seq.*, as they are
13 likely to deceive the public.

14 47. Psion’s acts of unfair competition have caused and will continue to cause Intel
15 irreparable harm. Intel has no adequate remedy at law for Psion’s unfair competition.

16 48. Intel is entitled to a judgment enjoining and restraining Psion from engaging in further
17 unfair competition.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Intel prays for relief as follows:

20 1. An order compelling the Commissioner of Trademarks of the United States to cancel
21 U.S. Trademark Registration No. 2,404,976 issued on November 21, 2000;

22 2. An order enjoining Psion from asserting any trademark rights in the term “netbook,” or
23 any term similar thereto;

24 3. For a declaration that Intel’s use of the term “netbook” in connection with laptop
25 computers does not violate the Lanham Act, 15 U.S.C. § 1125, nor does it otherwise constitute
26 trademark infringement, unfair competition or otherwise damage Psion;

27 4. For Intel’s attorneys’ fees;

28 5. For Intel’s costs and disbursements in this action; and

1 6. A judgment granting Intel such other and further relief as the Court deems just and
2 proper.

3 Dated: February 13, 2009

Respectfully submitted,

4 HARVEY SISKIND LLP
5 IAN K. BOYD
6 RAFFI V. ZEROUNIAN

7 By: 
8 Ian K. Boyd

9 Attorneys for Plaintiff
10 INTEL CORPORATION
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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: February 13, 2009

Respectfully submitted,

HARVEY SISKIND LLP
IAN K. BOYD
RAFFI V. ZEROUNIAN

By: 
Ian K. Boyd

Attorneys for Plaintiff
INTEL CORPORATION

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