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10 Attorneys for Plaintiff
11 IMAGEWARE SYSTEMS, INC.

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 IMAGEWARE SYSTEMS, INC., a Delaware
15 corporation,

16 Plaintiff,

17 vs.

18 M2SYS TECHNOLOGY, LLC, a Florida
19 limited liability company; and DOES 1
20 through 10, inclusive,

21 M2SYS.

22 CASE NO. '13CV0846 BEN BGS

23 **COMPLAINT FOR PATENT
24 INFRINGEMENT**

25 **DEMAND FOR JURY TRIAL**

1 Plaintiff ImageWare Systems, Inc., (“ImageWare”) hereby complains of M2SYS, LLC,
2 and DOES 1 through 10 (collectively, “M2SYS”), and alleges as follows:

3 **NATURE OF THE ACTION**

4 1. This is an action for patent infringement under the patent laws of the United States,
5 35 U.S.C. § 271, *et seq.*

6 **THE PARTIES**

7 2. ImageWare is a publicly-traded software company based in San Diego, California
8 that develops, markets and sells highly innovative technology solutions for the identity
9 management industry, particularly for government, border control, healthcare, financial services,
10 and electronic and mobile commerce applications. ImageWare’s flagship product is its IWS™
11 Biometric Engine®, which is the world’s first and only patented multi-modal, device- and
12 algorithm-independent biometric fusion platform that can search for, screen and authenticate
13 individuals using more than a dozen biometric modalities, including fingerprint, finger vein,
14 palm vein, face, and iris (among others). ImageWare’s suite of multimodal biometric fusion
15 products and software provide optimized identity enrollment, management and authentication
16 solutions for a variety of applications, including secure credentialing, controlled access, national
17 identification, border control, watch list, voter registration, driver license, and airport security
18 purposes (among many others). ImageWare is organized and existing under the laws of the State
19 of Delaware, with its principal place of business located at 10815 Rancho Bernardo Road, Suite
20 310, San Diego, California 92127.

21 3. ImageWare is informed and believes and based thereon alleges that Defendant
22 M2SYS is a limited liability company organized and existing under the laws of the State of
23 Florida, with its principal place of business located at 1050 Crown Pointe Parkway, #850,
24 Atlanta, Georgia 30338.

25 4. ImageWare is ignorant of the true names and capacities of the parties sued herein
26 as DOES 1 through 10, inclusive, whether individual, corporate or otherwise, and therefore sues
27 these defendants by such fictitious names. ImageWare will seek leave to amend the complaint to
28 assert their true names when they have been ascertained. ImageWare is informed and believes

1 and based thereon alleges that all defendants sued herein as DOES 1 through 10 are in some
2 manner responsible for the acts and omissions alleged herein.

3 **JURISDICTION AND VENUE**

4 5. This Court has original and exclusive subject matter jurisdiction over this action
5 under 28 U.S.C. §§ 1331 and 1338(a).

6 6. This Court has personal jurisdiction over M2SYS because it has conducted and is
7 conducting systematic and continuous business in California and within this District, and because
8 M2SYS has committed patent infringement in California and within this District by making,
9 selling, offering for sale, importing, and distributing (among other things) Hybrid Biometric
10 Platform, which is a multi-modal biometric system that supports fingerprint, finger vein, palm
11 vein, and iris recognition.

12 7. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because
13 M2SYS has regularly transacted business in California and within this District, because certain of
14 the acts complained of herein occurred in California and within this District, and because M2SYS
15 derives and seeks to derive revenue from sales of infringing products sold in California and
16 within this District. M2SYS' customers and software integrator partners include without
17 limitation VisionAIR/TriTech Software Systems, which is headquartered in San Diego,
18 California, WebTimeClock, which is located in Carlsbad, California, and Active Network, Inc.,
19 which is located in San Diego, California.

20 **GENERAL ALLEGATIONS**

21 8. On November 20, 2007, the United States Patent & Trademark Office ("PTO")
22 duly and lawfully issued U.S. Patent No. 7,298,873, entitled "Multimodal Biometric Platform"
23 ("the '873 patent"). ImageWare is the owner by assignment of the '873 patent, a copy of which is
24 attached hereto as Exhibit A.

25 9. On April 22, 2008, the PTO duly and lawfully issued U.S. Patent No. 7,362,884,
26 entitled "Multimodal Biometric Analysis" ("the '884 patent"). ImageWare is the owner by
27 assignment of the '884 patent, a copy of which is attached hereto as Exhibit B.

28 10. On September 29, 2009, the PTO duly and lawfully issued U.S. Patent No.

1 7,596,246, entitled “Multimodal Biometric Platform” (“the ‘246 patent”). ImageWare is the
2 owner by assignment of the ‘246 patent, a copy of which is attached hereto as Exhibit C.

3 11. On October 20, 2009, the PTO duly and lawfully issued U.S. Patent No.
4 7,606,396, entitled “Multimodal Biometric Platform” (“the ‘396 patent”). ImageWare is the
5 owner by assignment of the ‘396 patent, a copy of which is attached hereto as Exhibit D.

6 12. ImageWare is informed and believes and based thereon alleges that one or more of
7 M2SYS’s products infringe one or more claims of the ‘870, ‘884, ‘246 and/or ‘396 patents,
8 including without limitation M2SYS’s Hybrid Biometric Platform taken alone or in combination
9 with one or more of M2SYS’s Biometric SDK products Bio-Plugin, Bio-SnapOn, Bio-
10 Hyperpliance; M2SYS’s Enterprise Solutions RightPOS, RightPatient, RightPunch, AFIS, and
11 Enterprise Single Sign-On; and M2SYS’s Biometric Hardware products M2-PalmVein Reader,
12 M2-FingerVein, M2-TenPrint fingerprint Live Scanner, M2-TwoPrint Dual Fingerprint Reader,
13 M2-S Fingerprint Reader, M2-EasyScan Fingerprint Read, M2-DualEye Iris Camera, and Cross
14 Match Scan 2 Iris Camera (collectively, the “Accused Products”).

15 **FIRST CLAIM FOR RELIEF**

16 **(Infringement of U.S. Patent No. 7,298,873)**

17 13. ImageWare repeats, realleges and incorporates by reference the allegations of
18 paragraphs 1 through 12, above, as though set forth fully herein.

19 14. This claim is for patent infringement under the Patent Laws of the United States,
20 Title 35 of the United States Code.

21 15. ImageWare is informed and believes and based thereon alleges that M2SYS, by
22 and through its agents, officers, directors, employees and servants, has been and is currently
23 willfully and intentionally infringing the ‘873 patent by (a) making, using, offering to sell, and/or
24 selling the Accused Products that are covered by at least one claim of the ‘873 patent; (b) actively
25 inducing direct infringement of the ‘873 patent; and/or (c) importing, offering to sell, or selling
26 one or more components of the Accused Products, knowing such components to be especially
27 made or adapted for use in infringing the ‘873 patent and not staple articles or commodities
28 suitable for substantial noninfringing use. M2SYS’s acts constitute infringement of the ‘873

1 patent in violation of 35 U.S.C. §§271(a), (b) and/or (c). ImageWare is further informed and
2 believes and thereon alleges that M2SYS's infringement is willful.

3 16. ImageWare is further informed and believes and based thereon alleges that if and
4 to the extent M2SYS is not infringing directly, M2SYS is infringing indirectly by contributing to
5 and/or inducing direct infringers to infringe the '873 patent, including without limitation one or
6 more of its reseller and/or software integrator partners DSI-ITI, LLC, CTS-America, Southern
7 Software, Inc., Cisco, Emerald Systems, VisionAIR/TriTech Software Systems, GTL, Kodak
8 Dental Systems/Carestream, HenrySchein, Centaur Software, Logicare, RPGSi, VinDec
9 Enterprise Solutions, Global Care Solutions, Medibase, Red Prairie, Kronos, Stromberg,
10 EmPower, Qquest, Zoll Data Systems, TimeForge, Software Technologies, iEmployee/Asure
11 Software, TimeClockOnline, TimeCentre, Allied Soft, WebTimeClock, WorkTech, Time
12 Management Corporation, Aladec, Active Network, Inc. ASF Network, Inc., ACS Technologies,
13 Daxko, KI Software/Motion Soft, Shape Net, CSI, Affiliated Acceptance Corporation, Horizon
14 Software, NutriKids, PCS, MealsPlus, PowerPOS, Linus POS Systems, MiChoice Technologies,
15 Primero Edge, PSO Computer, Pearson School Systems, Clearview, Softerware, New Year Tech,
16 Factivity, Casco Development, JobPack, TeraCorp, Millennium/Harms Software, and Invotech
17 (collectively, "Software Integrator Partners").

18 17. ImageWare is further informed and believes and based thereon alleges that
19 M2SYS is knowingly inducing direct infringement and has the specific intent to encourage its
20 Software Integrator Partners and/or resellers to directly infringe the '873 patent by (among other
21 things) designing, developing and selling products, including without limitation the Accused
22 Products, to its Software Integrator Partners and/or resellers for the purpose of performing
23 multimodal biometric identity matching, and/or by making, using, selling, importing and offering
24 to sell the Accused Products that perform multimodal biometric identity matching. ImageWare is
25 further informed and believes and based thereon alleges that the Accused Products are each a
26 material component of ImageWare's patented methods and/or systems and that the Accused
27 Products are not capable of substantial non-infringing use.

28 18. ImageWare is informed and believes and based thereon alleges that M2SYS's

1 infringement of the '873 patent will continue unless enjoined by this Court.

2 19. ImageWare is informed and believes and based thereon alleges that M2SYS has
3 derived and received, and will continue to derive and receive, gains, profits and advantages from
4 the alleged acts of infringement of the '873 in an amount not presently known to ImageWare but
5 in excess of the jurisdictional requirement of this Court. By reason of the aforesaid infringing
6 acts, ImageWare has been damaged and is entitled to monetary relief in an amount to be
7 determined at trial but in excess of the jurisdictional requirement of this Court.

8 20. Because of the aforesaid infringing acts, ImageWare has suffered and continues to
9 suffer great and irreparable injury for which there is no adequate remedy at law.

10 **SECOND CLAIM FOR RELIEF**

11 **(Infringement of U.S. Patent No. 7,362,884)**

12 21. ImageWare repeats, realleges and incorporates by reference the allegations of
13 paragraphs 1 through 20 as though set forth fully herein.

14 22. This claim is for patent infringement under the Patent Laws of the United States,
15 Title 35 of the United States Code.

16 23. ImageWare is informed and believes and based thereon alleges that M2SYS, by
17 and through its agents, officers, directors, employees and servants, has been and is currently
18 willfully and intentionally infringing the '884 patent by (a) making, using, offering to sell, and/or
19 selling the Accused Products that are covered by at least one claim of the '884 patent; (b) actively
20 inducing direct infringement of the '884 patent; and/or (c) importing, offering to sell, or selling
21 one or more components of the Accused Products, knowing such components to be especially
22 made or adapted for use in infringing the '884 patent and not staple articles or commodities
23 suitable for substantial noninfringing use. M2SYS's acts constitute infringement of the '884
24 patent in violation of 35 U.S.C. §§271(a), (b) and/or (c). ImageWare is further informed and
25 believes and thereon alleges that M2SYS's infringement is willful.

26 24. ImageWare is further informed and believes and based thereon alleges that if and
27 to the extent M2SYS is not infringing directly, M2SYS is infringing indirectly by contributing to
28 and/or inducing direct infringers, including without limitation one or more of its Software

1 Integrator Partners and/or resellers, to infringe the ‘884 patent.

2 25. ImageWare is further informed and believes and based thereon alleges that
3 M2SYS is knowingly inducing direct infringement and has the specific intent to encourage its
4 Software Integrator Partners and/or resellers to directly infringe the ‘884 patent by (among other
5 things) designing, developing and selling products, including without limitation the Accused
6 Products, to its Software Integrator Partners and/or resellers for the purpose of performing
7 multimodal biometric identity matching, and/or by making, using, selling, importing and offering
8 to sell the Accused Products that perform multimodal biometric identity matching. ImageWare is
9 further informed and believes and based thereon alleges that the Accused Products are each a
10 material component of ImageWare’s patented methods and/or systems and that the Accused
11 Products are not capable of substantial non-infringing use.

12 26. ImageWare is informed and believes and based thereon alleges that M2SYS’s
13 infringement of the ‘884 patent will continue unless enjoined by this Court.

14 27. ImageWare is informed and believes and based thereon alleges that M2SYS has
15 derived and received, and will continue to derive and receive, gains, profits and advantages from
16 the alleged acts of infringement of the ‘884 patent in an amount not presently known to
17 ImageWare but in excess of the jurisdictional requirement of this Court. By reason of the
18 aforesaid infringing acts, ImageWare has been damaged and is entitled to monetary relief in an
19 amount to be determined at trial but in excess of the jurisdictional requirement of this Court.

20 28. Because of the aforesaid infringing acts, ImageWare has suffered and continues to
21 suffer great and irreparable injury for which there is no adequate remedy at law.

22 **THIRD CLAIM FOR RELIEF**

23 **(Infringement of U.S. Patent No. 7,596,246)**

24 29. ImageWare repeats, realleges and incorporates by reference the allegations of
25 paragraphs 1 through 28 as though set forth fully herein.

26 30. This claim is for patent infringement under the Patent Laws of the United States,
27 Title 35 of the United States Code.

28 31. ImageWare is informed and believes and based thereon alleges that M2SYS, by

1 and through its agents, officers, directors, employees and servants, has been and is currently
2 willfully and intentionally infringing the '246 patent by (a) making, using, offering to sell, and/or
3 selling the Accused Products that are covered by at least one claim of the '246 patent; (b) actively
4 inducing direct infringement of the '246 patent; and/or (c) importing, offering to sell, or selling
5 one or more components of the Accused Products, knowing such components to be especially
6 made or adapted for use in infringing the '246 patent and not staple articles or commodities
7 suitable for substantial noninfringing use. M2SYS's acts constitute infringement of the '246
8 patent in violation of 35 U.S.C. §§271(a), (b) and/or (c). ImageWare is further informed and
9 believes and thereon alleges that M2SYS's infringement is willful.

10 32. ImageWare is further informed and believes and based thereon alleges that if and
11 to the extent M2SYS is not infringing directly, M2SYS is infringing indirectly by contributing to
12 and/or inducing direct infringers, including without limitation one or more of its Software
13 Integrator Partners and/or resellers, to infringe the '246 patent.

14 33. ImageWare is further informed and believes and based thereon alleges that
15 M2SYS is knowingly inducing direct infringement and has the specific intent to encourage its
16 Software Integrator Partners and/or resellers to directly infringe the '246 patent by (among other
17 things) designing, developing and selling products, including without limitation the Accused
18 Products, to its Software Integrator Partners and/or resellers for the purpose of performing
19 multimodal biometric identity matching, and/or by making, using, selling, importing and offering
20 to sell the Accused Products that perform multimodal biometric identity matching. ImageWare is
21 further informed and believes and based thereon alleges that the Accused Products are each a
22 material component of ImageWare's patented methods and/or systems and that the Accused
23 Products are not capable of substantial non-infringing use.

24 34. ImageWare is informed and believes and based thereon alleges that M2SYS's
25 infringement of the '246 patent will continue unless enjoined by this Court.

26 35. ImageWare is informed and believes and based thereon alleges that M2SYS has
27 derived and received, and will continue to derive and receive, gains, profits and advantages from
28 the alleged acts of infringement of the '246 patent in an amount not presently known to

1 ImageWare but in excess of the jurisdictional requirement of this Court. By reason of the
2 aforesaid infringing acts, ImageWare has been damaged and is entitled to monetary relief in an
3 amount to be determined at trial but in excess of the jurisdictional requirement of this Court.

4 36. Because of the aforesaid infringing acts, ImageWare has suffered and continues to
5 suffer great and irreparable injury for which there is no adequate remedy at law.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Infringement of U.S. Patent No. 7,606,396)**

8 37. ImageWare repeats, realleges and incorporates by reference the allegations of
9 paragraphs 1 through 36 as though set forth fully herein.

10 38. This claim is for patent infringement under the Patent Laws of the United States,
11 Title 35 of the United States Code.

12 39. ImageWare is informed and believes and based thereon alleges that M2SYS, by
13 and through its agents, officers, directors, employees and servants, has been and is currently
14 willfully and intentionally infringing the '396 patent by (a) making, using, offering to sell, and/or
15 selling the Accused Products that are covered by at least one claim of the '396 patent; (b) actively
16 inducing direct infringement of the '396 patent; and/or (c) importing, offering to sell, or selling
17 one or more components of the Accused Products, knowing such components to be especially
18 made or adapted for use in infringing the '396 patent and not staple articles or commodities
19 suitable for substantial noninfringing use. M2SYS's acts constitute infringement of the '396
20 patent in violation of 35 U.S.C. §§271(a), (b) and/or (c). ImageWare is further informed and
21 believes and thereon alleges that M2SYS's infringement is willful.

22 40. ImageWare is further informed and believes and based thereon alleges that if and
23 to the extent M2SYS is not infringing directly, M2SYS is infringing indirectly by contributing to
24 and/or inducing direct infringers, including without limitation one or more of its Software
25 Integrator Partners and/or resellers, to infringe the '396 patent.

26 41. ImageWare is further informed and believes and based thereon alleges that
27 M2SYS is knowingly inducing direct infringement and has the specific intent to encourage its
28 Software Integrator Partners and/or resellers to directly infringe the '396 patent by (among other

1 things) designing, developing and selling products, including without limitation the Accused
2 Products, to its Software Integrator Partners and/or resellers for the purpose of performing
3 multimodal biometric identity matching, and/or by making, using, selling, importing and offering
4 to sell the Accused Products that perform multimodal biometric identity matching. ImageWare is
5 further informed and believes and based thereon alleges that the Accused Products are each a
6 material component of ImageWare's patented methods and/or systems and that the Accused
7 Products are not capable of substantial non-infringing use.

8 42. ImageWare is informed and believes and based thereon alleges that M2SYS's
9 infringement of the '396 patent will continue unless enjoined by this Court.

10 43. ImageWare is informed and believes and based thereon alleges that M2SYS has
11 derived and received, and will continue to derive and receive, gains, profits and advantages from
12 the alleged acts of infringement of the '396 patent in an amount not presently known to
13 ImageWare but in excess of the jurisdictional requirement of this Court. By reason of the
14 aforesaid infringing acts, ImageWare has been damaged and is entitled to monetary relief in an
15 amount to be determined at trial but in excess of the jurisdictional requirement of this Court.

16 44. Because of the aforesaid infringing acts, ImageWare has suffered and continues to
17 suffer great and irreparable injury for which there is no adequate remedy at law.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, ImageWare prays for judgment against M2SYS as follows:

20 (a) An Order adjudging M2SYS to have infringed the '873, '884, '246 and '396
21 patents under 35 U.S.C. § 271;

22 (b) An Order adjudging M2SYS to have willfully infringed the '873, '884, '246 and
23 '396 patents under 35 U.S.C. § 271;

24 (c) A permanent injunction under 35 U.S.C. § 283 enjoining M2SYS, its officers,
25 directors, agents, servants, employees and attorneys, and those persons acting in concert or
26 participation with M2SYS, from directly or indirectly infringing the '873, '884, '246 and '396
27 patents in violation of 35 U.S.C. § 271;

28 (d) That M2SYS account for all damages by M2SYS's infringement of the '873, '884,

1 '246 and '396 patents in violation of 35 U.S.C. § 271, and that M2SYS pay to ImageWare all
2 damages suffered by ImageWare;

3 (e) An order for a trebling of damages and/or exemplary damages due to M2SYS's
4 willful misconduct under 35 U.S.C. § 284;

5 (f) An Order adjudicating that this is an exceptional case;

6 (g) An award to ImageWare of the attorneys' fees and costs incurred by ImageWare in
7 connection with this action under 35 U.S.C. § 285;

8 (h) An award of pre-judgment and post-judgment interest and costs of this action
9 against M2SYS;

10 (i) For such other and further relief as the Court deems just and proper.

11 Dated: April 8, 2013

SAN DIEGO IP LAW GROUP LLP

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By: /s/James V. Fazio, III

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JAMES V. FAZIO, III
TREVOR Q. CODDINGTON, PH.D.

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Attorneys for Plaintiff
IMAGEWARE SYSTEMS, INC.

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1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff ImageWare
3 Systems, Inc. hereby demands a trial by jury of all issues so triable.

4 Dated: April 8, 2013

SAN DIEGO IP LAW GROUP LLP

6 By: /s/James V. Fazio, III

7 JAMES V. FAZIO, III
8 TREVOR Q. CODDINGTON, PH.D.

9 Attorneys for Plaintiff
10 IMAGEWARE SYSTEMS, INC.