

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GRACENOTE, INC., a Delaware
corporation,

Plaintiff,

v.

MUSICMATCH, INC., a Washington
corporation,

Defendant.

No. C 02-3162 CW

ORDER ADDRESSING
PARTIES' CROSS
MOTIONS FOR
SUMMARY JUDGMENT
RE: PATENT
INFRINGEMENT

Plaintiff Gracenote, Inc. moves for summary judgment on its patent infringement, breach of contract, and trademark infringement claims, as well as on Defendant MusicMatch, Inc.'s invalidity and unenforceability defenses to its patent infringement claims (Docket No. 494). MusicMatch opposes the motion, and cross moves for summary judgment on Gracenote's patent infringement, breach of contract, trademark infringement, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage, and unfair competition claims, as well as its non-infringement, invalidity, and unenforceability affirmative defenses and counterclaims (Docket No. 505).¹ The matter was heard on April

¹ MusicMatch also moves to strike Exhibits A to H attached to Gracenote's Motion for Summary Judgment (Docket No. 509) and to strike Exhibit A to Gracenote's Reply in Support of its Motion for Summary Judgment (Docket No. 540). The Court agrees with MusicMatch that these documents are tantamount to separate statements of fact and thus prohibited by the Court's scheduling Orders. The Court therefore grants MusicMatch's motions to

1 16, 2004. Having considered all of the papers filed by the
2 parties and oral argument on the motion, the Court issues this
3 Order addressing the parties' cross motions for summary judgment
4 regarding the patent infringement claims.²

5 BACKGROUND

6 Defendant MusicMatch produces "Jukebox," a software program
7 that enables computer users to play, record, copy, and manage
8 digital music files and CDs. Most of these CDs do not contain
9 descriptive information about their contents, such as the
10 identity of the artist, the name of the album, or the title of
11 each song. To have such information displayed on the computer
12 screen, customers must either manually enter it into the
13 computer or obtain it from a database of information available

14 _____
15 strike.

16 Gracenote moves to strike the Declaration of Bradley Kindig
17 (Docket No. 532), the Rebuttal Report of Bradley Kindig (Docket
18 No. 567), and the Supplemental Declaration of Stuart Soffer
19 (Docket No. 566). Gracenote also makes evidentiary objections
20 to these documents. MusicMatch makes evidentiary objections to
21 certain testimony offered by Dale Tyson Roberts, Ti Kan, and
22 Steven Scherf. The Court denies Gracenote's motions to strike.
23 To the extent that the Court relies upon evidence to which there
24 is an objection, the parties' objections are overruled. To the
25 extent that the Court does not rely on such evidence, the
26 parties' objections are overruled as moot.

27 MusicMatch objects to Gracenote's late submission of
28 evidence, argument, and case law, in the form of a bench book
given to the Court at the summary judgment hearing (Docket No.
582). Gracenote responds that this is simply an accepted use of
a demonstrative, and further moves to strike MusicMatch's
objection as an impermissible surreply (Docket No. 596).
Gracenote's bench book goes beyond a simple demonstrative to
include additional legal theories not raised in its briefs.
Gracenote's bench book is not part of the record, and the Court
will not consider it.

² The Court will issue a subsequent Order addressing the
non-patent-infringement claims.

