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CLIENT ALERT

Public Use Must Be for Intended Purpose of Invention to Trigger § 102(b) Bar

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In *Motionless Keyboard Company v. Microsoft Corporation* (No. 05-1497; May 29, 2007), the Federal Circuit affirms the district court's decision of non-infringement but reverses the decision of invalidity. The two patents at issue, directed to an ergonomic keyboard, were developed by an independent inventor, who "traversed the patent system on a limited budget." The district court held that both patents were invalid as the inventor demonstrated prototypes of his invention more than one year before the respective patent applications were filed.

On appeal, the Federal Circuit states that the public-use bar of 35 U.S.C. § 102(b) does not apply to either patent. The demonstration of one invention was protected by a non-disclosure agreement. With respect to the demonstration of the other invention, the panel holds that the prototype "was never connected to be used in the normal course of business to enter data into a system." The panel distinguishes the instant facts from those in the Supreme Court's 1881 decision in *Egbert v. Lippman* and concludes that "the disclosures in this record do not rise to the level of public use."

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