

Memorex Sues IBM For \$3 Billion

By RON ISCOFF

SAN FRANCISCO — Memorex last week brought the latest and largest in a series of antitrust complaints against IBM, filing three separate actions that seek total treble damages of more than \$3 billion.

Laurence Spitters, Memorex president, emerged from corporate seclusion for a 10 a.m. news conference Friday to announce that the suits had been filed moments earlier in U.S. District Court here.

The individual complaints were filed on behalf of Memorex Corp., ILC Peripherals' — Memorex' leasing subsidiary, and several foreign subsidiaries of the company.

Respective damages before trebling, as required under punitive provisions in the Clayton Act, are for \$750 million for Memorex, \$100 million for ILC Peripherals Leasing, and \$200 million for foreign subsidiaries.

Memorex charges IBM, IBM World Trade Corp., and other subsidiaries with monopolizing the market for peripheral products for use with IBM computers. Memorex alleges violations by IBM similar to those ruled unlawful in the September Telex decision.

The three Memorex complaints also maintain that IBM has engaged in anti-competitive conduct over a long period of time, specifically directed at the Santa Clara-based firm and its subsidiaries.

Memorex' suits come as no surprise. Most of the plug compatible peripherals makers have long assumed that the firm would bring suit against IBM. The only question has been when and for how much.

The delay was apparently a result of the firm's money problems and the obstacle of the enormous expenses involved in bringing suit against the industry leader.

Memorex as a corporation, Mr. Spitters, a founder of the company, and D James Guzy, former Memorex number two man are themselves defendants in several lawsuits, including shareholder class action claims.

In September, the company reported an \$8,352,000 operating loss for the first 6 months of its current fiscal year. (EN. Sept 17).

Including write-offs of assets, total loss for that period was \$101 million.

Charges in the Memorex complaints relate to IBM's alleged harassment and marketing practices in domestic and international markets designed to eliminate competition by Memorex and its subsidiaries.

In a separate claim for relief, Memorex' complaint charges IBM with monopolizing the market for (leases of computer peripheral products through the use of non-payout standard form lease agreements.

The complaint alleges that IBM's practices and monopolistic profits have enabled the computer leader to impose its form of nonpayout-lease as an industry standard.

Under this arrangement, IBM assumes the risk of ownership and the risks of financing the computer peripheral products after acquisition by the user, it was noted.

Memorex says that to compete IBM competitors must use the same type of lease.

"Given this market structure, Memorex, ILC, and other competitors to IBM have been severely damaged and virtually excluded from the market for leases."

Charges

Among the charges by Memorex and its subsidiaries is that the company has been virtually unable to obtain equity or debt financing at reasonable interest rates and the result has been that Memorex operations have been drastically cut and product programs — such as the MRX 40 / MRX 50 main frame program — have been abandoned.

The actions were filed by two local firms — Morrison, Foerster, Holloway, Clinton & Clark and Limbach, Limbach & Sutton.

All complaints seek injunctive relief and demand a jury trial.

In 1970 IBM brought suit in what Memorex terms an "unlawful California State Court action" for alleged theft of trade secrets.

Mr. Spitters remarked that this was an instance of IBM using litigation as a competitive device.

He added that litigation was filed after IBM had knowledge of impending financing for ILC Leasing and was an attempt to hinder Memorex from obtaining capital. "However, we did con summate that arrangement," he said.

The IBM suit against Memorex was settled in January 1972.

The IBM complaint was dismissed with prejudice, meaning the complaint could not be reasserted.

Memorex in its counterclaim to that suit alleged that IBM had attempted to preclude the Santa Clara company from hiring employees. No damages were paid by either party.

"Memorex' counterclaim was dismissed without prejudice, meaning the company could reassert its claim." Mr. Spitters explained.

In the 3 months since the Federal Court in Tulsa held IBM to be a monopolist in the IBM plug-compatible peripherals market, the computer industry leader has been slapped with three suits, not counting the new one by Memorex.

The three — by California Computer Products, Transamerica Computer and Hudson General — ask a total of at least \$178 million in actual damages, which would treble to \$534 million should their claims be upheld.

All three, suits are based on charges similar to those upheld by Judge A. Sherman Christensen in the Telex case. They accuse IBM of predatory actions in introducing its 2319 disk subsystems, in unveiling its fixed-term and extended term leasing plans and in raising CPU prices in the wake of lowered peripherals prices.

In the Transamerica Computer suit, filed in late October in San Francisco, and in the Hudson General suit, filed in Los Angeles in early December, the two companies claimed that their computer leasing business was impacted by IBM's actions since both were offering Telex peripherals along with IBM mainframes. Transamerica Computer sought \$50 million in actual damages and Hudson General a minimum of \$28 million the latter promising a more precise

figures later.

CalComp was the first to sue IBM after the Telex decision, filing in the Los Angeles Federal Court in early October and seeking \$100 million actual damages. IBM has since filed a counter suit charging CalComp with patent infringement, theft of trade secrets and monopolization of the plotter market.

Mr. Spitters said Memorex action is the ultimate result of concerns he first expressed publically in September 1971.

At that time he and another Memorex officer met with the press in New York City, "at which time I believe we were the first peripherals firm to call the attention of IBM's monopolistic practices to the computer industry."

He said at that 1971 meeting there were two things he called for that would be of benefit to the computer industry and the consumer public.

"He said a restructuring of the industry was necessary," which meant divesture by IBM of some of its operations, and the imposition of some restraints (on IBM).

"We also called upon the Justice Department to take action in this light

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The Memorex president said that he also indicated a need for a public commission composed of all sectors of the population including computer users manufacturers, scientists and government and political officials.

"A commission such as that might then, address itself to an industry that had been dominated by the monopolistic practices of IBM."

Mr. Spitters said, "We indicated it probably would not be possible for any private litigant to address the problem because of the mismatch of resources between IBM and other companies.

"An example is the Justice Department budget for its legal staff as compared to that of IBM."

Mr. Spitters said 1971 though, was not an auspicious time to make these statements.

He said the first significant change in the legal environment came with the 1972 settlement in the Control Data versus IBM suit.

The enormous settlement in that action. I believe bespoke IBM's acknowledgement of wrong-doing in the industry.

The second significant occurrence came in September of this year in the Telex trial decision." he added

Mr. Spitters said Memorex Corp. was specifically identified as an IBM target in evidence from the Telex case.

"A third factor is increased responsiveness of government officials, the Department of Justice, and computer users.

"In our perspective, this is an extraordinarily important action for us."

Mr. Spitters added that Memorex was very confident in terms of our ability to support our allegations, because we have had the benefit of thousands of pages of testimony taken in the Telex litigation and the numerous documents "These have been very important to us in proof of our claims "

He expressed his disappointment that the index prepared for the CDC litigation was destroyed. "I think it is unfortunate we were denied the benefit of that index."

In October, John Eastling, Memorex vice-president for corporate planning, said in an interview that there was considerable discussion at the company regarding filing an antitrust suit similar to the Telex one (EN, Oct. 8)

Mr. Eastling said he was "very pleased to see the Telex decision" and said he felt that Memorex has "very similar or identical claims as Telex against IBM.

An IBM spokesman said at presstime, we haven't had a chance to review Memorex' allegations yet, but based on initial press reports we've seen we believe the charges to be without foundation. Some of the allegations appear to be based on the judge's ruling in the Telex case. We believe that ruling to be erroneous and have been granted expedited appeal.

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